

# State of California County Tax Collectors' Reference Manual 2016

## Chapter 7000: Notice of Power to Sell



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## Introduction

The *County Tax Collectors' Reference Manual*, is produced by the State Controller's Office, Local Government Programs and Services Division, Property Tax Standards Unit. This manual is designed to provide comprehensive reference material to assist county tax collectors in performing their duties in compliance with statutory requirements and promote uniformity throughout the state.

All statutory references cited are from the Revenue and Taxation Code, unless otherwise noted. Citations and references in this manual are current as of its publication date however, care must be taken to ensure that none have been superseded by subsequent legislative action or court decisions.

The State Controller's Office forms referred to within this manual are samples that contain all of the required information pursuant to statute. The county tax collector's office may use the sample forms or they may create their own forms. Forms used should contain all information required by statute.

**NOTICE:** This publication is provided by the State Controller's Office, Property Tax Standards Unit, as a general resource for California's county tax collectors. This publication is written primarily for use by county tax collectors and does not constitute legal advice. This publication has been reviewed by The Committee on County Tax Collecting Procedures and members of the California Association of County Treasurers Tax and Collectors.

## 7000 General Overview: Provisions and Requirements

### 7000. OPERATION OF LAW

On July 1, when five or more years have elapsed since a property became tax defaulted, the tax collector is empowered to sell all or any portion of the tax defaulted property that has not been redeemed ([§3691](#)). By operation of law, the property becomes subject to the tax collector's power to sell if the property remains tax defaulted at 12:01 a.m. on July 1 ([§3361](#), [§3362\(d\)](#)). See manual section [9400 et seq.](#) for an outline of the publication of the Notice of Impending Power to Sell Tax Defaulted Property.

In the case of nonresidential commercial property, on July 1, when three or more years have elapsed since a property became tax defaulted, the tax collector is empowered to sell all or any portion of the property that has not been redeemed. The county board of supervisors may pass a resolution or ordinance to have the five-year time period apply to tax defaulted nonresidential commercial property ([§3691\(c\)](#)).

Real property must be included in the next scheduled tax sale if it can provide housing or services directly related to low income persons when three or more years have elapsed, and a request has been made by a city, county, city and county, or nonprofit organization ([§3362\(b\)\(3\)](#)).

Tax defaulted vacant residential developed property subject to a nuisance abatement lien is also subject to the tax collector's power to sell ([§3691\(b\)\(1\)\(A\)](#)).

**NOTE:** If the notice required by [§3361](#) is not published, or if the first notice is not published by the statutory deadline of June 8, then all of the property that would have become tax defaulted with the power to sell by operation of law will not attain the power-to-sell status, and the assessee will retain the right to initiate an installment plan of redemption until the next July 1 at 12:01 a.m.

## 7100-7106 Preparation of the Recorded Notice: General Information

### 7100. ACCURACY OF THE RECORDED NOTICE

The recorded Notice of Power to Sell Tax Defaulted Property should be prepared accurately so that its validity is not affected. Each recorded notice should be proofread before it is recorded. See manual section [7110-7114](#).

### 7101. NOTICE RECORDING REQUIREMENTS

A separate notice should be recorded for each property ([§3691.1](#)).

### 7102. STANDARD NOTICE FORM

State Controller's Office sample form, *Notice of Power to Sell – Five-year and Three-year Schedule* ([SCO 7-01.1](#)) may be used as the standard notice form for property that is eligible for sale after five years of default or three years in the case of commercial, nonresidential property.

State Controller's Office sample form, *Notice of Power to Sell – Five-year Schedule By County Ordinance or Resolution* ([SCO 7-01.2](#)) may be used as the standard notice form for property that is five years defaulted and the county has passed an ordinance pursuant to [§3691](#).

State Controller's Office sample form, *Notice of Power to Sell – Three-year Schedule* ([SCO 7-01.3](#)) may be used as the standard notice form for commercial property that is eligible for sale after three years of default or a request has been made by a qualified nonprofit organization.

Counties may create their own forms as long as they contain all of the provisions required by [§3691.2](#).

**NOTE:** A county may pass a resolution to opt out of the three-year power to sell for commercial property.

**7103. DATE OF TAX DEFAULT**

The date of the original valid tax default is considered the date of default.

