

Residential Foreclosures (CA)

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A Practice Note discussing residential foreclosure procedures and proceedings under California law. This Note outlines the primary considerations, requirements, and processes for non-judicial and judicial foreclosures of real property secured by deeds of trust. This Note also addresses the appointment of receivers, deficiency judgments, and the borrower's right to reinstate the loan and right of redemption.

Foreclosure is the legal process by which a lender (beneficiary or mortgagee) liquidates secured real property to obtain payment following the borrower's (trustor's) default on the underlying debt.

This Note outlines California law governing residential foreclosure proceedings including:

- Non-judicial foreclosures.
- Judicial foreclosures.
- Redemption rights.
- Deficiency judgments.

This Note also provides step-by-step guidance for conducting residential foreclosures under California law.

AVAILABLE METHODS OF FORECLOSURE IN CALIFORNIA

Lenders in California use the following instruments to secure loans against real property:

- Deeds of trust.
- Mortgages.

Deeds of trust are the most common security instruments in California. California recognizes mortgages, but lenders rarely use them. For more information, see State Q&A, Real Estate Finance: California: Question 1 ([7-500-5701](#)).

Under California law, a lender may foreclose a loan secured by residential real property by either:

- **Non-judicial foreclosure.** Foreclosure is authorized under a deed of trust or other contract containing a power of sale clause and is conducted at a public auction without judicial assistance (see Non-Judicial Foreclosure). Non-judicial foreclosures are the most commonly used form of foreclosure in California and are governed by the California Civil Code (Cal. Civ. Code §§ 2923.3 to 2944.10).
- **Judicial foreclosure.** Foreclosure of a mortgage or other contract by court order after a judgment in a lawsuit (see Judicial Foreclosure). Judicial foreclosure is rarely used with deeds of trust due to its lengthy and expensive nature and is governed by the California Code of Civil Procedure (Cal. Civ. Proc. Code §§ 725a to 730.5).

PRE-FORECLOSURE REQUIREMENTS AND CONSIDERATIONS

Counsel for the lender should review the terms of the note and deed of trust or mortgage for any contractually required notification requirements before foreclosure.

Most California lenders provide defaulting borrowers with a demand letter before beginning the foreclosure process. The demand letter should state:

- The terms of the loan.
- A description of the default.
- That the loan documents are to be strictly enforced if any default is not remedied.

Some California cities also require lenders to register properties that are in the process of being foreclosed. For example, Oakland has a Foreclosed and Defaulted Residential Properties Registration, Inspection, and Maintenance Program. Counsel should verify any registration requirements with the municipality where the real property is located.

RESTRICTIONS ON CONSUMER DEBT COLLECTION

Most institutional residential lenders are subject to the oversight of the Consumer Financial Protection Bureau (CFPB). The CFPB

imposes additional limitations when seeking to foreclose on a loan secured by residential real property. For guidance on the authority of the CFPB, see Practice Note, Summary of the Dodd-Frank Act: Consumer Financial Protection: Subtitle A: Consumer Financial Protection Bureau ([2-543-6265](#)).

The CFPB requires that subject lenders wait at least 120 days after a loan becomes delinquent before initiating the foreclosure process (12 C.F.R. § 1024.41(f)). Under the CFPB regulations, a lender cannot:

- Record a notice of sale before 120 days have passed relating to non-judicial foreclosures.
- File a civil complaint for foreclosure before 120 days have passed relating to judicial foreclosures.

Counsel for lenders should confirm the 120-day delinquency with the lender before taking any action to foreclose the secured loan.

CALIFORNIA HOMEOWNER BILL OF RIGHTS

The California Homeowner Bill of Rights (CAHBOR) provides protections and rights to borrowers with residential mortgage loans secured by owner-occupied real property (Cal. Civ. Code §§ 2923.4 to 2924.11).

