



# 7 Costly Mistakes to Avoid with your Note

The Note Holder's Handbook

Essential Information for Holders of  
Seller Financed Notes and Mortgages

Compiled and published by  
Nationwide Secured Capital

*Retail Price \$199.95*

A photograph of a person's hands holding a clipboard with a yellow sticky note. The note contains handwritten text in black marker. The background of the photo is a grid of colored squares (green, red, blue, white).

7 COSTLY MISTAKES  
AND WHAT TO DO:

#1 RECORD SECURITY  
INSTRUMENT

#2 KEEP THE  
NOTE SAFE

#3



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The Note Holder’s Handbook, V2

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## INTRODUCTION



This book was created specifically to help you maximize the value of a Note that was created by Seller Financing during sale of your property or business. Seller financing Notes may also be called mortgages, carry back financing, or may be mistakenly confused with the Deed of Trust which is associated with the Note.

A Note is a large and very valuable asset that typically represents 10's or 100's of thousands of dollars. As with any valuable asset or investment, a Note should be cared for diligently to preserve and maximize the value of that asset.

The Handbook before you was compiled and written by Nationwide Secured Capital and it's underwriters who are experts in the field of Note purchases and investing. This Handbook was created for our clients, but we have also made it available to the public.

This Handbook provides considerable information and serves as an important guide about managing your Note for maximum value, and emphasizes several mistakes to avoid that can seriously reduce the value of your Note.

If you have further questions about your Note that are not addressed in this Handbook, or have questions specific to your Note, or wish to explore selling your Note, please contact the Note experts at Nationwide Secured Capital by calling (800) 853-0573.



Nationwide Secured Capital Publications:

- The Note Maker's Handbook – "Creating a Note for MAXIMUM Value"
- The Note Holder's Handbook – "7 Costly Mistakes to Avoid with your Note"
- The Note Value Handbook – "What's My Note Worth?"
- The Note Seller's Handbook – "Selling your Note for MAXIMUM Cash... QUICKLY!" (future)

We would like to hear from you – Give us feedback.

Was this Handbook valuable? How did it help you with your Seller Financed Note?

Please email us at: [info@NationwideSecuredCapital.com](mailto:info@NationwideSecuredCapital.com) Thank you!

## CHAPTER 1: BASICS OF SELLER FINANCED NOTES

You loaned money to your buyer (and became a lender) when you sold your real estate with seller financing and carried back a Note. You essentially provided them some or all of the money they needed to purchase your property or business – with the agreement that they would pay you back with interest, and normally that the property would act as collateral on that loan.



### The Promissory Note

A promissory note (Note) is a written promise by the buyer of your property to pay a certain amount of money in the future – normally as a series of payments, and its payment in full is normally secured by property that you have sold to the buyer (the property acts as collateral guaranteeing you will be repaid).

Generally that security is pledged through a separate written agreement known as the security instrument that specifies exactly what constitutes default and what you must do to reclaim the property if the person you loaned money does not pay the Note as agreed.

The Note should specify:

- 1) The amount of the loan (principal)
- 2) The interest rate (interest)
- 3) The amount and frequency of payments (debt service)
- 4) When the buyer/borrower must repay the principal (due date)
- 5) The penalties imposed if the buyer fails to timely pay or tender a payment (late charge) or decides to pay a portion or all of the principal prior to the due date (prepayment penalty).
- 6) The promissory note must also identify the person who makes the payments to you (the buyer of your property—the borrower) and the person who receives the payments (you the Seller/Lender).

### The Security Instrument – Deed of Trust or Mortgage



The security instrument is the document that provides for the alternate repayment of the debt to you in the case of default by the buyer/borrower. The security instrument should be recorded in the county recorder's office as a lien on title of the property you sold.

There are three kinds of instruments used to make real estate security for a debt:

- 1) Mortgage, with or without the power of sale
- 2) Deed of Trust
- 3) Land contract

Mortgages and Deeds of Trust are by far the most common. People often call them mortgages. They account for well over 99% of the security devices used for real estate. The land contract—known by many names such as installment contract, contract for deed, contract of sale, conditional sales contract, and the like—is used on occasion.

**MISTAKE #1 – FAILURE TO HAVE A SECURITY INSTRUMENT OR FAILURE TO HAVE IT RECORDED**

**WHAT TO DO** - If you do not have a recorded Mortgage or Deed of Trust document for your Note, then find a competent Real Estate Attorney immediately to advise you on how to proceed. Your Note is seriously at risk if payment is not secured and recorded in this way and will be worth almost nothing if the buyer/borrower stops paying.



Your security instrument associated with your Note prevents the Buyer from selling the property without paying off what is owed to you AND gives you the right to sell the property, if the Buyer stops paying you as agreed on your Note. The exact terms and conditions of when you have that right and how you may sell the property are defined by the security instrument.

Using your security instrument to foreclose and sell a property is not a pleasant or easy task, and does not guarantee you will be able to get all the money owed to you – but it is an ESSENTIAL protection you must have when you provide Seller Financing and become a Lender.

## CHAPTER 2: MAXIMIZING THE VALUE OF YOUR NOTE

During the years after the creation of the Note when you are receiving your monthly payments, there are several things you must do to keep your Note safe and to maximize its value in the event you ever need or want to sell all or part of it in the future.