**7104. AMOUNT OF TAX DEFAULT**

Total amount of taxes, assessments, penalties, and costs that remain unpaid at the close of business on the last business day of June preceding the declaration of default at 12:01 a.m. on July 1.

**7105. FISCAL YEAR**

The fiscal year is the time period for which property owner defaults on any unpaid taxes, assessments, or penalties at the close of business on the last day of the fiscal year.

**7106. DEFAULT NUMBER**

The default number that must be used in the notice is the number that was:

- Assigned when the property was originally tax defaulted;
- Used when the property was tax defaulted (in accordance with the procedure set forth in manual section [9323](#)); or
- Adopted for use in the Addenda to Published Delinquent List by those counties preparing their lists by the use of electronic data processing equipment (manual section [9324](#)).

## 7110-7114 Preparation of the Recorded Notice: Description Requirements

**7110. FURNISHED BY ASSESSOR**

When tax defaulted property is subject to sale, the assessor shall furnish the tax collector with a metes and bounds or lot-block-tract description of the property by June 15 of the year in which the property is to become subject to the power of sale ([§3691.3](#)).

Unless descriptions can be obtained from computer files, the assessor should be provided with a list of the properties that will be subject to sale well in advance of June 15, so that there is sufficient time to prepare the descriptions.

**7111. ASSESSOR'S PARCEL NUMBER**

If the APN has been changed since the property was tax defaulted, the recorded notice must reflect both the old and the new numbers.

The recorded notice must contain a legal description in addition to the APN. A full legal description should be obtained from the assessor. Without such full identification, the recorded notice is not valid.

**7112. UNDIVIDED INTEREST**

When an undivided interest in property is subject to sale, the description in the recorded Notice of Power to Sell Tax Defaulted Property must reflect only the proportionate interest that is tax defaulted (e.g.: ONE-FOURTH INTEREST IN LOT 13, BLOCK 12, A.P.N. 22-333-44). For a definition of an undivided interest, see manual section [6103](#).

**7113. CITY PROPERTY**

If property lies within the boundaries of a city, the legal description on the recorded notice must contain the name of the city. Following are examples:

- Lot 1 in Block 2 of Brookdale Subdivision in the City of Sacramento.
- Lot 10 of block bounded by "A" and "B" Streets and 5th and 6th Streets, City of Sacramento, as shown on the official map of said city and recorded in volume \_\_\_\_\_ of Maps, \_\_\_\_\_ at page \_\_\_\_\_ ([§324](#)).

A metes and bounds description of land lying within a city should include the name of the city.

Any change in the status of jurisdictional boundaries between the date of the original delinquent assessment and the date the property became subject to sale may be shown as "now within the City of \_\_\_\_\_," or "formerly within the City of \_\_\_\_\_."

#### 7114. ABBREVIATIONS

Abbreviations may be used in the assessment, advertisement, and sale of tax defaulted property if they are used in accordance with [§156](#).

An example of an acceptable abbreviated description of government surveyed land is "the NW 1/2 of the NE 1/4 of Section 28, Twp. 25 South, Rge. 24 East, M.D.B.&M." Simply using "Sec. 28-25-24" would be unacceptable.

## 7120-7125 Preparation of the Recorded Notice: Execution Requirements

#### 7120. SIGNATURE OF TAX COLLECTOR

Whenever a notice is required by law to be recorded, it must be signed by the person giving the notice or by his or her agent (Gov. Code, [§27201](#), [§27289](#)). The tax collector may physically sign each recorded Notice of Power to Sell, or use a facsimile signature if an original signature is on file with the Secretary of State ([§168](#))

The county's official seal must be affixed to the notice (usually on the tax collector's signature) (Civ. Code, [§1193](#)).

#### 7121. DEPUTY TAX COLLECTOR – TAX COLLECTOR UNAVAILABLE OR OFFICE VACANT

The notice may be signed by the deputy tax collector if:

- The tax collector is unable to sign due to absence or physical disability; or
- The office of the tax collector becomes vacant and a successor or acting tax collector has not been named (Gov. Code, [§24100](#), [§24105](#)).

In each of the above cases, the notice should be executed in the following manner:

\_\_\_\_\_ COUNTY TAX COLLECTOR

By \_\_\_\_\_

Deputy Tax Collector

#### 7122. DATE

The date on which the Notice is signed by the tax collector is entered under the words, "Executed On." The date of acknowledgement of the signature by the county clerk, notary public, or other county official, pursuant to Civil Code section [1181](#), can be the same as or later than the date on which the document is executed ([§168.5](#)) (*Grant v. Oliver (1891) 27 P. 596, 91 C. 158*).

