

# State of California County Tax Collectors' Reference Manual

## Chapter 7000: Notice of Power to Sell



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# Chapter 7000 Notice of Power to Sell

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\* All statutory references cited are from Revenue and Taxation Code, unless otherwise noted.

## 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 ([Rev. & Tax. Code, §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 ([Rev. & Tax. Code, §§3361 and 3362\(d\)](#)). See [M-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.

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 ([Rev. & Tax. Code, §3362](#)).

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

**NOTE:** If the notice required by [Revenue and Taxation Code section 3361](#) is not published, or if the first publication 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.

## 7100-7102 Preparation of the Recorded Notice: General Information

### 7100. ACCURACY ESSENTIAL

The recorded "Notice of Power to Sell Tax-Defaulted Property" must be prepared accurately so that its validity is not affected. Each recorded notice should be proofread before it is recorded. The instructions in [M-7110 - M-7135](#) should be followed carefully.

### 7101. NOTICE RECORDING REQUIREMENTS

A separate notice should be recorded for each parcel ([Rev. & Tax. Code, §3691.2](#)).

### 7102. STANDARD NOTICE FORM

Form [SCO 7-01.1](#) may be used for 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.

Form [SCO 7-01.2](#) may be used for the standard notice form for property that is five years defaulted and the county has passed an ordinance pursuant to Revenue and Taxation Code section 3691.

Form [SCO 7-01.3](#) may be used for 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.

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

A county may create its own forms as long as they contain all of the provisions required by [Revenue and Taxation Code section 3691.2](#).

## 7110-7116 Preparation of the Recorded Notice: Form Instructions

### 7110. DATE OF TAX-DEFAULT

This is the date of the original, valid tax-default (form [SCO 7-01.1 - 7-01.3](#) ).

### 7111. AMOUNT OF TAX-DEFAULT

This is the total amount of taxes, assessments, penalties and costs that were unpaid at the close of business on the last business day of June preceding the [declaration of default](#) at 12:01 am on July 1.

This total amount must be published in the "Notice of Power to Sell Tax-Defaulted Property" unless, between the time of publication and the time of [recording](#) of the notice, there has been a partial cancellation, a partial redemption, or a correction referred to in [Revenue and Taxation Code sections 4831.5 and 4876.5](#) (form [SCO 7-01.1 - 7-01.3](#) ). In these cases, the tax-defaulted amount shown on the notice must be adjusted accordingly ([Rev. & Tax. Code, §3691.2\(d\)](#)). It is not to be confused with the "redemption amount" ([M-5102](#)).

### 7112. FISCAL YEAR

This is the [fiscal year](#) for which the taxes, assessments, penalties and costs were unpaid at the close of business on the last business day of the fiscal year and for which the property was originally tax-defaulted (forms [SCO 7-01.1 - 7-01.3](#) ).

### 7113. DEFAULT NUMBER

The [default number](#) that must be used is the number that was:

- 1) Assigned when the property was originally tax-defaulted;
- 2) Used when the property was tax-defaulted in accordance with the procedure set forth in [M-9332](#) and [M-9333](#) ([M-6120](#)); or
- 3) Adopted for use in the Addenda to Published Delinquent List by those counties preparing their lists by the use of electronic data processing equipment ([M-6120](#) and [M-9333](#)).

See forms [SCO 7-01.1 - 7-01.3](#) .

### 7114. NAME OF COUNTY

The name of the county is typed in the blank space preceding the word "county" (e.g., "Yuba", "San Francisco City and") (forms [SCO 7-01.1 - 7-01.3](#) ).

### 7115. NAME OF THE LAST ASSESSEE

Enter the name of the most current assessee(s) as shown on the assessor's records (forms [SCO 7-01.1 - 7-01.3](#) ).

## 7120-7124 Preparation of the Recorded Notice: Description Requirements

### 7120. 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 ([Rev. & Tax. Code, §3691.3](#)) (forms [SCO 7-01.1 - 7-01.3](#) ).

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 there is sufficient time to prepare the descriptions.

### 7121. ASSESSOR'S PARCEL NUMBER

When property is described only by the assessor's parcel number in the published "Notice of Impending Power to Sell Tax-Defaulted Property" and the parcel number 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 parcel number. A full legal description is obtained from the assessor. Without such full identification, the recorded notice is not valid.

### 7122. 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 an explanation of an undivided interest, see [M-6103](#).

### 7123. CITY PROPERTY

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

- 1) Lot 1 in Block 2 of Brookdale Subdivision in the City of Sacramento, or
- 2) 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 \_\_\_\_\_ ([Rev. & Tax. Code, §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 could be shown as, "now within the City of \_\_\_\_\_," or "formerly within the City of \_\_\_\_\_."