### Note Safety—Storage

It is CRITICAL to keep your original Note in a safe place such as a bank's safe deposit box or a fireproof safe in your home. Make a photocopy to keep with your trust deed and other escrow papers in your working files.

There are two reasons for this precaution.



First, the Note is not recorded in the county recorder's office. The deed of trust is. If you lose your deed of trust, you could simply get another copy at the recorder's office.

Second, your original Note is a negotiable instrument that means it can be endorsed on the back like a check. You wouldn't keep an un-cashed check lying around, so think of your Note like a VERY LARGE check and take good care of it.

Many people guard their original grant deed which transfers title of the property to them with their life. The fact is anyone can get another copy of their grant deed from the county recorder's office, just like they can a trust deed.

### MISTAKE #2 – LOSS OF YOUR NOTE THROUGH THEFT, FIRE OR CARELESSNESS

WHAT TO DO - If you have the original of your Note, immediately make a working copy for your files and store the original in a bank safe deposit box or in a fireproof safe at home. If you do not have the original of your Note, then find a competent Real Estate Attorney immediately to advise you on how to proceed. You may still be receiving payments, but you must have the executed original Note to enforce your right to get paid (see your local attorney to determine if a copy is sufficient).







## Note Safety—Insurance and Tax Payments

For a secured Note, it is critical that the property is insured against catastrophic loss that would make the property unable to protect the value of the Note. Similarly, if taxes are not paid they become liens that are in front of your interest in the property as collateral - that reduces the value of the property as your collateral.

Your security instrument may already provide for collection of monthly amounts from the Buyer, to be held in escrow for the annual or semi-annual payments of taxes and insurance. If you are relying on the Buyer to make these, you **MUST** insist on timely receipts that prove the tax and insurance payments have been made, and for a copy of the insurance coverage that shows the property is properly insured.

## Maximizing Note Value—Keep Detailed Payment Records

Keeping a detailed, well-organized and legible payment record showing the date each Note payment was received, and the breakdown amounts of the principal, interest and late charge for each payment received is essential to maintaining the value of your Note.

Not only do you need this information to be sure that you are indeed paid all the amounts owed to you, you will also need it if the Buyer ever stops making payments and you want to revise the terms of the Note, or if you need to proceed foreclose. And just as importantly, if you ever decide to sell your Note (or if you decease before the Note is paid off), you (or your executor) will be required to show the payment history to a prospective Note buyer so the Note buyer can verify and value the payment patterns of the Buyer. If someone inherits your Note, they will need these records to understand what is still owed to them as payments by the Buyer.

The value of your Note will always be greater to a potential purchaser of your Note, if you can show a steady and accurate history of payments on the Note by your Buyer with **PROOF** of payments evidenced by copies of the checks that were given to you. The reason that copies of the checks make your Note more valuable is:



- 1) A written record can be falsified – a series of checks cannot be, and
- 2) If you ever have to foreclose, the checks and records give a clear and accurate picture of what you are still owed from a foreclosure sale.



**MISTAKE #3 – NOT KEEPING ACCURATE PAYMENT RECORDS AND COPIES OF ALL PAYMENT CHECKS**

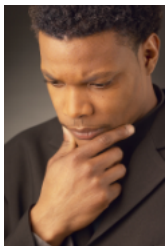
**WHAT TO DO** - If you have not been keeping complete and accurate records, start now! Use the Payments History record in the Appendix of this Handbook to keep track of all the payments you receive. Start by recording all information you have on prior payments that were made. Also, print out an amortization table for your loan from [www.bankrate.com](http://www.bankrate.com) where you can obtain a printable amortization schedule that shows you how much is principal, and how much is interest on each payment of your Note.

One thing many Note Holders neglect to do is to keep copies of the checks they receive. Make sure to make a copy of every check you receive and keep the envelope it came in if it was mailed to you. This kind of record keeping adds value to your Note as an asset because you have written proof that payments are being made on time, even when you don't deposit them in a bank account or delay in making those deposits.



**BEST PRACTICE:** Scan the check and envelope so that you can also backup this data electronically.

**Maximizing Note Value—Have your Buyer(s) Social Security # to Pull Credit**



One of the common uses of Seller Financed Notes and Mortgages is to make it easier for more Buyers to purchase your property, on easier terms. This is a great way to sell your property faster – but make no mistake, selling to a Buyer with bad credit is a recipe for losing money. If the Bank won't give your buyer/borrower a loan to buy your property, you need to be extra vigilant in making sure the Buyer will pay you back what you loan them under your Note.

One of the most important methods to determine how a person will pay back a debt is their Credit History combined with the payment history they have on the Note you are holding. If you (or after you decease, your executor or heirs) need to or want to sell your Note, you **MUST** be able to pull credit of your Buyer in order to sell the Note. It is essential that you have the Social Security number(s) to request a credit report on them during the life of your Note, so that you can have the option of selling it. You will not get maximum price for your Note without this.

Perhaps even more importantly, you are required by Federal law to have their Social Security numbers, and to provide them with a statement of interest at the end of every year with their Social Security Number on it so they can deduct this on their income taxes. And, of course, you yourself must report it as interest income.

