Shackelford

How to Foreclose on Personal Property in Texas

Article 9 of the UCC

- Provides statutory framework
- Remedies
- Safe Harbors
- Key concepts
  - Notice
  - Commercially Reasonable
  - Consumer v. Non-consumer transactions

Default

- Chapter 6 remedies arise upon default
- Default is not defined.
- Look to:
  - Agreement
  - Interpretation under non-Article 9 law

Notice of Default

- Texas law requires a secured party to give notice of default
- Note must be presented before the right to accelerate is exercised
- Note holder must notify maker of both his intent to accelerate and of acceleration

Remedies upon default § 9.601

- Reduce claim to judgment
- Foreclose
- Enforce by judicial procedure
- Proceed as to documents

Remedies are cumulative

- § 9.601(c) – rights under § § 9.601(a) & (b) may be exercised simultaneously
- If the security agreement covers both real property or fixtures and personal property, secured party may proceed:
  - Under UCC for personal property and under deed of trust for real property; or
  - Under deed of trust for both personal and real property

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