

**RESULTS ADVISORS FREE REPORT:  
THE FORECLOSURE PROCESS EXPLAINED  
AND WHAT HAPPENS AFTER FORECLOSURE**

By now everyone has heard that the federal government and 49 states have settled with the big banks over robo-signing, wrongful foreclosure and all the other illegal, unethical and plain terrible things the big banks were doing for homeowners seeking mortgage assistance. You may have heard that a check with your name on it is in the mail, and the State of California will make the banks pay down principal on their loans.

Don't hold your breath; your share of the settlement, if you ever get it, is months and years away.

What will happen is the number of foreclosures, denied loan modifications and denied short sales will increase since now what little adult supervision the banks were dealing with has been bought off, and the banks can now literally do as they pleased without repercussions – the babysat and neutralized the babysitter.

In this free report, we first discuss the foreclosure process and the steps which must be at least cosmetically followed, and then discuss what happens after the foreclosure takes place and what your options are.

The Foreclosure Process

Most of our clients are located in California, so we will discuss the California rules. The rules for Nevada and Arizona are very similar. All three states follow a “non-judicial” foreclosure process.

The non-judicial foreclosure process means that there is no court, no judge and no jury involved. The process used is an automatic process carried out by recording certain documents in a specific order, in a set time frame, with the county recorder's office. At the conclusion of the process, there is a public auction of the property, and the property is sold at that auction.

The time periods are pretty much the following:

**Day 0:** A loan payment is not made.

Technically, the foreclosure process can begin if you are only 30 days late on the mortgage payment, but under Fannie Mae and Freddie Mac servicing rules, foreclosure can't begin until 180 days has passed since the last payment. Most lenders follow this rule for all loans, since it is simpler to train their workforce to a single standard.

**Day 180:** The foreclosure process starts by the mailing of a "notice of acceleration" the first step of the process.

This is not a formal requirement, but allows the lenders to collect attorney fees and costs from you if they want to after the foreclosure.

**Day 210:** The formal foreclosure process by filing the "Notice of Default". This is recorded, and then a copy mailed regular mail and certified mail, to everybody who signed the mortgage note; you can expect at least two copies in the mail.

This starts a 90 day cure period in which the loan can be reinstated by paying past due payments, plus whatever fees and costs the lenders come up with. Once the notice of default is filed, nothing can stop the process short of filing bankruptcy, or perhaps the end of the Mayan Calendar; but don't bet serious money on the latter. Once the notice is filed, the process must run its course.

**Day 290:** The second step of the formal foreclosure process is completed by filing a "Notice of Trustee Sale". This is recorded, and then a copy mailed, regular and certified mail, to everybody who signed the mortgage note, just like the Notice of Default.

In addition, somebody will show up and physically tape a copy on your front door. Normally this is done at night or early in the morning to avoid confrontation, but it has been known to occur when people are home. You won't be disturbed, they won't try to break in or anything, but the notice will be posted on the property.

**Day 301:** The property is sold at the Trustee's Sale. These are conducted during normal business hours, usually at the local county courthouse. Once the house is sold at the trustee sale, it is virtually impossible to fix the situation.

Important: Unlike the Notice of Default, the trustee sale can be, and frequently is, extended or postponed. The notice gives them the right to postpone the sale as often as they like up for up to a year (at which point they must start the process again). Since the sale can be continued for as little as a day, there is more flexibility by the banks in trying to make some kind of bargain.

Important: It is also common for the foreclosure sale to take place automatically just before the one year period runs out, so calendar that date and stay on top of the bank if a loan modification or short sale is being negotiated.

### Interesting Side Issues in the Foreclosure Process

Filing the Notice of Default is a Public record, and there are companies that collect and sell that information. There is a literal industry built around contacting people who have had notices of default filed in an attempt to (1) secure a short sale; (2) sell you a loan modification or (3) buy your equity, if any.

Once the Notice of Default is recorded, expect lots of cards and letters, and a fair number of people knocking at your door to want to speak to you. You can work with them or ignore them, just be aware this will happen.

The foreclosure process from the bank perspective is fully automated and a computer system organized and maintained by a company called Lender's Processing Service is used by all the major banks. They collect statistics on how long foreclosures take in each state, on average. The process is now largely controlled by the computer program, and not the person on the phone.

Right now, the time in California from last payment to foreclosure sale is about 400 days. This time will decrease in the months ahead.