Before commencing a non-judicial foreclosure (by recording a notice of default) or a judicial foreclosure (by filing a foreclosure complaint), the lender must either:

- Contact the borrower in person or by telephone to assess the borrower's financial situation and explore foreclosure prevention alternatives, including:
 - advising the borrower that the borrower has the right to request a follow-up meeting within 14 days; and
 - providing the borrower with the toll-free telephone number for the US Department of Housing and Urban Development (HUD) to find HUD approved counseling agencies.
- Conduct "due diligence" to prove that the lender is exempt from the initial contact requirements:
 - sending a letter to the borrower that includes the HUD toll free number by first class mail and includes a toll-free number to the lender that provides access to a live representative during business hours;
 - after sending the letter, calling the borrower at least three times, at different hours and on different days, at the borrower's primary telephone number on file;
 - sending a certified letter to the borrower, return receipt requested, if the borrower has not responded to the initial letter or phone calls within two weeks; and
 - posting a prominent link on the lender's homepage of its website that provides the borrower with a description of the options to avoid foreclosure and instructions on how to explore the options, a list of the financial documents the lender requires from the borrower for discussing foreclosure avoidance options, and the lender's toll-free telephone number, and the toll-free telephone number made available by HUD to obtain a HUD-certified housing counseling agency.

(Cal. Civ. Code § 2923.5(a)(2), (e))

The lender may commence the foreclosure process 30 days after satisfying one of these pre-foreclosure requirements (Cal. Civ. Code § 2923.5(a)(1)(A).)

CAHOBOR also prohibits the lender from simultaneously working with the borrower on foreclosure prevention alternatives (loan modifications) and moving forward with the foreclosure process (known as "dual tracking") (Cal. Civ. Code § 2924.11).

Participate in Foreclosure Prevention Alternatives

CAHOBOR defines foreclosure prevention alternatives as including loan modifications, short sales, or other loss mitigation options (Cal. Civ. Code § 2920.5(b)).

If the borrower responds to the lender's initial contact and requests a follow-up meeting to discuss foreclosure prevention alternatives, the lender must:

- Establish a single point of contact to:
 - communicate the application process and deadlines;
 - coordinate receipt and review of the borrower's documents to determine eligibility for the foreclosure prevention alternatives, if any, and notify the borrower of any missing documents necessary to complete the application;
 - be responsible for monitoring the borrower's file and timely, accurately, and adequately communicate with the borrower about the status of the application;
 - ensure that the lender considers the borrower for all available foreclosure prevention alternatives; and
 - have access to the individuals with the authority to stop the foreclosure proceedings, if necessary.
- Provide the borrower with one or more direct means of communication with the single point of contact.

(Cal. Civ. Code § 2923.7.)

The lender must ensure that the borrower's application and supporting documents are competent and reliable (Cal. Civ. Code § 2924.17).

ORDER A TITLE SEARCH

Before beginning foreclosure, the lender must conduct a title search to identify liens and other encumbrances that affect title to the real property.

Liens for property taxes and certain homeowner association fees, should be paid to protect the lender's interest in the real property.

The lender should also conduct a search of the bankruptcy court records to determine whether the borrower has filed for bankruptcy. If the search reveals that a bankruptcy has been filed, the foreclosure action must stop until the lender applies for and is granted relief from the automatic stay (11 U.S.C. § 362).

CONSIDER APPOINTING A RECEIVER

In cases of both judicial and non-judicial foreclosure, to the extent a property is in danger of waste or deterioration, a lender may move for the appointment of a receiver to protect and preserve the property.

Lenders may seek a receiver to collect rents (relating to residential rental property) or to protect and preserve the property.

A receiver is responsible for paying:

- Real estate property tax.
- Property insurance for the residence.
- Homeowner association or condominium association dues.

The California Code of Civil Procedure and Rules of Court govern receiverships (Cal. Civ. Proc. Code §§ 564 to 570; Cal. Rules of Court, rules 3.1175 to 3.1184). For more information on receiverships in California, see State Q&A, Provisional Remedies: California ([W-000-3315](#)).

NON-JUDICIAL FORECLOSURE

Non-judicial foreclosure is a contractual right arising only where the borrower expressly grants the lender a power of sale in the subject deed of trust. The power of sale clause allows a lender to foreclose the security interest and sell the secured property if the borrower is in breach of a material obligation under the terms of the promissory note, the deed of trust, or another contract, without court proceedings. (*Biancalana v. T.D. Serv. Co.*, 56 Cal. 4th 807, 813 (2013).)

