

# Trustee Timeline

The Non-Judicial Foreclosure process has undergone dramatic changes in the past 5 years, the most recent coming from the "Homeowner's Bill of Rights" which became effective 1/1/2013. Different foreclosure procedures are required depending on the type and occupancy of the property being foreclosed on. Regardless of the type or occupancy, non-judicial foreclosures shall not I) be initiated by any party other than the holder of a beneficial interest under the Deed of Trust, the holder's designated agent, or the Trustee under the Deed of Trust (Civil Code 2924(a)(6)) and II) before recording any documents (NOD, NTS, Substitution of Trustee, assignment of Deed of Trust) the servicer shall review competent and reliable evidence to substantiate the borrower's default and the right to proceed with the foreclosure. The below timeline is a general overview of the process and should not be relied upon as a legal guide.

Trustee Timeline	
The following guidelines are applicable to foreclosures that are not 1st Trust Deed Borrower occupied residential 1 to 4 unit properties.	
Action	Time Period
Record Notice of Default	Day 1
Mail Notice of Default to Trustor & any other party who has requested such notice	Within 10 Business Days from date of recording NOD
Mail Notice of Default to Trustor to all required parties under 2924.6 ( C ) ( 2 )	Within 1 Month from date of recording of the NOD
Set sale date	After 3 Months
Send notice of sale to IRS (as applicable)	25 days prior to Sale Date
Record Notice of Sale at County Recorder's office.	20 days prior to Sale Date
Publish Notice of Sale in local paper at least once a week for 3 consecutive weeks with the first date of publication at least 20 days before the date of sale. Post Notice of Sale Mail Notice of Sale to all parties who were sent the NOD-including any state agency.	20 days prior to Sale Date

Request for directions of property sent to Beneficiary.	Within 10 days from 1st publication notice
Right of Borrower to reinstate ends	5 business days prior to sale
Sold at Trustee's Sale	Sale Date
<p>The following guidelines are applicable to foreclosures that are <u>1st Trust Deed Borrower</u> occupied residential 1-4 unit properties. "Borrower" must be a natural person who is the Trustor on the Deed of Trust. Guidelines apply to lenders foreclosing on less than 175 properties per year.</p>	
Action	Time Period
Send 1st class letter to borrower informing them of: 1)Options available to avoid foreclosure 2) HUD counseling 800#, 3) Right to schedule a meeting with the lender to occur within 14 days.	Day 1
Attempt to contact borrower to inform them of their options: 3 calls made on different days at different times must be made until contact is made. If no contact can be made, a registered letter is sent to the Borrower after 14 days.	Day 2-18
If borrower submits a "Complete"first lien loan modification application offered by or thru the lender or it's agent the NOD cannot be recorded until written determination of the request has been provided to the borrower; no "Dual-Tracking".Civil Code 2923.5(a)(f)(g) & 2924.18(b)	
Record Notice of Default with Declaration of Compliance	Day 31- 48 ( depending when "contact" completed)
Mail Notice of Default to Trustor &any other party who has requested such notice	Within 10 Business Days from date of recording NOD
Mail Notice of Default to Trustor to all required parties under 2924.6 ( C ) ( 2 )	Within 1 Month from date of recording of the NOD

<b>If borrower submits a "Complete"first lien loan modification application offered by or thru the lender or it's agent the NTS cannot be recorded until written determination of the request has been provided to the borrower; no "Dual-Tracking".Civil Code 2923.5(a)(f)(g) &amp; 2924.18(b)</b>	
<b>Set sale date</b>	<b>After 3 Months</b>
<b>Send notice of sale to IRS (as applicable)</b>	<b>25 days prior to Sale Date</b>
<b>Record Notice of Sale at County Recorder's office.</b>	<b>20 days prior to Sale Date</b>
<b>Publish Notice of Sale in local paper at least</b>	<b>20 days prior to Sale Date</b>
<b>Request for directions of property sent to Beneficiary.</b>	<b>Within 10 days from 1st publication notice</b>
<b>Right of Borrower to reinstate ends</b>	<b>5 business days prior to sale</b>
<b>Sold at Trustee's Sale</b>	<b>Sale Date</b>

### **Delinquent status**

When a borrower fails to comply with the terms of their Note and Deed of Trust they are in violation of their contractual agreement with the lender. This violation could be failing to make scheduled payments on their loan(s) recorded against the property, failing to pay the property taxes or failure to maintain hazard insurance against the property. When the lender is not paid their regularly scheduled payment, or makes advances on the borrower's behalf to secure their interest in the property and is not reimbursed by the borrower, the lender is entitled to begin the non-judicial foreclosure process in order to get their money. If the loan is secured by the borrower's principal 1-4 unit residence, certain steps must be taken to ensure they are aware of all options available to them to avoid foreclosure. Requirements may differ depending on the number of foreclosures conducted by the foreclosing entity (more or less than 175 foreclosures a year).

## **Default Time Period**

This time period begins once the notice of default has been recorded

The California Civil Code requires that a copy of the Notice of Default be mailed within 10 days of its recording to all persons who are entitled to notice. This includes the original trustor at the address shown on the Deed of Trust, at his / her last known address and to anyone else who has recorded a request for notice. The civil code also requires that a copy of the notice of default be mailed to certain entitled parties, such as junior lien holders, within one month of the notices recording. All mailings to the Trustors and new owners are sent by certified and first class mail.

A Trustees Sale Guarantee (TSG) will be ordered from a title company at the time the Notice of Default is recorded. The TSG provides the information needed to proceed with the Trustee's Sale process and guarantees the accuracy of that information to the trustee and beneficiary only.