Finally, be aware that if you are working with your bank in an attempt to obtain relief, either short sale or loan modification, understand the following:

- (1) The people who answer the phone are responding to computer prompts, not you, and have very limited authority.
- (2) They lie. About everything, all the time. Once you speak to them it is on YOU to document the conversation, including who you spoke to, their extension number, and what was said. The bank will deny the conversation took place, especially if something said was in your favor, so keep notes.

### Foreclosure in Other States

West of the Mississippi River, most states use the non-judicial foreclosure process, like California. The process used is the same, but the time frames will be different. The rules followed are the rules for the state the property is located; not California, even though the contract was entered into here.

East of the Mississippi, most states use a “judicial” foreclosure process. This means that the banks have to sue you in court to get the property back. These lawsuits are controlled by the court and civil rules of that state. What those are and the time processes involved are way beyond the scope of this report.

If you have a property in an east coast state, the foreclosure process will start by you being served a thick document called a “summons and complaint”. If that happens, contact us immediately and we will steer you in the right direction. It is critical that you respond to the summons and complaint. If you do not, the bank gets a “default” and they win. Game over.

### After the Foreclosure

At the trustee sale, one of two things happens. The property is either sold to a “third party” or it “returns to beneficiary”. Currently, about 2/3 of properties in California go back to the beneficiary, and about 1/3 of properties are sold to third parties. What will happen in your particular situation is a very fact intensive

inquiry beyond the scope of this report. If we could figure this out in advance, our living would be made at the racetracks and you would not be reading this report.

If the property is sold to a “third party” it means that somebody other than the bank bought the property. As mentioned earlier, buying properties at foreclosure sales is an industry to itself. You will be contacted, usually within a day or two, by the purchaser of the property or their agent.

If the property went back to the bank, or “beneficiary” the property becomes an “REO”. It will sit for a few days, and then be assigned to the bank’s REO agent for your area. You can expect a delay of a week or two before you are contacted.

In either case, standard procedure is to offer you “cash for keys”. This is a cash settlement to get you to move out while leaving the property reasonably intact.

There are no rules here. There is no law or regulation on how much money you will be offered for cash for keys, or how long you will be allowed to stay. Each buyer, and each bank, has their own program; so don’t think the deal the people down the street got will be the deal you get. Normally, you can expect a few thousand dollars and less than 30 days to move out.

In return for that, you agree to leave the property in some semblance of order: no afternoon interior decorating with a chain saw, no removing carpet or cabinets, etc. The buyers are buying your cooperation with the expectation you will not trash the house.

If you move out, make sure you move out by the agreed date, and keep your promise to not wreck the place; you may be sued for breach of contract, and there is a criminal case currently pending in San Diego for criminal mischief for wrecking a home post foreclosure: the bank or the buyer own it now, not you.

### You don’t take Cash for Keys

If you do not take the cash for keys deal, the next step is to have you evicted. The rules and procedures followed are exactly the same as if one of your tenants stopped paying the rent. The same court and same rules of evidence are followed.

In a way, post foreclosure eviction cases are actually easier to prosecute since common defenses such as habitability or retaliation are not available.

The eviction process begins by serving you with a 3 day notice. The notice will be taped to the front door of the home.

If you do not move out, an “unlawful detainer” action is filed. You or someone in the house will be physically served a copy of the summons and complaint. **Importantly, in California you have 5 calendar days from the day the paperwork is handed to you to file an answer to the complaint; if you don’t they get a default, which is expensive and difficult to reverse.**

If you answer the complaint, your case will be set for trial. Unlawful detainer trials happen pretty quickly, normally within 45-60 days of filing the complaint. It is not a drawn out, OJ Simpson type thing either. It is closer to Judge Judy – some facts laid out, some claims heard, and a ruling issued.

Normally, on the morning of trial, the attorney representing the buyer, or rarely the buyer will offer a deal for you to move out. Whether or not the deal is a good deal is up to you.

Beware, however, if they get an actual eviction against you, it can be difficult to find another place to rent. There is a service which tracks this also, and large apartment type landlords are very hesitant to rent a place with someone with an eviction on their record.

If you don’t show up, or don’t take the deal, the trial takes place. The bank or the buyer will win 99% of the time. At that point, the bank or buyer gets a “Writ of Possession”. The Writ of Possession is the actual court order which gives the county sheriff the right to remove you from the property. Let me emphasize that point: the actual eviction in California is done by the Sheriff’s department, not two guys in a pickup truck. The sheriff will arrive in uniform, in a marked car, and it will be clear who and what they are. The sheriff almost always gives you advance notice that they are coming, usually a few days, and the move out date is arranged in advance with the new buyer. Depending on how busy the sheriff is, the move out date is about 2-4 weeks after the Writ of Possession is issued.

