

Notice of Default

nonjudicial foreclosure
(homeowners & association members)



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THE NOTICE OF DEFAULT PROCESS

Foreclosure proceedings are initiated with a Notice of Default (N.O.D.). The Notice of Default is recorded at the request of the lender by the trustee which, in effect, gives notice to the public that the loan is in default. The actual recording of the notice takes place at the County Recorder's Office in the county in which the property is located. It denotes essential data pertaining to the trust deed, the amount in arrears, address of the property, and the date of recording.

In the state of California the trustor (Borrower) has ninety days from recordation of the notice of default to reinstate the loan (to make the loan current by paying all payments in arrears, any late charges, or other deficiencies). The law requires the lender to accept the trustor's reinstatement money during this ninety day period.

The following represents, in summary, the assessment lien and nonjudicial foreclosure process. The "Pre-Lien" notice is required pursuant to Civil Code Section 1367.1(a). This Code Section also requires that the minimum time period between the mailing of the "Pre-Lien" notice to the member and the recordation of a Notice of Delinquent Assessment ("Lien") is 30 days. Civil Code Section 1367.1(g) requires a minimum time period of 30 days between the recording of a Lien and the recording of a "Notice of Default" which begins the nonjudicial foreclosure process. The minimum time period for the nonjudicial foreclosure process is three months plus three weeks for publication as set forth in Civil Code Section 2924.

Pre-Lien Notice (Association Members)



With the passage of Assembly Bill 1317 in 1996, a pre-lien notice is required to be sent to a member who is delinquent in the payment of membership assessments. This notice must include an itemized statement of the assessments, late charges and collection costs charged to the member's account, describe the procedures used by the association to collect delinquent assessments and certain prescribed disclosures. The pre-lien notice must be mailed, by certified mail, to all owners at their last known address and before the recording of a Notice of Delinquent Assessment. With the passage of Assembly Bill 2289 in 2002, the minimum time period between the mailing of the "pre-lien" notice to the member and the recordation of a Notice of Delinquent Assessment ("Lien") is 30 days (effective January 2003).

Notice of Delinquent Assessment (Association Members)



The Notice of Delinquent Assessment, when recorded, creates a "Lien" on a property. This Lien represents a claim against the real property of the delinquent member. In addition to any requirements specified in the association's CC&Rs, the Notice of Delinquent Assessment must include the legal description of the subject property, a detail of the assessments, late charges, interest and costs of collection, the names of all of the record owners and, if the Lien is to be enforced by nonjudicial foreclosure, the name and address and the appointed trustee. A copy of the Lien must be sent, by regular first class and certified mail, to the owners of the property to their last known address. This mailing must occur no later than 10 days from the recording of the Lien. An affidavit or declaration of mailing must be completed and maintained in association files to evidence compliance with this mailing requirement.

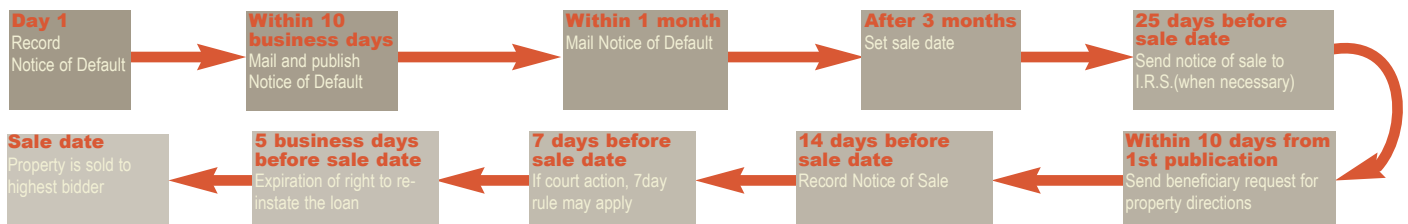
Notice of Default



After the expiration of 30 days from the recording of the Notice of Delinquent Assessment and, absent receipt of payment of all amounts owed to the association, the trustee will prepare a Notice of Default and Election to Sell. The official beginning of the "Trustee's Sale Proceeding" (nonjudicial foreclosure) occurs when the Notice of Default is recorded by the trustee at the county recorder's office.

