

UNDERSTANDING FORECLOSURE IN CALIFORNIA

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March 22, 2008

In California, Foreclosure comes in two forms each with very different requirements. The following is a general overview of that process:

A. Non-Judicial - (Trustee Sale)

This is the most common process, primarily because of its speed and the fact that no court process is involved. On most loans, the borrower signs a Deed of Trust which gives the creditor a security interest in the real property the loan is on. If the borrower defaults on the loan, the Deed of Trust gives a designated Trustee the power to protect the lender if there is a default. This is called a power of sale, or more commonly foreclosure.

The process starts with the recording of a Notice of Default in the County where the property is located. This Notice is also posted on the property, published in a newspaper, and mailed to the borrower and all junior creditors. Once this occurs, the borrower has **90 Days** to cure the default by paying all delinquent amounts plus late fees and costs.

If the borrower fails to cure the default within the 90 days, the Lender does the same process with a Notice of Sale. This states that the property will be sold at public auction in **21 days** unless within 5 days before the sale the borrower cures the default or pays off the loan in full before the sale. At the sale, the foreclosing lender generally starts the bidding at the amount they are owed. If no-one overbids, the Lender will get the property through a Trustee's Deed. The foreclosure extinguishes all junior liens on title as well as all leases and rental agreements.

This is a fast track process; Trustee sale can occur within as little as 111 days. However, in exchange for the fast track, a foreclosing lender cannot obtain a judgment against the borrower if the property value is less than the amount owed on the loan.

B. Judicial - (Sheriff's Sale)

The second process involves a court action and sale and is the only route by which a lender can generally get a judgment against a borrower. The Deed of Trust also gives the Trustee the power to sue to enforce the security agreement. This is typically called Judicial Foreclosure.

The process starts with the Trustee filing a lawsuit against the borrower seeking 1) Sheriff Sale of the real property; then 2) a Deficiency Judgment if the amount obtained in the Sheriff Sale is not enough to pay the Lender in full including a fees, costs, and attorney fees. The borrower is served with a Summons and the Complaint and has **30 days** to file an Answer. If the borrower fails to file an Answer, the Lender takes his default and the time is greatly shortened.

At some point in the proceedings, the Court will issue and Order for the property to be sold. After the sale, a Court hearing is held and the Lender can obtain a Judgment against the borrower for the deficiency between the amount of sale and the amount owed. The Lender can then seek to collect on the Judgment by going after the borrower's other assets as well as garnishing wages.

Unless the borrower defaults, the Judicial Foreclosure process can take up to 1.5 years or possibly more. Plus, if it is the borrower's home, the borrower has an additional 1 year right of reinstatement. Thus, a Judicial Foreclosure could take 2.5 years before the foreclosing lender could really sell the property to anyone. This makes this a very rare process which is typically only used when a large amount of money is at stake or there are property issues (title, toxics, etc) that prevent the Lender from being able to do a Trustee Sale.

This Report is general in nature and is not intended to provide legal advice to anyone on their specific problems. If you have a problem involving possible foreclosure, get competent legal help as soon as possible.

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