

# Table of Contents

## CHAPTER 1. GENERAL CONSIDERATIONS

- § 1.01 Default defined by debt instrument, security agreement, deed of trust, or loan agreement
- § 1.02 Demand note
- § 1.03 Term note
- § 1.07 Notice of intent to accelerate
- § 1.08 Notice that the debt has been accelerated
- § 1.09 Waiver of acceleration requirements
- § 1.10 Abandonment of acceleration
- § 1.12 Defenses to acceleration
- § 1.13 Good faith acceleration and § 1.208
- § 1.14 Usurious acceleration provisions
- § 1.18 Acceleration requirements for executory contract for purchase of real property to be used as purchaser's residence
- § 1.19 Acceleration requirements for retail purchase of manufactured homes
- § 1.22 Insecurity default clause
- § 1.36 Personal property: article nine and security agreement
- § 1.37 Comparison of foreclosure procedures for real property and personal property
- § 1.40 Aircraft foreclosure
- § 1.41 Vessel foreclosure
- § 1.43 Motor vehicle foreclosure
- § 1.44 Motor vehicles held as inventory covered by article nine
- § 1.45 Railroad car and rolling stock foreclosure
- § 1.48 Filing suit for judgment prior to or contemporaneously with proceeding against collateral
- § 1.49 Effect of judgment on a note upon subsequent nonjudicial foreclosure
- § 1.51 Repossession
- § 1.52 Self-help repossession
- § 1.53 Assembly of collateral
- § 1.54 Collection rights of secured party
- § 1.55 Sequestration
- § 1.56 Garnishment
- § 1.57 Attachment
- § 1.58 Injunction
- § 1.59 Receivership
- § 1.60 Fraudulent transfers
- § 1.63 Landlord's sale
- § 1.67 Fair Debt Collection Practices Act
- § 1.69 Nonjudicial foreclosure available for personal and real property
- § 1.72 Repossession and foreclosure problems
- § 1.73 Foreclosure by execution on judgment

- § 1.74 Election of judicial foreclosure if requested in lawsuit: real property remedies exclusive; personal property remedies cumulative
- § 1.75 Mechanic's and materialmen's liens on real property
- § 1.77 Oil and gas liens
- § 1.80 Liability for filing a fraudulent lien or claim against real or personal property *[New]*

## CHAPTER 2. REAL PROPERTY FORECLOSURE

- § 2.01 Governing law
- § 2.02 Section 51.002 Property Code: nonjudicial sale
- § 2.03 Section 51.003 Property Code: deficiency judgments after foreclosure
- § 2.03.1 Enforceability of prepayment premiums upon default *[New]*
- § 2.05 Section 51.005 Property Code: judicial or nonjudicial foreclosure after judgment against guarantor—Deficiency
- § 2.06 Section 51.003 and FIRREA
- § 2.07 Section 5.061 Property Code: foreclosure under an executory contract for purchase of real property to be used as purchaser's residence
- § 2.08 Contractual provision
- § 2.11 Abstractor's certificate: other liens
- § 2.14 Corporate franchise tax lien search
- § 2.15 Federal housing administration, veterans' administration, and private mortgage insurance guarantees
- § 2.17 Amount of bid price
- § 2.20 Equitable subordination, generally
- § 2.27 Nuisance
- § 2.28 Americans with Disabilities Act
- § 2.29 Forfeiture statutes
- § 2.30 Deed in lieu of foreclosure
- § 2.34 Statute of limitations affecting right to foreclose
- § 2.35 Unilateral reconveyance of property by mortgagor to mortgagee does not release secured debt and deed of trust
- § 2.36 Sample information sheet for mortgagee information
- § 2.37 Appointment of trustee and substitute trustee
- § 2.38 Power of trustee
- § 2.39 Mortgagor designates trustee in deed of trust
- § 2.40 Authority to appoint solely from deed of trust
- § 2.44 Section 51.003: statute of limitation or statute of repose
- § 2.45 Appointment of substitute trustee after proper posting by trustee
- § 2.46 Sample form for resignation of trustee and appointment of substitute trustee
- § 2.47 Power of trustee
- § 2.48 Trustee fees
- § 2.49 Notice of sale
- § 2.50 Section 51.002 Property Code notice
- § 2.57 Request by proper party
- § 2.57.50 Trustee and mortgage servicer information *[New]*

