

PRESENTED AT

49th Annual William W. Gibson, Jr. Mortgage Lending Institute

September 17-18, 2015

Austin, Texas

November 5-6, 2015

Dallas, Texas

**Foreclosure Update –
The Courts Have Spoken and You
Need to Hear This!**

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Buckle up and prepare for a fast and furious ride through the dynamic realm of foreclosure

I. Introduction

As a frequent speaker and writer on Texas foreclosures, it is widely perceived that the process in Texas is unceremonious and well, simple. Taken directly from RealtyTrac, a leading real estate information company specializing in foreclosed and defaulted properties, “Compared to many states, it is extremely easy to foreclose on property in Texas and the process moves rather quickly. The entire foreclosure process can take about three months.”¹ As covered below, while the non-judicial foreclosure process is indeed simple compared to some other states, the overall process itself is far from it and requires astute navigation by counsel to avoid the pitfalls created by both consumers and banks, alike.

II. Texas is a Non-Judicial Foreclosure State: Easy as Pie, Right?

It is indeed fact that Texas is a non-judicial foreclosure state meaning no court intervention is required to foreclose under the power of sale in the deed of trust...unless the deed of trust is created under Texas Constitution Article XVI, Section 50(a)(6), also known as a home equity loan...or a reverse mortgage created under Texas Constitution Article XVI, Section 50(a)(7)....but only if the defaulting event under the reverse mortgage is other than a ground stated by (6)(A) or (B) of Texas Constitution Article XVI, Section 50(k)....and, of course, as long as the sale is conducted not later than four years after the date the cause of action accrues (typically, acceleration or maturity of loan) in compliance with TEX. CIV. PRAC. & REM.

¹ <http://www.realtytrac.com/real-estate-guides/foreclosure-laws/texas-foreclosure-laws/>

§ 16.035(b).

Those exceptions aside, the non-judicial foreclosure process in Texas is relatively simple. It starts with the notice of default or breach letter, typically sent by the mortgage servicer. This notice must be sent certified mail and advise the borrower of the specific action required to cure the default within a specified timeframe, usually 30 days. Failure to cure the default by this date may result in acceleration of the debt. It is worth noting Texas Property Code § 51.002(d) requires only 20 days to cure the default, while a vast majority of residential deeds of trust provide 30 days. Effective September 1, 2011, Texas Property Code § 51.002(i) required all notices of default to include specific boldfaced or underlined verbiage notifying recipients or their spouses who are active in the United States military or the National Guard of any U.S. State of their ability to assert their rights under the Servicemember's Civil Relief Act.

Upon expiration of the notice of default, the next action is acceleration. The acceleration notice gives the borrower notification the maturity of the debt has been accelerated. A copy of the notice of trustee's sale is often included simultaneously with the acceleration letter, providing the date, time and place of the foreclosure sale as required by Texas Property Code § 51.002(a). The notice of trustee's sale must be sent by certified mail at 21 days prior to the scheduled sale date. In addition to mailing by certified mail, the notice of trustee's sale must also be posted at the courthouse door and filed with the county clerk of the county in which the real property is located.² The notice of sale must include the name and address of the trustee or substitute trustee who will be conducting the actual foreclosure sale.³ In the event a substitute trustee is appointed to conduct the sale, the appointment should be recorded prior to the

² Texas Property Code §§ 51.002(b)(1)-(3)

³ Texas Property Code § 51.0075(e)

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First appeared as part of the conference materials for the
49th Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Foreclosure Update—The Courts Have Spoken and You Need to Hear This!"