

Foreclosure Prevention (in light of COVID-19)

Legal Aid of NorthWest Texas

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03/27/20

Last updated

Foreclosures in Texas

- Non-judicial
- Judicial
- Rule 736 (expedited)
- Contract for Deed

Non-Judicial Foreclosure

- Who does it?
 - Purchase Lenders
- Process?
 - Three distinct notices must be provided
 - (1) demand for payment with 20 days to cure;
 - (2) notice of intent to accelerate; and
 - (3) notice that the debt has been accelerated (given after the 20 days to cure).

Notice of Sale

- Notice of sale must be given at least 21 days before the sale date
- Sales are conducted on the first Tuesday of the month at a place designated by the county commissioners (usually the courthouse)

Non-Judicial Foreclosure Defenses

- Wrongful foreclosure – violation of a federal and state statute or regulation concerning the foreclosure process
- Breach of Contract

Judicial Foreclosure

- Generally Who does it?
 1. Taxing Authorities (property taxes)
 2. Judgement Liens
 3. Sometimes filed by lender when borrower dies intestate (without a will)

Judicial Foreclosure Process

- Notice of default has to be sent
- A lawsuit is filed in District Court
- Every potential party has to be served process

Judicial Foreclosure Common Defenses

- Taxes were paid
- Tax Deferral for homeowner over 65 or Disabled
- Property owner was never served process

Expedited Foreclosure under Rule 736

Who does it?

- HOAs
- Reverse Mortgages
- Home Equity Loans
- Home Equity Line of Credit
- Property Tax Lenders

Expedited Foreclosure under Rule 736 Process

- Filed in District Court in county where property located
- When filed?
 - An application may not be filed until the opportunity to cure has expired under applicable law and the loan agreement, contract, or lien sought to be foreclosed

Tex. R. Civ. Pro. 736

Rule 736 Response

- Response
 - Due the first Monday after the expiration of **38 days** from the date the citation was placed in the custody of the USPS in accordance with the clerk's standard mailing procedures, as stated in citation
 - Respondent must affirmatively plead in the response:
 1. why the respondent believes a respondent did not sign a loan agreement document, if applicable, that is specifically identified by the respondent;
 2. why the respondent is not obligated for payment of the lien;
 3. why the number of months of alleged default or the reinstatement or pay off amounts are materially incorrect;
 4. why any document attached to the application is not a true and correct copy of the original; or
 5. proof of payment.

Tex. R. Civ. Pro.

Rule 736 (cont'd.)

- Response may NOT state an independent claim for relief
- Discovery not permitted
- If response not filed, default order is entered without a hearing

Rule 736 Defense

- Breach of Contract – Filed as a separate lawsuit. The Court must dismiss the 736 proceeding.
 - i.e. wrongful foreclosure

Contract for Deed

- Owner financed
- Often disguised as rent with “option to purchase” or “rent to own”
- Chapter 5 Subchapter D Tex. Prop. Code Section 5.061 *et seq.*
- Strict requirements so seller always fails to comply with the law
- Seller usually tries to evict buyer as a tenant
- Talk to a lawyer

What is Loss Mitigation?

- **Loss mitigation** is a process used by mortgage lenders to work with buyers who are delinquent on their home loans

Loss Mitigation Options

- Loan Modification
- Forbearance
- Short Sale
- Deed in Lieu

Loan Modification

- Can include moving missed payments to the end of the note
- May lower interest rate
- May lower payment amount
- Must be experiencing a hardship*

Forbearance

- An agreement between the lender and borrower
- Lender agrees to put the brakes on foreclosure
- Gives the borrower a chance to catch up on missed payments
- If you accept a forbearance must understand that the payments are still due
- Try to make a budget and plan for how you are going to pay missed payments

Short Sale

- Requires borrower to put house on the market
- Allows borrower to sell property for less than amount owed
- Lender agrees to not go after borrower for deficiency

Deed in Lieu

- Transfer of title to property back to lender
- Includes agreement to not pursue borrower for deficiency

How do I request loss mitigation?

- Call the lender or mortgage servicer
- Request a loss mitigation application
- Trial payments

Key components of loss mitigation applications

- Hardship letter or affidavit
- Bank statements
- Recent tax returns
- Recent pay stubs
- Award letter for any social security benefits
- IRS form 4506-T
- Application signed by all borrowers
- If relative/friend is helping you financially, will require supporting documentation (likely all items listed above)

Loss Mitigation (contd.)

- Must request loss mitigation early on
- It takes at least 30 days or more to process an application
- If any document or signature is missing, borrower will receive notice and must respond within time provided
- Maintain contact with lender or servicer
- It is a good idea for borrower to have separate homeowners insurance rather than “force placed” insurance

*** if your hardship is related to COVID-19 be prepared to have proof. That is a letter from your employer regarding furloughs, layoffs or if you tested positive have test results or medical records

My house was foreclosed, now what?

