

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 However, those statutes were repealed effective Jan. 1, 2011.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.

In the counting of days in the chart below, please consider that if the final day of performance falls on a Saturday, Sunday, or holiday, then the day for performance becomes the next business day. “Business days” are defined as all days other than Saturday, Sunday, and holidays. See California Civil Code Sections 7.1, 9, and 10 for more details.

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
DAY 1: CONTACT THE BORROWER	
<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 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.</p> <p><u>Note:</u> In the 2010 case, <i>Mabry v. Aurora Loan</i>, 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.</p>	

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).

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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 (Cal. Civ. Code § 2924b(c)(4); 26 U.S.C. 7425(b)).

20 days prior to Trustee’s Sale: Notice of Trustee’s Sale must be recorded at least 20 days prior to Sale (Cal. Civ. Code § 2924f(b)).

20 days prior to Trustee’s Sale: 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)).

20 days prior to Trustee’s Sale: Notice of Sale

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

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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 (Cal. Civ. Code § 2924b(c)(4); 26 U.S.C. 7425(b)).

20 days prior to Trustee’s Sale: Notice of Trustee’s Sale must be recorded at least 20 days prior to Sale (Cal. Civ. Code § 2924f(b)).

20 days prior to Trustee’s Sale: 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)).

20 days prior to Trustee’s Sale: Notice of Sale

<p>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>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).