



## INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

*The information included on this page is for educational and informational purposes only. Please consult an attorney regarding specific legal questions.*



## Facing Foreclosure

Purchasing a home can be one of the most significant investments a person or family makes. After the sale is complete, there is often no one available to consult with when you experience financial troubles and face foreclosure. This article is designed to provide a basic introduction and description of the foreclosure process, the laws governing foreclosure, and possible options for those facing foreclosure.

### **What are the different types of foreclosures?**

In Texas, the type of foreclosure process that is used by a lender depends on the type of debt that is owed. There are two general classes of foreclosure: a nonjudicial foreclosure and a judicial foreclosure. A nonjudicial foreclosure — performed without involving a court or judge — is used when the loan was used to purchase the home or to refinance the original purchase loan. A judicial foreclosure generally occurs when a government entity is seek-

ing to collect taxes owed on the property. The government will file a lawsuit with the court seeking to have your property sold to pay for property taxes that are owed.

There is also a third type of foreclosure that combines parts of the nonjudicial and judicial foreclosures and is used only for specific types of loans. If a homeowner has received a home equity loan or a loan that was used to pay property taxes, the lender must obtain a court order approving the foreclosure before

performing a nonjudicial foreclosure. After the lender provides the first notice and the homeowner does not pay the debt owed, the lender must file an application with the court requesting an order of foreclosure. The homeowner has 38 days to file a response to the foreclosure application. If a response is filed, the court will hold a hearing to determine whether the lender is entitled to foreclosure. If a foreclosure order is signed by the court, the lender will then be allowed to continue with a nonjudicial foreclo-



*In certain situations, it is possible that your lender must consider modification if your home loan qualifies under new laws passed to provide relief from rising foreclosures, such as the Making Home Affordable plan and the Home Affordable Modification Program.*

sure by providing the second notice, which is the Notice of Sale.

**What steps are involved in a nonjudicial foreclosure?**

Once a homeowner has missed a mortgage payment and is in default under the promissory note, the lender may attempt several unofficial steps to resolve the problem, such as collection calls, letters, acceptance of partial payments, or negotiating a temporary payment plan. Assuming that these efforts have not resolved the problem and the lender is ready to proceed with a nonjudicial foreclosure, the following actions must be performed by the lender:

- 1) Notice of Default and Intent to Accelerate (the first notice);
- 2) Notice of Sale and Acceleration of Debt (the second notice);
- 3) Foreclosure Sale;
- 4) Distribution of Proceeds;
- 5) Eviction;
- 6) Deficiency Action; and
- 7) No Right of Redemption for Non-judicial Foreclosure.

**What options are available to avoid a nonjudicial foreclosure?**

A foreclosure can be canceled, delayed, or avoided at any time prior to the sale at the courthouse. The best time to reach a resolution is during the 20-day period after receipt of the first notice. During this time, you are required to pay only the past

due amounts and not the entire loan amount. If you believe that you will be able to gather the necessary funds to bring the loan current, it would be wise to contact the lender and keep them informed on your progress as they may be willing to extend the 20-day period if they believe that the matter can be resolved without further action. If you cannot pay the entire amount that is due, your lender may be willing to agree to a payment plan, loan modification, or other arrangement to bring the loan current and ensure that you will be able to make future payments.

In certain situations, it is possible that your lender must consider modification if your home loan qualifies under new laws passed to provide relief from rising foreclosures, such as the Making Home Affordable plan and the Home Affordable Modification Program.

**Deed in Lieu of Foreclosure**

A deed in lieu of foreclosure involves a scenario where the homeowner voluntarily transfers ownership of the property to the lender. Deeds in lieu of foreclosure are quicker to complete, cost less money for the lender, and are more confidential than a public sale. However, this is usually only an option when ownership of the property is free and clear of mortgages, liens, and encumbrances. Homeowners will be left with the same final result as with a foreclosure — the loss of their residence.

**Bankruptcy**

The filing of a bankruptcy petition will immediately stop a foreclosure sale from occurring as of the filing of the petition. However, you will be required to continue making some type of regular payments and make some payments toward the delinquency as part of your bankruptcy plan.

Filing for bankruptcy is a major event and should not be taken lightly or performed without careful consideration. ❖

GERRY SPENCE  
TRIAL LAWYER'S COLLEGE



Led by Gerry Spence and Jude Basile, the Trial Lawyer's College has been training the nation's top trial lawyers for 16 years. Join fellow trial lawyers from across the nation to learn and practice the TLC methods that will improve your effectiveness before juries and help you win your cases.

YOU WILL LEARN HOW TO DISCOVER YOUR CLIENTS' STORIES. YOU WILL LEARN HOW TO USE YOUR OWN TRUTH TO COMMUNICATE THESE STORIES TO JUDGES AND JURIES. YOU WILL LEARN HOW TO WIN FOR YOUR CLIENTS, EVERY TIME.

Courses are designed for both beginning and experienced practitioners of the TLC methods.

---

Trial Lawyer's College Texas Regional Seminar  
April 28 - May 1, 2011  
Festival Hill Institute  
**Round Top, Texas**  
Emphasis on Voir Dire

www.TRIALLAWYERSCOLLEGE.COM  
FOR MORE INFORMATION AND ONLINE REGISTRATION  
OR CALL 307-734-4430. EMAIL INFO@TRIALLAWYERSCOLLEGE.COM

This article was excerpted from *Facing Foreclosure*, a brochure prepared as a public service by the Texas Young Lawyers Association and distributed by the State Bar. To obtain a complete copy of the pamphlet, write to the State Bar Public Information Department at P.O. Box 12487, Austin, 78711-2487; call (800) 204-2222, ext. 1800; or visit [www.tyla.org](http://www.tyla.org).