### 7124. ABBREVIATIONS

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

An example of an acceptable abbreviated description of [government surveyed](#) land would be, "the NW 1/2 of the NE 1/4 of Section 28, Twp. 25 South, Rge. 24 East, M.D.B.&M." It would be unacceptable as "Sec. 28-25-24."

## 7130-7135 Preparation of the Recorded Notice: Execution Requirements

### 7130. 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](#)) (forms [SCO 7-01.1 -7-01.3](#)). The tax collector may physically sign each recorded Notice of Power to Sell, or he or she may use a facsimile signature if an original signature is on file with the Secretary of State ([Rev. & Tax. Code, §168](#)).

The county's official seal must be affixed to the notice (usually on the tax collector's signature).

**7131. DEPUTY TAX COLLECTOR - TAX COLLECTOR UNAVAILABLE OR OFFICE VACANT**

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

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

In this case, the notice should be executed in the following manner:

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

By \_\_\_\_\_

Deputy Tax Collector

**7132. DATE**

The date on which the instrument is signed by the tax collector is entered under the words, "Executed On" (forms [SCO 7-01.1 -7-01.3](#) ). The date of [acknowledgment](#) 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](#) ([Rev. & Tax. Code, §168.5](#)) (*Grant v. Oliver* (1891) 27 P. 596, 91 C. 158). See annotations to [Civil Code section 1188](#).

The date is left blank if so desired by the county clerk.

**7133. NAME OF TAX COLLECTOR**

The name of the tax collector must be entered immediately after the date, in the [acknowledgment](#) (forms [SCO 7-01.1 -7-01.3](#) ).

**7134. ACKNOWLEDGMENT OF TAX COLLECTOR'S SIGNATURE**

The [acknowledgment](#) is made by the county clerk, [notary public](#) or other county official, pursuant to [Civil Code §1181](#), without charge ([Rev. & Tax. Code, §§168.5 and 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](#)); forms [SCO 7-01.1 -7-01.3](#) ).

**7135. ACKNOWLEDGMENT FORMAT**

A certificate of [acknowledgment](#) required in any document or form referred to in this manual shall be in substantially the following form ([Civ. Code, §1189](#)).

State of California

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

Tax Collector

On \_\_\_\_\_, before me, \_\_\_\_\_ (here insert name & 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.

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County Clerk and Ex-Officio Clerk or Notary Public

## 7140-7145 Preparation of the Recorded Notice: Administrative Requirements

### 7141. 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 ([Rev. & Tax. Code, §3691.5](#)).

### 7142. RECORDING FEE

The notice must be recorded by the county recorder, without charge ([Rev. & Tax. Code, §3691.4](#)).

### 7143. TRANSMITTAL TO THE CONTROLLER

This section was deleted on January 1, 1999.

### 7144. 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. If a property was previously tax-deeded to the state and is now tax-defaulted and subject to the tax collector's [power to sell](#), it should be assessed like other real property. The secured abstract should be updated to include all fiscal years of taxes that may have been on a separate document or listing per [Revenue and Taxation Code section 568](#).

### 7145. 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](#) ([Rev. & Tax. Code, §3365](#)) or [certified mail](#) ([Gov. Code, §53062](#)) to the last known address of the last assessee of each parcel. (It is recommended that a return receipt be requested.) 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 [Revenue and Taxation Code sections 3365 and 3366](#). When a printed notice is used, Form [SCO 7-03.1](#), [7-03.2](#) or [7-03.3](#) is recommended.

If notice is being given on a defaulted [installment plan of redemption](#), form [SCO 7-04](#) is recommended. See [M-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 must examine the rolls, beginning with the year of delinquency up to and including that of the last equalized roll ([Rev. & Tax. Code, §3365](#)). The "last equalized roll" is defined in [Revenue and Taxation Code sections 2052-2055](#), inclusive.

The tax collector may also use the most recent telephone directories for the area in which the tax-defaulted property is located and for the area of the last known assessee ([Rev. & Tax. Code, §3365](#)).

Other sources may be checked and a copy of the notice mailed to any address found.

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 ([Rev. & Tax. Code, §3365](#)).

## 7200-7203 Correction of the Notice: General Information

### 7200. AUTHORITY

If a notice contains a clerical error or a misstatement of fact (provided the publication of the "Notice of Impending Power to Sell Tax-Defaulted Property" was published correctly), an amended or corrected notice may be recorded. There is no time limit within which a corrected notice must be recorded ([Rev. & Tax. Code, §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, or is about to be, recorded.

### 7201. STANDARD FORM

Use forms [SCO 7-01.1](#) through [7-01.3](#) for correcting the "Notice of Power to Sell Tax-Defaulted Property." The corrected notice is filled out exactly as the original except for:

- 1) Items corrected;
- 2) Name of tax collector, if change has occurred; and,
- 3) [Acknowledgment](#) and recording information.

The acknowledgment date will, of course, differ from the original.

### 7202. SPECIAL CONTENTS

The notice should be clearly marked as a "corrected notice." It must show the volume and page on which the original notice 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 present incumbent.