## TABLE OF CONTENTS

§ 2.57.75	Statement Required if Notice of Sale Serves as Appointment and Authorization of Substitute Trustee <i>[New]</i>
§ 2.58	Time, date, and place of sale
§ 2.59	Sample form of notice
§ 2.60	Posting of notice
§ 2.62	Time and duration of posting notice
§ 2.63	Place of posting
§ 2.66	Personal notice
§ 2.67	Form of personal notice
§ 2.68	Notice filed with county clerk
§ 2.73.50	Advertising of Sale <i>[New]</i>
§ 2.74	Federal tax lien notice
§ 2.77	Substitute trustee's sale
§ 2.79	Place of sale
§ 2.80	Date of sale
§ 2.82	Wrongful foreclosure if required notices not given or deed of trust requirements not satisfied
§ 2.83	Conducting the sale
§ 2.85	Requirement to bid cash
§ 2.96	Grossly inadequate consideration and irregularity
§ 2.98	Deficiency judgments after April 1, 1991 addition of § 51.003
§ 2.101	Mortgagee as purchaser
§ 2.103	No warranties to purchaser at foreclosure sale
§ 2.105	Insurance
§ 2.106	Employer/employee
§ 2.108	Trustee's fiduciary duty
§ 2.109	Receiver foreclosure
§ 2.112	Trustee's deed
§ 2.113	Trustee's distribution of bid proceeds
§ 2.115	Possession
§ 2.116	Distribution of proceeds following tax sale
§ 2.120	Sample form of substitute trustee's deed
§ 2.121	Interests affected by valid foreclosure
§ 2.130	Fixing of oil and gas lien by contractor and subcontractor
§ 2.135	Tenants
§ 2.137	Homestead problems
§ 2.139	Wraparound mortgages
§ 2.139.1	Rescission of certain non-judicial foreclosures of residential property <i>[New]</i>
§ 2.141	Rents—Assignment absolute or as collateral
§ 2.142	Rents—Right of mortgagee to rents
§ 2.143	Rents—Bankruptcy considerations
§ 2.146	Equitable subrogation and the homestead
§ 2.148	Remedies for wrongful foreclosure
§ 2.151	Practical limitation of liability of mortgagee for property increasing in value after foreclosure
§ 2.153	Purchaser at sale not good faith purchaser for value
§ 2.162	Standing to bring action attacking foreclosure
§ 2.164	Miscellaneous matters affecting power of sale
§ 2.168	Death of mortgagor
§ 2.171	Soldiers' and sailors' Civil Relief Act of 1940
§ 2.172	Foreclosure of real and personal property together

- § 2.176.1 Constitutional amendment prescribing requirements for  
liens for work and material used in residential homestead  
property *[New]*
- § 2.178 Constitutional requirement for valid home equity loan
- § 2.187 Home equity loan foreclosure and certain reverse mortgage  
loan foreclosure require judicial order to proceed with  
security instrument and § 51.002 foreclosure
- § 2.188 Rule 735 allows alternative foreclosure action
- § 2.189 Rule 736 expedited foreclosure procedure
- § 2.190 Rule 735 procedures
- § 2.191 Rule 736 expedited foreclosure proceeding (Effective January  
1, 2012) *[Retitled]*
- § 2.191.1 Changes in Tex. R. Civ. Proc. 736 (Effective January 1, 2012)  
*[New]*
- § 2.192 Notice to purchasers of deed restrictions *[New]*
- § 2.193 Obligations of military servicemember *[New]*

## **CHAPTER 3. PERSONAL PROPERTY FORECLOSURE**

- § 3.01 Governing law
- § 3.03 New approach (Revised Article Nine)
- § 3.06 Right to nonjudicial disposition
- § 3.20 Lien search
- § 3.35 Revised § 9.611 notice—To whom
- § 3.44 Public sale: reasonable notification of time and place of sale to  
debtor
- § 3.49 Disposition according to security agreement covering both real  
and personal property (Revised Article Nine)
- § 3.50 Commercially reasonable sale
- § 3.53 Special rule for sale to related parties (Revised Article Nine)
- § 3.55 Application of statutory standards for sheriff's sale to  
disposition of personal property
- § 3.74 Private sale: secured party may purchase certain defined types  
of collateral
- § 3.77 Conducting the sale
- § 3.91 Other secured party's right of redemption
- § 3.92 Debtor liable for deficiency
- § 3.109 Remedies for wrongful foreclosure
- § 3.117 Damages for wrongful foreclosure of consumer goods
- § 3.118 Damages for wrongful foreclosure of property other than  
consumer goods
- § 3.119 Damages for wrongful foreclosure on consumer goods (Revised  
Article Nine)
- § 3.124 Statute of limitations

## **CHAPTER 4. FORECLOSURE OF SECURITIES**

- § 4.01 Introduction
- § 4.02 Treatment of securities under Revised Article Nine of the U.C.C
- § 4.03 The recognized market of Revised Article Nine § 9.610(c)
- § 4.04 The underwriter dilemma and the resale exemption

