

California's 90-Day Foreclosure Moratorium Really Isn't

In February 2009, Governor Arnold Schwarzenegger approved the California Foreclosure Prevention Act. The news media has portrayed the legislation, which takes effect on June 15 2009, as a 90-day moratorium on foreclosures. The reality is much more complicated and could lull home owners into a false sense of security if they in negotiations with a lender for a loan modification.

What the new law really does is expand the time between when a lender can record a Notice of Default to begin the foreclosure process and when the lender may record a Notice of Sale from 90 days to 180 days. The law only protects owner-occupied homes from foreclosure where the first loan was recorded between Jan. 1, 2003 and Jan. 1, 2008. For loans outside of the specified time period, the time before the lender may give a Notice of Sale remains at 90 days.

The law also allows lenders to avoid the 90-day "moratorium" if they have a comprehensive loan modification program based, in part, on criteria set forth by the Federal Deposit Insurance Corporation ("FDIC"). There is no requirement that the lenders negotiate in good faith.

Nearly all residential foreclosures utilize what is commonly referred to as nonjudicial foreclosures, which means that the foreclosure sale can occur without court supervision. If a lender does not comply with California's foreclosure laws, it will still be up to the homeowner to go to court to prevent or set aside an improper foreclosure. If homeowners wait too long before seeing a qualified attorney, they may be so far behind in their payments that even a Chapter 13 repayment plan in bankruptcy might not be able to save them from foreclosure.

For now, I am advising my clients to act as if they do not have the benefit of an additional 90 days to stop a home foreclosure because there simply is no way to tell when a lender might assert that it has a loan modification program that complies with California law. Once the foreclosure sale takes place, it is very difficult and expensive to go to court to undo the transaction.

If you are in Southern California, please feel free to [contact us](#) for a free consultation on your bankruptcy options to possibly help save your home from foreclosure.

About the Author: [Carl H. Starrett II](#) has been a licensed attorney since 1993 and is a member in good standing with the California State Bar and the San Diego County Bar Association. Mr. Starrett practices in the areas of [bankruptcy](#), [business litigation](#), [construction](#), [corporate planning](#) and [debt collection](#).