

Foreclosure Timeline

When a real estate transaction involves a property in foreclosure, knowing the foreclosure timeline helps you as the real estate agent to assess whether you have enough time to close escrow before the foreclosure sale. Starting September 8, 2008, California has a special foreclosure timeline for loans originated between 2003 and 2007, inclusive, which are secured by owner-occupied residences. Indeed, loans involved in short sales are likely to be owner-occupied loans from the years 2003 to 2007, which was the heyday for subprime lending. The special foreclosure timeline does not apply if the borrower has filed for bankruptcy, surrendered the property, or contracted with a person or entity whose primary business is advising people, who have decided to leave their homes, on how to extend the foreclosure process and avoid their contractual obligations. The special foreclosure timeline will remain in effect until January 1, 2013. (Cal. Civ. Code § 2923.5.)

FORECLOSURE TIMELINE FOR OWNER-OCCUPIED REAL PROPERTY LOANS (made from 2003 to 2007)

The approximate minimum time frames for the non-judicial foreclosure of owner-occupied real property loans made from 2003 to 2007 are as set forth below. In California, most lenders elect to foreclose non-judicially by conducting trustees' sales, not by judicial foreclosure.

Pre-Foreclosure Period

A lender may initiate the foreclosure process when a borrower defaults on a loan, such as by missing a mortgage payment. However, a slight delay may not justify acceleration and foreclosure by the lender. Hence, in practice, lenders generally wait a few months after a missed payment before starting the foreclosure process.

Day 1: Lender Contacts Borrower

For owner-occupied loans from 2003 to 2007, a lender initiating the foreclosure process must generally 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.

Day 31: Filing of Notice of Default

For owner-occupied loans from 2003 to 2007, the lender may file a notice of default 30 days after contacting the borrower to explore options for avoiding foreclosure. The notice of default must be filed in the county where the property is located and a copy must be mailed within 10 business days after recordation to the borrower and all other persons who have requested such notice. The notice of default informs the borrower of the default. It must also 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.

Day 121: Filing of Notice of Trustee's Sale

Three months after the filing of the notice of default, the lender may record a notice of trustee's sale setting forth the date, time, and place of the upcoming trustee's sale. Because of the gravity of a notice of trustee's sale, it must be widely disseminated. The notice of trustee's sale must be recorded, posted, mailed to the borrower and others, as well as published once a week for three consecutive weeks in a newspaper of general circulation.

Day 145: Deadline to Cure Default

Up to five business days before the trustee's sale, the borrower may reinstate the loan by curing the default or paying the missed payments plus allowable costs. After the reinstatement period expires, the borrower still has the right to redeem the property by paying the entire debt, plus interest and costs (not just the arrearage), before the bidding begins at the trustee's sale.

Day 152: Trustee's Sale

Although California law allows a trustee's sale to take place 20 days after the posting of the notice of trustee's sale, lenders customarily wait at least 31 days instead to help protect against federal tax liens. 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.

USING THIS FORECLOSURE TIMELINE

A foreclosure timeline helps you as a listing agent ascertain whether you have enough time to market and sell the property as a short sale. Depending on the stage of foreclosure the homeowner is in ("Foreclosure Stage"), the chart below gives you the total time frame you have, at a minimum, to sell a property as a short sale before the trustee's sale occurs ("Minimum Time Left to Sell").

| Foreclosure Stage | Minimum Time Left to Sell |
|--|---|
| Homeowner just missed making mortgage payment for the first time. | About 6 to 8 months total |
| Homeowner has just been contacted by the lender to explore options for avoiding foreclosure. | About 5 months total |
| Notice of default has just been filed. | About 4 months total |
| Notice of trustee's sale has just been filed. | Date of trustee's sale is on notice of sale |

As an example, if a notice of default has just been filed, you have a minimum of about four months to sell the property before the trustee's sale may occur. That's four months not only to find a buyer, but also to get the lender to approve the short sale and close escrow. The short sale lender may agree to postpone the trustee's sale in some situations (such as when there's an accepted offer), but be sure to get any agreement for a postponement in writing.

FORECLOSURE TIMELINE FOR OTHER TYPES OF LOANS

For loans that are not secured by owner-occupied real property or not made from 2003 to 2007, lenders are not required to contact the borrowers to explore options for avoiding foreclosure. For these loans, the total minimum time for the foreclosure process is roughly only 122 days, not 152 days. If the lender is not required to contact the borrower, the foreclosure process takes a minimum of about 4 months from the filing of the notice of default to the day of the trustee's sale.

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