

## Notice of Default Does Not “Disturb Possession”

An action to quiet title in real property can be governed by various statutes of limitation, depending on what theory underlies the claim. Possibilities include the five-year limitations period for adverse possession, the four-year period for the cancellation of an instrument, or the three-year period for claims based on fraud or mistake.

But sometimes the key issue is not WHAT statute of limitations period applies, but WHEN it begins to run.

In a recent opinion published by the California Court of Appeal (Fifth District, in Fresno), [Salazar v. Thomas](#), the court addressed an issue of “first impression” — whether notices of default under a forged, and therefore void, deed of trust disturbed the owners’ possession sufficiently to start the statute of limitations running on their claim to quiet title.

The court’s answer: No.

### **The facts**

Jaime and Alisia Salazar purchased commercial real property in Bakersfield in 1992. Since buying the property they have had a store, restaurant, and other businesses there, some of which were operated by their children. The Salazars spoke and understood very little English.

In 2005, a deed of trust was recorded on the property, securing a promissory note in the amount of \$350,000. The Salazars’ names on the deed of trust and note were forged, most likely by one of their adult sons.

The lenders/beneficiaries on the note were a group of trust deed investors. In March 2005 the lenders served a notice of default by mail to the Salazars. The Salazars’ oldest daughter, who spoke English, opened their mail and saw the notice of default. She questioned her brothers about the notice of default, and became suspicious of one of them, but at his request she did not tell her parents about the notice of default.

After receiving additional notices of default, the Salazars’ daughter informed Mr. Salazar, and then reached out to the loan servicer, PLM Lender Services. The daughter told PLM that her parents had not signed the deed of trust, and that

someone had forged their signatures. The servicer responded, “Well that is interesting,” and then ended the conversation. Even though the deed of trust was forged, Mr. Salazar began making payments out of fear of losing the property.

After finally consulting with an attorney the Salazars sued to quiet title in their property. They filed their lawsuit in January 2012.

### **The trial court rules for the lenders**

The lenders filed a motion for summary judgment based in part on the statute of limitations, arguing that their first notice of default in March 2005 was sufficient to disturb the Salazars’ possession and start the running of the limitations period.

The trial court agreed, and granted summary judgment.

### **The court of appeal reverses**

The court of appeal reversed, holding that the notice of default did not disturb the Salazars’ possession, and therefore did not trigger the statute of limitations on their claim for quiet title.

The court started by observing the general rule that the statute of limitations for a quiet title action does not run against one in possession of the property. But, the court noted, this rule is not absolute. The statute might begin running if the plaintiff’s possession of the property is “disturbed.” Merely having notice of an adverse claim or cloud on title is generally not enough to disturb possession, until the hostile claim is asserted in some manner to jeopardize the owner’s superior title.

Turning to the facts at hand, the court quickly dismissed the lenders’ first argument that the Salazars were not in possession of the property in the first place due to the business use of the property by their children and third party tenants. The court confirmed that the Salazars remained in possession of the property “through their own occupancy or the occupancy of their tenants.”

As to the notices of default, the court held that they merely constituted the “first statutory step” in the nonjudicial foreclosure process. The notice reflects a demand for payment on a defaulted secured debt; it informs the property owner of the amount of the default and states that the property may be sold. But importantly, the owner generally does not lose rights of possession *until the trustee’s deed issues following the trustee’s sale.*

The court concluded that the notices of default may have, at most, informed the Salazars of a potential cloud on their title, but that was not the same as disputing possession. “Rather, the notices of default presupposed that plaintiffs were the rightful owners of the [property] and their ownership interest gave them an incentive to pay the amount of the indebtedness that was in default.” The court also confirmed that “disturbing” possession must be something impacting the *legal right of possession*, and did not require an inquiry into the “subjective impact” of the notices of default on the Salazars.

### **Lesson**

The easy lesson is: Lenders relying on a deed of trust that they have reason to believe was forged do so at their own peril. Most courts will not be impressed.

The more technical lesson is: The statute of limitations on a quiet title action will NOT begin running by the simple issuance of a notice of default. Something more than a notice of default is required (such as a trustee’s deed at the end of the nonjudicial foreclosure process) to disturb an owner’s possession of property.

[\[View source.\]](#)