There are several parties entitled to receive a copy of the Notice of Default. The Trustee will mail a copy of the notice within ten days after recording to the record owners and all persons who have recorded a "Request for Notice". Further, the trustee will send notice to other parties having an interest in the property within thirty days as required by law.

At the time the trustee records the Notice of Default, a "Trustee's Sale Guarantee" (TSG) is purchased from a title company. The TSG is a type of insurance policy which provides the trustee with certain information that is needed to properly conduct a nonjudicial foreclosure and insures the homeowners association and the trustee in the event the information is incorrect or incomplete.



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Notice of Sale



**21-25
DAYS**

When the delinquency is not cured within three months from the recording of a Notice of Default and, after receiving authorization from the association, the trustee will prepare the Notice of Trustee's Sale. This notice includes, among other information, a description of the property, an estimate of the amounts owed to the association (the "opening bid") and the time, date and place of the sale of the property. The Notice of Sale is then sent to a legal newspaper to publish the notice once each week for three consecutive weeks, the first publication to occur at least 20 days before the conduct of the sale. The Notice of Sale is recorded, posted on the property and in at least one public place where the sale is to take place. The parties who were mailed a copy of the Notice of Default will now additionally be sent a copy of the Notice of Sale. Any taxing agencies entitled to receive notice will also be provided with the same.

The trustee will also prepare an Affidavit of Non-Military Status for signature by the association or management agent. The affidavit is a sworn statement that, to the best of the association's knowledge, the subject property owners are not in active military service. This signed affidavit is required before the sale because of certain protections granted to military personnel by the Soldier's and Sailor's Civil Relief Act of 1940. There are extremely few situations when a property owner claims protection under the act.

Trustee's Sale



**AFTER
SALE**

The date of the Trustee's Sale was decided upon at the time the Notice of Trustee's Sale was prepared. It usually falls within 21-25 days after the end of the Pre-Publication Period, depending upon whether or not there are federal tax lien notification requirements. The exact date is also influenced by the location of the Trustee's Sale and by the frequency of publication of the newspaper which the trustee is required to use.

The sale is a public auction sale and is open to all bidders. Bids are made orally and each person wishing to bid must first show the auctioneer the amount and form of money which he/she intends to use in the event that he/she is the successful bidder. Only cash equivalents, such as cash, cashier's checks, etc. are permitted. Personal checks are not acceptable. The total amount must be paid by the highest bidder prior to the acceptance of the final bid. The association who is foreclosing doesn't need any money unless it wishes to bid more than the total debt, including trustee fees and costs. If the association wishes to bid more, it must also have enough money to pay the difference between the amount of its debt and the final bid. The sale is completed when the highest bid has been received and the auctioneer accepts that bid.

Trustee's Deed Upon Sale

A Trustee's Deed Upon Sale will be prepared after the sale has been completed. The Deed is executed by trustee and sent to the recorder's office. After recording, it is forwarded to the purchaser at the Trustee's Sale.

Unlike other types of foreclosure sales, there is no right of redemption after a Trustee's Sale and the purchaser is entitled to immediate possession. The one exception is the right of the federal government to redeem within 120 days if a federal tax lien affects the property.

No policy of title insurance is given to the party who becomes the owner at the Trustee's Sale. Normally, title insurance becomes involved when the property is subsequently sold or refinanced. Associations have found that it is nearly impossible to sell properties which they have foreclosed upon and taken title to because title insurance could not be obtained by subsequent purchasers without the association conducting a "quiet" title action. A "quiet" title action is a judicial proceeding where a court is petitioned to "quiet" any claims from the previous property owner(s) who lost the subject property. If successful, insurable title will result. Many title companies will now provide, with some qualifying conditions, insurable title after assessment lien trustee's sales to purchasers of association foreclosed properties without the necessity of "quiet" title actions.

Postponement

There are various reasons why a Trustee's Sale may be postponed. A bankruptcy, association authorized payment program or legal proceeding may prevent us from holding the sale on the scheduled date. The association and the homeowner may jointly request any number of postponements. However, there is a limit of three postponements by the association or trustee, alone. State law requires publication of a new Notice of Sale when there are more than three postponements by the association or trustee. Each postponement must be made to a definite future date. Once the date has been announced, the sale cannot be held prior to that date.