

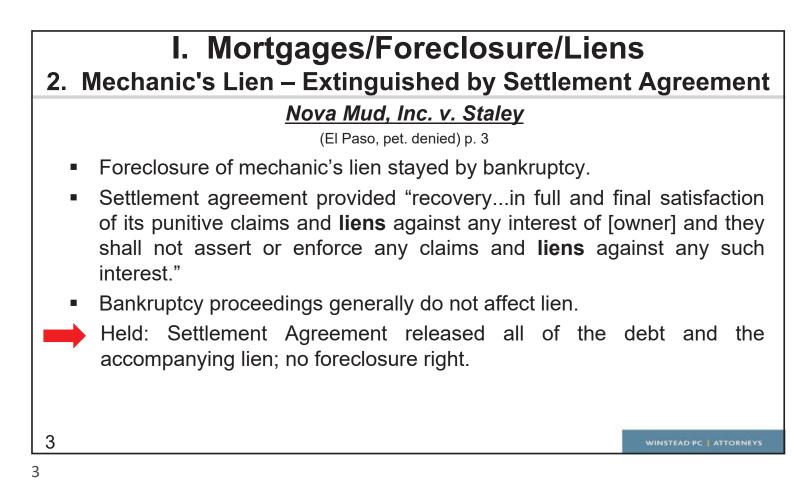
1. Mortgages/Foreclosure/Liens 1. Foreclosure – Strict Requirement Not Required

Casalicchio v. BOKF, N.A.

(5th Cir.) p. 2

- Deed of trust required notice of breach and 30 day cure.
- Cure period not strictly observed.
- 5th Circuit: minor defect did not void the foreclosure.
- 5th Circuit: requirements of strict compliance not absolute.
- Tex. Sup. Ct. (<u>Hemyari</u>): obvious mistake harmless and defect so minor that it would not void the foreclosure sale.
 - Failure to comply with a deed of trust provision, which causes no harm or prejudice to the debtor, will not void the foreclosure sale.





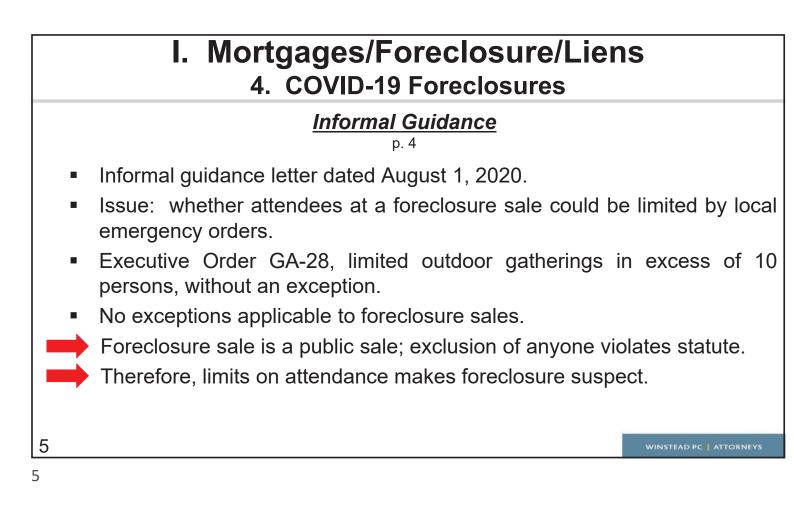
I. Mortgages/Foreclosure/Liens 3. Statute of Limitations

Perry v. CAM XV Trust

(Houston [1st Dist.] no pet.) p. 3

- 9-3-10 default notice: "the mortgage payments will be accelerated...and foreclosure proceedings will be initiated."
- 10-3-13 was end of the cure period.
- 10-3-10 notice: "elected to accelerate the maturity."
- 10-20-10 notice: "elected to accelerate the maturity of the debt."
- 10-20-14 foreclosure suit filed.
- Perry claimed 10-3-14 was the bar date, based on 10-3-10 notice
- Deed of trust read: "Lender...may require immediate payment...without further demand and may invoke power of sale...."
- Held: notices (intent and actual acceleration) not waived by deed of trust provision.
- Comment: was 2nd (10-3-10) notice clear it was not an actual acceleration?

TIP: Initial notice should be clear and unequivocal that acceleration will be done in a subsequent letter.



Debtor/Creditor/Guaranties/Indemnities Н. 1. Description of Collateral

Cheniere Energy, Inc. v. Parallax Enterprises LLC

(Houston [14th Dist.] pet. dism'd) p. 4

- Issue: whether a generic description of collateral is valid under UCC.
- Cheniere and Parallax negotiated a potential agreement to develop LNG facilities.
- Parallax began development with Cheniere funding, evidenced by Note & Security Agreement.
- Cheniere stopped funding; sought foreclosure of security interest in Parallax subsidiary, Live Oak LNG LLC.
- Held: security interest in subsidiary not adequately described by generic phrase "All other tangible and intangible property and assets of [Parallax]."

UCC § 9.108(c): description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or words of similar import does not reasonably identify the collateral for security agreement.

Cont'd

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