Examples of material breaches that can lead to foreclosure include:

- Failure to make timely payments on the promissory note.
- Failure to keep the secured property insured.
- Failure to pay property taxes when due.
- Transfer of title or interest in the secured property to certain parties without prior written consent of the lienholder.

In California, deeds of trust typically contain a power of sale. Mortgages in California generally do not contain a power of sale.

A beneficiary under a deed of trust may not simultaneously pursue a suit on the promissory note and foreclose non-judicially. In California, the beneficiary is limited to one form of recovery (known as the “one-action” rule). (Cal. Civ. Proc. Code § 726(a).)

SUBSTITUTION OF TRUSTEE

The trustee named in the original deed of trust often is unqualified, unwilling, or unable to conduct the foreclosure sale. In these instances, the lender must record a substitution of trustee (SOT). In an SOT, the lender or the appointed attorney-in-fact appoints a party authorized and willing to conduct the foreclosure sale as trustee. The SOT must be:

- Signed by the current beneficiary or the beneficiary’s power of attorney.
- Recorded in the county where the real property is located.

RECORD A NOTICE OF DEFAULT

The first step to initiating a non-judicial foreclosure sale under a deed of trust secured by residential real property is for the trustee to record a notice of default. The trustee cannot record the notice of default until at least 30 days after either:

- The lender’s initial contact with the borrower to explore foreclosure prevention options.
- The lender completes the CAHOBOR due diligence requirements.

The notice of default must include all the following:

- A statement identifying the deed of trust, including the borrower’s name, recording information and legal description.
- A statement that the borrower is in default or has breached the deed of trust.
- A description of the breach or event of default.
- A statement that the trustee intends to sell the property if the borrower does not cure the default.
- If the default is curable, a description of the steps necessary and the deadlines for the borrower to cure the default.
- A statement that:
 - the lender has contacted the borrower;
 - the lender has tried, with due diligence, to contact the borrower as required; or
 - the lender is not required to contact the individual because the individual did not meet the definition of borrower.
- (Cal. Civ. Code § 2923.5.)

(Cal. Civ. Code § 2924c(b)(1).)

The trustee must mail a copy of the notice of default by certified mail to the borrower and any party that recorded a request for notice within ten days after recording the notice of default (Cal. Civ. Code § 2924b(b)).

The trustee must mail a copy of the notice of default, by certified mail, within 30 days after recording to all the following parties:

- The borrower’s successor-in-interest, if any.
- The beneficiaries under any junior deeds of trust or mortgages or their assignees.
- The purchaser (vendee) under a recorded contract of sale or their successors-in-interest, if any. The tenant under a recorded lease or memorandum of lease.
- The Office of the State Controller if there is a recorded property tax lien.

(Cal. Civ. Code § 2924(c).)

California law prescribes the form for the notice of default (Cal. Civ. Code §§ 2923.3(c) and 2924c(b)(1)).

POST AND PUBLISH THE NOTICE OF SALE

The trustee may set a sale date for the trustee’s sale at least 90 days after recording the notice of default (Cal. Civ. Code § 2924c). The notice of sale must include:

- The time and place of the sale
- The location where the trustee intends to conduct the sale.
- The name of the original borrower (trustor) named in the deed of trust.
- The street address, assessor’s parcel number, and legal description of the real property.
- The terms of sale.
- The name, address, and telephone number of the trustee.
- The total amount of the unpaid balance secured by the real property.