**MISTAKE #4 - FAILURE TO OBTAIN THE CREDIT OF YOUR BUYER/BORROWER(S) INITIALLY, TO AND GET THEIR SOCIAL SECURITY NUMBER(S)**

WHAT TO DO - If you did not check the credit of your Buyer(s) before you sold your property, you can't undo that decision. However, you can get their Social Security numbers now to assure that you can check credit now and in the future, to assure that you (or your heirs) will have the ability to sell your Note easily and at the maximum price possible if you choose to.

You can simply tell your Buyer(s) that you have misplaced it or think you may not have received it as required by Federal law, and that you need this on file so that you or your accountant can prepare their year end statement of interest, which permits them to deduct this on their income taxes, and probably receive a substantial tax refund!



## Note Problems—Late Payments

Getting paid on time is CRITICAL to getting the maximum value of your Note, if you ever want to sell it. Accepting late payments without doing anything about it might make you a "nice guy" BUT it can cost you thousands of dollars in the value of your Note, and worse yet sends the message to your buyer that they don't need to worry about exact adherence to their payment schedule.



If the payments on your Note are late, it is important to call your Buyer and find out why the payment is late and when it will be sent. Most Buyers don't like to receive these kinds of phone calls, and just by calling you will improve your chances of receiving future payments on time. Be courteous but firm about the need to receive the payments on time.

If your Note calls for a late payment charge, be sure to collect it. Many Note Holders have a late payment charge built into their Note but do not collect it. There are two IMPORTANT reasons to collect the late charge besides the obvious one that it is more money in your pocket.

First, you will again improve your chances of receiving future payments on time if you collect the late charge. Second, if you don't collect the late charges regularly, you may lose the legal right to collect them later in the event of a foreclosure because you demonstrated that you do not enforce that part of the Note contract.

**MISTAKE #5 - QUIETLY ACCEPTING LATE PAYMENTS AND/OR FAILING TO COLLECT LATE FEES**

**WHAT TO DO** - If you've been quietly accepting late payments, stop today. If you've failed to collect late fees, notify your Buyer(s) of the late fees that are still owed. You may choose to demand payment for these late fees and work out a repayment schedule, OR you may choose to forgive these past due fees with a written agreement that they understand that this forgiveness of monies they owe in no way changes their obligation to pay future late fees that come due under your Note agreement. It is best to consult a local attorney to draft such a forgiveness agreement, to ensure you maintain your rights to collect late fees under your Note.

**Note Problems—Delinquent Payments**



If a payment is more than a month overdue, it ceases to be late and becomes delinquent. If you followed our advice above on late payments and have talked to your Buyer when the payment was merely late, you have already taken the first step toward solving the delinquency problem - you have established communication with your Buyer which can be essential to avoiding a worsening problem that ends in a costly foreclosure.

While you may be upset if your payments stop on your Note, the worst thing you can do is to be angry and break off communications with the Buyer and start a foreclosure. Foreclosure may eventually be necessary, but it is extremely unpleasant and costly, and should definitely never be your first choice at resolution. Read the next section for a full explanation of why foreclosure is very costly and should be your last resort. Refer to the Appendix of this Handbook for more details on the Foreclosure Process.

It is best if you can get your Buyer to make up the delinquent payments, but sometimes this is not possible because the delinquency may have been caused by the Buyer's loss of a job and other loss of income during a period of several months.

In these cases, your Buyer can resume making payments but cannot make up the missed payments. This becomes an excellent opportunity to restructure the Note so that you have a more valuable Note. Your Buyer will usually go along with a restructuring because it solves his problem also (the missed payments he still owes and which could result in foreclosure). In other words, you agree not to foreclose if your Buyer agrees to restructure the Note. This problem now becomes an opportunity for you!





**MISTAKE #6 - STARTING FORECLOSURE, OR SELLING, BEFORE TRYING TO RESTRUCTURE A NOTE THAT HAS MISSED PAYMENTS**

**WHAT TO DO** - The value of a Note with missed payments is substantially lowered. The value of a Note under foreclosure is even less. Your best course of action is to be in communication with your Buyer about the reasons for the missed payments and whether you are able to work out a revised Note upon which they will be able to resume agreed payments. This is called restructuring the Note. Restructuring the Note will generally result in the maximum return you can receive on the money you have loaned.

Restructuring a Note requires some special expertise and you should only do this yourself if you feel confident that you know exactly what you are doing. Nationwide Secured Capital is happy to assist you with information and free consultation on restructuring a Note that has missed payments – call us at (800) 853-0573.

And you may also find you don't want to continue with further risks of non-payment and holding the Note - Nationwide Secured Capital can also assist you with selling the restructured Note.



If your Buyer is not able to resume payments, you have two options—start foreclosure or sell the Note. You can sometimes still work with the Buyer to restructure the Note after the foreclosure has been started.

To start a foreclosure, notify the trustee under the Deed of Trust of the default and request a foreclosure. The process will proceed according as described in the Appendix on “The Foreclosure Process”.