#### 7123. NAME OF TAX COLLECTOR

The name of the tax collector must be entered immediately after the date in the acknowledgement.

#### 7124. ACKNOWLEDGMENT OF TAX COLLECTOR'S SIGNATURE

The acknowledgement is made by the county clerk, notary public, or other county official, pursuant to Civil Code section [1181](#), without charge ([§168.5](#), [§3691.1](#)). A deputy tax collector who is also a deputy county clerk may acknowledge the tax collector's signature (*Markowitz v. Carpenter, 94 Cal. App. 2d 667*; *Bell v. Towns, 95 Cal. App. 2d 398*) (Gov. Code, [§1194](#), [§24000](#), [§24057](#)); see State Controller's Office sample forms, *Notice of*

*Power to Sell – Five-year and Three-year Schedule (SCO 7-01.1) and Notice of Power to Sell Three – year Schedule (SCO 7-01.3).*

**7125. ACKNOWLEDGMENT FORMAT**

A certificate of acknowledgement required in any document or form referred to in this manual shall be in substantially the following form (Civ. Code, §1195):

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

\_\_\_\_\_ County Executed on \_\_\_\_\_ By \_\_\_\_\_

Tax Collector

On \_\_\_\_\_, before me, \_\_\_\_\_ (here insert name and title of the officer) \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on whose behalf the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
County Clerk and Ex-Officio Clerk or Notary Public

## 7130-7133 Preparation of the Recorded Notice: Administrative Requirements

**7130. RECORDATION OF THE NOTICE**

The tax collector must have the Notice of Power to Sell Tax Defaulted Property recorded with the county recorder. After recordation, the notice is retained by the tax collector (§3691.5).

**7131. RECORDING FEE**

The notice must be recorded by the county recorder without charge (§3691.4).

**7132. ASSESSMENT OF PROPERTY SUBJECT TO SALE**

All property subject to the tax collector's power of sale must be assessed as though subject to taxation. The secured abstract should be updated to include all fiscal years of taxes that may have been on a separate document or listing per §568.



**7133. MAILED NOTICE TO LAST ASSESSEE**

After the first publication of the Notice of Impending Power to Sell Tax defaulted Property, a notice must be sent by registered mail ([§3365](#)) or certified mail (Gov. Code, [§53062](#)) to the last known address of the last assessee of each property. This notice must be mailed not less than 21 nor more than 35 days before July 1.

The notice may be either a copy of the publication or a printed notice meeting the requirements of [§3365](#) and [§3366](#).

State Controller's Office sample form, *Notice of Tax Collector's Impending Power to Sell – Five and Three-Year Schedule* ([SCO 7-03.1](#)) may be used as the standard notice form for tax defaulted property that is impending sale.

If notice is being given on a defaulted installment plan of redemption, then including all information on the State Controller's Office sample form, *Notice of Tax Collector's Impending Power to Sell (For Property Under an Installment Plan of Redemption)* ([SCO 7-04](#)) is recommended. See manual section [5234](#) for the amount required to redeem a property in full after it becomes subject to the power to sell.

To ascertain the last known address, the tax collector should examine the rolls, beginning with the year of delinquency up to and including that of the last equalized roll ([§3365](#)). The "last equalized roll" is defined in [§2052-2055](#).

The tax collector may improve his or her due diligence by using a service such as LexisNexis which has one of the largest collection of public records available to help locate the last known assessee.

The failure of the tax collector to make a reasonable effort to ascertain the address of the last assessee as required does not affect the validity of a subsequent sale to satisfy the lien of unpaid taxes ([§3365](#)).

## 7140-7143 Correction of the Notice: General Information

**7140. AUTHORITY**

If a notice contains a clerical error or a misstatement of fact, an amended or corrected notice may be recorded. There is no time limit before which a corrected notice must be recorded ([§4839](#), [Webster v. Somer, 159 Cal. 459](#)). An order from the board of supervisors is not required.

**NOTE:** It is not necessary to issue a corrected notice if the property has been redeemed and a Rescission of Notice of Power to Sell Tax Defaulted Property has been recorded, or is about to be recorded.

