



## Featured Article

### Conflicting California Decisions Call Into Question When the Purchaser At A Foreclosure Sale Can Start its Eviction

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It is understandable that a purchaser of a property at a trustee's sale is anxious to immediately begin eviction proceedings in order to take possession of and market the property. However, two recent published decisions draw into question the practice of serving the properties' occupants with a Notice to Quit *before* perfecting title.

As more fully discussed in this article, after the Appeals Division of the Superior Court in *McLitus* ruled that both sale and title to be perfected prior to even service of the Notice to Quit, the Court of Appeals in *Westlake* clarified that California *Code of Civil Procedure* § 1161a held that title must be perfected prior to the tenant being removed from the property, not prior to service of the Notice to Quit.

In *U.S. Financial, L.P. v. McLitus*, 6 Cal. App. 5th Supp. 1, 2016 Cal. App. LEXIS 1057 (Cal. Super. Ct. 2016), U.S. Financial purchased the subject property at a trustee's sale held pursuant to *Civil Code* § 2924. As many foreclosure purchasers do, it immediately served a Notice to Quit prior to recording the Trustee's Deed Upon Sale with the County Recorder's Office. Upon expiration of the Notice to Quit, U.S. Financial filed a post-foreclosure unlawful detainer action under *CCP* § 1161a against Michael McLitus, the former owner and occupant of the property. McLitus argued U.S. Financial had failed to perfect title to the property prior to serving the Notice to Quit and thus had failed to meet the prerequisites of bringing an unlawful detainer action under *CCP* § 1161a. The Trial Court entered judgment in favor of U.S. Financial stating that it had perfected the sale and title upon recording the Trustee's Deed with the County Recorder. McLitus appealed.

The Appellate Division of the Superior Court found that although U.S. Financial perfected the sale it had **failed to timely perfect title** prior to serving the Notice to Quit. The Appellate Division explained that perfecting the sale and title are two separate and distinct requirements and in order for a purchaser to avail itself to the rights and privileges of summary unlawful detainer proceedings the sale and title must first be

duly perfected.

The Appellate Court in *Dr. Leevil, LLC v. Westlake Health Care Center*, (2017) 2017 Cal. App. LEXIS 192, did not agree with the Appellate Division's interpretation of the requirements of *Code of Civil Procedure* § 1161a and distinguished the ruling of the *McLitus* Court. Under a similar post-foreclosure fact pattern the Appellate Court in *Westlake* clarified that "[t]he statute [*California Code of Civil Procedure* § 1161a] does not require that title be perfected (i.e., that the trustee's deed be recorded) before service of the three-day notice. It requires that title be perfected before a tenant 'may be removed' from the property." *Westlake* at \*7. The Appellate Court further explained that adding the requirement that title be perfected prior to service of the Notice to Quit would impose an extra obligation that *Code of Civil Procedure* § 1161a does not demand, which the courts are not permitted to do.

Although the Court of Appeals' ruling in *Westlake* can and should be cited to attempt to distinguish the ruling by the Appellate Division of the Superior Court in *McLitus*, purchasers at foreclosure sales would be well advised to take immediate steps to perfect the sale and title after a trustee's sale. If bringing an eviction action on other grounds, speak to an attorney to ensure all prerequisites are met prior to serving an eviction notice.



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