- An estimate of the costs, expenses, and advances incurred by the trustee.
- The following language (if the property contains four or less single-family residences):

“NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this property lien, you should understand that there are risks involved in bidding at a trustee auction. You will be bidding on a lien, not on the property itself. Placing the highest bid at a trustee auction does not automatically entitle you to free and clear ownership of the property. You should also be aware that the lien being auctioned off may be a junior lien. If you are the highest bidder at the auction, you are or may be responsible for paying off all liens senior to the lien being auctioned off, before you can receive clear title to the property. You are encouraged to investigate the existence, priority, and size of outstanding liens that may exist on this property by contacting the county recorder’s office or a title insurance company, either of which may charge you a fee for this information. If you consult either of these resources, you should be aware that the same lender may hold more than one mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale may be postponed one or more times by the mortgagee, beneficiary, trustee, or a court, pursuant to Section 2924g of the California Civil Code. The law requires that information about trustee sale postponements be made available to you and to the public, as a courtesy to those not present at the sale. If you wish to learn whether your sale date has been postponed, and, if applicable, the rescheduled time and date for the sale of this property, you may call [telephone number for information regarding the trustee’s sale] or visit this Internet Web site [Internet Web site address for information regarding the sale of this property], using the file number assigned to this case [case file number]. Information about postponements that are very short in duration or that occur close in time to the scheduled sale may not immediately be reflected in the telephone information or on the Internet Web site. The best way to verify postponement information is to attend the scheduled sale.”

(Cal. Civ. Code § 2924f(b)(1-7), (8)(A).)

Common Errors in the Notice of Sale

Certain mistakes in the drafting of the notice of sale can lead to the cancellation of the sale. Those errors include:

- The wrong date, time, or place of sale.
- An incorrect legal description that makes it impossible to identify the property to be sold.

MAIL THE NOTICE OF SALE

At least 20 days before publishing the notice of sale, the trustee must mail the notice of sale to:

- The trustor (borrower).
- Any party with a recorded interest in the property (see Order a Title Search).
- Any party that recorded a request for notice of sale with the county recorder for the county where the real property is located (Cal. Civ. Code § 2924b(b)(2)).

If the property contains no more than four residential dwelling units, the trustee must include a separate summary document of the notice of sale information that is attached to the notice of sale. The summary must be both:

- In English.
- In Spanish, Chinese, Tagalog, Vietnamese, or Korean (depending on the language the borrower’s language).

(Cal. Civ. Code §§ 2924f(d) and 1632(b).)

Give Notice to the IRS

If there is a federal tax lien attached to the property, the trustee must give notice of the foreclosure sale to the IRS at least 25 days before the sale date by certified mail or personal service (26 U.S.C. § 7425(c)(1)). The foreclosure does not extinguish the tax lien if the trustee does not give notice of the sale to the IRS. The IRS has 120 days following the sale to redeem the property. (26 U.S.C. § 7425(a), (d).)

In practice, while it is rare for the IRS to redeem the property, an IRS right of redemption creates a post-foreclosure cloud on title delaying further conveyance of the foreclosed property acquired by the lender after foreclosure.

Publish and Post the Notice of Sale

The trustee must:

- Post the notice of sale at least 20 days before the sale date, once a week for three consecutive calendar weeks, in a public place in the city where the real property is located (if in a city) or in a public place in the county seat where the property is located (if not located in a city) (usually at the courthouse) (Cal. Civ. Code §2924f(b)(1)).
- Publish the notice of sale at least 20 days before the sale date in a newspaper of general circulation published:
 - in the city where the real property is located (if in a city);
 - in the public notice district (if not located in a city);
 - in the county where the real property is located (if no newspaper is published in the city or public notice district); or
 - in a contiguous county with the highest population of all contiguous counties (if no newspaper is published in the county).

(Cal. Civ. Code § 2924f(b)(2).)

Post a copy of the notice of sale in a conspicuous place on the property at least 20 days before the sale date including, if possible, on a door of the residence (Cal Civ. Code § 2924f(b)(3)).

The trustee, lender, and authorized agents of the lender or trustee have a duty to make a good faith effort to provide up-to-date information on the sale and any postponements to any person that wants the information. The information must be available:

- Free of charge.
- Available 24 hours per day, seven days per week by:
 - internet web site;
 - telephone number; or
 - any other method that is available for free.

(Cal. Civ. Code § 2924f(b)(8)(B).)

Mail the Homeowner Protection Notice (Owner-Occupied Properties)

For deeds of trust secured by owner-occupied single-family residences, the trustee must mail an additional warning statement to the borrower if the borrower has not cured the default within 30 days after the trustee recorded the notice of default.

