

Foreclosure Sale Policy

Foreclosure Sale Policy (Rules)

The Foreclosure Sale policy is for all bidders who intend to bid on property subject to foreclosure through the Public Trustee of El Paso County. If this is your intent, you will be referred to below as "Bidder".

As a Bidder, you are subject to the applicable state statutes on foreclosures and foreclosure sales as set forth in 38-37-101 et seq. and 38-38-101 et seq. of the Colorado Revised Statutes. Section 38-38-112, C.R.S., establishes the right of the Public Trustee to utilize electronic means to conduct a foreclosure sale and to require the Bidder to participate in bidding and other foreclosure sale procedures through such electronic means. It also recognizes the authority of the Public Trustee to establish uniformly written policies for conducting foreclosures and foreclosure sales. This document is one of those written policies directed at foreclosure sales. Your compliance, as a bidder, to the policies set forth below is a condition to your right to participate in bidding at a foreclosure sale conducted by the Public Trustee.

The Office of the El Paso County Public Trustee has contracted with Realauction.com to provide a website, services, applications and tools (collectively "Services") for a Bidder to be able to bid at foreclosure sales held by the Public Trustee. The User Agreement posted on the Realauction.com website sets out the terms by which Realauction.com offers Bidder access to and use of the online auction capability for foreclosure sales. This User Agreement governs the relationship between the Bidder and Realauction.com, L.L.C. concerning the electronic process and requirements for participating in on-line foreclosure sales held by the Public Trustee. Before using Realauction.com's website to access foreclosure sale information or to engage in bidding on foreclosed property, Bidder must agree to be legally bound by the terms and conditions of Realauction.com's User Agreement.

Any difficulties or concerns a Bidder may have with the Services offered by Realauction.com should be directed to Realauction.com at customerservice@realauction.com. Under section 38-38-110, C.R.S., El Paso County and the Public Trustee, acting in their official capacities in preparing, conducting, and executing a foreclosure sale by electronic means are not liable for the failure of a "device" that prevents a Bidder from participating in a sale. A "device" includes computer hardware, computer network, computer software application or a website. This includes the Services offered by Realauction.com.

Rules for Bidders Participating in the Electronic Auction for Foreclosure Sales:

- 1. ID and Information.** A Bidder must be identified by name and other information required by RealAuction.com, including, but not limited to, driver's license number, state ID, tax identification information or email addresses. A User ID and password will be provided by RealAuction.com. Only the Bidder itself/himself/herself or the Bidder's authorized employees and agents may use this User ID or password when bidding at a foreclosure sale. The identity may not be transferred to or used by any third party. Bidder must notify RealAuction.com immediately in the event of theft or unauthorized use of User ID and/or password.
- 2. Competency/Authority.** Bidder and Bidder's authorized employees or agents must be of legal age to enter into binding contracts. Any authorized employee or agent must be legally authorized to act on behalf of Bidder. Failure to comply with these requirements will result in immediate disqualification of Bidder at a foreclosure sale.
- 3. Truthfulness.** All information provided or representations made by Bidder to the Public Trustee must be truthful, accurate and complete to the best of his/her knowledge. Any material misinformation or misrepresentation will result in the immediate disqualification of Bidder at a foreclosure sale.

4. Manipulation. Bidder must not engage in activities that result in a manipulation of the foreclosure sale adverse to the public interest. Such manipulation would include but are not limited to: bid-rigging, intimidation, computer hacking or other misuse of the Services provided by Realauction.com, and actions intended to adversely influence the decision of a public official. Any manipulation will result in the immediate disqualification of Bidder at a foreclosure sale and, if the manipulation is criminal, in the possible referral of the matter to the Fourth Judicial District Attorney's Office.

5. Deposit of Funds. As a condition to the right to bid at the foreclosure sale, Bidder shall deposit with the Public Trustee, an amount equal to or greater than 10 percent of the Bidder's anticipated high bid on each foreclosed property on which the Bidder intends to bid. The deposit shall be made either by electronic means or delivered in person. In order for funds to be available for the auction, all Cash, Certified Funds (i.e. certified check or cashier's check, or teller's check) and Wires must be received by **4:00 p.m. (Mountain Time), the day before the auction.**

6. Cancelling a Bid. Lowering or cancelling a bid must be done prior to the official start of the foreclosure sale. Once a sale officially commences, no bid retractions will be accepted.