### 7203. RECORDING REQUIREMENTS

The corrected notice must be [recorded](#) in the same manner as an original notice of power to sell ([Rev. & Tax. Code, §§158](#) and [3691.4](#)). See [M-7142](#) and [M-7143](#).

## 7300 Cancellation of the Notice: General Information

### 7300. AUTHORITY

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

## 7310-7315 Cancellation of the Notice: Conditions for Cause

### 7310. WHEN TAX DEFAULT IS CANCELLED

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

**7311. 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 cancelled ([Rev. & Tax. Code, §4992\(b\)](#)).

**NOTE:** The most common types of errors that may invalidate the notice are outlined in [M-7312](#) - [M-7315](#).

**7312. SUBSEQUENT NOTICE AFTER VALID NOTICE WAS GIVEN**

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

**7313. REDEEMED PROPERTY**

If the property is redeemed or an installment plan of redemption is initiated before 5 p.m. on the last business day prior to the date when 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, the recorded notice is void ([Rev. & Tax. Code, §§3362\(c\), 4217, 4218](#)).

**7314. PUBLICATION ERRORS**

Errors or omissions in the published "Notice of Power to Sell Tax-Defaulted Property" may result in the recorded notice being void if the error or omission renders the notice ineffectual or invalid ([M-9416](#)).

Errors in the published notice that may result in the recorded notice being void are:

- 1) An error in the tax-defaulted amount, and
- 2) Errors in the description of the property.

The types of errors that can occur in descriptions are too varied and numerous to mention. However, a good test of a description is to determine if it discloses the property's physical location to **a reasonable person** without confusing it with other property.

**7315. 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 [Revenue and Taxation Code section 3365](#). Failure to send the mailed notice may jeopardize the salability of the property at a tax sale. See [M-7145](#) for the procedures of mailing notice to the last assessee.

## 7320-7328 Cancellation of the Notice: Processing Procedures

**7320. REQUIRED FORM**

An invalid recorded "Notice of Power to Sell Tax-Defaulted Property" must be cancelled by recording form [SCO 7-02](#) from the forms section of this manual; or another form may be created, as long as it is essentially the same as form [SCO 7-02](#) ([Rev. & Tax. Code, §4992](#)).

**7321. GENERAL CONTENTS OF FORM**

Form [SCO 7-02](#) is indexed to the manual sections that discuss the information to be entered in the blank spaces on the form.

**7322. FISCAL YEAR**

Use the [fiscal year](#) in which the property initially became delinquent. The fiscal year should be the year shown on the recorded notice of power to sell (form [SCO 7-02](#) and [M-7112](#)).

**7323. DEFAULT NUMBER**

The default number must be shown on the cancellation exactly as it is shown on the recorded notice of power to sell (form [SCO 7-02](#) ).

**7324. ASSESSOR'S PARCEL NUMBER**

The current assessor's parcel number (APN) should be shown on the cancellation (form [SCO 7-02](#) ). If the 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

**7325. NAME OF THE COUNTY**

The name of the county is typed in the blank space preceding the word "County" (e.g., "Yuba" or "San Francisco City and").

**7326. RECORDING DATA**

Recording data on the cancellation (form [SCO 7-02](#) ) 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](#) for the recorded notice being canceled. Any 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 ([M-7200 et seq.](#)).

**7327. SIGNATURES**

The cancellation form must be signed by the tax collector and then by the auditor ([Rev. & Tax. Code, §4992](#)); form [SCO 7-02](#) , and [M-7130](#).

**7328. 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](#) ([Rev. & Tax. Code, §§168.5, 4992](#)). See [M-7130 et seq.](#)

## 7330-7334 Cancellation of the Notice: Administrative Requirements

**7330. RECORDING CANCELLATION**

Whenever a recorded notice is cancelled, the cancellation document must be recorded to give [constructive notice](#) of the elimination of the recorded notice. Form [SCO 7-02](#) has been designed to provide an area for the recorder's stamp. The county recorder shall record the cancellation without charge ([Rev. & Tax. Code, §4992](#)).

**7331. ERRORS ON A CANCELLATION OF A NOTICE OF POWER TO SELL**

If it is necessary to make a correction to a previously recorded "Cancellation of Notice of Power to Sell Tax-Defaulted Property" due to an error on the face of the document, or if the wrong tax notice was canceled, the following steps must be taken.

- 1) 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.

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

- 2) If, through error, the wrong notice of power to sell is cancelled, 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 cancelled, and a new notice of power to sell must be recorded to reestablish the one erroneously cancelled. 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.

### **7332. NOTICE OF CANCELLATION - COUNTY RECORDS**

Section 4992 of the Revenue and Taxation Code provides:

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

### **7333. COPIES**

A copy should be provided to each of the following officials: tax collector, auditor, and assessor.