The trustee must send the following statement:

“YOU ARE IN DEFAULT UNDER A [DEED OF TRUST/ MORTGAGE] DATED [DATE]. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.”

(Cal. Civ. Code § 2924f(c).)

Do not alter this statement, except to complete the bracketed items.

BORROWER'S RIGHT TO REINSTATE THE LOAN

The borrower has the right to reinstate (also known as a right to cure) the loan at any time until five business days before the sale date. To reinstate the loan, the borrower must pay:

- The entire amount then due, other than the accelerated portion of the principal due and owing after default (all installments past due without regard to acceleration of the loan balance).
- The costs and expenses incurred by the lender resulting from enforcing its rights under the deed of trust, including:
 - insurance premiums paid by the lender, if any;
 - delinquent taxes paid by the lender, if any;
 - interest to the date of reinstatement;
 - costs of recording and publication;
 - costs of service;
 - attorneys' fees; and
 - any other expenses necessarily paid by the lender.

(Cal. Civ. Code § 2924c.)

CONDUCTING THE SALE

The trustee conducts foreclosure sales between 9:00 a.m. and 5:00 p.m. and can be held on any business day Monday through Friday. The foreclosure sale must take place:

- At the time specified in the notice of sale.
- At the location specified in the notice of sale (typically at the courthouse).
- In the county where the real property is located.

(Cal. Civ. Code §§ 2924f(c)(4) and 2924g(a).)

The trustee or its agent conducts the sale and may schedule more than one sale for the same time and place.

The trustee is entitled to a \$50 fee for conducting the sale, in addition to any fees permitted by statute (Cal. Civ. Code §§ 2924f(c)(5) and 2924c).

On the date of sale, the trustee must offer the property for cash sale by public auction. The order approving sale and the notice of sale set the terms.

The trustee has the right to require:

- Every bidder to show evidence of the bidder's ability to deposit the full amount of the final bid with the trustee and actually deposit the bid amount to be held by the trustee:
 - in cash;
 - by cashier's check drawn on a state or federal savings and loan association or national bank;
 - by a check drawn on a state or federal credit union;
 - by a check drawn by a state or federal savings and loan association, savings association, or savings bank authorized to do business in California; or
 - by cash equivalent designated in the notice of sale.
- The last and highest bidder to deposit, if not previously deposited, the full amount of the winning bid.

(Cal. Civ. Code § 2924h(b).)

If the winning bidder does not deliver the bid amount in the form designated or fails to deliver the bid amount, the bidder is:

- Liable to the trustee for all damages, including court costs and attorneys' fees.
- Guilty of a misdemeanor punishable by a fine of not more than \$2,500, where failure to deliver was willful.

(Cal. Civ. Code § 2924h(d).)

The beneficiary (lender) may make a full credit bid equaling the amount owed on the debt.

POST-SALE REQUIREMENTS

Trustee's Deed

After the foreclosure sale and payment of the bid amount, the trustee has 15 business days to execute and deliver a trustee's deed to the successful bidder. (Cal. Civ. Code § 2924h(c).)

A purchaser acquiring property by a trustee's deed acquires title that is free and clear of:

- All liens junior to the deed of trust.
- Any title, interest, or claim of:
 - the trustee;
 - the trustor;
 - the beneficiary; and
 - their respective successors in interest.

There is no right of redemption relating to a non-judicial foreclosure in California (see Right of Redemption).

Taking Possession of the Property

If the property is abandoned at the time of the sale, the purchaser may take possession immediately. If the property remains occupied, the purchaser may take possession only after successfully completing an unlawful detainer action (eviction) (see Practice Note, Tenant in Default: Landlord's Rights and Remedies (Residential) (CA): Eviction) ([W-004-8305](#)).

Common practice for beneficiaries (lenders) that end up owning the property after the sale is to negotiate voluntary delivery of possession

with the occupants of the property. This type of arrangement is typically referred to as a “cash for keys” arrangement and many lenders attempt this effort to avoid the time and expense of a forcible entry and detainer action.

