

CALIFORNIA COURTS

THE JUDICIAL BRANCH OF CALIFORNIA

Foreclosure

[Español](#)

READ FIRST: The following section provides very basic information that generally applies to most people. Foreclosure law is very complicated and does not fit a simple explanation, in part because the rules vary based on different situations. Nonprofit organizations in most counties, and even nationally, can help answer specific questions you may have about a foreclosure proceeding. We encourage you to contact a local housing [legal aid agency](#) or community-based nonprofit to find reliable information.

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What is a foreclosure?

Most people buy a home by borrowing part of the purchase price usually from a bank or a mortgage company. Other times, a homeowner borrows money against the equity in the property after the home is purchased, and this is called a “home equity loan.” Sometimes people refinance their mortgage loan and combine it with a home equity loan. In all these situations, the lender usually has a lien against the home to secure repayment of the loan. When a buyer fails to make the payments due on the loan (defaults on the loan) the lender can foreclose, which means that the lender can force a sale of the home to pay for the outstanding loan.

For more information about foreclosure laws:

- Foreclosure Process - [Civil Code section 2924](#)
- Foreclosure Consultants - [Civil Code section 2945](#)

The law on foreclosure is changing often. Make sure you read the most updated laws.

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Types of foreclosures

In California, lenders can foreclose on deeds of trust or mortgages using a nonjudicial foreclosure process (outside of court) or a judicial foreclosure process (through the courts). The nonjudicial foreclosure process is used most commonly in our state.

- **Nonjudicial foreclosure** is the most common type of foreclosure in California. It is used when there is a power-of-sale clause in the deed of trust that secures the mortgage loan by giving the trustee the authority to sell the home to pay off the loan balance at the request of the lender if the borrower defaults (fails to make payments).

When a lender uses the nonjudicial foreclosure process against a borrower who fails to pay on a mortgage for his or her primary residence, the lender gives up the right to collect a deficiency judgment against the borrower. But most lenders prefer this process anyway because it is much faster and less costly.

- **Judicial foreclosure** involves filing a lawsuit to get a court order to sell the home (foreclose). It is used when there is no power-of-sale clause in the mortgage or deed of trust. Generally, after the court orders the sale of your home, it will be auctioned off to the highest bidder.

Judicial foreclosures are rare in California. A judicial foreclosure allows the lender to get a deficiency judgment against the borrower. BUT the homeowner has the “right of redemption,” which allows him or her to buy the home back from the successful bidder at the auction for 1 year after the sale. The process is longer and more costly than a nonjudicial foreclosure.

Foreclosure Process

These are the main steps in a nonjudicial foreclosure, which apply to the majority of foreclosures in California.

1. The lender **MUST** contact you and anyone else on the mortgage loan to assess your financial situation and explore your options to avoid foreclosure (called a “foreclosure avoidance assessment”). The lender:

- Cannot start the foreclosure process until at least 30 days after contacting you to make this assessment; and
 - Must advise you during that first contact that you have the right to request another meeting about how to avoid foreclosure. That meeting must be scheduled to take place within 14 days.
 - You can authorize a lawyer, HUD-certified housing counseling agency, or other advisor to talk on your behalf with the lender about ways to avoid foreclosure. You cannot be forced to accept any plan that your representative and the lender come up with during that discussion.
2. If you and the lender have not worked out a plan to avoid foreclosure, the lender can record a **Notice of Default** in the county where your home is located, at least 30 days after contacting you for the foreclosure avoidance assessment. This marks the beginning of the formal and public foreclosure process. The lender sends you a copy of this notice by certified mail within 10 business days of recording it. You then have 90 days from the date that the Notice of Default is recorded to “cure” (fix, usually by paying what is owed) the default.
- **WARNING:** Since the Notice of Default is recorded as a public document, many fraudulent companies and scam artists search the public records to send defaulted borrowers offers to “help” them avoid losing their homes to foreclosure. These fraudulent companies could take your money and then do nothing to help. There are free services available from government and nonprofit organizations to help borrowers.
3. If you do not pay what you owe, a **Notice of Sale** is recorded (at least 90 days after the Notice of Default is recorded). The Notice of Sale states that the trustee will sell your home at auction in 21 days.
- The Notice of Sale must:
- Be sent to you by certified mail.
 - Be published weekly in a newspaper of general circulation in the county where

your home is located for 3 consecutive weeks before the sale date.

