

A.: A creditor faced with a default on a loan secured by real property has a choice of remedies: judicial foreclosure or nonjudicial foreclosure by exercising the power of sale. Nonjudicial foreclosure will generally be faster and less expensive because a legal action is not necessary. The disadvantage to nonjudicial foreclosure is that a deficiency judgment is not available. A judicial foreclosure permits a deficiency judgment, but the debtor will have a right to redeem from the sale. This advantage is not significant, however, if a deficiency is barred because purchase money is involved.

A "nonjudicial foreclosure" is the exercise of a power of sale in a mortgage or deed of trust by the mortgagee or trustee after a breach of the obligation secured by the mortgage or deed of trust. This power of sale may only be exercised when the mortgagee, trustee, beneficiary, or authorized agent of any of the foregoing has first recorded a notice of default. At any time after the notice of default is recorded until five business days before the date of sale, the mortgagor, trustor, or any subordinate lienholder may cure the default and reinstate the loan by paying the amount that is then due under the secured obligation, including specified costs and fees. Three months after the notice of default is recorded, the mortgagee or trustee (or other person authorized to take the sale) must give at least 20 days' notice of sale of the secured property if the default has not been cured. At the expiration of this notice period, the mortgagee or trustee may sell the secured property, at public auction, to satisfy the delinquent obligation in accordance with statutory requirements. (Civil Code section 2924).

On the other hand, a "judicial foreclosure" is authorized by Code of Civil Procedure section 725a. A beneficiary or trustee named in a deed of trust or a mortgagee has the right to bring an action to foreclose the deed of trust or mortgage. The superior court has jurisdiction of foreclosure actions involving real property, and the court's jurisdiction over the matter and the parties continues until the period of redemption has expired. An action for judicial foreclosure must be commenced in the superior court in the county in which the real property, or some part of the real property, is situated. The beneficiary or trustee named in a deed of trust, a mortgagee named in a mortgage with a power of sale, or their successors in interest may bring an action to foreclose. The owner or owners of record must be named as defendants or the decree or order will not affect their interest in the property. The executor or administrator of a deceased record owner's estate must also be made a party defendant to the proceeding. In addition, all holders of junior liens of record should be joined because, if they are not, the judgment of foreclosure and sale does not affect them and the liens are still on the property.