**7141. STANDARD FORM**

See State Controller's Office sample forms, *Notice of Power to Sell – Five and Three-year Schedule* ([SCO 7-01.1](#)) and *Notice of Power to Sell Three-year Schedule* ([SCO 7-01.3](#)) for correcting the Notice of Power to Sell Tax Defaulted Property. The corrected notice is completed exactly as the original except for:

- Items corrected;
- Name of tax collector, if a change has occurred;
- Acknowledgement and recording information; and
- Acknowledgement date.

**7142. SPECIAL CONTENTS**

The notice should be clearly marked as a "corrected notice." It must show the volume and page on which the original Notice of Power to Sell was recorded, and it must state the reason for the correction. The name of the tax collector issuing the original notice should be included if it is not the name of the incumbent.

**7143. RECORDING REQUIREMENTS**

The corrected notice must be recorded in the same manner as an original Notice of Power to Sell ([§158](#), [§3691.4](#)). See manual sections [7142-7143](#).

## 7200-7206 Cancellation of the Notice: Conditions for Cause

### 7200. WHEN TAX DEFAULT IS CANCELED

When the declaration of default on property that is subject to sale is canceled, the notice based on the declaration of default must be canceled ([§4991](#), [§4992\(a\)](#)).

### 7201. AUTHORITY

When the recorded notice is void, it must be canceled by the tax collector, with the approval of the auditor ([§4992](#)).

### 7202. NOTICE INVALID DUE TO ERROR

When the declaration of default is valid but the recorded Notice of Power to Sell Tax Defaulted Property is invalid due to an error occurring after the declaration of default, the notice must be canceled ([§4992\(b\)](#)).

**NOTE:** The most common types of errors that may invalidate the notice are outlined in manual section [7202-7206](#).

### 7203. SUBSEQUENT NOTICE AFTER VALID NOTICE WAS GIVEN

When tax defaulted property has become subject to sale validly, any subsequently recorded notice based on the same tax default is void and must be canceled.

### 7204. REDEEMED PROPERTY

If the property is redeemed or an installment payment plan is initiated before 5 p.m. on the last business day prior to the date on which the tax collector obtains the power to sell the property, and such installment plan was in good standing at the time the property became subject to sale, then the recorded notice is void ([§3362\(c\)](#), [§4217](#), [§4218](#)).

### 7205. PUBLICATION ERRORS

Errors or omissions in the published Notice of Power to Sell Tax Defaulted Property may result in the recorded notice being void; see manual section [9003](#).

An error in the tax defaulted amount; and or errors in the description of the property may result in the recorded notice being void.

**NOTE:** The types of errors that can occur in descriptions are varied and numerous. A good test of a description is to determine whether a reasonable person would understand the description.

### 7206. FAILURE TO SEND NOTICE TO ASSESSEE

It is essential that notice of the tax collector's power to sell the property be given to the last assessee, in accordance with [§3365](#). Failure to send the mailed notice may jeopardize the salability of the property at a tax sale.

## 7210-7214 Cancellation of the Notice: Processing Procedures

### 7210. REQUIRED FORM

An invalid recorded Notice of Power to Sell Tax Defaulted Property must be canceled by recordation. See State Controller's Office sample form, *Cancellation of Notice of Power to Sell Tax Defaulted Property* ([SCO 7-02](#)) ([§4992](#)).

**7211. GENERAL CONTENTS OF FORM**

State Controller's Office sample form, *Cancellation of Notice of Power to Sell Tax Defaulted Property* ([SCO 7-02](#)) must be completed exactly as the original recorded notice of power to sell.

If the current APN on the recorded notice of power to sell differs from the current number, the former APN should be shown after the current number.

**EXAMPLE:** APN 025-010-07, formerly 025-010-03

**7212. RECORDING DATA**

Recorded data on the cancellation must be exactly as shown on the recorded Notice of Power to Sell Tax Defaulted Property. Otherwise, it will be impossible to index the cancellation to the public record. Error in the recording data may require recording a correction of the Cancellation of the Notice of Power to Sell Tax Defaulted Property. A correction of cancellation should be prepared in the same manner as a corrected notice (manual section [7200 et seq.](#)).

**7213. SIGNATURES**

The cancellation form must be signed by the tax collector and then by the auditor ([§4992](#)).

