

Foreclosure in Texas

Texas is a non-judicial foreclosure state. A foreclosure proceeding in Texas is like a Motion for Summary Judgement.

And as Sergeant Major Basil Plumley stated: Gentlemen, prepare to defend yourselves!

Basically, the non-judicial process of foreclosure is used when a **power of sale clause exists in a mortgage or deed of trust**. A "power of sale" clause is the clause in a deed of trust or mortgage, in which the **borrower pre-authorizes the sale of property** to pay off the balance on a loan in the event of the their default. In deeds of trust or mortgages where a power of sale exists, the power given to the lender to sell the property may be executed by the lender or their representative, typically referred to as the trustee.

When is Section 51 of the Texas Property Code, an enforcement tool of the State Laws, if the secured debt becomes bifurcated? The Deed of Trust, void?

When the Security Instrument, becomes a nullity, certain sections of the Texas Property Code, become enforceable in a different way. These Codes all contain a specific reference, "deed of trust". Without the deed of trust, there is no legal enforcement of a foreclosure.

Sec. 51.0001. DEFINITIONS. In this chapter:

(1) "Book entry system" means **a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.**

"Book entry system", according to most lenders, mortgage servicers, is Mortgage Electronic Registration Systems, Inc, commonly known as MERS, the beneficiary/nominee. MERS never had this prestigious status. It was only an illusion. There are many **qui tam** suits across the United States that prove MERS has no authority to conduct business as a mortgagee. But, since MERS took up this "ability" to assign/transfer mortgage loans by means of electronic process, MER bifurcated most all mortgages in the United States. Maybe a thank you card is appropriate?

(2) "Debtor's last known address" means:

(A) **for a debt secured by the debtor's residence**, the debtor's residence address unless the debtor provided the **mortgage servicer** a written change of address before the date the **mortgage servicer** mailed a notice required by Section 51.002; or

(B) for a debt other than a debt described by Paragraph (A), the debtor's last known address as shown by the records of the **mortgage servicer of the security** instrument unless the debtor provided the **current mortgage servicer** a written change of address before the date the **mortgage servicer** mailed a notice required by Section 51.002.

There is no debt secured by the debtor's residence when bifurcation has occurred. There is no mortgage servicer. There is only theft by third parties on victims of real property.

(3) **"Mortgage servicer" means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument.** A mortgagee may be the mortgage servicer.

There is no debt secured by a security instrument when bifurcation has occurred. There is no mortgage servicer once the secured debt was bifurcated.

(4) **"Mortgagee" means:**

(A) **the grantee, beneficiary, owner, or holder of a security instrument;**

(B) **a book entry system;** or

(C) **if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.**

When bifurcation of the secured debt occurred, none of the above mentioned "Mortgagee" exist. There is only the creditor of the unsecured debt.

(5) **"Mortgagor" means the grantor of a security instrument.**

When bifurcation of the secured debt occurred, the "Mortgagor" ceased to exist. Only the creditor of the unsecured debt is left.

(6) **"Security instrument" means a deed of trust, mortgage, or other contract lien on an interest in real property.**

Again, when bifurcation of the secured debt occurred, the "Security Instrument" ceased to exist. It became a nullity taking up space in public records.

(7) **"Substitute trustee" means a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale.**

When bifurcation of the secured debt occurred, the "Substitute Trustee" ceased to exist. The "Substitute Trustee", became a third party committing theft upon the victims property.

(8) **"Trustee" means a person or persons authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074.**

When bifurcation of the secured debt occurred, the "Substitute Trustee" was converted to a third party attempting to use an invalid deed of trust to take control of the property by theft and sell it for a profit.

Sec. 51.002. SALE OF REAL PROPERTY UNDER CONTRACT LIEN.

(a) **A sale of real property under a power of sale conferred by a deed of trust** or other contract lien must be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month.

(d) **Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a deed of trust** or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the **debtor is in default under the deed of trust** or other contract lien and giving the debtor at least 20 days to cure the default before notice of sale can be given under Subsection (b).

Subsection (a), clearly states "**A sale of real property under a power of sale conferred by a deed of trust**". When the Security Instrument, or Deed of Trust, is not perfected in public records, the Deed of Trust becomes void. Therefore, this subsection is no longer enforceable.

Subsection (d), also clearly states "**Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a deed of trust**" and "**debtor is in default under the deed of trust**". There is no default under the deed of trust. The Mortgage Servicer has no standing under this subsection. The Deed of Trust is a nullity. This subsection is not enforceable, due to the bifurcation.

