



Short Sales/Foreclosures/REOs

In today's economic times the occurrence of Short Sales, Foreclosures and REOs has become common. Below is a description of these property statuses.

Short Sale: A short sale is when the property is sold (or on the market) at a price that is less than what is owed on the property. If there is a secondary loan on the property the carrier of the first will negotiate with the carrier of the second. The carrier of the second may not get paid. Once an offer is made a short sale requires a great deal of interaction and negotiation with the bank. This may be done by the property owner or the agent and it is not uncommon for escrow to take 3 or more months.

Foreclosure: A foreclosure occurs when the owner of the property has defaulted on the loan(s) and the lender takes over to recover their principal investment. If there is a secondary loan on the property, the carrier of the secondary loan will not get paid (unless they want to take over the first loan.) Here is the process:

1. Owner of the property defaults
2. The bank or loan carrier files a Notice of Default (NOD.) This is a letter sent to the property owner notifying him/her of their default on the loan. It notifies the owner of the intent of the lender to follow through on their right to collect on the debt. This can occur anywhere between a week to many months after one misses their mortgage payment.
3. No sooner than 90 days after the NOD the trustee must publish a Notice of Trustee Sale in the local newspaper and file that notice with the county recorder's office. This can be extended if the property qualifies for the 90 day extension.
4. No sooner than 20 days after the Notice of Trustee Sale is filed, the home may be sold at public auction. If no bid is higher than the lender's opening bid the lender takes the property back and it becomes an REO.

A winning bid at a foreclosure auction requires all cash, there is no upfront knowledge of possible liens and as noted in the chart below, the property cannot be inspected.



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REO (Real Estate Owned): This is property owned and being sold by the bank. You can easily obtain a 30 day close of escrow with these properties. The price of the property is often good as the bank wants it sold. The drawback to these transactions is the bank is exempt from many of the disclosures – the primary one is the Transfer Disclosure Statement (TDS) and they most often will not make repairs or do inspections.

Pre-foreclosure: This is the period from the filing of the Notice of Default until the property is sold at auction or is assumed by the bank. During this time investors can purchase the home directly from the owner, Realtors can list the home and Lenders can help them refinance.

The chart below shows characteristics of the above mentioned opportunities:

Opportunity	Traditional Financing	Subject-To Financing	Title Insurance	Inspections	Eviction Required	Overall Risk
Pre-foreclosure	Yes	Yes	Yes	Yes	No	Low
Auction*	No	No	No	No	Maybe	High
Bank Owned	Yes	No	Yes	Yes	No	Very Low

* A winning bid at a foreclosure auction requires all cash, there is no upfront knowledge of possible liens and as noted in the chart above, the property cannot be inspected.



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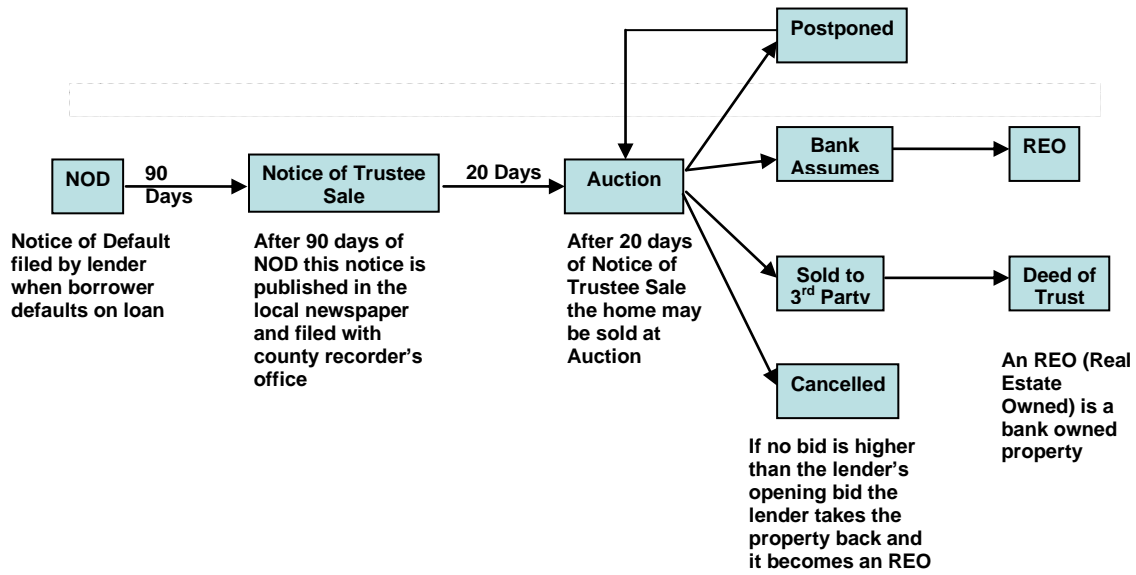
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FORECLOSURE PROCESS