**7214. ACKNOWLEDGMENT**

When the cancellation form has been completed, the tax collector's signature is acknowledged, without charge, by the county clerk, the notary public, or another county official, pursuant to Civil Code section [1181](#) ([§168.5](#), [§4992](#)).

## 7220-7223 Cancellation of the Notice: Administrative Requirements

**7220. RECORDING CANCELLATION**

Whenever a recorded notice is canceled, the cancellation document must be recorded to give notice of the elimination of the recorded notice. The county recorder shall record the cancellation without charge ([§4992](#)).

**7221. ERRORS ON A CANCELLATION OF A NOTICE OF POWER TO SELL**

An error on the face of the document can be corrected by recording a corrected Cancellation of Notice of Power to Sell form. The following statement must be added to the form:

Corrected Cancellation of Notice of Power to Sell Tax Defaulted Property. This cancellation is being recorded to correct an error on the original cancellation, issued \_\_\_\_\_, and recorded on \_\_\_\_\_, in book \_\_\_\_\_ of the Official Records of said county, at page \_\_\_\_\_, wherein the \_\_\_\_\_ was in error.

If, through error, the wrong notice of power to sell is canceled, the recording of a corrected cancellation is not advised. A new cancellation should be recorded to cancel the notice of power to sell that was intended to be canceled, and a new notice of power to sell must be recorded to reestablish the one erroneously canceled. The following statement must be added to the new notice:

This notice is being recorded to reinstate that Notice of Power to Sell Tax Defaulted Property recorded \_\_\_\_\_ date in book \_\_\_\_\_ at page \_\_\_\_\_ of the Official Records of said county, which was canceled in error by that "Cancellation of Notice of Power to Sell Tax Defaulted Property" recorded \_\_\_\_\_, in book \_\_\_\_\_ at page \_\_\_\_\_ of the Official Records of the county.

**NOTE:** It is recommended that a copy of the correction be kept by the tax collector.

**7222. NOTICE OF CANCELLATION – COUNTY RECORDS**

The fact and date of the cancellation shall be entered on the abstract or electronic data processing records ([§4992](#)).

**7223. COPIES**

A copy should be provided to the tax collector, auditor, and assessor.

## 7230 Notice of Power to Sell: Standard Rescission

**7230. GENERAL INFORMATION**

When property that is subject to sale is redeemed, the tax collector must record a rescission of the recorded *Notice of Power to Sell Tax Defaulted Property* ([§4112](#)). State Controller's Office sample form, *Rescission of Notice of Power to Sell Tax Defaulted Property* ([SCO 5-08](#)) and State Controller's Office sample form, *Partial Rescission of Notice of Power to Sell Tax Defaulted Property* ([SCO 5-09](#)) comply with the statutory requirement for releasing the recorded *Notice of Power to Sell Tax Defaulted Property* (see State Controller's sample form [SCO 7-01](#)). When the rescission is completed, the county tax collector's signature must be acknowledged by the county clerk, the notary public or another county official, pursuant to Civil Code section [1181](#), without charge, and recorded by the county recorder for a fee, as provided in Government Code section [27361.3](#).

The tax collector must collect the recording fee at the time of redemption and transmit it to the recorder. After the rescission has been recorded, it should be returned to the redemptioner by the recorder ([§168.5](#)).

This fee is deposited in the county general fund to reimburse the county for its cost in obtaining the names and last known mailing addresses of parties of interest, as defined by [§4675](#), and for mailing the notices, as required by [§3701](#) (see [§4112](#) and manual section [5102](#) regarding the redemption amount and manual section [5125](#) for the parties-of-interest fee).

If tax defaulted property is redeemed prior to the proposed sale but after the county has incurred notice or publication costs as required by [§3702](#), a fee in an amount reasonably necessary to reimburse the county for those costs may be collected ([§4112\(2\)\(b\)](#)).

Government Code section [54985](#) permits a county board of supervisors to either increase or decrease the amount of fees and charges imposed by law for providing any product or service or in enforcing a regulation for which a fee or charge is levied. This fee is to cover the actual cost of searching for parties of interest as required by [§3701](#).

**CAUTION:** When payment is in the form of negotiable paper, the tax collector should allow sufficient time for it to be processed by the bank before executing and recording a rescission ([§2509](#)).