If you sell the Note when payments are delinquent, but before a foreclosure is initiated, you will not receive as much cash for the Note as you would if payments were not delinquent, but probably more cash than you would if the foreclosure is already in process. This is because if you sell the Note before the foreclosure process is started, the new owner of the Note has the time to try to work with your Buyer to restructure or refinance.

If you want to sell a delinquent Note, call Nationwide Secured Capital at (800) 853-0573 for expert advice.



## Note Problems—Foreclosure... The Last Resort



If your Buyer stops making payments on your Note, and you can see that there is no hope for restructuring the Note or catching up on missed payments, then you must reclaim the property through foreclosure in order to attempt to retrieve the balance of the money that you loaned on the property and the missed payments.

A non-judicial foreclosure normally takes approximately four months if there are no legal postponements. In many cases, there are multiple postponements that could further prolong the process. Usually one or two months have passed without payments before the notice of default is filed, which means that six or more payments will have been missed before the foreclosure sale takes place. If the buyer declares bankruptcy, this generally incurs further delays and costs.

In order for you to recoup the amount of your Note and missed interest payments, someone must bid high enough for the property at the trustee's sale to cover the remaining principal balance on your Note (and any liens or Notes with earlier position first, i.e. these amounts get paid before your Note), all the back payments and late charges, and the trustee's fees and attorney's fees.

The amounts bid by the bidders at a trustee's sale to purchase the property in default are always well below the market value of the property. If your loan to the Buyer is too large, no one will bid high enough at the trustee's sale to purchase the property. In this case, the property will not be sold and you will end up with title to the property again. You may not be able to sell it for enough to pay real estate sales commissions and to get your money back out of your Note and lost interest payments and foreclosure costs.

Please read the Appendix on "The Foreclosure Process" for more detail.



Unpleasant Tax problems with foreclosure also occur when you have to take the property back and don't sell it in the same year of the foreclosure.

Problem 1 - You must report the remainder of the realized gain that has not yet been reported (see the Section on Tax Reporting in Chapter 3). In other words, you must complete the tax reporting of the installment gain from when the property was sold.

Problem 2 - If you are not able to sell the property by April 15<sup>th</sup> the year after you receive it in a foreclosure, then you must pay taxes on the gain even though you have received no cash.

Problem 3 - Then if/when you sell the property in a subsequent year at a loss, you can only deduct \$3000 of the loss per year.





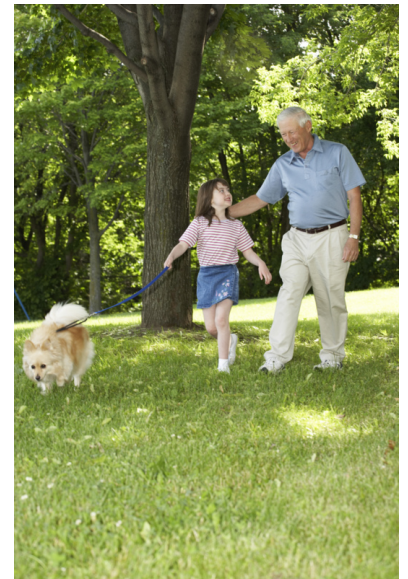
## CHAPTER 3: SALE OF A SELLER FINANCED NOTE



You can sell your secured real estate Note at any time from the day it was created until the day of the last payment. You can sell the entire Note and all payments (a full sale), or only part of the payments (a partial sale).

Why consider selling your Note or Deed of Trust now? Here are just a few good reasons:

- Eliminate the worries of late or missed payments, or worse yet - a costly foreclosure
- Eliminate the risk of unpaid buyer insurance that can wipe out the property and your Note
- Get cash for a big purchase, a dream house/vacation home/travel, or a new project or business
- Pay off high interest debt, increase your retirement savings, move to higher yield investments
- Pay off / pay down the mortgage on your current home
- Get the highest price now - the value of your Note goes down with every monthly payment your purchaser makes, and every time they miss or make late payments
- Easy distribution of ownership if ending a marriage, a partnership or liquidating an estate
- The best time to sell a Note is before you need to!



When you work with knowledgeable Note purchasers, such as the experts at Nationwide Secured Capital, they can structure options designed specifically for the cash needs of you the Note Holder. Below you will find examples of the two most popular options for sale of a Note. There are many more. It is important for you to know that there are numerous options that are available to you – and that choosing the right option for you can save or make you \$1,000s of dollars.

### **MISTAKE #7 - SELLING YOUR ENTIRE NOTE IF YOU ONLY NEED PART OF THE CASH**

**WHAT TO DO** – Call Nationwide Secured Capital! We are experts on all aspects of how to maximize the value of your Note – when you hold it or when you sell it. See one example below of how to realize 33% more cash from sale of a Note if you only need part of the cash now. We would be happy to consult with you on the options you have for selling your Note, and help you choose the one that suits your situation and needs most completely, and that MAXIMIZES the value of your Note. Just call us at (800) 853-0573 for a free consultation.





## Example of a Note on which You are Receiving Payments



Sale Price = \$100,000

Loan to Value =  $\$93,641.04 / \$100,000 = 93.64\%$

- \$95,000 Face Value Note
  - 9% Interest Rate
  - 30-Year Term (360 Payments)
  - \$764.39 Monthly Payments
- 24 payments have been received.  
The current balance owed is \$93,641.04.

