



PRINT

Home Page > Legal > Foreclosure & Short Sale Folder > Foreclosure Timeline

Foreclosure Timeline

find the article at: "<http://www.car.org/legal/foreclosure-short-sale-folder/foreclosure-timeline/>"

Members Legal Services

Tel (213) 739-8282

Fax (213) 480-7724

March 3, 2011

In California, lenders who intend to foreclose on a property when the loan is delinquent typically use the nonjudicial foreclosure process also known as a trustee's sale. This process is less expensive for the lender than the judicial foreclosure process. A nonjudicial foreclosure doesn't require a court proceeding and, thus, is a more expeditious process. From here on, whenever the term "foreclosure" is used, it is referring to a trustee's sale.

With foreclosures being so prevalent and with so many homeowners being at risk of losing their homes to foreclosure, REALTORS® need to be able to assess whether they have sufficient time to market the property and close escrow before the property is lost to foreclosure. Therefore, this article provides a foreclosure timeline to assist REALTORS® in their assessment of the time remaining before a possible foreclosure occurs.

Several recent laws have impacted the foreclosure timeline. The California legislature added an additional 90-day extension period after the recordation of the Notice of Default (NOD)—California Civil Code Sections 2923.52-2923.55. However, those statutes were repealed effective Jan. 1, 2011.

Another law which expires Jan. 1, 2013—California Civil Code Section 2923.5--affects the foreclosure timeline but only for loans made between Jan. 1, 2003 and Dec. 31, 2007 on residential one-to-four unit owner-occupied properties. This law adds a 30-day borrower contact period before the lender may record the NOD.

"Days" in the foreclosure timeline are "business days," defined as all days other than Saturday, Sunday, and holidays. See California Civil Code Sections 7.1 and 9 for more information.

FORECLOSURE TIMELINE FOR LENDERS

Loans Made Between Jan. 1, 2003 and Dec. 31, 2007 on Residential One-to-Four Unit Owner-Occupied Properties	Other Loans
<p>DAY 1: CONTACT THE BORROWER</p> <p>Under Cal. Civ. Code § 2923.5(a) the lender must contact the borrower by phone or in person to assess the borrower's financial situation and explore options for avoiding foreclosure. During</p>	

the conversation, the lender must inform the borrower of the right to meet with the lender within 14 days. The lender must also give the borrower the toll-free number for finding a HUD-certified housing counseling agency.

Note: In the 2010 case, *Mabry v. Aurora Loan*, the court held that a borrower can file an injunction to postpone the foreclosure sale if the lender doesn't comply with this law, but cannot overturn the foreclosure sale once it has been conducted.

DAY 31: RECORD THE NOD

The NOD must be filed in the county where the property is located. The language of the NOD can be found in Cal. Civ. Code § 2924c(b)(1).

The NOD must include the lender's declaration that it has contacted the borrower to explore options for avoiding foreclosure, tried with due diligence to contact the borrower, or the borrower has surrendered the property (Cal. Civ. Code § 2923.5(b)).

Within 10 days after recordation of the NOD: A copy of the NOD must be mailed by registered or certified mail to the borrower/trustor and to any parties with a recorded Request for Notice as indicated in Cal. Civ. Code § 2924(b)(1). (Cal. Civ. Code § 2924b(b).)

Within 30 days after recordation of the NOD: the lender must mail a statutory notice to the borrower as described in Cal. Civ. Code 2924f(c) (3).

DAY 1: RECORD THE NOD

The NOD must be filed in the county where the property is located. The language of the NOD can be found in Cal. Civ. Code § 2924c(b)(1).

Within 10 days after recordation of the NOD: A copy of the NOD must be mailed by registered or certified mail to the borrower/trustor and to any parties with a recorded Request for Notice as indicated in Cal. Civ. Code § 2924(b)(1). (Cal. Civ. Code § 2924b(b).)

Within 30 days after recordation of the NOD: the lender must mail a statutory notice to the borrower as described in Cal. Civ. Code 2924f(c) (3).

DAY 116 – 121: RECORD THE NOTICE OF TRUSTEE'S SALE

The Notice of Trustee's Sale must set forth the date, time, and place of the Sale. It must also include the total amount of the unpaid balance and reasonably estimated costs, expenses, and advances at the time of the initial publication of the Notice. It must be recorded, posted, published, and also mailed by registered or certified mail as well as first class mail to the borrower (Cal. Civ. Code § 2924f).

25 days prior to Trustee's Sale: Notice of Sale sent to IRS in case there is an IRS lien recorded more than 30 days before the date of the Sale

DAY 86 - 91: RECORD THE NOTICE OF TRUSTEE'S SALE

The Notice of Trustee's Sale must set forth the date, time, and place of the Sale. It must also include the total amount of the unpaid balance and reasonably estimated costs, expenses, and advances at the time of the initial publication of the Notice. It must be recorded, posted, published, and also mailed by registered or certified mail as well as first class mail to the borrower (Cal. Civ. Code § 2924f).

