

# ARMSTRONG LAW OFFICES

326 N. Mount Shasta Blvd., Suite 2  
Mount Shasta, California 96067

Kenneth Armstrong, J.D.  
Vesta A. Armstrong, J.D.

Telephone: (530) 926-6802  
Facsimile: (530) 926-6817  
Email: alo@armstronglegal.com

## Foreclosure Information and Time Line

The following information is general in nature and may not apply to your situation and it should not be considered legal advice and shall not serve to establish an attorney - client relationship. For information regarding your situation, you should consult with the appropriate professional.

### **How are mortgage liens treated in California?**

California is known as a title theory state where the property title remains in trust until payment in full occurs for the underlying loan. The document that secures the title is usually called a deed of trust but may also be referred to as a mortgage. California has a complicated set of rules concerning foreclosures and alternate rules for foreclosures.

### **How are California mortgages foreclosed?**

The primary method of foreclosure in California involves what is known as a non-judicial foreclosure. This type of foreclosure does not involve court action. When the deed of trust is initially signed, it will usually contain a provision called a power of sale clause, which upon default allows a trustee to sell the property in order to satisfy the underlying defaulted loan.

The trustee acts as a representative of the lender to effectuate the sale, which typically occurs in the form of an auction. Unlike many states where trustees are appointed by lenders, title companies primarily serve as trustees managing foreclosure sales in California. California has a requirement known as the "one-action rule". The "one action rule" basically means that the lender can either elect to foreclose on the property or attempt to collect on the promissory note, but not both. If the lender elects to foreclose on the property, but doesn't end up receiving enough money from the sale of the property to pay off the loan, the lender cannot sue the borrower for the remainder.

If a foreclosure is completed by non-judicial means, a second action to recover a deficiency judgment is not permitted. But, if the lender elects to use a judicial foreclosure, a lender may recover a deficiency judgment in certain circumstances. Since this process takes longer than non-judicial foreclosure, it is rarely used. California non-judicial remedies have stringent notice requirements and the mortgage documents are required to contain the power of sale language in order to use this type of foreclosure method. Judicial foreclosures are permitted in California and these usually occur when no power of sale language is included in the loan documents.

## **Power of Sale Notice Requirements:**

A notice of default is recorded after a default occurs in the county in which the property is located. This does not necessarily occur after one or more payments are not met but for logistical reasons may occur after a loan is in substantial default — sometimes six months or more past due. This is known as the redemption period. The foreclosure process does not move forward for a minimum of 60 days. A notice of sale containing the name and address of trustee, certain disclosures (including that the property is about to be lost to foreclosure sale), the name of the beneficiary, and other information must be recorded in the county in which the property is located at least 14 days before any foreclosure sale after that time period. This is known as the publication period.

The borrower must receive a twenty (20) day notice before any foreclosure sale, further notice of the foreclosure must: (a) mailed to the defaulting borrower (and other creditors whose liens affect the property) and; (b) be posted at the property being foreclosed upon and in a public place in the county where any sale would occur.

The defaulting borrower may prevent the foreclosure sale by paying all arrearages up to five (5) days before the sale. The trustees' foreclosure sale then occurs at the earliest twenty one (21) days after the first publication.

Foreclosure sales must take place on any business day between the hours of 9AM and 5PM and must occur at the location referenced on the notice of sale. The trustee will auction the property to the highest bidder, including the lender. The borrower is permitted to postpone the sale for one (1) day.

In California, the lenders can also go to court in what is known as a judicial foreclosure proceeding where the court must issue a final judgment of foreclosure. If the deed of trust does not contain the power of sale language, the lender may seek judicial foreclosure. The property is then sold as part of a publicly noticed sale. A complaint is filed in county court along with what is known as a lis pendens. A lis pendens is a recorded document that provides public notice that the property is being foreclosed upon.

## **What are the legal instruments that establish a California mortgage?**

The documents are known as the deed of trust, (promissory) note, and in a commercial transaction, a security agreement. Sometimes the mortgage document is combined with the security agreement. Alternatively, a mortgage is filed to evidence the underlying debt and terms of repayment, which is set forth in the note.

## **How long does it take to foreclose a property in California?**

Depending on the timing of the various required notices, it usually takes a minimum of 120 days

to effectuate an uncontested non-judicial foreclosure. This process may be delayed if the borrower contests the action in court, seeks delays and adjournments of sales, or files for bankruptcy.

### **California Foreclosure Time Line**

The following time-line is applicable for non-judicial California Foreclosures under a Deed of Trust. Foreclosures begin with the Trustor (borrower) not making the monthly payments to the Beneficiary (Lender), the first missed payment is technical default, but in practical terms, most Beneficiaries do not begin the process until the third payment is missed.

If the Beneficiary cannot resolve the defaulted payment amount with the Trustor through Forbearance or other Loss Mitigation measures, the Beneficiary will instruct the Trustee to begin Foreclosure proceedings.

#### **Day 1**

Notice of Default is filed with the county recorder.

#### **Within 10 business days**

Mail Notice of Default to borrower address

#### **Within 1 month**

Mail Notice of Default

#### **After 3 months**

Set Trustee Sale date

#### **25 days before Trustee Sale date**

Send notice of sale to I.R.S.(when necessary)

#### **Within 10 days from 1st publication of Trustee Sale**

Send beneficiary request for property directions

#### **14 days before Trustee Sale date**

Record Notice of Trustee Sale

#### **7 days before sale date**

If court action, 7day rule may apply

#### **5 business days before sale date**

Expiration of borrower's right to re-instate the loan

#### **Sale date**

Property is sold to highest third party bidder or reverts to Beneficiary at public auction.