

**55th Annual William W. Gibson, Jr.
Mortgage Lending and Servicing Institute**

Residential Mortgage Litigation Update 2021

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Two Key Developments

- The Texas Supreme Court has issued two significant opinions in the last year related to lender's subrogation rights vis-à-vis the prior lienholder
 - *Freddie Mac v. Zepeda*
 - *PNC Mortgage v. Howard*
- More state courts are following the federal courts' lead in finding acceleration is abandoned as a matter of law in statute-of-limitations cases

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Subrogation



- ***If the shoe fits . . .***
- The doctrine of equitable subrogation allows a lender who discharges a valid lien on the property of another to step into the prior lienholder's shoes and assume that lienholder's security interest in the property, even though the lender cannot foreclose on its own lien.

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Subrogation

Federal Home Loan Mortgage Corporation v. Zepeda, 601 S.W.3d 763 (Tex. 2020)



- Facts
 - Zepeda refinanced her debt with a home equity loan, which paid the balance of Zepeda's preexisting purchase-money loan.
 - Zepeda sent two letters (1) providing notice that the home-equity loan allegedly did not comply with the Texas Constitution at the time of origination due to the lender failing to execute a fair-market value acknowledgment and (2) requesting a cure within 60 days.

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Subrogation

Federal Home Loan Mortgage Corporation v. Zepeda, 601 S.W.3d 763 (Tex. 2020)

- The Lawsuit
 - Zepeda filed a lawsuit seeking to quiet title premised on the claim that the lien securing her home-equity loan was void due to the origination defect and the lender's failure to cure.
 - Freddie Mac argued it was subrogated to the previous lender's rights under the purchase-money lien under equitable subrogation because its predecessor paid off the balance of that loan.
 - District court granted Zepeda summary judgment, determining that (1) the lien was void, and (2) Freddie Mac was not entitled to subrogation because it was negligent in failing to cure the constitutional defect.

Subrogation

Federal Home Loan Mortgage Corporation v. Zepeda, 601 S.W.3d 763 (Tex. 2020)

- The Appeal and Certification
 - Freddie Mac appealed to the Fifth Circuit
 - The Fifth Circuit certified the following question to the Texas Supreme Court:
 - Is a lender entitled to subrogation, where it failed to correct a curable constitutional defect in the loan documents under § 50 of the Texas Constitution?
 - Texas Supreme Court Answer:
 - Yes

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