

# Texas Case Law Update

## Mortgage Lending and Servicing Institute

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## I. Mortgages/Foreclosure/Liens

### 1. Limitations Tolloed by Bankruptcy and Abandonment of Acceleration

Citibank, NA v. Pechua, Inc., [Houston, no pet.] p. 2

- Home loan foreclosure
- S/L challenge
- 3 intervening bankruptcies totaling 5 years
- Issue: Did auto stay toll statute of limitations? [Case of FIRST IMPRESSION]
  - ➔ Tx.S.Ct. held BK tolled running of limitations
- Issue: Was prior acceleration abandoned?
  - 2015 (never addressed) & 2016 accelerations
  - ➔ Tx.S.Ct. held language was clear and unequivocal unilateral abandonment
    - 4 critical elements: 1) allow cure by payment of delinquent installments; 2) statement of future acceleration without payment; 3) acceleration in future; 4) forward looking statements negating prior accelerations.

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## 2. Non-Receipt of Notice

Douglas v. Wells Fargo Bank, N.A. [5<sup>th</sup> Cir.] p. 3

- Home loan foreclosure
- Challenge for failure to receive required notices
- Certified mail returned “unclaimed” and “unable to forward”
  - ➔ Held notice requirement is only constructive notice; therefore, lender proof was sufficient:
    - 1) attorney declaration of mailing notice
    - 2) copy of notice letters
    - 3) scan of envelopes with name and address

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## 3. HUD Regulations

Ferrell v. Union Home Mortg. Corp. [S.D. Tex.] p. 4

- Home loan acceleration and foreclosure
- Challenged failure to receive notice and follow HUD regulations
  - ➔ Held Tex. Prop. Code § 51.002(e) only requires servicing (not receipt) of notice
- HUD regulations require, as condition to foreclosure a face to face meeting
- Debtor would not respond to telephone call requests for such meeting
  - ➔ Held, face to face meeting not required when debtor won't cooperate.
    - Reasonable efforts satisfied with 1 certified letter and 1 trip to property to see debtor.

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## 4. Foreclosing Lender Identity

PNC Mortg. v. Howard [Dallas, pet. granted] p. 4

- Home loan foreclosure
  - Complex facts based on loan assignments and mergers pre-BK
  - Default and intent to accelerate letters by Nat'l City Bk., as loan servicer (1-2009)
  - Acceleration letter by Nat'l City Bk. attorney (6-2009)
  - Appointment of Substitute Trustee by Bank of Indiana (6-2009)
  - Acceleration letter by Bank of Indiana, as mortgagee, and PNC, as loan servicer (3-2010)
  - Bank of Indiana had assigned loan prior to above actions
-  Held: Only the current mortgagee has right to appoint substitute trustee and initiate foreclosure
-  TIP: Get formalities correct.

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# I. Mortgages/Foreclosure/Liens

## 5. Statute of Limitations: 4 or 6 Years

PNC Mortg. v. Howard [Dallas, pet. granted] p. 5

- Same as prior case
  - Debtor alleged 4 year S/L under Tex. Civ. Prac. & Rem. Code § 16.004
  - Creditor alleged 6 year S/L under UCC 3.118(a)
-  Held: 4 year S/L applies to foreclosure action, but debt continues under 6 year S/L

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