The property owner, or a junior lien holder, may cure the default by paying all delinquent amounts, including all costs associated with the filing of the default. This may be done at any time up to five business days before the scheduled sale date, which is set in the publication period.

## **To Cure a Default**

Many foreclosure proceedings are resolved during this 3-month default time period. The borrower or anyone with a subsequent interest in the property may pay the beneficiary or his authorized agent the amount necessary to cure the default. This amount will include delinquent payments, any advances and the fees and costs associated with filing the notice of default and other necessary documents. Always call County Records Research prior to accepting any money to verify the total costs to cure the default. You must always notify us immediately upon receipt of payment. Acceptance of any partial reinstatement may void the foreclosure proceedings. When the default is cured, a Notice of Rescission will be prepared so that the beneficiary can sign it. When the Notice of Rescission is recorded it cancels the Notice of Default.

## **Proceeding with the Trustees Sale**

If the default is not cured within the three-month default period, the next step will be to prepare, post, record and publish the Notice of Trustee's Sale. An instruction form, which is referred to as the "authorization to publish", is sent to the beneficiary. This letter authorizes publication of the Notice of Trustee's Sale. A copy of the notice is published in an adjudicated newspaper of general circulation once a week for three consecutive weeks in the county in which the property is located. The notice is also posted on the property and recorded at the County Recorder's office.

If the property owner wants to reinstate the loan during the publication period, the beneficiary must allow him / her to do so up to five business days prior to the date of sale, unless the loan is

all due and payable pursuant to the terms of the note. The beneficiary will also sign a "Bid Instruction Letter" which will instruct County Records Research to make the opening bid on the beneficiary's behalf. This bid will usually be for the total amount of the debt secured by the Deed of Trust plus any advances, trustee's fees and expenses.

The beneficiary may instruct County Records Research to make a deficiency bid. A deficiency bid is one which is less than the debt due on the loan, and is used when the beneficiary does not want the property back and / or the value of the property is less than the debt due on the note.

## **The Trustees Sale**

The date of the Trustee's Sale is established at the time the Notice of Trustee's Sale is prepared. The Trustee's Sale is a public auction sale and is open to all qualified bidders. Bids are made orally and everyone who wants to bid must first qualify with the auctioneer by showing the amount and type of money intended to be used in the event of a successful bid. The Notice of Trustee's Sale designates the type of funds required, usually cash, cashier's check or bank check. The acceptance of the bid is not final until the total amount is paid to the auctioneer by the highest bidder. The beneficiary does not need any money to make the opening bid. However, if the lender plans to bid over the opening bid he must have enough money to pay the difference between the amount of his balance due and his final bid. The sale is complete when the highest bid is received and the auctioneer accepts it, declaring the property sold.

## **Postponement**

There are many reasons why a Trustee's Sale may be postponed. As an example; a bankruptcy or other legal proceedings may prevent County Records Research from conducting the sale on the scheduled date. If there is a bankruptcy or litigation, it may be necessary for the beneficiary to employ the services of an attorney. County Records Research can assist you if you find it necessary to contact an attorney.

The sale must be completed within 1 year of the sale date published on the Notice of Trustee Sale, or the process must be started again by recording a new NTS. The beneficiary and the property owner can agree on as many postponements as they wish. If there is a bankruptcy or legal proceeding, the sale can be postponed as many times as necessary to obtain a court order to allow the sale to take place. If a sale is postponed for any reason, an announcement must be made at the sale location as to the reason for the postponement and the next sale date. When the foreclosing Loan is a 1<sup>st</sup> Lien against an Owner Occupied 1-4 Unit residence and the sale is postponed for a period of at least 10 business days, then pursuant to Section 2924g a mortgagee, beneficiary or authorized agent shall provide written notice to the borrower regarding the new sale date and time, within five business days following the postponement.

If the postponed sale date is for a period of time that exceeds five business days, the right of reinstatement is revived and continues until five business days prior to the newest sale date.

## After the Sale

A Trustees Deed Upon Sale is prepared after the sale is completed. This Deed transfers title to the successful bidder or beneficiary. The Deed must be signed by the Trustee, acknowledged by a notary public and recorded. If it is recorded within 14 days of the sale, it has the same effect as if it was recorded at 8 am on the day of the sale. After the Deed has been recorded it is forwarded to the party who purchased the property at the Trustees Sale auction.

There is no right of redemption after a Trustee's Sale and the successful bidder is entitled to immediate possession, with the exception of Federal Tax Liens and HOA foreclosures. The first exception is the right of the federal government to redeem, with full payoff to the successful bidder, if a federal tax lien has been recorded against the property and is subsequent to the deed of trust being foreclosed. IRS redemption rights elapse four months after the Trustees Sale. The second exception is if a Homeowners Association forecloses on delinquent HOA dues; in this case the Borrower has 90 days to pay the full amount owed in order to redeem the property.

Once you understand the foreclosure process, **profit potential is unlimited.**

The information provided does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available are for general informational purposes only.

You should contact your attorney with respect to any legal matter

Terry Jenkins - Realtor® - Century 21 Select Real Estate / DRE# 2096855

CREA - Certified Real Estate Auctioneer®  
Jenkins Real Estate Auctions LLC  
Entity No. 202358616912  
Formed In California

Registered: State of California Secretary of State  
Surety Bond Auctioneer/Auction Company  
Bond Number 387770D

Private Cell: 916-588-0067

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