

Quick tips to make sure your Note investment is up to date and ready for repayment

As a private lender, you have made an investment in a Note and Deed of Trust to generate a return on your investment. You may have done so as part of a Seller Carry-back sale, invested in Notes arranged by a Real Estate Broker, or provided financing to others on your own, secured by a Note and Deed of Trust. County Records Research has been processing foreclosures for private lenders for decades and has identified a couple housekeeping issues that have traditionally caused a delay in starting the foreclosure process.

- 1) Do you need to send out a Balloon notification? Ca Civil Code 2966 states that when the term of repayment on a Note is for a period in excess of 1 year the holder of the Note shall, not less than 90 days nor more than 150 days before the Balloon payment is due, deliver or mail (we recommend both 1st class and registered mail) to the trustor or his/her successor in interest at the last known address of such person a written notice informing the borrower of the date when the Balloon becomes due, the amount due, and include the name and address of the person to whom the balloon payment is to be paid (there are forms available with all the required information). While Balloon Notifications are not required for Notes less than a year, *many Notes erroneously contain that clause* meaning you will have to comply with the Code even though your loan is for less than a year. That process will add another 90 days before you can demand payment in full. Same goes for Non-owner occupied loans; balloon notification letters under Ca Civil Code 2966 are not required but if the Note contains the clause, you will have to send one out.
- 2) Have you accepted payments after your Note was due and payable? If the answer is yes, you will have to send out a Balloon-Notification letter to reset your due date so you can demand payment in full.
- 3) 1-4 Unit properties: If you made a 1st Trust Deed loan to an individual(s) secured by a 1-4 Unit property and the borrower claims they (or their tenants) are unable to make their payments due to a reduction in income related to COVID-19, you will have to comply with AB 3088 requirements. This applies to both Owner and Non-owner occupied loans. You will have to comply with guidelines for contacting the Borrower verbally and in writing to provide information that may be helpful to them on avoiding foreclosure. While contact requirements previously only applied to Owner occupant 1-4 Units, it has now been expanded to Non-owner since the pandemic. As such, it is best to start early, as these requirements can take up to 46 days. We can direct you to the code you need to follow to be in compliance, or CRR can provide pre-foreclosure compliance services on your behalf.
- 4) Servicing Records: If you are not being paid consistently, you will need to apply the payments received to the first missed payments. After applying these payments, you will have a date and amount of default which can then be used to start your foreclosure. Remember, any costs incurred or advances made to protect your loan are payable by the Borrower so keeping good records is essential.

- 5) Contact records: Keep detailed records of your correspondence with your borrower. Dates and times for phone calls and emails/letters are helpful to document your collection efforts. We recommend sending the Borrower a letter informing them of your intent to record a Notice of Default 30 days before submitting your file to us.
- 6) Original Note: You should be in possession of your Original Note. When we start a foreclosure on your behalf, we will ask for a certified true and correct copy of your Note, never the original.
- 7) Is your interest rate >10%? If you hold a seller-carryback loan or had your loan arranged by a Broker, then there is no limit to the interest rate you may charge on your Note. However, if these do not apply and your Note is over 10% you may have a Usurious loan, regardless of the loan position or purpose. Usury law is quite complex and there are exceptions so we recommend contacting a Real Estate Attorney to explore your options.

These are a few of the items that can cause delays when you are protecting your investment using non-judicial foreclosure. If you have any other questions, please feel free to [email](#) or call our office at (800) 664-2567. We have been helping Lenders just like you get current, repaid or their property back for decades. Call us for a free consultation and take advantage of our over 30 years of foreclosure processing experience.

P.S. County Records Research actively purchases non-performing and performing Notes and Deeds of Trust from lenders. Contact us at (800) 664-2567 if you would like a no obligation bid on your Note.