

THE FORECLOSURE PROCESS IN CALIFORNIA IN A NUTSHELL

The California home-buying process usually involves the use of the **deed of trust**, which by its legal definition involves three parties; the **trustor** (borrower), the **beneficiary** (lender), and the **trustee** (neutral third party receiving the right to foreclose). The deed of trust usually includes a "**power of sale**" clause that gives the trustee the legal right to enforce collection of the debt. Collection of the debt is ultimately enforced by beneficiary's right to sell the house when the borrower fails to make their mortgage payments.

Defaulting on one's loan causes the start of **foreclosure**, the process by which the lender takes over the home in order to recover their principal investment. Once the house is either sold at **auction** or "repossessed" by the lender, it is sold and the former owner must vacate at the discretion of the new owner. When there is a power of sale clause in the deed of trust the **non-judicial** process of foreclosure is used.

In a non-judicial foreclosure, the trustee must meet a few requirements before he or she sells the property. In comparison to a **judicial foreclosure**, non-judicial foreclosure is quick because the trustee does not have to obtain a **court order** to foreclose, nor is court supervision required in order to sell the house, as is required in the judicial foreclosure process. The judicial process of foreclosure is used when a power of sale clause is not in the deed of trust.

In California, the timeline of non-judicial foreclosure begins when the trustee files a **notice of default**. This is a letter which is sent to the owner/trustor notifying him or her of their default of the loan. This notifies the owner of the intent of the lender to follow through on their right to collect on the debt. The copy of the notice, which is recorded at the County Recorders Office of the appropriate county, is mailed to the address of notice as per the deed of trust. Recording of the notice of default can vary greatly depending on the beneficiary. It can occur anywhere between a week to many months after one misses their first mortgage payment.

The step that follows next is the stage of the foreclosure process in which there is a filing of the **Notice of Trustee's Sale**. No sooner than ninety (90) days after the trustee records the Notice of Default, the Trustee must publish a notice of trustee's sale in the local paper and simultaneously file that notice with the county recorder's office. No sooner than twenty days (20) after the notice of trustee sale is filed, the home may be sold at public auction for the amount of the debt plus foreclosure costs. If no one bids at the auction, the lender assumes ownership of the property, and may dispose of that property to recover their cash investment.

A homeowner should keep in mind that with each succeeding legal action, that these filings are formally recorded and become part of the **legal record**. Very often these filings can and do have damaging effects to a homeowner's credit for a period of seven years. The earlier a homeowner can address the situation, the better the overall result will be regardless of the outcome.