<b>Buyer's Equity</b> <b>\$10,742.67</b>
<b>Your Note</b> <b>\$93,641.04</b> <b>Owed Now</b>

## Two Options for Selling the Note

The purchase prices suggested in these examples are for illustration only. The actual Note purchase prices are based on a number of variables specific to each Note, including, but not limited to – credit score of your Buyer, how many on time payments have been made, interest rate on the Note, balance of the Note, current mortgage rates, current value of the property.



1) FULL SALE: Sell the entire Note now.  
NOTE HOLDER GETS: \$89,501.55 CASH NOW

2) PARTIAL SALE-FRONT END PAYMENTS: Sell the next 5 years of payments (60 payments). Then receive the last 96 payments.  
NOTE HOLDER GETS: \$44,553.91 CASH NOW  
\$88,958.43 Loan Balance in 5 years  
 \$125,112.34 Total Cash to Note Holder



Many other options are available for structuring the sale this Note, or any other. Options for selling your Note can be designed specifically for your cash needs. If you are considering selling your Note for cash, call Nationwide Secured Capital at (800) 853-0573 for a free consultation and purchase quotation, or go to [www.NationwideSecuredCapital.com/SellYourNote.html](http://www.NationwideSecuredCapital.com/SellYourNote.html)



Also refer to Nationwide Secured Capital's: The Note Value Handbook – "What's My Note Worth?"



## Tax Reporting For Note Holders

When real property is sold, and a purchase money Note and deed of trust are carried back by the seller as part or as all of the purchase price of the property, the gain on the sale is reported on the seller's tax return as an installment sale.



The amount of interest received each year by the seller or Note Holder must be reported on Schedule B of Form 1040. This is a very simple process if the Note Holder has an amortization schedule for the loan, which summarizes the interest portion of each payment received. You can obtain a printable amortization schedule for your loan at [www.bankrate.com](http://www.bankrate.com).

A portion of the principal received each year must also be reported on Schedule D of Form 1040 (and supporting Form 6251 for Installment Sales). This is not as simple as the tax reporting for interest.

The total amount of the gain on the sale is called the realized gain. Realized gain is the net sales price less the cost. The amount of the realized gain that is reported each year on the Note Holder's tax return is called recognized gain.

The amortization schedule shows the amount of interest and principal reduction for each payment, and the yearly totals.

For this example, we will assume that the cost of the property (cost basis) was \$40,000. The realized gain is the sales price (\$100,000) less the cost (\$40,000) or \$60,000.

A simple technique for properly computing the recognized gain for each year's tax return, and thus avoiding tax problems, is to first compute the gross profit percentage which is the realized gain divided by the sales price. In the example, this percentage is \$60,000 divided by \$100,000 or 60%.

In the example, the property was sold in December 1988. The cash down payment was \$5,000 and no payments were received on the Note in 1988 because payments did not start until January 1989.

The amount of the gain to report on Schedule D in the first year (1988) is 60% of the \$5,000 down payment of \$3,000. For 1989, the amount to report on Schedule D is 60% of principal received in 1989 \$649.02, or \$389.41.



For the next year, 1990, the amount to report on Schedule D is 60% of principal received in 1990 (\$209.90) or \$425.94. In our example, we assumed that the Note Holder sold the Note after two years. Therefore, he also has to report the net amount he receives on the sale of the Note in 1990.

The additional amount to report in 1990 is 60% of the remaining Note balance of \$93,641.04 or \$56,184.62. Notice that the total of the four amounts reported ( $\$3,000 + \$389.41 + \$425.94 + \$56,184.62$ ) is equal to the \$60,000 realized gain that must be reported over the life of the Note.

However, what about the discount? The Note Holder did not receive the entire remaining balance of \$93,641.04 when he or she sold the Note. The Note Holder received \$66,229.43 in our example.

In this case, the Note Holder takes the entire discount of \$93,641.04 less \$79,501.55 or \$14,139.49 as a tax deduction thus reducing the amount to report on Schedule D in 1990 from \$56,184.62 to \$42,045.13.

Tax reporting for partial sales and split funded sales are somewhat more complicated than this example for a full sale. You should consult your tax advisor for the tax reporting method for these types of sales.



If you have an amortization schedule for your Note, the yearly principal paid the yearly interest paid are simply taken from the yearly totals shown on the amortization schedule.

## CHAPTER 4: WHAT IS YOUR NOTE WORTH

We've given you a great deal of information on how you can MAXIMIZE the value of your Note while you hold it and receive payments. There is no standard pricing for Seller Financed Notes because there are no standard Notes, nor standard properties. Each Note is different and each Note must be individually researched in order to determine its highest value.

If you do not require all the cash from your Note immediately, it is possible to receive 100% or more of the remaining balance of your Note by selling only a part of the payments on your Note now. This is illustrated in the example of the previous Chapter. If you do want to sell the entire Note, you will normally get something less than the full amount of principal still owed on the note – due to a number of factors affecting the market value of the note, but with a partial sale you can easily exceed this amount.