Due to the destruction of the Secured debt, **Sec. 51.002. SALE OF REAL PROPERTY UNDER CONTRACT LIEN**, is no longer a valid enforcement tool by the mortgage servicer, trustee, substitute trustee, or any other entity who attempts to use the deed of trust, power of sale clause, to foreclose and trustee sale the homeowners property. The secured debt was destroyed by bifurcation. Only the unsecured "Note" exists?

Sec. 51.0025. ADMINISTRATION OF FORECLOSURE BY MORTGAGE SERVICER. A **mortgage servicer may administer the foreclosure of property under Section 51.002 on behalf of a mortgagee** if:

- (1) **the mortgage servicer and the mortgagee have entered into an agreement** granting the current mortgage servicer authority to service the mortgage; and
- (2) the notices required under Section 51.002(b) disclose that the mortgage servicer is representing the mortgagee under a servicing agreement with the mortgagee and the name of the mortgagee and:
- (A) the address of the mortgagee; or
 - (B) the address of the mortgage servicer, if there is an agreement granting a mortgage servicer the authority to service the mortgage.

This is the favorite Section of the Property Code of the alleged Mortgage Servicer. This section went out the window when the secured debt was bifurcated.. There is no secured debt. There is no Mortgage Servicer. There is no Mortgagee. Only an unsecured debt owned by the Creditor.

Sec. 51.003. DEFICIENCY JUDGMENT.

(a) **If the price at which real property is sold at a foreclosure sale under Section 51.002 is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale and is governed by this section.**

(b) **Any person against whom such a recovery is sought by motion may request that the court in which the action is pending determine the fair market value of the real property as of the date of the foreclosure sale.** The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include, but is not limited to, the following: (Blah, Blah, Blah)

- (a) Once the secured debt was bifurcated, the third party continues to commit theft by deception by recovering addition profits from the victim.
- (b) Third party commits fraud upon the courts by making such fraudulent motion in the court of the real property jurisdiction to obtain additional profit from the theft they committed.

Sec. 51.004. JUDICIAL FORECLOSURE--DEFICIENCY.

(a) This section applies if:

(1) **real property subject to a deed of trust** or other contract lien is sold at a foreclosure sale under a court judgment foreclosing the lien and ordering the sale; and

This subsection would not be a valid enforcement tool, if proof of bifurcation is proved, that the secured debt was destroyed, due to the wording “real property subject to a deed of trust”?

Sec. 51.005. JUDICIAL OR NONJUDICIAL FORECLOSURE AFTER JUDGMENT AGAINST GUARANTOR--DEFICIENCY.

(a) This section applies if:

(1) the holder of a debt obtains a court judgment against a guarantor of the debt;

This subsection clearly states “the holder of a debt”. The “Note” was an agreement between the original parties, the Borrower and the Lender. Unless the Mortgage Servicer, Trustee or any other party, provides legal proof, they are the holder of the debt, they are no legally entitled to foreclose.

(2) real property subject to a deed of trust or other contract lien securing the guaranteed debt is sold at a foreclosure sale under Section 51.002 or under a court judgment foreclosing the lien and ordering the sale;

This subsection clearly states “real property subject to a deed of trust” and “securing the guaranteed debt is sold at a foreclosure sale under Section 51.002”, meaning, unless there is a valid Deed of Trust, Section **51.005. JUDICIAL OR NONJUDICIAL FORECLOSURE AFTER JUDGMENT AGAINST GUARANTOR—DEFICIENCY**, is no longer a valid enforcement tool. Only a third party committing theft by deception.

Sec. 51.005. JUDICIAL OR NONJUDICIAL FORECLOSURE AFTER JUDGMENT AGAINST GUARANTOR--DEFICIENCY. (a) This section applies if:

(1) the holder of a debt obtains a court judgment against a guarantor of the debt;

(2) real property subject to a deed of trust or other contract lien securing the guaranteed debt is sold at a foreclosure sale under Section 51.002 or under a court judgment foreclosing the lien and ordering the sale;

(3) the price at which the real property is sold is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency; and

(4) a motion or suit to determine the fair market value of the real property as of the date of the foreclosure sale has not been filed under Section 51.003 or 51.004.

