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# Texas Case Law Update

## Mortgage Lending and Servicing Institute

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# I. MORTGAGES/FORECLOSURES/LIENS

## 1. Reverse Mortgage – Rule 736 Authorized Assignee

Kapur v. U.S. Bank N.A. [Houston [14th Dist.], pet. denied], p. 3

- U.S. Bank (Trustee, 2017 Trust) obtained Rule 736 order for foreclosure.
- Then deed of trust assigned to U.S. Bank (Trustee, 2021 Trust).
- 2021 Trust held foreclosure.
- Issue: Was foreclosure valid by assignee?
- Held:
  - Rule 736 requires petitioner to be authorized party to foreclose.
  - After Rule 736 order "a person may proceed with foreclosure."
  - Rule 736 does not prohibit post-order assignment.



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# I. MORTGAGES/FORECLOSURES/LIENS

## 1. Reverse Mortgage – Rule 736 Authorized Assignee

Kapur v. U.S. Bank N.A. [Houston [14th Dist.], pet. denied], p. 3

- Issue: Did deed of trust language limit rights in assignee?
- Held:
  - Deed of trust allowed "to extent allowed by court order."
  - Court order stated "successors and assigns."







# I. MORTGAGES/FORECLOSURES/LIENS

## 2. Mortgage – Signor Capacity

Reverse Mortgage Solutions, Inc. v. Held [San Antonio, no pet.], p. 4

- Widow Mona was Trustee of two testamentary trusts which owned home.
- Home equity loan obtained in name of "Mona P. Reilly" (not as Trustee).
- After death, home destroyed by fire; suit by heirs against mortgagee over insurance proceeds.
- Trial court ruled invalid deed of trust lien.
- Tex. Const. art. VXI § 50(k) requires all **owners** to sign deed of trust.
- Issue: Was Mona's signature sufficient?
- Held: Yes, based on:
  (1) granting clause covered "all property"; and
  (2) covenant of seisin in deed of trust.

# I. MORTGAGES/FORECLOSURES/LIENS
## 3. Abandonment of Acceleration

U.S. Bank Trust N.A. v. Walden [5th Cir. 2024], p. 5

- Intermediate mortgagee sent acceleration notice on January 30, 2018 and obtained foreclosure order.
- Then assignment to U.S. Bank, which sent default notice on August 13, 2021 containing:

  "… any such demands or notice of acceleration have been withdrawn, cancelled, and abandoned."
- U.S. Bank sent notice of foreclosure sale in November 2021; filed declaratory action.
- Issue: Had right to foreclose been abandoned by default notice?
- Held: Yes, letter was clear abandonment of acceleration. Distinguished:

  Boren: Intent to abandon acceleration was clear.

  Lyons: Never a waiver of acceleration.







# I. MORTGAGES/FORECLOSURES/LIENS
## 4. Foreclosure – Motion to Dismiss

Flores v. Bank of Am., N.A. [El Paso, no pet.], p. 6

- Flores home equity loan went into default.
- Flores alleged constitutional defects in loan: 1) no notice under § 50(g); 2) false billing statements; 3) wrongful amounts demanded for escrow; 4) wrongful credit agency report; 5) denial of mortgage adjustment based on gender.
- Bank moved to dismiss under T.R.C.P. Rule 91a.
- Issue: Was dismissal motion valid?
- Held:
  - Rule 91a motion must be based only on pleadings and facts.
  - Judicial Notice Doctrine under Rule 59 not proper for Rule 91a dismissal.
  - Rule 91a preempts Rule 59.
  - Flores misciting to constitutional provision gave way to fair notice standard in pleadings.

# Title search: Texas Case Law Update

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