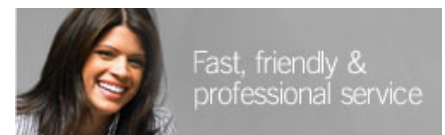
The best way to find out how much your Note is worth is to get a quotation from a professional Note purchaser. Be aware that there are many people who are likely to approach you offering to buy your Note for cash. Many of these buyers will give you a low-ball offer, or to get you started with an attractively high quote and/or fees you must pay in advance – only for you to find out much later that the offer goes down by the time you reach the closing table. Many amateur Note buyers don't know how to structure partial offers tailored to your needs as a Note Holder and may not know how to close the transaction properly so that you are protected.

When you deal with a professional Note investment company like Nationwide Secured Capital:

- You will get reliable information on purchase price
- You won't see upfront costs prior to receiving a written offer, and
- You will receive maximum return on your Note!

If you are considering sale of your Note, Nationwide Secured Capital would be happy to provide a free consultation and purchase quotation.

Call us at (800) 853-0573 or go to  
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Also refer to Nationwide Secured Capital's: The Note Value Handbook – "What's My Note Worth?" for inside information regarding valuation of your seller financed Note in the Note investor market!



## APPENDIX A: THE FORECLOSURE PROCESS

This Appendix talks about:

### Non Judicial Foreclosure

- Notice of Default
- Notice of Trustee's Sale
- Trustee's Sale
- Rent and Rental Income
- Deficiency Judgment
- Trustee's Fees
- Special Legal Provisions



### Judicial Foreclosure

- Foreclosure Sale
- Redemption of Property
- Deficiency Judgment
- Rent and Rental Income

Under a Deed of Trust, you the seller/lender are the "beneficiary". The buyer/borrower is the "trustor". The "trustee" is an independent third party specified in the Deed of Trust that holds control over the title to the property until the Note/loan is paid off. If it is paid off property the title is given to the buyer/borrower. If a default on payments occur, then the trustee acts to sell the property to pay off the debt(s) or if this cannot be done adequately then gives title to the seller/lender.

In some states, the beneficiary can choose one of two methods to foreclose, judicial or non-judicial, when a payment default has occurred.

1) In a judicial foreclosure, the beneficiary files a lawsuit against the trustor in Superior Court to foreclose on the property. The case is then set for trial. The property will be ordered sold at a public sale if the court rules in favor of the beneficiary.

2) In most instances, however, it is a non-judicial foreclosure. In a non-judicial foreclosure, the court system is not involved. To foreclose non-judicially, the deed of trust or mortgage must contain a power of sale clause. The power of sale clause gives the trustee the right to begin foreclosure without going to court. To include a power of sale clause does not require a specific form or language.

If, on the other hand, the security instrument does not contain a power of sale provision,





Judicial foreclosure is the beneficiary's only way to obtain the property. Most conventional deeds of trust say "with the power of sale".

Judicial and non-judicial foreclosures differ in many ways. The foreclosure method selected by the beneficiary has significant consequences for the trustor.

#### Speed

Non judicial foreclosure is relatively fast, as this method does not involve the court system. In most instances, non-judicial foreclosure takes, at minimum, about four months after the trustor has failed to meet the obligation or defaulted on the loan. Judicial foreclosure, on the other hand, may take up to several years.

#### Cost

Non judicial foreclosure is generally less costly than judicial foreclosure. In a non-judicial foreclosure, the trustee's and attorney's fees are largely specified by law. In a judicial foreclosure, however, there are generally no legal limits for attorney's fees. As a result, the trustor may be liable for significant legal expenses.

#### Deficiency Judgment

Another major difference between the two foreclosure methods is the beneficiary's right to a deficiency judgment. A deficiency judgment is a court order stating that the trustor still owes money to the beneficiary if the proceeds from the foreclosure sale are not sufficient to pay the balance of the debt.

Some state laws do not allow a deficiency judgment in a non-judicial foreclosure on residential purchase money loans. A residential purchase money loan is one in which loan proceeds are used to purchase the property. Furthermore, state laws do not allow deficiency judgments against the residential trustor where the loan was made by the seller of the property or by a third party lender (often a financial institution) on a four-unit or less residential property that is the principal residence of the trustor. If the beneficiary judicially forecloses on a non-purchase money residential loan, a deficiency judgment may be obtained against the trustor.



#### Right of Redemption

Non-judicial and judicial foreclosures also differ with regard to the trustor's right of redemption after the foreclosure sale. This is the trustor's right to reclaim the foreclosure property. In a non-judicial foreclosure, the sale of the property at the trustee's sale is an irrevocable final sale, and the trustor does not have the right to redeem or reclaim the property after the sale. Judicial foreclosure sales, however, are subject to redemption by the trustor.

This summary of the major differences between non-judicial and judicial foreclosure shows the advantages of non-judicial foreclosure for the beneficiary. The non-judicial foreclosure is timely, economical, not subject to redemption, and may command a higher sales price. In addition, it is unlikely that the beneficiary would recover any losses through a deficiency judgment, as the trustor could not make the loan payments in the first place. Because of these advantages, beneficiaries typically prefer to foreclose non-judicially. Beneficiaries might foreclose judicially when they see an opportunity to recover any losses through a deficiency judgment.

