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Successfully Navigating the Texas Foreclosure Statute of Limitations Minefield

Jason L. Sanders
jsanders@lockelord.com
(214) 740-8437 (W) | (214) 499-7709 (C)
Marc D. Cabrera
mcabrera@lockelord.com
(214) 740-8289 (W) | (214) 734-1494 (C)

The University of Texas School of Law
49th Annual William W. Gibson, Jr. Mortgage Lending Institute

September 17-18, 2015, AT&T Conference Center, Austin, TX | November 5-6, 2015, Cityplace Conference Center, Dallas, TX

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- Potential Mitigating Factors

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Foreclosure Crisis

- The general consensus is that subprime lending and securitization of mortgages were significant contributors to the foreclosure crisis of the mid-2000s.
  - Arsen Sarapinian, *Fighting Foreclosure: Using Contract Law to Enforce the Home Affordable Modification Program (HAMP)*, 64 HASTINGS L.J. 905, 910-11 (2013)
  - Kathleen C. Engel & Patricia A. McCoy, *The Subprime Virus: Reckless Credit, Regulatory Failure and Next Steps* 15-19 (2011) (discussing how subprime lending, securitization, and weak government oversight led to the mortgage crisis)
  - U.S. Dept. of Housing and Urban Development Office of Policy Development and Research, *Report to Congress on the Root Causes of the Foreclosure Crisis* (Jan. 2010)
  - Raymond C. Niles, *Eighty Years in the Making: How Housing Subsidies Caused the Financial Meltdown*, 6 J.L. ECON. & POL'Y 165 (2010) (housing subsidies significantly contributed to the mortgage crisis)
  - William Poole, *Causes and Consequences of the Financial Crisis of 2007-2009*, 33 HARV. J.L. & PUB. POL'Y 421, 425 (2010) (government encouraged the growth of the subprime mortgage market by attempting to increase home ownership)
  - Kurt Eggert, *The Great Collapse: How Securitization Caused the Subprime Meltdown*, 41 CONN. L. REV. 1276 (2009) (securitization was a major cause of the subprime meltdown)
  - Todd J. Zywicki & Joseph D. Adamson, *The Law and Economics of Subprime Lending*, 80 U. COLO. L. REV. 1 (2009) (subprime lending was a contributor to the mortgage crisis).

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Foreclosure Crisis: Subprime Lending

- U.S. Dept. of Housing and Urban Development Office of Policy Development and Research, *Report to Congress on the Root Causes of the Foreclosure Crisis* (Jan. 2010):
  - Between late 2006 and mid-2007, the share of loans that were seriously delinquent or beginning the foreclosure process reached their highest levels since the late 1970s. By mid-2008, these rates had more than doubled previous record highs.
  - Most of the initial increase in foreclosures was driven by subprime loans, both due to the fact that these inherently risky loans had come to account for a much larger share of the mortgage market in recent years and because the foreclosure rates among these loans were rising rapidly.
    - Subprime loans generally refer to "'loans to borrowers who have significantly higher credit risks' than prime borrowers." *Pension Ben. Guar. Corp. ex rel. St. Vincent Catholic Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 715 (2d Cir. 2013). Therefore, subprime loans "tend to come with a higher degree of credit and default risk than other mortgages . . . ." *Id.*

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Foreclosure Crisis: Subprime Lending

- Alt-A loans also began experiencing higher delinquency and foreclosure rates. In both the subprime and Alt-A market segments, foreclosures have grown most rapidly among adjustable-rate loans.
  - Alt-A refers to loans made to borrowers that require little or no documentation of income or assets and entail other features that may expose borrowers to large increases in loan payments over time.
- The level of foreclosures among prime fixed-rate loans also rose as the economy deteriorated in 2008 and into 2009, further exacerbating the crisis.

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Foreclosure Crisis: Securitization

- Another cause of the foreclosure crisis has been attributed to the emergence of the "securitization" of "subprime and other non-prime residential loans, along with the resecuritization of the resulting mortgage-backed securities." Kurt Eggert, *The Great Collapse: How Securitization Caused the Subprime Meltdown*, 41 CONN. L. REV. 1257 (2009).
  - Securitization "encouraged market participants to push risk to the very edge of what the applicable market standards would tolerate, to make the largest, riskiest loans that could be sold on Wall Street, to bundle them using the fewest credit enhancements rating agencies would permit, and then to repeat the securitization process with many of the lower-rated mortgage-backed securities that resulted." *Id.*
  - Through securitization, "subprime lenders could make loans and sell them on Wall Street, where investment houses marketed securities backed by pools of subprime loans . . . [allowing] subprime lenders [to] quickly unload much of the risk of the subprime loans as well as recoup the money lent and relend it to new subprime borrowers." *Id.* at 1259.

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