

Foreclosure Glossary

FORECLOSURE - (non-judicial) - a popular term used to describe the procedure followed in enforcing a creditor's rights when a debt secured by any lien on property is in default; however, the correct term for a "Foreclosure" involving a deed of trust is a "Trustee's Sale Proceeding."

ASSIGNMENT OF DEED OF TRUST - written document, that transfers the beneficial interest in a note and deed of trust from one to another.

AUTHORIZATION TO SIGN AS AGENT AGREEMENT - written document given by a beneficiary authorizing an agent to sign a document on their behalf (such as a notice of default).

BANKRUPTCY - a legal proceeding which allows a debtor to discharge certain debts or obligations without paying the full amount or allows the debtor time to reorganize his financial affairs so he can fully repay his debts. (A bankruptcy does not discharge obligations secured by a deed of trust.)

BENEFICIARY - the lender or their successor in interest for whose benefit a trust is created and to whom the debt is owed.

BID AUTHORIZATION LETTER - your written authorization instructing the trustee to make the initial opening bid at the trustee's sale on the lender's behalf. This form will also advise our office of any additional amounts to be included in the opening bid, (total Debt), such as funds advanced by you to pay delinquent real estate taxes, etc.

BREACH - the failure without legal excuse to perform any promise made in a contract. A breach is stated in the notice of default.

DECLARATION OF DEFAULT - a written document that instructs the trustee to prepare and record a notice of default and if necessary, to sell the secured property in order to satisfy the unpaid obligation. This document does not require the acknowledgment of a notary public or recording and is merely retained by the trustee in their foreclosure file.

DEED OF TRUST - a written document, describing the real property that is being given as security for the repayment of an obligation.

EVICTION - See "Unlawful Detainer."

EXTENSION AGREEMENT - an agreement (normally written) giving additional time to pay an obligation.

FEDERAL TAX LIEN - an obligation to the United States government as a result of nonpayment of federal income taxes.

ENDORSEMENT/DATEDOWN - A continuation of the trustee's sale guarantee that reports any changes in the status of the property being foreclosed. Such "date downs" are requested from the title company prior to preparation of the notice of trustee's sale and prior to the trustee's sale.

IMPORTANT NOTICE - A written document required by California law to be a part of the recorded Notice of Default. This document is completed by our office and attached to the Notice of Default (as page 1) prior to recording. It sets forth the reinstatement amount as of a specific date and contains certain language directed to the borrower and emphasizes the fact that a foreclosure proceeding has been initiated.

INVALID - not legally sufficient; no binding force.

JUNIOR LIEN - a legal claim upon real property recorded subsequent (or recorded prior but has subordinated) to another legal claim upon the same real property.

LIMITED POWER OF ATTORNEY - a recorded document which authorizes someone to act as attorney-in-fact in a specific manner for someone else.

LIS PENDENS - a recorded notice of pending legal action, which notifies prospective purchasers and encumbrances that any interest acquired by them in a property litigation is subject to the decision of the court.

MODIFICATION AGREEMENT - a written document, signed by the beneficiary and the borrower that alters the terms of either the note of deed of trust.

NONMILITARY AFFIDAVITS - a sworn statement, in writing from the beneficiary or his agent which declares that the property owner is not entitled to any rights under the Soldier's and Sailors Civil Relief Act of 1940.

NOTE - a written document, (promise to pay), that sets forth the amount of the obligation and the terms of repayment.

NOTICE OF DEFAULT - a written document that gives constructive notice of a trustor's failure to perform his obligation under a deed of trust. This document does not require the acknowledgment of a notary public and must be recorded.

NOTICE OF RESCISSION - a written document that cancels or annuls the effect of a notice of default when a default has been cured (reinstated). This document does not require the acknowledgment of a notary public, but must be recorded with the county recorder in the county in which the property is located.

NOTICE OF TRUSTEE'S SALE - a written document that sets forth the day, date and time of the trustee's sale, describes the property to be sold and gives an estimate of the unpaid debt as of the first publication date. This document is prepared by the trustee and does not require the acknowledgment of a notary public and must be recorded with the county recorder in the county in which the property is located at least 14 days prior to the scheduled sale date. We must arrange for the notice of trustee's sale to be published in a qualified newspaper in the city (or judicial district), in which the property is located. This publication must appear for 3 consecutive weeks, with the first publication date being at least 20 days prior to the sale date.

POSTPONEMENT - a verbal announcement made at the time and place of the scheduled trustee's sale that establishes a new date or time for the trustee's sale. The sale cannot be changed from the originally noticed location.