- Purchaser at auction (usually the lender) must follow state law and file eviction
- lender/servicer offers *cash for keys*
- The foreclosed on borrower signs agreement to turn over house in *broom swept* condition in exchange for cash which can be anywhere between \$1,500- \$3,000 or more

Federal Suspension of Foreclosures & Evictions

- Mortgagee Letter 2020-04
- Circular 20-26-8 (VA)
- USDA Single-Family Housing Guaranteed Loan Program (SFHGLP)
- USDA Single-Family Housing Direct (SFHD)
- Fannie Mae LL 2020-02
- Freddie Mac Announcement

Note: these are being updated regularly

FHA Moratorium

- **Mortgagee Letter 2020-04-** HUD's response to COVID-19 released on March 18, 2020
 - 60 day moratorium on foreclosures and evictions
 - Reverse Mortgages and traditional FHA backed loans
 - Applies to single family mortgages

Moratorium VA Loans

- **Circular 26-20-8**
- Released March 18, 2020
- 60 day moratorium on foreclosures
- Applies to VA loans
- Uses language “VA *strongly encourages* loan holders to establish a sixty-day moratorium beginning March 18, 2020”

USDA Guaranteed Home Loan Foreclosures Suspended Temporarily

- Stakeholder announcement released March 20, 2020
- foreclosure and eviction moratorium for all USDA Single-Family Housing Guaranteed Loan Program (SFHGLP) loans for a period of 60 days, in connection with the Presidentially declared COVID-19 National Emergency
- deadlines of the first legal action and reasonable diligence timelines are extended by 60 days

USDA Single-Family Housing Direct (SFHD) Suspension of Foreclosure

- Stakeholder announcement released March 20, 2020
- Foreclosure and eviction moratorium for 60 days
- Includes rural development grant loans

Fannie Mae Lender Letter(LL- 2020-02)

- **LL -2020-02** released on March 18, 2020 (updated Mar.25.20)
- Forbearance eligibility (up to 12 months)
- the property securing the mortgage loan may be a principal residence, a second home, or an investment property
- Servicers must suspend all foreclosure sales for the next 60 days
- Suspension does not apply to properties that have been determined to be abandoned or vacant

Freddie Mac Announces Enhanced Relief for Borrowers Impacted by COVID-19

- Announcement released March 18, 2020
- suspension of foreclosure sales and evictions is effective immediately and applies until May 17, 2020
- Up to 12-month forbearance
- Waives assessments of penalties or late fees
- Suspends reporting of delinquency related to forbearance to credit bureaus
- Expands loss mitigation such as loan modifications for borrowers to afford their loan payments beyond forbearance
- Property may be owner occupied, a second home or an investment property

How do I know if my loan qualifies for suspension of foreclosure?

- You must know who the investor is
- Directly ask the servicer to review the closing documents
- Freddie Mac easy look up tool
<https://www3.freddie.mac.com/loanlookup/>
- Fannie Mae easy look up tool
<https://www.knowyouroptions.com/loanlookup#>
- look for an FHA case number on the mortgage document
- Call HUD's National Servicing Center at 877-622-8525
- VA guaranteed loans have specific language in documents and a closing fee is paid to the VA
- U.S. Department of Agriculture's Rural Home Service (RHS)
 - Borrowers with a mortgage directly extended by the RHS will be very familiar with the agency
 - BUT borrowers of privately serviced RHS-guaranteed loans often do not know the loan's status

Links to Foreclosure Moratoriums and Suspensions by the Major Mortgage Investors

- **FHA** — <https://www.hud.gov/sites/dfiles/OCHCO/documents/20-04hsgml.pdf>
- **VA** — https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_8.pdf
- **USDA Direct** (bottom of page 1) — https://www.rd.usda.gov/sites/default/files/USDA_SA_COVID19_SFHContinuity03202020.pdf
- **USDA Guaranteed** — https://www.rd.usda.gov/sites/default/files/USDA_RD_SA_Foreclosure_and_Eviction_Relief_COVID19_NationalEmergency.pdf
- **Fannie Mae** — <https://singlefamily.fanniemae.com/media/22261/display>
- **Freddie Mac** — <https://guide.freddiemac.com/app/guide/bulletin/2020-4>

Tips for Borrowers experiencing hardship

- Contact your lender right away
- Review your closing documents
- Request *loss mitigation* or *forbearance*
- Save all correspondence
- Consumer Financial Protection Bureau has resources online
 - https://www.consumerfinance.gov/about-us/blog/protect-yourself-financially-from-impact-of-coronavirus/?utm_source=Master+List&utm_campaign=adadbd2adc-COvid19&utm_medium=email&utm_term=0_f2aa20a326-adadbd2adc-53191529
- Contact a HUD-approved counselor
 - <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>

Contact

- Legal Aid of NorthWest Texas
 - Legal Aid Line: 1-888-529-5277
 - Foreclosure Hotline: 1-844-894-3975



Please email all question to:

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Questions will be accepted up to one hour following webinar and will be posted and link will be sent out.