California adopted a state equivalent of the federal Protecting Tenants at Foreclosure Act. In California, the winning bidder must give:

- A 90-day written notice to quit to a tenant on a month-to-month lease or other periodic tenancy before evicting the tenant.
- Permit a tenant under a fixed term lease (for example, 12 months) entered into before the foreclosure to remain until the end of the term.

(Cal. Civ. Proc. Code § 1161b(a-b).)

Several cities in California have specific “eviction control” ordinances (known as “good cause” or “just cause” evictions) that contain additional protections for tenants after foreclosure:

- Berkeley.
- Beverly Hills.
- East Palo Alto.
- Emeryville.
- Glendale.
- Hayward.
- Los Angeles.
- Maywood.
- Mountain View.
- Oakland.
- Palm Springs.
- Richmond.
- San Diego.
- San Francisco.
- San Jose.
- Santa Monica.
- Thousand Oaks.
- Union City.
- West Hollywood.

Disbursement of Sale Proceeds

Within 30 day following the sale, the trustee must send a written notice of surplus proceeds to all parties with an interest in the property. The interested parties have 30 days after the trustee sends the notice to submit a claim to the surplus proceeds. After reviewing the claims the trustee may:

- Distribute the sale proceeds in the order determined by California law.
- Deposit the sale proceeds with the clerk of the superior court for determination of distribution.

(Cal. Civ. Code § 2924j.)

California law prescribes the following order of priority:

- To the costs of the sale.
- To the payment of the obligations secured by the deed of trust.

- To the payment of any junior liens or encumbrances secured by the foreclosed property.
- The balance, if any, to the trustor or the trustor’s successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee’s sale.

(Cal. Civ. Code § 2924k.)

Transfer of Title After Foreclosure Sale

The trustee must deliver a trustee’s deed to the last and highest bidder following the sale and payment of the winning bid. The sale is perfected if the trustee’s deed is recorded within 15 calendar days of the sale date. (Cal. Civ. Code § 2924h(c).)

JUDICIAL FORECLOSURE

Although rarely pursued for deeds of trust, California law authorizes judicial foreclosures. Judicial foreclosure is the appropriate method when the lender holds:

- A mortgage rather than a deed of trust.
- A non-standard deed of trust, such as a deed of trust lacking a power of sale clause.

A mortgagee (lender) may either:

- Foreclose the security interest in the real property.
- Sue directly on the debt (suit for breach of contract for failure to pay).

A lender may not simultaneously file separate actions on the note and to foreclose the mortgage. (Cal. Civ. Proc. Code § 726(a).)

FILE A FORECLOSURE COMPLAINT

To initiate a judicial foreclosure, the foreclosing party must file a complaint with the superior court for the county where the real property is located. The complaint must name all persons with a recorded interest in the property at the time of filing and the rights of which may be impacted by the foreclosure (Cal. Civ. Proc. Code § 726(c)). These may include:

- The mortgagor (borrower).
- The borrower’s successor and assigns, if any.
- The owner of the property, if different from the borrower (for example, a guarantor that pledged the property as collateral for a loan).
- Junior lien holders, such as:
 - subordinate lenders;
 - judgment lien holders; and
 - mechanic’s lien holders.
- Guarantors.

Counsel for the lender should consider obtaining a litigation guarantee from a reputable title company to provide the lender with all information regarding the necessary and indispensable parties to the judicial foreclosure.

The foreclosing party must serve a copy of the complaint on the other named parties to the action (see State Q&A, Commencing an Action: California: Question 12) ([2-571-6845](#)).

After filing the foreclosure complaint, the lender should immediately record a notice of pendency of action (also called a notice of lis pendens) with the recorder's office in the county where the real property is located (see Standard Document, Notice of Lis Pendens (CA) ([W-000-0420](#))). Recording the notice of lis pendens gives constructive notice to third parties that there is a:

- Legal action.
- Affecting the title or rights to certain real property.

(Cal. Civ. Proc. Code § 405.24 and *Kirkeby v. Superior Court of Orange Cty.* (2004) 33 Cal. 4th 642, 647.)