7. Sale Procedure. All procedures, protocols and requirements for conducting a sale shall be determined by the Public Trustee. Bidder shall have no right to direct or control such procedures, protocols and requirements.

8. Payment for Purchase. All purchases must be completed via the Realauction.com website using the bidder's available funds. If a remaining balance is due (an amount beyond the amount of the deposited funds described above), all final payments must be delivered to the Public Trustee's office by wire transfer, cash, or certified funds (certified check, cashier's check, or teller's check) in a timely manner to allow for the receipt of funds and the update of the bidder's account balance to complete the purchase by **2:00 p.m. (Mountain Time) the day of the auction.** All funds must be drawn from a US Financial institution and no foreign currency is accepted.

9. Failure to complete a purchase. Failure to pay the balance of the winning bid or complete the purchase by **2:00 p.m. (Mountain Time) the day of the auction** will result in a forfeited bid. The 10 percent deposit used to participate in the auction will be removed from the bidder's available balance and held in a Public Trustee's non-interest-bearing account for 30 business days or longer at the discretion of the office of the Public Trustee. At that time, the funds will be released back to the Bidder's Realauction.com account.

If the first bidder fails to complete the transaction, an email will be sent to the second highest bidder. The second highest bidder will have the opportunity to purchase the property for their last highest bid amount. The second highest bidder has until **2:00 p.m. (Mountain Time) the next business day following the auction** to submit the required funds. In the event that, neither the first bidder nor the second highest bidder purchases the property, the property will go back to the lender for the lender's bid at auction.

10. Fund Transfers and Handling. All procedures, protocols and requirements regarding the appropriateness and completeness of fund transfers and the handling of funds received shall be determined solely by the Public Trustee. Bidder shall have no right to direct or control such procedures, protocols and requirements.

11. Name on Certificate of Purchase/Confirmation Deed. If the successful bidder at a foreclosure sale, Bidder is solely responsible for providing to the Public Trustee, in writing, the complete and accurate name of the entity or person to which or whom Bidder wishes the Certificate of Purchase and, if applicable, the Confirmation Deed to be issued.

12. Reserved Rights. The Public Trustee reserves the right to correct, revise, add to, delete and/or modify any information regarding any foreclosed property being offered for sale, and may cancel the sale of any foreclosed property at any time, including after the bidding has been completed.

13. Risks. The Bidder assumes the risks associated with bidding and acquiring foreclosed property at foreclosure sale. Foreclosure sales may be cancelled, set aside or deemed void by a court of law through no fault of the Bidder. However, absent Public Trustee error, if the sale is set aside or voided, all fees and charges paid by the Bidder shall be retained.

14. Duty to Review. Bidder is solely responsible for reviewing all information made available regarding a foreclosure sale and foreclosed properties prior to bidding at a foreclosure sale and for inquiring with the Public Trustee and Realauction.com as to any potential errors, omissions or inaccuracies of said information. El Paso County, the Public Trustee and Realauction.com shall not be liable for any claim of loss alleged to have resulted from any errors, omissions or inaccuracies concerning any of such information.

15. Title Defects. Under state statutes, all foreclosed property is sold "as is, where is." El Paso County, the Public Trustee, and Realauction.com hold no title or other property interest in foreclosed property being sold at foreclosure sale and, therefore, cannot, and do not, make any express or implied warranties or representation about the condition, marketability, value, existing or potential uses, title, outstanding liens, mortgages or other encumbrances which may survive the foreclosure sale of foreclosed property, zoning regulations or laws that may affect current or future uses of the foreclosed property, or existence of any physical or environmental conditions affecting the value or use of foreclosed property. It is the sole responsibility of Bidder to perform any and all research necessary regarding the condition, marketability, use of, and current state of the title to any foreclosed property offered at foreclosure sale.

16. Data Usage Disclaimer:

During the course of business, the El Paso Public Trustee may choose to use data provided to us through registration with Realauction to contact you regarding our auctions. The information may also be provided to foreclosing lenders and/or their attorneys in the normal conduct of their business. Additionally, as a government agency, the El Paso County Public Trustee is subject to the [Colorado Open Records Act](#) (CORA). Any information provided to us in the course of normal business using Realauction may be subject to CORA Requests, including but not necessarily limited to Name, Company Name, Company Aliases, Addresses, Phone Numbers and Emails.