## TABLE OF CONTENTS

- § 4.05 Rule 144
- § 4.06 Current public information
- § 4.07 Holding period restrictions
- § 4.08 Volume limitations
- § 4.09 Further restrictions
- § 4.10 The 4 (1-1/2) concept
- § 4.11 Utilizing the Section 4 (1-1/2) exemption to conduct a commercially reasonable public sale
- § 4.12 Application of § 13 and § 16 of the Exchange Act to pledged securities
- § 4.13 Stock of financial institutions

## CHAPTER 5. FORECLOSURE OF PARTNERSHIP INTERESTS

- § 5.01 Introduction
- § 5.02 Common law in Texas and the Texas Uniform Partnership Acts (expired)
- § 5.03 Charging order against a limited partnership
- § 5.04 Charging order as exclusive remedy
- § 5.05 Appointment of receiver not mandatory
- § 5.06 Potential foreclosure of charging order
- § 5.07 Receiver's authority under charging order
- § 5.08 Use of court's discretionary power
- § 5.09 Remedies and rights of nondebtor partners
- § 5.10 Rights of creditor of individual partner prior to judgment
- § 5.12 Individual partner or joint venturer in bankruptcy
- § 5.14 Drafting techniques
- § 5.15 Sample petition

## CHAPTER 6. FORECLOSURE OF AIRCRAFT

- § 6.01 Securing collateral in place
- § 6.03 Aircraft and engine logbooks
- § 6.04 No recognized market or standard price quotations
- § 6.05 Public sale
- § 6.06 Advertising
- § 6.07 Conducting the sale
- § 6.08 Private sale
- § 6.11 Preserving the commercial reasonableness standard
- § 6.14 FAA documentation
- § 6.15 The Cape Town Treaty *[New]*
- § 6.16 International Business Transactions *[New]*
- § 6.17 Re-registration and renewal of aircraft registration with FAA *[New]*
- § 6.18 Registration of aircraft in the US for non-citizen trusts ("NCTs") *[New]*
- § 6.19 Registration of unmanned aircraft *[New]*
- Appendix 6-2. Aircraft Security Agreement
- Appendix 6-4. Aircraft Bill of Sale
- Appendix 6-7. FAA Entry Point Filing Form *[New]*
- Appendix 6-8. Aircraft Re-Registration Application *[New]*

## **CHAPTER 7. SETOFF**

- § 7.01 Common law right of setoff
- § 7.06 Depositor's (Borrower's) Right of Setoff *[New]*
- § 7.07 Setoff and Loan Participations *[New]*

## **CHAPTER 8. SEQUESTRATION**

### **A. INTRODUCTION**

- § 8.01 Sequestration defined and distinguished
- § 8.02 Relationship to foreclosure
- § 8.03 Availability of remedy
- § 8.04 Constitutional considerations

### **B. SEQUESTRATION PROCEDURE**

- § 8.05 Grounds for issuance of writ
- § 8.06 Application for writ
- § 8.07 Order granting application
- § 8.09 Service of writ
- § 8.11 Dissolution or modification of writ
- § 8.12 Defendant's right to replevy

### **C. WRONGFUL SEQUESTRATION**

- § 8.14 Liability
- § 8.15 Damages

### **D. CONCLUSION**

- § 8.16 Conclusion

## **CHAPTER 9. GARNISHMENT**

- § 9.04 Application for writ of garnishment
- § 9.05 Grounds for issuance of a prejudgment writ of garnishment
- § 9.11 Service of writ of garnishment
- § 9.12 Effect of writ
- § 9.13 Property not affected by writ
- § 9.14 Garnishee's answer or response
- § 9.15 Garnishee's right of offset
- § 9.19 Trial and judgment
- § 9.20 Wrongful garnishment

## **CHAPTER 10. ATTACHMENT**

### **A. INTRODUCTION**

- § 10.01 Attachment defined
- § 10.02 Attachment distinguished from other special remedies
- § 10.03 Relationship to foreclosure

TABLE OF CONTENTS

**B. ATTACHMENT PROCEDURE**

- § 10.08 Application for writ
- § 10.09 Grounds for issuance
- § 10.10 Additional allegations
- § 10.12 Bond
- § 10.14 Levy of writ of attachment

**C. POTENTIAL LIABILITIES ARISING OUT OF ATTACHMENT**

- § 10.18 Wrongful attachment
- § 10.20 Damages
- § 10.21 Attachment and replevy bond

**D. THIRD-PARTY RIGHTS**

- § 10.23 Trial of right of property

**CHAPTER 11. INJUNCTIONS**

**A. AVAILABILITY OF INJUNCTIVE RELIEF AND APPLICATION TO FORECLOSURE**

- § 11.02 Use of injunctive relief by parties to a secured transaction
- § 11.03 Injunctive relief sought by creditors
- § 11.04 Injunctive relief sought by debtors

