

From Notice to Auction: Demystifying the Texas Foreclosure Fast Track

Julie Pettit

Founding Partner of The Pettit Law Firm

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CONSUMER PROTECTION

Foreclosure is a term that can strike fear into the hearts of homeowners, but understanding this process is crucial for anyone involved in the Texas real estate market. In essence, foreclosure is a legal procedure that allows a lender to recover the amount owed on a defaulted loan by taking ownership of and selling the mortgaged property.¹ In the Lone Star State, where homeownership is a cornerstone of the American Dream for many, grasping the nuances of foreclosure is more than just a legal necessity—it is a practical safeguard for your financial future.



The concept of foreclosure might seem daunting, but knowledge truly is power in this situation. Texas, home to over 30 million people,² has a unique foreclosure process shaped by state laws and regulations.³ A notable aspect of foreclosure in Texas is the relatively fast timeline, which can be a benefit or a challenge. For homeowners, this underscores the critical importance of acting quickly when facing financial hardship. For potential buyers, this may present opportunities in the real estate market that are not available in other states.

To see the supplementary infographic for this article, [click here](#).

The Foreclosure Process in Texas

When it comes to foreclosure, Texas allows for both judicial and non-judicial processes,⁴ with non-judicial foreclosures being far more common due to their speed and lower cost.⁵ In a non-judicial foreclosure, lenders can foreclose on a property without going through the court system, provided that the mortgage or deed of trust includes a power of sale clause.⁶ This is the most frequently used method in Texas.⁷ Judicial foreclosures, which involve the lender filing a lawsuit to obtain a court order to foreclose, are less common and typically used only when the mortgage or deed of trust does not contain a power of sale clause.⁸

The foreclosure process in Texas typically begins when a borrower defaults on their mortgage payments. While missing just one payment can technically trigger a default, most lenders wait until multiple payments are missed before initiating foreclosure proceedings. Once a default occurs, Texas law requires the lender to send a notice of default to the borrower.⁹ This notice must be

sent by certified mail, give the borrower at least twenty days to cure the default, and inform them that failure to cure will result in acceleration of the loan and potential foreclosure.¹⁰

During this twenty-day period, known as the *right to cure*, the borrower has the opportunity to resolve the default by paying all past-due amounts plus any allowed fees.¹¹ This is a critical window for homeowners facing financial difficulties, as it provides a last chance to avoid foreclosure proceedings.

If the borrower does not cure the default within the given timeframe, the lender can proceed with foreclosure.¹² The next step involves sending a notice of sale to the borrower by certified mail, filing it with the county clerk, and posting it at the county courthouse.¹³ This must be done at least twenty-one days before the foreclosure sale.¹⁴ The notice of sale must include specific information, such as the date, time, and location of the sale, a statement that the property will be sold to the highest bidder for cash, and a description of the property to be sold.¹⁵

In Texas, foreclosure sales are held on the first Tuesday of each month between 10 a.m. and 4 p.m. at the county courthouse.¹⁶ The entire non-judicial foreclosure process can be completed in as little as forty-one days from the date of the first notice, making Texas one of the fastest foreclosure states in the nation.¹⁷ At the sale, the property is auctioned to the highest bidder, with the lender usually making an initial bid often based on the amount owed on the mortgage plus foreclosure costs.

After the foreclosure sale, there are a few important points to note. Unlike some states, Texas does not provide a *right of redemption* after a non-judicial foreclosure sale.¹⁸ This means that once the sale is complete, the former homeowner has no further right to reclaim the property. Additionally, if the foreclosure sale does not cover the full amount owed, the lender can seek a deficiency judgment¹⁹ against the borrower for the difference.

Warning Signs of Potential Foreclosure

For homeowners in Texas, recognizing the early warning signs of potential foreclosure is crucial. Being able to identify these indicators can provide valuable time to take corrective action and potentially avoid the foreclosure process altogether. While missing a mortgage payment is an obvious red flag, there are several other, less apparent signs that you may be heading toward financial trouble.

One of the most common warning signs is consistently making late payments on your mortgage. Even if you eventually pay the full amount, a pattern of late payments can signal to your lender that you are struggling financially. In Texas, where the foreclosure process can move quickly, falling behind on payments can rapidly escalate into a more serious situation.

Receiving notices from your lender is another clear warning sign. In Texas, lenders are required to send specific notices before initiating foreclosure proceedings.²⁰ If you receive a notice of default or a notice of intent to accelerate your loan, it is a serious indication that foreclosure may be imminent. These notices typically give you a specific timeframe (usually twenty days in Texas) to cure the default by paying the overdue amount.²¹

You should also stay alert to communication from your lender. If you are receiving more frequent calls or letters from your mortgage company, especially regarding missed or late payments, this could be a sign that they are concerned about your ability to meet your mortgage obligations.