The following sections give detailed information on each of the foreclosure methods.

## Non-Judicial Foreclosure

This section describes the major procedural requirements of a non-judicial foreclosure, discusses the trustor's reinstatement and redemption rights, reviews legal provisions for trustee's fees and summarizes special legal provisions affecting foreclosures in many states.

Many states allow the beneficiary of a deed of trust containing the power of sale provision to foreclose non-judicially after the trustor has defaulted on one or more contractual obligations. In case of default, the beneficiary may order the trustee to initiate foreclosure.

### Notice of Default



Foreclosure begins when the beneficiary notifies the trustee that the trustor has defaulted on any obligations stated in the promissory Note and deed of trust. The beneficiary gives the trustee information concerning the condition of the debt such as the amount of the unpaid balance and due dates. Upon receipt of this information, the trustee prepares the Notice of Default.

The Notice of Default must be recorded in the office of the recorder of the county where the property is located. If the deed of trust encumbers property located in more than one county, the Notice of Default should be recorded in the other counties as well.

The trustee must mail a copy of the Notice of Default to the trustor and to each person requesting notice within ten days of recording the notice. The law specifies additional notification requirements under certain circumstances. The Notice of Default must be published weekly for four weeks in a newspaper or personally be served on the Trustor, if the trustor has not requested to be notified of its recordation of the notice.



Trustor's should always notify the beneficiary and the trustee of any address changes to ensure prompt receipt of any correspondence from the beneficiary or trustee.

Before January 1, 1986, the trustor and beneficiaries under subordinate deeds of trust were given three months from the recordation of the Notice of Default to cure the default. An amendment to the law extended the expiration of the reinstatement period to five business days before the scheduled trustee's sale. If the trustee's sale is postponed, the reinstatement period is extended to five business days before the new date of the sale.

At any time during the reinstatement period, the trustor may stop the default by paying the beneficiary all sums of money due on the loan up to that point including additional costs incurred by the beneficiary, and attorney's or trustee's fees as specified by law. It is not necessary to repay the entire loan balance.

After reinstatement of the loan, the foreclosure proceeding is discontinued and the trustor resumes making the regular periodic payments.

#### Notice of Trustee's Sale

If three months have passed since recording the Notice of Default, and the trustor has not begun to reinstate the loan; the trustee may proceed with the foreclosure by preparing a Notice of Trustee's Sale.

The Notice of Trustee's Sale must be recorded in the office of the recorder of the county in which the property is located, at least 14 days before the date of the sale. As with the Notice of Default, the Notice of Trustee's Sale must be mailed to the trustor's last address actually known to the trustee.



The Notice of Trustee's Sale must also be published in a newspaper of general circulation in the city, judicial district or county where the property is located. The notice must be published once a week over a 20-day period before the sale.

In addition to mailing and publication, the Notice of Trustee's Sale must be posted for at least 20 days before the sale at the following locations:

- In at least one public place in the city, judicial district, or county in which the property is to be sold
- In a conspicuous place on the property to be sold

Improperly broadcasting the Notice of Trustee's Sale typically will result in the cancellation and re-notice of the sale.

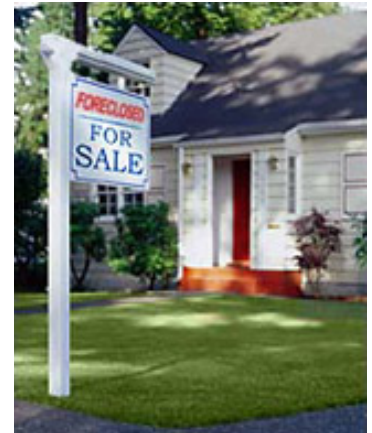


As mentioned before, the trustor can cure the default during the reinstatement period that runs up to five days before the scheduled sale. After the reinstatement period expires, the trustor must pay the entire indebtedness plus foreclosure costs to avoid foreclosure. This is called redemption and only can be done during the five days before the sale. The trustor's right of redemption ends once bidding at the foreclosure sale starts.

### Trustee's Sale

The trustee or the trustee's agent must conduct the foreclosure sale at a public auction in the county where the property is located. The sale is to the highest bidder who must pay in cash, cashier's check or cash equivalent as specified in the notice and acceptable to the trustee.

The trustee may postpone the sale at any time before it is completed. The sale may be postponed at the trustee's discretion, upon instruction by the beneficiary, or upon a written request by the trustor who has the right to request a one-day delay to obtain sufficient cash to pay the debt or bid at the sale. The trustor's request for postponement must include a statement identifying the source of the funds. The law allows for three postponements. After three postponements, a new notice of sale must be given, except for postponements requested by the trustor or ordered by a court.



After the sale to the highest bidder, the trustee executes and delivers a trustee's deed to the purchaser. The trustee's deed conveys title to the purchase free and clear. The issuance of the trustee's deed terminates the previous trustor's legal and equitable rights in the property. It should be noted, however, that title to the property is conveyed subject to all senior liens, including liens for property taxes and assessments.

The purchaser of the foreclosed property is entitled to take immediate possession. A trustor who refuses to vacate the property may be legally forced to do so.