25 days prior to Trustee's Sale: Notice of Sale sent to IRS in case there is an IRS lien recorded more than 30 days before the date of the Sale

<p>(Cal. Civ. Code § 2924b(c)(4); 26 U.S.C. 7425 (b)).</p> <p><u>20 days prior to Trustee's Sale:</u> Notice of Trustee's Sale must be recorded at least 20 days prior to Sale (Cal. Civ. Code § 2924f(b)).</p> <p><u>20 days prior to Trustee's Sale:</u> Notice of Sale publication begins (must run once a week for 3 consecutive weeks in a newspaper of general circulation) (Cal. Civ. Code § 2924f(b)).</p> <p><u>20 days prior to Trustee's Sale:</u> Notice of Sale must be mailed by registered or certified mail to everyone who is entitled to receive a NOD. In addition, the Notice of Sale must also be mailed by 1 st class mail to the borrower (Cal. Civ. Code § 2924b(b)-(c)).</p>	<p>(Cal. Civ. Code § 2924b(c)(4); 26 U.S.C. 7425 (b)).</p> <p><u>20 days prior to Trustee's Sale:</u> Notice of Trustee's Sale must be recorded at least 20 days prior to Sale (Cal. Civ. Code § 2924f(b)).</p> <p><u>20 days prior to Trustee's Sale:</u> Notice of Sale publication begins (must run once a week for 3 consecutive weeks in a newspaper of general circulation) (Cal. Civ. Code § 2924f(b)).</p> <p><u>20 days prior to Trustee's Sale:</u> Notice of Sale must be mailed by registered or certified mail to everyone who is entitled to receive a NOD. In addition, the Notice of Sale must also be mailed by 1 st class mail to the borrower (Cal. Civ. Code § 2924b(b)-(c)).</p>
<p>DAY 135: LAST DAY TO CURE DEFAULT</p> <p>Up to 5 business days <u>before</u> the Trustee's Sale, the borrower may reinstate the loan (bring the loan current) by paying the missed payments plus allowable costs. <u>Note:</u> If the Sale is postponed the date that the borrower may reinstate is postponed accordingly. (Cal. Civ. Code § 2924c (e).)</p>	<p>DAY 105: LAST DAY TO CURE DEFAULT</p> <p>Up to 5 business days <u>before</u> the Trustee's Sale, the borrower may reinstate the loan (bring the loan current) by paying the missed payments plus allowable costs. <u>Note:</u> If the Sale is postponed the date that the borrower may reinstate is postponed accordingly. (Cal. Civ. Code § 2924c (e).)</p>
<p>DAY 141: TRUSTEE'S SALE FORECLOSURE</p> <p>After the last day to cure the default, the borrower still has the right to redeem the property but he/she must pay the entire debt, plus interest and costs before the bidding begins at the Sale (Cal. Civ. Code §§ 2903, 2905).</p> <p>At the Trustee's Sale, the property is sold through a public auction to the highest bidder. Title is transferred to the successful bidder by Trustee's Deed.</p>	<p>DAY 111: TRUSTEE'S SALE FORECLOSURE</p> <p>After the last day to cure the default, the borrower still has the right to redeem the property but he/she must pay the entire debt, plus interest and costs before the bidding begins at the Sale (Cal. Civ. Code §§ 2903, 2905).</p> <p>At the Trustee's Sale, the property is sold through a public auction to the highest bidder. Title is transferred to the successful bidder by Trustee's Deed.</p>

Bottom Line: The minimum time for a trustee's sale foreclosure (nonjudicial foreclosure) is 110 days after the NOD is recorded for most loans (plus 30 days for loans made between Jan. 1, 2003 and Dec. 31, 2007 on owner-occupied residential one-to-four unit properties).

This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org.

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739-8282, Monday through Friday, 9 a.m. to 6 p.m. and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to <http://www.car.org/legal/legal-hotline-access/>. Written correspondence should be addressed to:

CALIFORNIA ASSOCIATION OF REALTORS®
Member Legal Services
525 South Virgil Avenue
Los Angeles, CA90020

The information contained herein is believed accurate as of March 3, 2011. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Written by Sonia M. Younglove, Esq.

Copyright© 2011 CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). Permission is granted to C.A.R. members only to reprint and use this material for non-commercial purposes provided credit is given to the C.A.R. Legal Department. Other reproduction or use is strictly prohibited without the express written permission of the C.A.R. Legal Department. All rights reserved.