It is also worth noting that sometimes, homeowners may try to ignore these warning signs out of fear or anxiety. You might find yourself avoiding opening mail from your lender or screening their calls. While this behavior is understandable, it is important to face the situation head-on as avoiding communication with your lender can limit your options for resolving the situation.

Remember, the earlier you recognize and address these warning signs, the more options you will have available to avoid foreclosure. In Texas, where homeownership is highly valued, there are resources and professionals available to help you navigate financial difficulties and work toward keeping your home.

Options for Struggling Texas Homeowners

When Texas homeowners find themselves struggling to meet their mortgage obligations, it is crucial to understand that foreclosure is not the only option. There are several alternatives available that can help you retain your home or at least mitigate the financial impact of losing it.

Loan modification is often the first avenue that struggling homeowners should consider. This process involves working with your lender to change the terms of your mortgage to make it more manageable. In a loan modification, your lender might agree to lower your interest rate, extend the loan term, or even forgive a portion of the principal.²² In Texas, where home values have been generally increasing, lenders may be more willing to modify loans rather than foreclose, especially if you can demonstrate that the modification will allow you to stay current on your payments moving forward.

Another option is refinancing your mortgage. This involves taking out a new loan with better terms to pay off your existing mortgage.²³ Refinancing can be particularly beneficial if interest rates have dropped since you originally took out your mortgage, or if your credit score has improved. However, it is important to note that refinancing typically requires good credit and some equity in your home, which might be challenging if you are already struggling financially.

For homeowners facing a temporary financial setback, forbearance could be a viable option. In a forbearance agreement, your lender agrees to reduce or suspend your mortgage payments for a specified period.²⁴ This can provide you with some breathing room to get back on your feet financially. However, it is crucial to understand that forbearance does not erase what you owe. You will need to repay the missed amounts, often through a repayment plan, once the forbearance period ends.

If retaining your home is not feasible, a short sale might be an alternative to foreclosure. In a short sale, your lender agrees to let you sell your home for less than what you owe on the mortgage.²⁵ While this still results in the loss of your home, it generally has less of a negative impact on your credit score than a foreclosure. Additionally, in Texas, if your lender agrees to a short sale, they may waive their right to pursue a deficiency judgment against you for the remaining balance.²⁶

Another option that involves voluntarily giving up your home is a deed in lieu of foreclosure.²⁷ In this scenario, you transfer the deed of your house to the lender in exchange for being released from your mortgage obligations.²⁸ Like a short sale, this option can be less damaging to your credit than a foreclosure. However, it is important to get a written agreement from your lender that they will not pursue a deficiency judgment against you.

For some homeowners, bankruptcy might be a consideration, particularly Chapter 13 bankruptcy. Unlike Chapter 7 bankruptcy, which typically does not help you keep your home,²⁹ Chapter 13 involves a repayment plan that can allow you to catch up on missed mortgage payments over time.³⁰ Notably, Texas has some of the most generous homestead exemption laws in the country, which can provide significant protection for your home equity in bankruptcy proceedings.³¹

It is crucial to remember that each of these options has its own set of pros and cons, and the best choice depends on your specific financial situation, the amount of equity you have in your home, and your long-term financial goals. Additionally, some of these options, particularly loan modifications and short sales, can be complex and time-consuming processes that require careful navigation.

Consumer Rights in Texas Foreclosures

Understanding your rights as a homeowner is crucial when facing the possibility of foreclosure. While the Lone Star State is known for its relatively fast foreclosure process, there are still important protections in place for consumers. These rights are primarily governed by the Texas Property Code and various federal laws.

One of the most fundamental rights for Texas homeowners is the right to receive proper notice before foreclosure proceedings begin. Under Texas law, your lender must provide you with two essential notices. First, you must receive a notice of default, which gives you at least twenty days to cure the default by paying the past-due amount.³² If you are unable to cure the default, the lender must then provide a notice of sale at least twenty-one days before the foreclosure sale.³³ This notice must be sent by certified mail, posted at the courthouse, and filed with the county clerk.³⁴ These notice requirements give homeowners time to explore alternatives or prepare for the potential loss of their home.

Texas law also provides homeowners with the right to reinstate their mortgage. This means that, at any time before your loan has been accelerated, you have the right to bring your loan current by paying all past-due amounts, plus any allowable fees and costs incurred by the lender.³⁵

Protections also extend to the foreclosure sale itself. Foreclosure sales in Texas must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month, at the location designated by the county commissioner court.³⁶ This standardization helps ensure that interested buyers can attend, potentially resulting in a higher sale price.

It is important to note that Texas is primarily a non-judicial foreclosure state, meaning most foreclosures occur without court supervision.³⁷ However, you always have the right to challenge an improper foreclosure in court. If you believe your lender has not followed proper procedures or violated your rights, you can file a lawsuit to attempt to stop or invalidate the foreclosure.