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California 90-DAY EXTENSION TO FORECLOSURE PROCESS

Q 83. What, in a nutshell, is the new law extending the foreclosure process by 90 days?

A Under the new California Foreclosure Prevention Act, lenders foreclosing on certain loans are prohibited from giving a notice of sale until the lapse of at least 3 months plus 90 days after the filing of the notice of default (see Question 88). A loan servicer can obtain an exemption from this requirement by demonstrating that it has a comprehensive loan modification program (see Questions 89 to 94).

Q 84. What is the purpose of this law?

A The purpose of this law is to try to stem the tide of foreclosures and their adverse consequences by providing additional time for lenders to work out loan modifications with borrowers as well as creating an incentive for lenders to establish comprehensive loan modification programs.

Q 85. When will this law be in effect?

A This bill was enacted into law on February 20, 2009 along with the state budget. Its provisions take effect on or about March 16, 2009.

More specifically, the law states that the appropriate commissioners must adopt regulations to carry out this law within 10 days of its enactment (see Cal. Civil Code § 2923.53(d)), which would be by March 2, 2009. The law also states that it will become operative 14 days after the issuance of such regulations (Cal. Civil Code § 2923.52(d)), which would be on or about March 16, 2009.

This law will stay in effect only until January 1, 2011 at which time it will be repealed, unless it is deleted or extended by statute (Cal. Civil Code § 2923.52(d)).

Q 86. How does this new law affect the foreclosure timeline?

A Under preexisting law, a lender who files a notice of default in the foreclosure process must wait at least 3 months before giving a notice of sale (Cal. Civil Code § 2924). The new law extends that 3-month period by an additional 90 days.

Also under preexisting law, the general rule of thumb is that the entire foreclosure process takes a minimum of 4 months from the filing of a notice of default until the final trustee's sale. Under the new law, that general rule of thumb is extended by 90 more days for a total of about 7 months, unless the lender is exempt. For more information about the foreclosure process, C.A.R. offers a legal article entitled [Foreclosure Timeline](#).

Q 87. Under the new law, is the minimum time frame from the filing of a notice of default to the notice of sale a total of 6 months or 180 days?

A *Neither. The way the law is written, the minimum time frame from the filing of the notice of default to the notice of sale is technically “3 months plus 90 days.”*

Q 88. What type of loan falls under the new law extending the foreclosure process by 90 days?

A *Unless otherwise exempt, the 90-day extension to the foreclosure process applies to loans that meet all of the following requirements:*

- *The loan was recorded from January 1, 2003 to January 1, 2008, inclusive;*

The loan is secured by a first deed of trust for residential real property;

The borrower occupied the property as a principal residence at the time the loan became delinquent;
and

A notice of default has been recorded on the property.

(Cal. Civil Code § 2923.52(a).)

Q 89. What are the exceptions to the new law extending the foreclosure process by 90 days?