(b) The guarantor may bring an action in the district court in the county in which the real property is located for a determination of the fair market value of the real property as of the date of the foreclosure sale. The suit must be brought not later than the 90th day after the date of the foreclosure sale or the date the guarantor receives actual notice of the foreclosure sale, whichever is later. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include:

- (1) The holder of a debt obtains a court judgment? There is no holder when the secured debt is bifurcated. Only an unsecured debt held by the Creditor. These third party thieves have audacity to commit fraud upon the court?
- (2) There is no real property subject to a deed of trust when the secured debt is bifurcated.
- (4) **a motion or suit to determine the fair market value of the real property as of the date of the foreclosure sale has not been filed under Section 51.003 or 51.004.**

(b) When the secured debt is bifurcated, there is no guarantor to bring forth an action in court. If an imposter brings an action in the district court, they are committing fraud upon the court.

Sec. 51.006. DEED-OF-TRUST FORECLOSURE AFTER DEED IN LIEU OF FORECLOSURE.

(a) This section applies to a holder of a debt under a deed of trust who accepts from the debtor a deed conveying real property subject to the deed of trust in satisfaction of the debt.

When the bifurcation of the Secured debt takes place, there is no “debt under the deed of trust”. The Deed of Trust is no longer a useful tool to foreclose on the home, or to bargain for another negotiable instrument, legally. The third party commits theft of real property by deception, taking possession of real property that does not legally belong to them, and sells it for a profit.

The secured debt was destroyed, now only the “note”, as an unsecured debt, is left as evidence. They cannot be put back together.

Sec. 51.007. TRUSTEE UNDER DEED OF TRUST, CONTRACT LIEN OR SECURITY INSTRUMENT.

(a) The trustee named in a suit or proceeding may plead in the answer that the trustee is not a necessary party by a verified denial stating the basis for the trustee's reasonable belief that the trustee was named as a party solely in the capacity as a trustee under a deed of trust, contract lien, or security instrument.

When the secured debt is bifurcated, there is no TRUSTEE. There is only a third party committing theft by deception, illegally gaining control of real property for a profit.

Sec. 51.0074. DUTIES OF TRUSTEE.

(a) One or more persons may **be authorized to exercise the power of sale under a security instrument.**

There is **no person authorized** to exercise the power of sale when the secured debt was bifurcated. Only theft and deception by the third party.

(b) A trustee may not be:

- (1) **assigned a duty under a security instrument** other than **to exercise the power of sale in accordance with the terms of the security instrument**; or
- (2) **held to the obligations of a fiduciary of the mortgagor or mortgagee.**

Because of the bifurcation of the secured debt, "*Sec. 51.0074. DUTIES OF TRUSTEE*", is not enforceable, by a trustee, or any other person. The Deed of Trust is null and void. There is no power of sale clause. There is a third party committing theft of real property.

Sec. 51.0075. AUTHORITY OF TRUSTEE OR SUBSTITUTE TRUSTEE.

- (a) **A trustee or substitute trustee may set reasonable conditions for conducting the public sale if the conditions are announced before bidding is opened for the first sale of the day held by the trustee or substitute trustee.**

Again, when the secured debt was bifurcated, there is no trustee. Only a third party committing theft by deception to gain control of real property and sell for a profit.

- (b) **A trustee or substitute trustee is not a debt collector.**

This could be correct. The trustee is a third party committing theft by force selling real property of a victim for a profit.

Sec. 51.009. FORECLOSED PROPERTY SOLD "AS IS".

A purchaser at a sale of real property under Section 51.002:

- (1) acquires the foreclosed property "as is" without any expressed or implied warranties, except as to warranties of title, and at the purchaser's own risk; and
- (2) is not a consumer.

Purchaser's of foreclosure property, failure to research the property, could find out later, that they may stand the chance of losing their investment. But I suppose this is all a gamble?

Sec. 51.015. SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF THE MILITARY.

- (a) In this section:

- (1) "Active duty military service" means:

- (A) service as a member of the armed forces of the United States; and

(B) with respect to a member of the Texas National Guard or the National Guard of another state or a member of a reserve component of the armed forces of the United States, active duty under an order of the president of the United States.

(b) This section applies only to an obligation:

- (1) **that is secured by a mortgage, deed of trust**, or other contract lien **on real property or personal property** that is a dwelling owned by a military servicemember;
- (2) that originates before the date on which the servicemember's active duty military service commences; and
- (3) for which the servicemember is still obligated.

When bifurcation of a Secured debt has occurred, there is no deed of trust. These thieves still commit fraud upon the very people who serve this great country, here and abroad. Goes to show, they do not care who you are.

That just about covers the Texas Property Code, Chapter 51. Defend yourself!