Minimum Facts for the Foreclosure Complaint

The foreclosure complaint must include the following information, at a minimum:

- Identify the parties.
- Describe each party's interest in the real property.
- Describe the mortgage or deed of trust and the secured obligation (promissory note).
- Describe the property.
- Establish the lender's ownership of the note and deed to secure debt or mortgage.
- Describe the default.
- Identify the interests of all other parties in the property.
- Include any facts establishing the lender's compliance with statutory or contractual pre-foreclosure requirements, if any.
- Request foreclosure of the mortgage or deed of trust.
- Request attorneys' fees and other expenses if provided for under the mortgage or deed of trust.
- Include facts supporting any requests for special relief. For example:
 - to reform or amend the loan documents;
 - to subrogate another lien or to determine priority; or
 - to obtain a deficiency judgment against the residential borrower.

Attach Exhibits to the Foreclosure Complaint

The lender should attach legible copies of the following instruments as exhibits to the foreclosure complaint:

- The vesting deed.
- The signed promissory note.
- The recorded deed of trust or mortgage.
- Any recorded assignments of mortgage or deed of trust (or substitution of trustee), if applicable.
- Any other recorded liens or interests in the real property.
- A request for attorneys' fees and other expenses.

JUDGMENT

The lender often prevails without a trial:

- If the defendant borrower does not respond to the foreclosure complaint within 30 days of service, the lender should seek judgment using an entry of default (Cal. Rules of Court, rule 3.110(d), (g)-(h), Cal. Civ. Proc. Code § 585(a)-(c), (e) and see Practice Note, Default Judgment: Drafting the Application (CA) ([W-012-5347](#))).

- If defendant debtor does file a response to the complaint, the lender may be able to prevail by moving for summary judgment. If no material facts are contested, the court issues summary judgment in favor of lender. (Cal. Civ. Proc. Code § 437c and see Practice Note, Summary Judgment: Overview (CA) ([W-007-7620](#))).

Judgment in favor of lender:

- Includes an order for the entire amount due to plaintiff lender, including costs and disbursements.
- Directs the sale of the real property to satisfy the amounts due.
- Directs the sheriff to sell the property at public auction.
- Determines the priority among liens, if applicable.
- Determines the amount of attorneys' fees owed.
- Indicates whether a deficiency judgment is permitted.

EXECUTING ON THE FORECLOSURE SALE

The foreclosing lender enforces a judgment in foreclosure by a writ of sale (writ). The writ directs the sheriff to levy on and sell the real property.

After receiving the writ, the sheriff must prepare a notice of sale. The sheriff must:

- Publish the notice of sale for three consecutive weeks in a newspaper of general circulation in the county where the real property is located.
- Serve the notice of sale at least 20 days before the sale date on:
 - the trustor or the trustor's successor in interest;
 - all persons with a lien on the property;
 - all parties that filed a request for notice with the clerk of the court.

The sheriff's notice of sale must contain:

- The details of the foreclosure judgment, including:
 - the parties;
 - the amount awarded the plaintiff; and
 - the court in which the judgment was granted.
- The property to be sold, including:
 - the legal description; and
 - the street address or other identifiable location of the property.
- The details of the sale, including:
 - the date, time, and place of sale; and
 - if the real property has no street address, a statement that directions to its location may be obtained from the levying officer on request.
- A statement that the sale is made subject to the borrower's right of redemption.
- The following statement:
 - "Prospective bidders should refer to Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders."

(Cal. Civ. Proc. Code §§ 701.540 and 701.547.)

DISBURSEMENT OF SALE PROCEEDS

After the judicial foreclosure sale concludes, the sheriff must disburse the proceeds as follows:

- To reimburse the costs incurred in conducting the sale.
- To the foreclosing lender until its award in the court judgment is satisfied.
- To the junior lienholders in order of priority.
- Any remainder to the debtor.

RIGHT OF REDEMPTION

A right of redemption allows a borrower (or the borrower's successor in interest) to retain the property after a foreclosure sale.

Judicial foreclosure offers debtors the following timelines to redeem:

- Three months from the sale date, if the sale proceeds satisfy the debt, with interest and costs.
- One year from the sale date, if the sale proceeds do not satisfy the debt, including interest and costs.