PRELIMINARY INJUNCTION - A judicial order granted by a judge of the Superior Court, which prohibits the trustee from proceeding with any further action on a specific foreclosure file until a trial is held or settlement reached. This occurs when there is a dispute between the owner of a property and the beneficiary. A Trustee's Sale cannot be held any sooner than seven (7) days from the dismissal of the action or the expiration of a restraining order, injunction or stay from any court of competent jurisdiction. However, the order or any amendment thereto may expressly provide for an earlier sale date.

PRE-PUBLICATION PERIOD - the three month period following the recording of the notice of default. Prior to 1986 this period was called the reinstatement period.

PRESENT OWNER, CURRENT OWNER, NEW OWNER - the successor to the trustor named in the deed of trust and now the owner of the property.

PROMISSORY NOTE - See "Note."

PUBLICATION LETTER - this letter is sent to the lender by the trustee. When completed and returned, it authorizes the trustee to proceed with the scheduling of the trustee's sale and preparation of the notice of trustee's sale.

PUBLICATION PERIOD - this is the interval beginning the day after the pre-publication period expires and ending with the conducting of the trustee's sale. During the publication period, the notice of trustee's sale is published, posted, recorded, and copies are mailed to all entitled parties. The publication period is normally 30 to 40 days.

RECONVEYANCE - a recorded document which gives notice that the loan secured by the identified deed of trust has been paid in full.

RESCISSION - See "Notice of Rescission."

REINSTATEMENT - a curing of a default and restoration of the loan to current status through payment of past-due amounts together with the fee and expenses of the trustee.

REINSTATEMENT PERIOD - this is the interval from the date the notice of default is recorded until five business days prior to the date of sale during which time a default may be reinstated/cured.

REQUEST FOR NOTICE - a recorded document which requests a copy of any notice of default and any notice of sale to be sent to the requester at the address shown. See California Civil Code section 2924b(1).

RETURN AND ACCOUNT OF SALE BY TRUSTEE - an itemization prepared by the trustee or his agent and sent to the successful bidder at the sale. It gives a complete accounting of the successful bid.

REQUEST TO PREPARE NOTICE OF DEFAULT - See "Transmittal Form."

SOLDIER'S AND SAILOR'S RELIEF ACT - an act passed by Congress in 1940, for the financial protection of those persons serving in the military service. This act is the reason for the completion of the nonmilitary affidavit forms.

STATEMENT/INVOICE - an itemization of the trustee's fee and expenses incurred at the conclusion of the foreclosure proceeding (cancellation, reinstatement, payoff or completed sale).

SUBSTITUTION OF TRUSTEE - a written document that appoints a successor trustee to the trustee named in the deed of trust, (or present trustee). This document must be acknowledged by a notary public and recorded with the county recorder in the county in which the property is located.

TEMPORARY RESTRAINING ORDER (TRO) - A judicial order which is granted by a judge of the Superior Court. This order temporarily prohibits the trustee from proceeding with any further action under a specific foreclosure file until a trial is held or settlement reached. A TRO is effective, generally, for a 21 day time period or until a hearing is held and the judge decides whether a preliminary injunction will be granted or denied.

TOLL - to temporarily stop. Frequently used to describe the tolling (stopping) during bankruptcy of any further acts in foreclosure.

TRANSMITTAL FORM (TS138) - this is the "Request to Prepare Notice of Default" transmittal form which is completed by the lender and forwarded to T.D. Service Company together with the note, deed of trust, assignments and other necessary loan documents. This form sets forth all pertinent information to enable us to prepare the default documents.

TRUSTEE'S DEED UPON SALE - a written document which is prepared and signed by the trustee when the secured property is sold at a trustee's sale. This document transfers ownership to the successful bidder at the sale; must be recorded with the county recorder in the county in which the property is located.

TRUSTEE'S SALE - the public auction of the real property, described in the deed of trust, to satisfy the unpaid obligation.

TRUSTEE'S SALE GUARANTEE - A Title report given to the present trustee when a trustee's sale proceeding has been initiated. This report provides the names of the current owner, all liens and encumbrances recorded and other information pertinent to the foreclosure process. The information is insured to be correct by the title company.

TRUSTEE'S SALE PROCEEDING (foreclosure) - the term used to describe the non-judicial procedure followed by the trustee in enforcing a creditor's rights when a debt secured on real property is in default.

TRUSTOR - the borrower (or property owner) at the time the deed of trust was created. Trustor is often used to refer to the current owner.

TS138 - See "Transmittal Form."

UNLAWFUL DETAINER ACTION (eviction) - a legal action to remove someone who has unjustly retained possession of real property after one's right to possess has terminated.

VALID - a condition that is legally sufficient; that will be upheld by the courts.

VOID - having no legal force or binding effect. Incurable.

VOIDABLE - a condition capable of being made void, although not necessarily void in itself.