

1Dear [FIRSTNAME],

Why demanding that the lender or loan servicer produce the original note as a foreclosure defense strategy does not work is the topic of this issue of the newsletter. Despite what many people may think, the truth is that in most cases it will not work. While this newsletter is not intended as legal advice the main reason that production of the original note is not required is that California is a non-judicial foreclosure state.

Reminder:

THE AUTHOR NOW SELLS COLLECTIONS OF SAMPLE LEGAL DOCUMENTS AT A HUGE DISCOUNT! VISIT THE WEBSITE BELOW FOR MORE INFORMATION.

<http://www.scribd.com/LegalDocsPro/collections>

CHECK OUT MY NEWEST FREE SAMPLE LEGAL DOCUMENT. A CALIFORNIA SECURITY DEPOSIT DISPUTE LETTER. USE THE LINK BELOW TO VIEW AND DOWNLOAD.

<http://www.scribd.com/doc/151850234/Sample-California-Security-Deposit-Dispute-Letter>

MY LATEST SAMPLE LEGAL DOCUMENT IS AN OPPOSITION TO A HEGGSTAD PETITION FOR CALIFORNIA. USE THE LINK BELOW TO VIEW A PORTION.

<http://www.scribd.com/doc/152057306/Sample-Opposition-to-Heggstad-Petition-for-California>

Non-judicial foreclosure under a deed of trust is governed by California Civil Code Section 2924 which states in relevant part that a “trustee, mortgagee or beneficiary or any of their authorized agents” may conduct the foreclosure process.”

California courts have held that the Civil Code provisions “cover every aspect” of the foreclosure process, and are “intended to be exhaustive,”

Any person who is under the impression that the “show me the note” defense will work in California is sadly mistaken. In California, the lender is not required to produce a Promissory Note to conduct a non-judicial foreclosure which is also known as a Trustee’s Sale. This is due to the fact that the power of sale comes from the Deed of Trust, NOT the Promissory Note.

Anyone using the show me that note defense runs the risk of not only losing in Court, but also blowing their chance to actually show some kind of valid defense to the Judge that might convince them to at least delay the foreclosure sale.

Several cases have stated that there is NO requirement under California law to produce the original note to proceed with a non-judicial foreclosure. See Putkkuri v. ReconTrust Co., 2009 WL 32567, *2 (S.D.Cal. Jan.5, 2009) (“Production of the original note is not required to proceed with a non-judicial foreclosure.”); see also Phillips v. MERS Mortgage Electronic Registration Systems, 2009 WL 3233865, 9 (E.D.Cal.2009); Vargas v. Reconstruction Co., 2008 U.S. Dist. LEXIS 100115, at *8-9 (E.D.Cal. Dec. 1, 2008).

Readers should understand that the author has no sympathy for major lenders or loan servicers as several years ago he worked on a case where one of the “Big Five” banks had clearly used forged paperwork to complete a California foreclosure. A Texas notary had claimed they had notarized a document for a person, yet when their notary journal was reviewed, there was NO entry on that date for that person.

Subscribers need to understand that some Judges are not very inclined to show much sympathy for technical challenges to a foreclosure, particularly when it is clear from the complaint and other documents filed with the Court that the borrower is in default under the loan.

Later newsletter issues will cover some valid claims that may convince a Judge to grant a request for a temporary restraining order to enjoin the trustee foreclosure sale.

Attorneys or parties in California who would like to view a portion of a 22 page sample complaint to stop a trustee foreclosure sale that includes a verified complaint, ex-parte application with points and authorities, sample declarations, and a proposed order sold by the author can use the link shown below.

<http://www.scribd.com/doc/146074976/Sample-California-Complaint-to-Stop-Foreclosure-Sale-by-Trustee>

If you enjoy this newsletter, tell others about it. They can subscribe by visiting the following link: <http://www.legaldocspro.net/newsletter.htm>

It would be greatly appreciated if you would visit the Facebook page for LegalDocsPro at <http://www.facebook.com/LegalDocsPro> and give it a like if possible. Have a great week and thanks for being a subscriber.

Yours Truly,
Stan Burman

The author of this newsletter, Stan Burman, is a freelance paralegal who has worked in California and Federal litigation since 1995, and recently relocated to Asia.

Copyright 2013 Stan Burman. All rights reserved.

DISCLAIMER:

Please note that the author of this newsletter, Stan Burman is NOT an attorney and as such is unable to provide any specific legal advice. The author is NOT engaged in providing any legal, financial, or other professional services, and any information contained in this newsletter is NOT intended to constitute legal advice.

These materials and information contained in this newsletter have been prepared by Stan Burman for informational purposes only and are not legal advice. Transmission of the information contained in this newsletter is not intended to create, and receipt does not constitute, any business relationship between the sender and receiver. Subscribers and any other readers should not act upon this information without seeking professional counsel.