A *Most notably, a loan servicer is exempt from the 90-day extension to the foreclosure process if the loan servicer has obtained an order of exemption based on the implementation of a comprehensive loan modification program (Cal. Civil Code § 2923.53(a)) (see Questions 89 to 94). The order of exemption must be current and valid at the time the notice of sale is given (Cal. Civil Code § 2923.52(b)).*

Other exceptions to the 90-day extension include the following:

- *Certain state or local public housing agency loans (Cal. Civil Code § 2923.52(c)).*

When a borrower has surrendered the property as evidenced by a letter confirming the surrender or delivery of the keys to the property to the lender or authorized agent (Cal. Civil Code § 2923.55(a)).

When a borrower has contracted with any 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 to the lenders (Cal. Civil Code § 2923.55(b)).

When a borrower has filed a bankruptcy case and the court has not entered an order closing or dismissing the case or granting relief from a stay of foreclosure (Cal. Civil Code § 2923.55(c)).

Q 90. What constitutes a comprehensive loan modification program?

A A comprehensive loan modification program that may exempt the loan servicer from the 90-day extension to the foreclosure process includes all of the following features:

- The loan modification program is intended to keep borrowers whose principal residences are located in California in those homes when the anticipated recovery under loan modification exceeds the anticipated recovery through foreclosure on a net present value basis (Cal. Civil Code § 2923.53(a)).

It targets a 38 percent or less ratio of the borrower's housing-related debt to the borrower's gross income (Cal. Civil Code § 2923.53(a)). Housing-related debt is debt that includes loan principal, interest, property taxes, hazard insurance, flood insurance, mortgage insurance and homeowner association fees (Cal. Civil Code § 2923.53(k)(2)).

It includes some combination of loan modifications terms as specified (Cal. Civil Code § 2923.53(a)) (see Question 91).

The loan servicer seeks long-term sustainability for the borrower (Cal. Civil Code § 2923.53(a)).

Q 91. What are the loan modification terms that must be included in a comprehensive loan modification program?

A A comprehensive loan modification program that may qualify for exemption from the new law extending the foreclosure process by 90 days must include some combination of the following features:

- An interest rate reduction, as needed, for a fixed term of at least five years;
- An extension of the amortization period for the loan term to no more than 40 years from the original date of the loan;
- Deferral of some portion of the unpaid principal balance until loan maturity;
- Principal reduction;
- Compliance with a federally mandated loan modification program; or
- Other factors that the appropriate commissioner determines.

(Cal. Civil Code § 2923.53(a)(3).) See also Question 92.

Q 92. Does a loan servicer have to modify loans to get an exemption from the 90 day extension to the foreclosure process?

A No. A loan servicer is not required to modify a loan for a borrower who is not willing or able to pay under the modification. Furthermore, a loan servicer is not required to violate any contractor agreement for investor-owned loans. (Cal. Civil Code § 2923.53(i).)

Q 93. How does a loan servicer obtain an order of exemption from the new law extending the foreclosure process by 90 days?

A A loan servicer may apply to the appropriate commissioner (see Question 94) for an order exempting loans that it services from the new law extending the foreclosure process by 90 days (Cal. Civil Code § 2923.53(b)(1)). Upon receipt of an initial application for exemption, the commissioner must issue a temporary order exempting the mortgage loan servicer from the 90-day extension to the foreclosure process (Cal. Civil Code § 2923.53(b)(2)). Within 30 days of receipt of the application, the commissioner must make a final determination by issuing a final order exempting the loan servicer or denying the application (Cal. Civil Code § 2923.53(b)(3)). If the application is denied, the temporary order of exemption shall expire 30 days after the date of denial (Cal. Civil Code § 2923.53(b)(1)).

Q 94. To which commissioner does a loan servicer apply for exemption?

