

# California Foreclosure Process

Use the following foreclosure process to develop a definite plan of action with well-timed, well-informed steps, so you can stop the foreclosure process and save your home!

California is famous for its one-action rule, in which a lender must carefully elect one action to take against the borrower if the borrower defaults. If the lender forecloses the deed of trust out of court, the lender has chosen one action and may not bring a lawsuit to recover a deficiency, which would be a second action. If the lender chooses to sue the borrower and obtain both a foreclosure order, and if the proceeds of the judicial sale of the real estate are not sufficient to repay the loan balance, then they may seek a deficiency judgement for the balance. Such a suit is permitted as the lender's one action. California lenders rarely elect judicial foreclosures.

## Non-Judicial Foreclosure

The non-judicial process of foreclosure is used when a power of sale clause exists in a mortgage or deed of trust. A "power of sale" clause is the clause in a deed of trust or mortgage, in which the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event of their default.

## Judicial Foreclosure

The judicial process of foreclosure, which involves filing a lawsuit to obtain a court order to foreclose, is used when no power of sale is present in the mortgage or deed of trust.

This is uncommon with most commercially available real estate loans and most likely would be found when there is a private party lending the money to purchase or finance real property. Generally, once the court declares a foreclosure, the property will be auctioned off to the highest bidder.

**Notice of Default:** Foreclosure proceedings start with a Notice of Default (NOD). The lender (or trustee for the lender) files a Notice of Default with the county, after the property owner (trustor) fails to make his/her loan payment(s). This is done to give, constructive notice to the public which is required by law. The owner may be delinquent anywhere from 15 days to 12 months, or more. After the recording of the Notice of Default, the borrower and junior lien holders are given proper notification and the borrower has 90 days to bring their account current with the lender. This time period is also referred to as the Reinstatement Period.

**Notice of Trustee Sale:** If the borrower does not reinstate their account within the 90 day period, the lender will authorize and instruct the Trustee to record the Notice of Trustee Sale (NOS). A notice of trustee sale must be mailed by certified mail, return receipt requested, 20 days before the foreclosure sale to the borrower, to anyone who requests notice or recorded a request and to the trustors, beneficiaries or parties at interest.

The Notice of Trustee's Sale is recorded at the County Recorder's office in the County where the property is located at least 14 days before the sale. It contains the date, time, and place where the auction will take place. This notice has to be published in a adjudicated newspaper in the city where the property is located.

The NOS is posted on the property as a requirement of law. If access to the property is restricted by means of a central guard gate, then the notice must be posted on the guard gate. Also, a copy of the notice must be posted at one public place in the city where the property is to be sold (or judicial district in rural areas) at least 20 days before the sale.

**Sale Procedures:** After 21 days of the recording of the NOS, a foreclosure sale can take place at public auction. The property may be sold to a third party bidder or revert back to the lender for a specified amount. Bidders are required to bring cashier's checks or money orders to the sale in an amount equal to or higher than the lenders opening bid. The auctioneer will qualify each bidder and the successful bidder will have to tender full payment at the time of the sale.

Buying property at a Trustee's Sale is not like purchasing property in a conventional manner. You will not have the opportunity to inspect the property after you have purchased it at sale. Any and all due diligence must be conducted prior to the Trustee's sale. This means potential purchasers will benefit from tracking the properties as the Notice(s) of Default are filed up until the time they are sold at the Trustee's Sale.

**Postponement:** Sales may be postponed by announcement at the time and location specified for the intended sale. The borrower may postpone the sale in order to obtain cash, provided the written request for postponement identifies source from which the funds are to be obtained, and the postponement is only for one business day. The borrower may obtain one such postponement.

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# California Foreclosure Process Proceedings Timeline

**Reinstatement:** Debtors may reinstate up to five days before non-judicial foreclosure sale.

**Junior:** Junior lien holders may no longer redeem, so they may try to protect themselves by (1) advancing funds to bring the senior loan payments current, then foreclosing for the sums advanced; (2) bidding at the foreclosure sale so the price will be sufficient to pay off the senior and the junior liens; or (3) acquire the property by bidding at the foreclosure. If the debtor has a right to redeem and does so, the junior who purchased the home must be reimbursed. Junior liens do not reattach the property if a borrower redeems a senior lien whose foreclosure extinguished the junior. This helps borrowers by encouraging the junior to bid up to the property to fair market value at the foreclosure sale, or else lose out, giving borrowers closer to fair value at sale.

**Deficiency:** Lenders may not seek a deficiency judgment if (1) the foreclosure is non-judicial or if (2) foreclosure is on a purchase money obligation. The same rules do not apply to guarantee or later lien holders. The lenders may seize alternative collateral. If the lender forecloses by filing a lawsuit, then the lender can obtain both a foreclosure sale order and a judgment against the borrower for a deficiency after the court-ordered sale, but only for the difference between the judgment and the fair value of the security.

**Redemption:** A borrower's right to redemption is terminated when a deficiency judgment is waived or prohibited. When redemption is permitted, after judicial foreclosure, only the borrower can now redeem and junior lien holders or "redemptionors" may not. When the lender is permitted to seek a deficiency, elects to pursue a deficiency and forecloses judicially, the borrower may redeem 12 months after sale, but a full credit bid by the lender cuts it to 3 months.

Proceedings Timeline	Foreclosure Process Description & Civil Codes
Day 1	Notice of Default recorded with County Recorder - 2924
Within 10 Business Days	Trustee mails Notice of Default to borrower(s) with the recording date - 2924(b)(1) and 2924(e)
Within 1 Month	Mail Notice of Default as per TSG instructions - 2924b(c)(1)(2) and 2924b(e)
After 3 Months	Set sales date, time and location unless a bankruptcy has been filed, or other event occurs that holds the timeline - 2924 and 2924f(b)
25 Days Prior to Sales Date	Send Notice of Sale to IRS (if applicable) IRS Regulations
20 Days Prior to Sales Date	Public Notice of Sales - 2924f(b) Post Notice of Sales - 2924f(b) Mail Notice of Sale - 2924b(c)(3) Begin publishing Notice of Sale in a adjudicated newspaper. (Must run 3 consecutive weeks) 2924b(e)
Within 10 Days from first publication of Notice of Sale	Send beneficiary request for directions to the property - 2924(b)
14 Days Prior to Sales Date	Record the Notice of Sale with recorder's office - 2924f(b)
7 Days Prior to Sales Date	Trustee cannot sell for 7 days after expiration of court order - 2924g(d)
5 Business Days Prior to Sales Date	The borrower's right to reinstate expires- 2924c(e)
Sale Date	The property is sold to high bidder or reverts back to lender

The information above was gathered from various sources. It is deemed reliable but not guaranteed. Before acting on any legal matter, you should consult with your personal legal advisor.