

Texas Foreclosure Timeline

Texas has a rather quick foreclosure process for non-home equity loans. (Home equity loans must be foreclosed judicially.) The process is conducted by the trustee designated by the lender in the deed of trust (the mortgage instrument) without any court involvement.

The process may take as little as 41 days, depending on the timing between mailing the required notices and the actual foreclosure date. All foreclosure sales in Texas occur on the first Tuesday of the month between 10 a.m. and 4 p.m. The commissioner's court designates the location. Generally, it is conducted at the courthouse, but any location in reasonable proximity to the courthouse and accessible to the public is acceptable.

First Required Notice—Notice to Cure

Once a default occurs, the lender may declare the full amount of the note due and payable under the acceleration clause in the promissory note signed by the borrower. Without this clause, lenders could not foreclose on the unpaid balance of the note but only on the missed payment(s).

For residential loans in Texas, however, lenders may not accelerate the note immediately upon a default. Instead, they must give the homeowner 20 days' written notice to cure the amount in default. The notice must be sent by certified mail, return receipt requested. This right cannot be waived. The notice must be sent to the debtor's last known address.

Receipt of the notice alerts the homeowner that the lender intends to accelerate the note and foreclose (sell the property) if the default is not cured within the 20 days.

Second Required Notice—Notice of Acceleration

If the amount in default is not cured within the 20 days, the lender sends the debtor a notice of acceleration and initiates the foreclosure process by requesting that the trustee sell the property. Chapter 51 of the Texas Property Code delineates the process. The trustee must strictly comply with Chapter 51 and any other requirements set forth both in the deed of trust and the promissory note to ensure a valid foreclosure.

The trustee begins by sending a third notice to the debtor of the pending foreclosure sale, posting an identical notice at the courthouse and filing one in the deed records. The notice alerts the debtor and all who read it that the property will be sold on the first Tuesday of the month occurring 21 days after the notice was forwarded,

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posted and filed. It specifies the earliest time the sale will begin. The notice must be sent to the debtor's last known address.

The debtor may stop the foreclosure process prior to the sale by tendering the full amount due under the note and any additional interest, late fees and trustee's fee due at the time.

Foreclosure Sale

The trustee begins the sale by reading a copy of the posted notice and stating the terms of the sale. Generally, the trustee requires cash-only sales. If a bidder requests time to return with the cash, the trustee must temporarily adjourn the sale to accommodate the request. All parties present may bid, including the lender, debtor and even the trustee. However, the trustee may not bid on his or her behalf or on behalf of a company or corporation owned by the trustee.

In preparation for the foreclosure sale, the lender gives the trustee a minimum bid price for the property. If

no higher bid is offered, the property is sold to the lender at that price. Lenders may pursue the borrower for collection of the difference between the foreclosure sales price and the balance due on the loan. If the borrower files for personal bankruptcy protection, the foreclosure action is stopped until the bankruptcy court determines whether the borrower has the ability to repay/restructure the mortgage.

Post-Foreclosure

Following the sale, borrowers have no right to redeem (repurchase) the property. Redemptive rights apply only after tax foreclosure sales in Texas.

If the borrower continues to occupy the property, the lender (or new property owner) may file an eviction action. The county constable's office serves the eviction notice, which includes a court date. Following a court hearing and ruling by a judge, the defendant has five days to vacate or appeal the ruling. After the five days, the constable's office posts a notice on the door giving the borrower a minimum of 24 hours to move out. Otherwise, the constable will remove the occupant and place all his or her personal possessions outdoors.

With the rate of foreclosures increasing, the Tarrant County Constable's offices in Fort Worth are conducting as many evictions stemming from foreclosures as from delinquent rents.



People gather for the Tarrant County foreclosure sale held on August 7, 2007, at the county courthouse in Fort Worth.

Photo: Roy Lopez