A A lender or loan servicer would apply for an exemption to the following commissioner as appropriate:

- Commissioner of the Department of Financial Institutions for commercial and industrial banks, savings associations, and credit unions organized in California to service mortgage loans;

Commissioner of the Department of Real Estate for licensed real estate brokers servicing mortgage loans; and

Commissioner of the Department of Corporations for licensed residential mortgage lenders and servicers, licensed finance lenders and brokers, and any other entities servicing mortgage loans not regulated by the Department of Financial Institutions or Department of Real Estate.

(Cal. Civil Code § 2923.53(k)(1).)

Q 95. How does a homeowner ascertain whether his or her loan servicer is exempt from the 90-day extension to the foreclosure process?

A The Secretary of Business, Transportation and Housing must maintain a publicly-available Internet website disclosing the final orders granting exemptions, the date of each order, and a link to Internet websites describing the loan modification programs (Cal. Civil Code § 2923.52(f)) (see also Question 96).

Q 96. Does a loan servicer have to inform the borrower as to whether the loan servicer is exempt from the longer foreclosure timeframe?

A Yes. A notice of sale must include a declaration from the loan servicer stating both of the following:

- Whether the loan servicer has obtained a final or temporary order of exemption from the 90-day extension to the foreclosure process that is current and valid on the date the notice of sale is filed; and
- Whether the 90-day extension to the foreclosure process under the new law does not apply.

The law requires the loan servicer's declaration of exemption on the notice of sale, even though it may have been more helpful for the borrower if the declaration was on the notice of default. This requirement will stay in effect only until January 1, 2011 at which time it will be repealed, unless it is deleted or extended by statute. (Cal. Civil Code § 2923.54.)

Q 97. *What is the penalty for violating this law?*

A *Anyone who violates this law shall be deemed to have violated his or her license law as it relates to these provisions (Cal. Civil Code § 2923.53(h)).*

Q 98. *Where do I find this law?*

A *This law is set forth at sections 2923.52 to 2923.55 of the California Civil Code. The full text of this law is available at the California Legislative Counsel website at www.leginfo.ca.gov.*



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CA Foreclosure Postponement Reasons

In California, foreclosure sales can be postponed for up to one year per CA Civil Code 2924 g (c) (2). The postponement reasons are outlined in 2924 g (c) (1), but the following names are commonly used at the foreclosure auctions.

1. **Mutual Agreement.** The most common postponement reason it simply indicates that the homeowner and the lender have agreed to postpone the sale. This may be the result of a simple call by the homeowner requesting a little more time, or a more formal agreement like forbearance. Many homeowners do not realize when they enter a forbearance agreement that the foreclosure process continues; and if they miss an agreed upon payment, the property can be sold on the next scheduled sale date with no further notice.
2. **Bankruptcy.** When a homeowner files for bankruptcy protection, it puts an automatic stay on all debt collection actions, including foreclosure. Note that *bankruptcy does not stop foreclosure*, as many believe. Instead, it simply delays the sale of the property until the homeowner resolves the debt, or in many cases, the lender gets approval from the bankruptcy court to continue the sale - an order granting motion for relief from stay. The bottom line is that a home is a secured debt, and the lender has the right to take the security (the home) if the homeowner lacks the ability to pay the debt as agreed. Bankruptcy is only an effective tool against foreclosure if the homeowner will have sufficient income to pay their home loan and make up past due amounts once the bankruptcy plan is completed.
3. **Beneficiary's Request.** A simple decision by the lender (beneficiary) to postpone the sale. Could be for any reason, including that they simply aren't prepared to take the property to sale, or because they have reason to believe they are about to be paid (a closed escrow for which they have not yet received payment, for example).
4. **Trustee's Discretion.** A simple decision by the trustee to postpone the sale. The most typical reason is that they are unable to reach the lender for sale instructions.
5. **Operation of Law.** Fairly rare, but used when a court orders the postponement of the sale. The most likely reasons for a court to make such an order would be in

cases where there is a plausible allegation of fraud against the lender, or there are questions of material fact around the right of the lender to foreclose.

No matter what the postponement reason, a new notice of trustee sale must be posted and filed if the sale is postponed for more than 365 days.



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