When the sheriff arrives, you will be given about 5 minutes to grab some things, and then physically escorted off the property. The buyer/bank has normally has an agent present, and a locksmith. The locksmith will change the locks, and the move is complete. If some of your stuff is left behind, it's between you and the new owner to arrange a time to have it picked up, at your expense.

The process is then over, and you need a new place to live.

Other Issues to be concerned with:

### **Credit Scores**

In the months and years leading up to the foreclosure eviction, your credit score will be destroyed. Expect to lose at least 150-200 points. It will be difficult to borrow money again at low rates for a while. Grin, bear it and accept it. Correcting this takes time and a little effort.

If a foreclosure appears on your record, it will take approximately 3-7 years before you will be able to purchase real estate again. The exact time frame depends upon the reason for the foreclosure, but currently both Fannie Mae and Freddie Mac have a prohibition of at least three years before you are eligible for one of their loans. This may change over time, but figure you cannot enter the credit mainstream again for a few years.

### **Tax Issues**

For reasons that are a separate report of their own, when a property is foreclosed, it is considered by the IRS to be "forgiveness of debt" and is taxable income earned the year the foreclosure takes place. You potentially must pay taxes on the money lost in the foreclosure.

The foreclosing bank will make your life easier in this regard by issuing you a "1099-A" for the amount they calculated they lost on the transaction. This will also be reported to the IRS, so they will expect to see this reported somewhere.

The good news is that a lot of this, or in many cases, all of this debt, can be exempted from taxes under the "Mortgage Forgiveness Debt Relief Act". There is a specific forms and instruction for this. **It is critical that you see an enrolled**

**agent or certified public accountant to do your taxes for the year of the foreclosure; a mistake here can cost thousands of dollars.**

The bad news is that this law is set to expire Dec. 31, 2012. There is legislation pending in Congress to extend this a few more years, but don't expect any action on the bill before November's election; so stay tuned.

### **Homeowner's Association Dues**

These continue to accumulate during the foreclosure process. Normally, you are responsible for these while your name is on title. In every foreclosure, a trustee' deed is recorded and you are removed from title; but if you voluntarily abandon the property before the trustee sale, it can be months before the bank completes the transfer, so beware.

Normally, the bank or the buyer will pay off the past due HOA fees when the property is resold, since they cannot deliver clear title without doing this. We have encountered instances in which the bank will pay a portion, and then the HOA sends the balance out to a collection agency. You, unfortunately, are responsible for any difference between what the bank paid and what the HOA says they are owed.

### **Second and Third Trust Deeds**

Most homes in California have more than one deed against them. In nearly all cases, it is the large, purchase money loan that completes the foreclosure process.

In California, if the bank uses the "non-judicial" foreclosure process, when they complete the foreclosure and take the property back, they are finished with you. They cannot seek or collect any additional money.

That's not true with seconds, thirds, etc. Because they lost their right to foreclose against you when the first did it, their interest in the property is wiped out. Their remedy, then, is to either sue you for the balance, or more likely, send it out for collections. The second will almost always charge off their loan, and you will be contacted by collection agency wanting some money.



The good news is we have made a science of dealing with debt collectors on these. When the collection agency calls, give us a call and we will deal with it for you.

Different states have different rules. Nevada allows deficiency judgments on first trust deeds after foreclosure. Arizona may, depending on the size of the parcel involved. Most other states permit a deficiency judgment. All states allow a deficiency on second trust deeds which were foreclosed on.

### **Finding a Place to Live**

As mentioned earlier, the major corporate landlords will probably not rent to you, especially if you have an eviction on your record. The good news is there exists lots of “moms and pops” out there who will likely rent to you. If you need assistance with finding a place to rent, or need information on what a landlord can and cannot do, visit our website and click on the “help for renters” tab.

### **Conclusion**

You are no doubt reading this report at a difficult time. We understand and emphasize, since we deal with situations like this daily. Understand that this too shall pass, and it is possible to rebuild your life and move on into a better situation.

As my son’s hockey coach keeps telling the team: “Chin Up! Keep moving your feet!” Good advice here as well.

If we can be of further assistance, contact us through or website:  
[www.resultsadvisors.com](http://www.resultsadvisors.com)