- Be posted on your property, as well as in a public place, usually at your local courthouse.
- Have the date, time, and location of the foreclosure sale; the property address; the trustee's name, address, and phone number; and a statement that the property will be sold at a public auction.

4. At least 21 days after the date when the Notice of Sale is recorded the property can be sold at a public auction. The successful bidder must pay the full amount of the bid immediately with cash or a cashier's check. The successful bidder gets a trustee's deed once the sale is complete. The lender usually bids at the auction, in the amount of the balance due plus the foreclosure costs. If no one else bids, your home goes to the lender.

Note: Before the foreclosure process begins, the lender or loan servicer may send you letters (over the course of several months) demanding payment. Those letters are NOT notices of default.

Stopping the foreclosure sale

You have up until 5 days before the foreclosure sale to cure the default and stop the process. This is called "reinstatement" of the loan. During the 21-day period after the Notice of Sale is recorded, any person or institution (like a bank) with an interest in your home has the right to redeem the home up until the nonjudicial foreclosure sale/auction. This means that they must pay the entire loan in full.

After the foreclosure

Whoever buys your home at the foreclosure sale/auction cannot just change the locks to the home. The new owner must serve you with a 3-day written notice to "quit" (move out) and, if you do NOT move out in the 3 days, go through the formal eviction process in court in order to get possession of the home. That process typically takes several weeks. Learn more about the [eviction process](#).

Rights of Tenants During a Foreclosure

If there are tenants in the house that was foreclosed on, the new owner must honor the existing lease. BUT when the tenants have a month-to-month lease or the owner/landlord also lives in the home that is being foreclosed on, the new owner can evict the tenants or former owner/landlord. In these cases, the new owner may either (1) offer the existing tenants a new lease or rental agreement or (2) begin eviction proceedings. If the new owner chooses to evict existing tenants (other than the former owner), the new owner must give the tenants at least 90 days' notice before starting eviction proceedings.

- There are other rights that tenants have in eviction cases done after a foreclosure. If a tenant is not named in the complaint for the eviction, he or she may be able to challenge the eviction at any time during the case or even after the judgment for eviction is made. If you are an occupant of a foreclosed property where the new owner filed an eviction case, [talk to a lawyer](#) or call the [Tenant Foreclosure Hotline](#) at 1-888-495-8020 to learn about your rights.

Tenants in some California cities may still have a right to stay in their buildings. Cities with eviction or rent control laws prohibit new owners from using foreclosure as a reason for evicting tenants.


Note: If you are a tenant and want to find out if the place you rent is in foreclosure, you can record, in your [county recorder's office](#), a form called a Request for Notice, asking that you be notified of any foreclosure proceedings. This way you, as the tenant, will receive a copy of the Notice of Default and Notice of Sale and know the status of the foreclosure. You can buy a Request for Notice at stores that sell legal forms or get 1 from the customer service department of a title company.


Help for tenants during a foreclosure


There are resources for tenants to get more information about their options. Read [Tenant's Rights in Foreclosed on Properties](#). Tenants may also call the [Tenant Foreclosure Hotline](#) at 1-888-495-8020.

If you need additional information, talk to a lawyer. Click for [help finding a lawyer](#).

More Information About Foreclosure

[Housing and Economic Rights Advocates](#): Has consumer pamphlets, tips, and information to help you be better informed about foreclosure, preventing foreclosure, working with lenders, and other resources.

[Tenants Together's Law & Resources](#): Information to help you know your rights, answers to frequently asked questions and resources to help you be better informed about foreclosure and your rights as a tenant in a foreclosure.

[U.S. Department of Housing and Urban Development \(HUD\)](#): The Department of Housing and Urban Development's guide to avoiding foreclosure contains links that can help you find a local HUD-certified housing counselor, learn about refinancing options, and understand the steps homeowners can take to avoid foreclosure.