

HOA FORECLOSURES IN CALIFORNIA

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What is HOA foreclosure in California?

In an HOA foreclosure, a homeowners association places a lien on a property due to unpaid dues or assessments and, if the debt remains unpaid, initiates foreclosure proceedings. This means that the HOA can eventually sell the home to recover the outstanding debt.

In most cases, foreclosure is a last resort after other collection efforts have been exhausted. Homeowners typically receive multiple notices and opportunities to settle their debt before an HOA can take legal action. However, once foreclosure proceedings begin, the homeowner risks losing their property if the issue remains unresolved.

Can an HOA foreclose on your house in California?

Yes, HOAs in California have the authority to foreclose on a property. However, specific conditions must be met before an HOA can initiate foreclosure. The process is governed by the California Civil Code, primarily under the Davis-Stirling Common Interest Development Act, which outlines the steps HOAs must follow when collecting delinquent assessments and initiating foreclosure.

Before an HOA can initiate foreclosure, the homeowner must have at least \$1,800 in unpaid assessments (fines, late fees, and collection costs generally don't count toward this threshold) or be more than 12 months overdue. Note that HOAs may still record a lien for smaller amounts, which can include late fees and collection costs, but they cannot move forward with foreclosure unless they meet the statutory threshold for unpaid assessments.

Once the threshold is met, the HOA must send a 30-day pre-lien notice, informing the homeowner of the outstanding balance and their rights. HOAs must also offer a repayment plan, giving homeowners the opportunity to catch up on dues before further action is taken.

If the debt remains unpaid, the HOA can record a lien on the property, officially securing the debt. The board must approve the decision to record a lien by a majority vote in an open meeting, and record the decision in the meeting minutes. From there, the HOA must wait at least 30 more days before moving forward. During this time, the homeowner must receive another notice outlining their rights, including their right to dispute the debt.

Before foreclosure can proceed, the HOA board must formally approve the action by majority vote in an executive session and record the decision in the meeting minutes. If the board authorizes foreclosure, the HOA can then record a Notice of Default, which officially begins the foreclosure process. This starts a 90-day period during which the homeowner can attempt to resolve the debt. After the 90-day period, if the debt remains unpaid, the HOA can issue a Notice of Trustee's Sale at least 20 days before the scheduled foreclosure sale.

HOAs can pursue foreclosure through a judicial foreclosure, which involves court proceedings, or a nonjudicial foreclosure, which takes place outside the court system. Nonjudicial foreclosure is more common, but it is subject to strict legal requirements. Homeowners and HOA board members should always consult legal counsel when navigating foreclosures.

Common reasons for HOA foreclosure

The most common reason for HOA foreclosure in California is unpaid assessments (regular or special). HOA dues are essential for keeping the community running, covering everything from landscaping and maintenance to security and common area repairs. When homeowners miss payments, the HOA may take action to collect, which can eventually lead to foreclosure.

On top of regular dues, HOAs may charge special assessments to fund major repairs, upgrades, or unexpected expenses. These one-time fees can add up, and homeowners who don't pay may face the same collection process as with overdue dues.

Under California law, fines, late fees, interest, legal costs, and collection expenses typically cannot serve as the basis for foreclosure, even if they contribute to a homeowner's overall debt. The Davis-Stirling Act typically prohibits HOAs from foreclosing on a property solely due to unpaid fines or related charges.

Preventing HOA foreclosure: Best practices for homeowners

For homeowners, staying current on HOA dues and assessments is the best way to avoid foreclosure. However, if financial difficulties arise, there are proactive steps homeowners can take to help prevent the situation from escalating.

First, review your governing documents. By familiarizing yourself with your community's CC&Rs (Covenants, Conditions, and Restrictions), bylaws, and rules, you'll have a better grasp of your financial responsibilities. Understanding how HOA assessments are structured and budgeting accordingly can also help homeowners stay on top of their financial responsibilities. Reviewing the HOA's financial statements and upcoming expenses can provide insight into potential fee adjustments or special assessments.

If a homeowner is experiencing financial hardship, reaching out to the HOA board or property management company early can help identify possible solutions. Many HOAs are willing to discuss alternative payment arrangements to prevent accounts from becoming severely delinquent. Working with the HOA and its management company to establish a structured plan can help homeowners catch up on missed payments over time.

HOA foreclosure vs. mortgage default

When a homeowner falls behind on payments, whether to their homeowners association (HOA) or mortgage lender, they risk foreclosure. However, the process, legal implications, and homeowner rights differ significantly between an HOA foreclosure and a mortgage default.

- **Who initiates the foreclosure:** HOAs initiate foreclosures when a homeowner fails to pay assessments beyond a certain threshold, while mortgage lenders foreclose when homeowners fall behind on their mortgage payments.
- **Legal authority and process:** HOA foreclosures in California follow Davis-Stirling Act procedures, while mortgage foreclosures adhere to state and federal lending laws.
- **Timeline and notice requirements:** In an HOA foreclosure, the association must send a 30-day pre-lien notice, record a lien, wait at least 30 more days (while notifying the homeowner of their rights), obtain board approval, record a Notice of Default (starting a 90-day period), and then issue a Notice of Trustee's Sale at least 20 days before the sale. Mortgage foreclosures typically follow a similar pattern: the lender issues a Notice of Default (giving around 90 days to cure) and then a Notice of Trustee's Sale 20 days before the auction. Specific timing can vary based on laws, local rules, or the terms of the mortgage.
- **Redemption and right to cure:** In most HOA nonjudicial foreclosures for delinquent assessments, homeowners have up to 90 days after the trustee's sale to reclaim the property. Mortgage foreclosures in California generally do not provide a post-sale redemption period if the process is nonjudicial, except in rare circumstances.