

Summary of California's Foreclosure Law

Read on for a summary of California's law governing foreclosures.

Non-judicial Foreclosure

Lenders have the option of foreclosing either judicially, by filing a complaint with the court seeking a judgment for foreclosure and sale, or nonjudicially, by exercising the power of sale contained in the deed of trust or mortgage document. Cal. Civ. Code 2924; Cal Civ. Proc. Code 725a. When given the option, most lenders choose to foreclose nonjudicially, as it saves the expense of court costs. This is the case in California, where non-judicial foreclosure is the most common method of foreclosure used by lenders. Judicial foreclosures are generally used only when lenders expect to get a deficiency judgment against a buyer, as deficiency judgments are unavailable in non-judicial foreclosures. Cal. Civ. Proc. Code 580d.

Notice Requirements

Lenders are required to give borrowers two separate foreclosure notices: a notice of default and a notice of sale. The notice of default must be filed in the recorder's office in the county where the property is located. The notice must include details of the borrower's right to cure the default. Within ten days of recording this notice, a copy must be mailed to the borrower by registered or certified mail, with postage prepaid, and by first-class mail. Within one month, the lender must also mail a copy by both first-class and certified or registered mail to any successors in interest, subsequent lenders, assignees of interest of the lender, and the Office of the Controller. Cal. Civ. Code 2924, 2924b. The notice of sale must also be sent by first-class mail and registered or certified mail at least 20 days before the sale date to the borrower, as well as to all parties who were entitled to the notice of default. Cal. Civ. Code 2924.8. The notice of sale must also be:

- posted in one public place in the city where the property is to be sold at least 20 days before the sale
- published once a week for three consecutive weeks, with the first publication at least 20 days before the sale, in a newspaper in general circulation in the city or judicial district where the property is located
- posted in a conspicuous place on the property to be sold (the door of the property if it is a single family residence) at least 20 days before the sale date when it is possible and not restricted, and
- recorded with the recorder in the county where the land is located at least 20 days before the sale. Cal. Civ. Code 2924f.

Right to Cure

Borrowers in California can cure the default on the mortgage by paying the amount due on the mortgage, plus costs and expenses, at any time between the filing of the notice of default and five business days before the foreclosure sale. Cal. Civ. Code 2924c.

Redemption Rights

The right to redeem the property after foreclosure sale only applies in judicial foreclosures when a deficiency judgment has not been waived or prohibited. Cal. Civ. Proc. Code 729.010. If a deficiency judgment would be allowed in the case, the foreclosure sale is subject to a redemption right until three months after the sale if the proceeds were

sufficient to cover the debt owed or until one year after the sale if the proceeds were not enough to pay back the debt. Cal. Civ. Proc. Code 729.010, 729.030. The right to redeem is exercised by the borrower by giving the necessary payment to the officer who conducted the foreclosure sale. Cal. Civ. Proc. Code 729.060.

Deficiency Judgments

Deficiency judgments are not allowed in non-judicial foreclosures. Cal. Civ. Proc. Code 580d. Deficiency judgments may be recovered in judicial foreclosures only if the mortgage was not a purchase money mortgage secured by a one- to four-family unit, one of which was the primary residence of the borrower. Cal. Civ. Proc. Code 580b. The amount of the deficiency judgment is limited to the amount the debt exceeds the fair market value of the property. Cal. Civ. Proc. Code 726(b).

Foreclosure Avoidance

In the case of mortgages recorded between January 1, 2003 and December 31, 2007, there is an additional requirement for lenders to discuss with borrowers potential options for foreclosure avoidance. For such mortgages, a notice of default may not be filed until 30 days after the lender contacts the borrower about foreclosure avoidance options.

The lender must first send a letter to the borrower by first-class mail with information about the available foreclosure avoidance options, including a phone number for housing counseling. The lender must then attempt to contact the borrower by telephone at least three times on different days at different hours. If the borrower does not respond within two weeks of these attempts, the lender must send a letter through certified mail, return receipt requested, providing a means to contact the lender in a timely manner and also post a link on the lender's website to housing counseling information. Cal. Civ. Proc. Code 2923.5.