

## DEFAULTED OWNERS WOULD LIKE TO REINSTATE THE LOANS

If I am a defaulted owner, there are three bad times for me. When the Notice of Default (NOD) is recorded, when the Notice of Trustee's Sale (NTS) is recorded, and when the trustee's sale is held. Although when the Notice of Default is recorded my credit has already been badly damaged for the following seven years, there are times before the trustee's sale when I can stop the impending foreclosure.

Under California Civil Code 2924, the period between the recording date of the NOD and the trustee's sale has been divided into two periods. The first is called the reinstatement period. During this time, I am permitted to stop the foreclosure by "curing the loan". Curing the loan requires me to make up all back payments, penalties, trustee's fees and costs.

I knew this impending foreclosure was about to grab me, and my life would change. I didn't really know the extent of the changes that have occurred though. I have gotten letters, post cards, telephone calls, and strangers knocking at my door. Some want to buy my property (for a price under fair market value, however), and some want to loan me money (at an outrageous cost). I would be happy to work with a lender who is not too greedy and who will give me a loan (at a rational rate) until this problem is overcome.

My current effort is to find relatives, good friends, business associates, or some other sources who will have enough faith in me to give me that short term loan. With that money, I will reinstate the loan and proceed from there. If I make a good faith offer to cure the foreclosing loan, that lender cannot fail to stop the foreclosure process.

The reinstatement period is in effect until five business days before the actual trustee's sale date. If I am unable to stop the foreclosure during the reinstatement period, I get a second and final opportunity during the redemption period. In this period, however, I must not only cure the loan (as required in the reinstatement period) but also pay off the balance of the loan amount.

If I couldn't stop the impending foreclosure when I simply was delinquent and I haven't stopped the foreclosure during the reinstatement period, I certainly can't stop the foreclosure when the additional burden of paying off the foreclosing loan balance during the redemption period is added to my problems.

Sometimes life just gets too tough. The redemption period doesn't give me a very good opportunity to stop the foreclosure, but the gate has not slammed shut on me yet. I again will give it a try and make a last ditch effort to get the necessary funds before the trustee's sale.

If we agree that the pre-foreclosure period starts with the recording of the NOD and ends with the final date of the trustee's sale, we are talking about a period of three months (minimum time between the recording of the NOD and the recording of the NTS) plus

three weeks (minimum time between the recording of the NTS and the actual date of the trustee's sale).

Some years ago, the reinstatement period started with the recording of the NOD and ended with the recording of the NTS. The redemption period started with the recording of the NTS and ended with the date of the trustee's sale.

Those of you who have been working with the defaulted owners or buying at the trustee's sale know that the final dates of the trustees' sales often are delayed repeatedly. Under the original code, this simply extended the redemption period---the most difficult time for the defaulted owner to recover and stop the foreclosure.

The current code now extends the reinstatement period when the actual sale date for the trustee's sale is postponed. The redemption period remains five business days prior to the actual date of the trustee's sale and moves with each postponement. [And here you thought that the trustees and lenders didn't have our best interests at heart!]

This probably is a good time to point to one of the dangers for investors working with the defaulted owners (equity sellers). California Civil Code 2945 takes a very dim view of unfulfilled promises by the equity purchaser who agrees to extend the reinstatement period of the defaulted owners as an enticement to permit that investor to purchase the property of the equity seller. Civil and criminal penalties could apply to the unwary investor working with the defaulted owner. Take great care here!

764 words

April 26, 2006

Warren E. Racine

Topic: Defaulted owners can reinstate or redeem the defaulted loan