## Rent and Rental Income

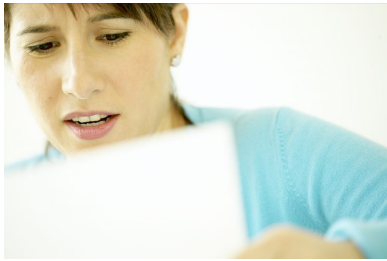
Generally, the trustor occupying the property does not have to pay rent to the beneficiary while in default. If a deed of trust should indicate a rent liability, enforcement of it would be unlikely.

The beneficiary may have a right, however, to any rental income generated by the property during the period of default. In the absence of such a provision in the deed of trust, the beneficiary is generally not entitled to any rental income.

## Deficiency Judgment

In general, the law prohibits a deficiency judgment in a non-judicial foreclosure with a power of sale provision. Even if the proceeds from the foreclosure are inadequate to repay the loan, the beneficiary has no other possibility to recover.

## Trustee's Fees



The fees a trustee is entitled to charge the beneficiary or deduct from the proceeds of the sale are prescribed by law. The trustee may charge for costs incurred in recording, mailing, publishing, and posting of Notice of Default and Notice of Trustee's Sale; the cost of postponing the sale by request of the trustor (not to exceed \$50 per postponement) and the cost of a trustee's sale guarantee. In addition to charging for these actual costs, the law provides for a fee schedule based on the amounts of the unpaid debt.

The legal limitations for trustee's and attorney's fees do not apply to attorney's fees the beneficiary is entitled to recover under special provisions of the deed of trust.

## Special Legal Provisions

Special federal and state laws may affect the manner in which the foreclosure is conducted. If the loan is insured or guaranteed by the U. S. Department of Housing and urban Development (HUD/ FHA) or the Veterans Administration (VA), certain procedures must be followed. In the case of a VA-guaranteed loan, the trustor may be liable for any deficiency, unless the veteran obtains a release of liability from the VA. California law does not necessarily protect the trustor from liability for a deficiency on a VA guaranteed loan. Federal laws governing the VA loan program take precedence over any conflicting California law. Trustors should contact the VA for details concerning their rights and to learn about specific requirements.

## Judicial Foreclosure

Judicial Foreclosure is tried in some state Superior Courts. The beneficiary, upon default of obligation by the trustor, brings a foreclosure lawsuit against the trustor. If successful, the court will issue an order to sell the property at a public sale. The beneficiary must use judicial foreclosure if the security instrument does not contain a power of sale provision. A mortgage or deed of trust containing the power of sale provision may be foreclosed judicially if the beneficiary chooses to do so.

The decision to foreclose judicially or non-judicially is not necessarily final. The beneficiary may discontinue judicial foreclosure at any time and commence non-judicial foreclosure.

Conversely, the beneficiary may abandon non-judicial foreclosure and initiate judicial foreclosure. Beneficiaries sometimes initiate both types of foreclosure simultaneously.

## Foreclosure Sale

A court-appointed commissioner or sheriff in the public place must give notice of the sale of the property for 20 days preceding in the date of the sale. This same notice must be published in a newspaper of general circulation weekly for 20 days. The notice also must be sent by certified mail to all defendants at their last known addresses.

At the foreclosure sale, the property must be sold by the auctioneer to the highest bidder who is financially qualified.

## Redemption of Property

In a judicial sale, the trustor has the right to redeem or reclaim the property after the foreclosure sale. For a trustor, the right of redemption makes a judicial sale attractive. It should be remembered, however, that a judicial sale might also lead to a deficiency judgment. This possibility does not exist in a non-judicial foreclosure.



## Deficiency Judgment

In a judicial foreclosure, the beneficiary has, under certain circumstances, a right to a deficiency judgment. The deficiency judgment is limited to an amount equal to either the difference between the indebtedness and the fair market value of the property, or the indebtedness and the sales price at the foreclosure sale, whichever is less.





## Rent and Rental Income

The trustor occupying the disputed property does not have to pay the beneficiary rent while in default. The beneficiary may be entitled, however, to any rental income generated by the property.

After the sale, the trustor retains possession of the property and does not have to pay the beneficiary rent while in default. The beneficiary may be entitled, however, to any rental income generated by the property.



**APPENDIX B: PAY HISTORY**

Date: \_\_\_\_\_

Buyer/Borrower: \_\_\_\_\_ Phone: (     ) \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

All transactions are to be recorded on the loan account - this includes escrow payments, escrow disbursements and description, late charges collected, other fees collected and any transaction completed. Accurate records of these amounts will be necessary in the event that the Note needs to be restructured due to missed payments or in the event that then Note is to be sold.

Payment Due Date	Date of Receipt	Payment Amount	Interest Amount	Principal Amount	Current Balance	Escrow Amount



PAY HISTORY

Buyer/Borrower: \_\_\_\_\_ Phone: (      ) \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Photocopy this page to record more payments.

Payment Due Date	Date of Receipt	Payment Amount	Interest Amount	Principal Amount	Current Balance	Escrow Amount

When you are ready to sell your Note, Nationwide Secured Capital would be happy to provide a free consultation and purchase quotation.

Nationwide Secured Capital gives you MAXIMUM cash for your Note!

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