It is crucial to remember that while these rights provide important protections, they also come with responsibilities. As a homeowner, you have the responsibility to stay informed about your mortgage, respond to communications from your lender, and take action if you are struggling to make payments.

Lastly, Texas law recognizes the importance of homeownership through its homestead protections. While these protections do not prevent foreclosure on a mortgaged home, they do protect a portion of your home's value from other creditors, which can be crucial if you are facing financial difficulties.³⁸

Understanding these rights can empower you to navigate the foreclosure process more effectively. However, foreclosure laws can be complex, and the specific application of these rights can vary depending on your individual circumstances. If you are facing foreclosure, it is advisable to consult with a qualified attorney who specializes in Texas foreclosure law. They can provide personalized advice and help ensure that your rights are fully protected throughout the process.

Conclusion

Navigating the foreclosure process in Texas can be a challenging and emotionally taxing experience, but armed with the right knowledge and resources, homeowners can face this challenge head-on.

For homeowners facing financial difficulties, it is essential to remember that foreclosure is not the only option. The key to successfully navigating potential foreclosure is to act early. If you are struggling to make your mortgage payments or seeing warning signs of financial distress, do not wait to act. Reach out to your lender as soon as possible to discuss your options. Many lenders have programs in place to help homeowners avoid foreclosure and are often more willing to work with you if you are proactive about addressing the issue. Additionally, do not hesitate to seek professional help. An attorney specializing in Texas foreclosure law can help ensure your rights are protected throughout the process and a financial advisor can assist in developing a plan to address your overall financial situation.

While facing foreclosure can be daunting, it is important to remember that you are not alone. Texas has a robust network of resources available to homeowners in distress. By understanding the foreclosure process, knowing your rights, and exploring all available options, you can work toward the best possible outcome for your situation.

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Sources:

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- [3] Tex. Prop. Code Ann. § 51.002 (governing sales of real property under contracts for deed).
- [4] See *Bonilla v. Roberson*, 918 S.W.2d 17, 21 (Tex. App.—Corpus Christi 1996, no writ) (explaining that Texas law allows for both judicial and non-judicial foreclosures).
- [5] *The Foreclosure Process*, Texas State Law Library, <https://guides.sll.texas.gov/foreclosure/the-foreclosure-process> (Dec. 13, 2024, 2:51 P.M.).
- [6] A power of sale clause is “a provision in a mortgage or deed of trust that gives the mortgagee or trustee the right and power to sell the property without court proceedings if the mortgagor defaults.” *Power of Sale*, Black’s Law Dictionary (11th ed. 2019).
- [7] *The Foreclosure Process*, *supra* note 5.
- [8] See Tex. Prop. Code Ann. §§ 51.004, 51.002(a).
- [9] Tex. Prop. Code Ann. § 51.002(d).
- [10] *Id.*
- [11] *Id.* § 5.065.

- [12] *Id.* § 51.002(d).
- [13] *Id.* § 51.002(b).
- [14] *Id.*
- [15] *Id.* § 51.002(b)(1)–(3).
- [16] *Id.* § 51.002(a).
- [17] 2012 *State of Texas Low Income Housing Plan & Annual Report*, Tex. Dep’t of Hous. & Cmty. Affs. 1, 311 (2012) <https://www.tdhca.texas.gov/sites/default/files/housing-center/docs/12-SLIHP.pdf>.
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- [19] A deficiency judgment is a judgment for “[t]he amount still owed when the property secured by a mortgage is sold at a foreclosure sale for less than the outstanding debt.” *Deficiency*, Black’s Law Dictionary (12th ed. 2024).
- [20] Tex. Prop. Code Ann. § 51.002(b), (d).
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- [24] *Forbearance Agreement*, Black’s Law Dictionary (12th ed. 2024).
- [25] A short sale is “a sale for a price that is lower than the outstanding balance on the mortgage, occurring usually when the property owner faces a financial crisis.” *Short Sale*, Black’s Law Dictionary (12th ed. 2024).
- [26] *Short Sales and Deeds in Lieu of Foreclosure Under the Law*, Justia, <https://www.justia.com/foreclosure/alternatives-to-foreclosure/short-sales-and-deeds-in-lieu-of-foreclosure/> (Oct. 2024).
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- [31] Tex. Const. art. XVI, § 50(a); Tex. Prop. Code Ann. § 41.001 (establishing Texas homestead protections).
- [32] Tex. Prop. Code Ann. § 51.002(d).
- [33] *Id.* § 51.002(b).
- [34] *Id.*
- [35] *Id.* § 51.002(d).
- [36] *Id.* § 51.002(a).
- [37] *The Foreclosure Process*, Texas State Law Library, <https://guides.sll.texas.gov/foreclosure/the-foreclosure-process> (Dec. 13, 2024, 2:51 P.M.).
- [38] Tex. Const. art. XVI, § 50(a); Tex. Prop. Code Ann. § 41.001.