

Foreclosure Refresher: The Updated Basics

Presentation for:

Mortgage Lending Institute

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Focus of Presentation

- Non-Judicial Foreclosures
- Commercial Properties
- Presentation does not address foreclosure of property used as the debtor's residence.
 - Texas Property Code § 51.002(d) (non-waivable notice giving debtor at least twenty (20) days to cure the default before notice of sale can be given).
 - Fair Debt Collection Practices Act (15 U.S.C. § 1692, et. seq.)
 - Texas Debt Collection Act (Texas Finance Code § 392.001, et. seq.)
 - Consumer Financial Protection Bureau (loss mitigation requirements)
 - Newly added Tex. Bus. & Com. Code Chapter 22



Alternatives to Non-Judicial Foreclosure for Conveying Title

- Deed in lieu of foreclosure
 - Voluntary agreement by mortgagor to convey title to mortgagee, and voluntary agreement by mortgagee to accept title in partial satisfaction of the debt.
 - Texas Property Code § 51.006: Mortgagee may void deed conveying property within four (4) years of execution if debtor fails to disclose lien or encumbrance on the property before executing the deed and the mortgagee had no personal knowledge of the undisclosed lien or encumbrance on the property.
- Judicial foreclosure
 - Action to establish the debt and for judgment for foreclosure and order of sale
 - See Rules 309, 310, 646a and 647 of the Texas Rules of Civil Procedure and Texas Civil Practice & Remedies Code § 34.041

Non-Judicial Foreclosure What?

- Public auction at which property is sold to the highest bidder
- All aspects of sale including location, time, and notices must comply with the Texas Property Code Chapter 51 and terms of the deed of trust
- No court order or judicial intervention is required.

Non-Judicial Foreclosure Where?

- At the area of the county courthouse designated by the commissioner's court. Tex. Prop. Code § 51.002(a).
- The county commissioners may designate an alternative area within a reasonable proximity of the courthouse in a location as accessible to the public as the courthouse. Tex. Prop. Code § 51.002(h).
- If property is located in more than one county, the sale can occur in any county in which the property is located. Tex. Prop. Code § 51.002(a).

Non-Judicial Foreclosure When?

- Between 10:00 a.m. and 4:00 p.m. on the first Tuesday of the month unless the first Tuesday is January 1 or July 4 in which case the sale is conducted on the first Wednesday of the month between 10:00 a.m. and 4:00 p.m. Tex. Prop. Code § 51.002(a) & (a-1).
- Sale must begin at either the time stated in the notice or no later than three (3) hours after that time. Tex. Prop. Code § 51.002(c).
- Sale must be completed within four years of earlier of stated maturity of debt or acceleration of maturity. If not, the lien and the power of sale to enforce lien become void. Tex. Civ. Prac. & Rem. Code § 16.035(d).

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Title search: Foreclosure Refresher: The Updated Basics

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