(Cal. Civ. Proc. Code § 729.030.)

To redeem, the judgment debtor must pay:

- The purchase price.
- The amount of any assessments or taxes and reasonable amounts for fire insurance, maintenance, upkeep, and repairs paid by the purchaser.
- Any amount paid by the purchaser towards a superior interest to protect the purchaser's interest.
- Interest on the total amount paid, including post-sale items, at the rate of interest on money judgments.

(Cal. Civ. Proc. Code § 729.060(b).)

The redemption amount may be offset against any rents or profits paid to the purchaser after the sale (Cal. Civ. Proc. Code § 729.060(c)).

Counsel should be aware that the IRS maintains a 120-day redemption period on properties subject to a federal tax lien (see Give Notice to the IRS).

SHERIFF'S CERTIFICATE OF SALE

After payment of the purchase price, the sheriff must execute a certificate of sale in favor of the purchaser. The sheriff:

- Delivers the certificate of sale to the purchaser.
- Records a duplicate certificate of sale with the county recorder.

(Cal. Civ. Proc. Code § 729.040.)

DEFICIENCY JUDGMENTS

Deficiency judgments are not available for non-judicial foreclosures, but are available for judicial foreclosures on a limited basis.

DEFICIENCY JUDGMENT AFTER JUDICIAL SALE

Deficiency judgments are generally available to lenders following a judicial foreclosure. However, no deficiency judgment is available if the foreclosed mortgage was a purchase money mortgage.

The deficiency is limited to the difference between the balance owing on the loan and the fair market value of the property. (Cal. Civ. Proc. Code § 726(b).)

FORECLOSURE COMPARISON

	Non-Judicial Foreclosure	Judicial Foreclosure
Costs	Typically less expensive	Typically more expensive.
Timeline	115 days minimum (Cal. Civ. Code § 2924(a)(3), (4)).	Approximately six months for default judgment. Up to two years or more if the defendant contests the foreclosure complaint or if delays in service of process are encountered.
Any notice requirements before commencing foreclosure	The lender must contact the borrower to explore foreclosure prevention alternatives at least 30 days before recording a notice of default (Cal. Civ. Code § 2923.5). The lender must comply with any notice requirements in the loan documents.	There is no statutory requirement for a pre-foreclosure demand letter. The lender must comply with any notice requirements contained within the loan documents.
Publication requirements	The trustee must publish the notice of sale once each week for three consecutive weeks in a newspaper of general circulation in the county where the real property is located. The first date of publication must occur at least twenty days before the sale date. (Cal. Civ. Code § 2924f(b)(1), (2).)	Counsel for the trustee must publish the summons and complaint only if alternative service is needed to provide notice of the lawsuit to a defendant (see State Q&A, Commencing an Action: California: Question 12 (2-571-6845)). The sheriff must publish the notice of sale following judgment according to the same requirements for a non-judicial sale.
Declaratory Judgment for Loan or Title Defects	N/A	The lender may include a count for a declaratory judgment to clear a title defect in a foreclosure complaint
Deficiency Judgment	No. California is an anti-deficiency state (Cal. Civ. Proc. Code § 580b). A junior lienholder may sue the borrower on a the debt, unless the junior lien is a purchase money mortgage.	A lender may include a count for a deficiency judgment in the foreclosure complaint for non-purchase money mortgages (Cal. Civ. Proc. Code § 726(b)).
Redemption Period	N/A	<ul style="list-style-type: none"> ■ Three months after the sale date if the proceeds satisfy the debt. ■ One year after the sale date if the proceeds do not satisfy the debt. (Cal. Civ. Proc. Code § 729.030.)
Requirement to Confirm Foreclosure Sale	N/A	N/A
One Action Rule	A beneficiary (lender) under a deed of trust may only pursue one form of recovery of any debt secured by a mortgage or deed of trust (Cal. Civ. Proc. Code § 726(a)).	A beneficiary (lender) under a deed of trust may only pursue one form of recovery of any debt secured by a mortgage or deed of trust (Cal. Civ. Proc. Code § 726(a)).

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