**C. CONSIDERATIONS IN OBTAINING INTERLOCUTORY INJUNCTIVE RELIEF FROM A TRIAL COURT**

- § 11.15 Bond
- § 11.16 Order
- § 11.18 Probable right and probable injury
- § 11.19 Inadequate remedy at law
- § 11.20 Ownership of real property
- § 11.23 Venue

**D. GROUNDS FOR GRANTING INJUNCTIVE RELIEF IN FORECLOSURE SITUATION**

- § 11.31 Miscellaneous

**E. TEMPORARY RESTRAINING ORDER PROCEDURES**

- § 11.35 Duration
- § 11.36 Bond for restraining order
- § 11.38 Appeal

**F. TEMPORARY INJUNCTION PROCEDURES**

- § 11.40 Notice and hearing

- § 11.41 Applicant's burden of proof
- § 11.42 Bond required
- § 11.43 Duration of temporary injunction
- § 11.47 Motion to increase bond

## **G. APPELLATE REVIEW OF ORDER GRANTING OR DENYING INJUNCTIVE RELIEF**

- § 11.48 Interlocutory appeals
- § 11.49 Procedure for appeal
- § 11.50 No stay as to the trial on the merits
- § 11.51 Supersedeas
- § 11.53 Standard for review
- § 11.54 Writ of error to texas supreme court

## **H. INJUNCTIVE RELIEF PENDING APPEAL**

- § 11.56 Procedure for injunctive relief
- § 11.61 Effect of availability of supersedeas
- § 11.62 Application for writ of error

# **CHAPTER 12. RECEIVERSHIP**

## **A. APPLICATION TO FORECLOSURE UNDER THE DEBTOR-CREDITOR RELATIONSHIP**

- § 12.01 Nature of remedy and its use

## **B. PREJUDGMENT RECEIVERSHIP**

- § 12.02 Authority for prejudgment receivership
- § 12.03 Equitable receivership
- § 12.05 Rules of equity govern
- § 12.06 Threat to property
- § 12.09 Effect of receivership
- § 12.10 Receivership Pursuant to the Business Organizations Code  
[Retitled]
- § 12.11 Section 11.403: Control of specific property [Retitled]
- § 12.12 Section 11.404: Rehabilitation of domestic entity [Retitled]
- § 12.13 Section 11.405: Appointment of receiver to liquidate domestic  
entity; liquidation [Retitled]

## **C. PROCEDURAL REQUIREMENTS FOR THE APPOINTMENT OF A RECEIVER**

- § 12.14 Jurisdiction and venue
- § 12.15 Parties
- § 12.17 Bond
- § 12.19 Qualifications of the receiver
- § 12.20 Oath and bond of receiver
- § 12.21 Powers of the receiver
- § 12.22 Duties of the receiver



## TABLE OF CONTENTS

- § 12.23 Suits against the receiver
- § 12.24 Appeal of prejudgment receivership order

### **D. POSTJUDGMENT RECEIVERSHIP**

- § 12.26 Receivership pursuant to the turnover statute

## **CHAPTER 13. SHERIFFS' SALES**

### **A. BACKGROUND**

- § 13.02 What lien rights are affected?

### **B. METHOD OF EXECUTION PURSUANT TO THE WRIT**

- § 13.04 On real property
- § 13.05 On personal property in general
- § 13.06 On certain types of personal property

### **C. ISSUES COMMON TO EXECUTIONS ON REAL AND PERSONAL PROPERTY**

- § 13.08 Order of execution
- § 13.09 Conveyance upon consummation
- § 13.10 Where sale proceeds fall short of the judgment
- § 13.13 Rights acquired by purchaser

### **D. NOTICE PROVISIONS**

- § 13.14 As to execution on real property
- § 13.15 As to execution on personal property

### **E. PENALTIES FOR NONCOMPLIANCE**

- § 13.16 Noncompliance with notice provisions
- § 13.17 Noncompliance with other duties
- § 13.19 Turnover provision: § 31.002 of the Civil Practice and Remedies Code

## **CHAPTER 14. LANDLORD'S LIENS**

- § 14.01 Introduction
- § 14.02 Statutory landlord's liens
- § 14.03 Section 54.001: agricultural landlord's lien
- § 14.04 Application of Revised Article 9
- § 14.05 Section 54.021: commercial landlord's lien
- § 14.06 Section 59.021: self-service storage facility landlord's lien
- § 14.07 Section 54.041: residential landlord's lien
- § 14.08 Contractual landlord's liens
- § 14.09 Waiver of landlord's liens
- § 14.10 Perfection and priority
- § 14.11 Bankruptcy

- § 14.12 Aid to enforcement of landlord's lien through distress warrant and commercial lock-out
- § 14.13 Constitutionality of prejudgment seizure of tenant's property in aid of enforcement of landlord's liens
- § 14.14 Foreclosure and sale
- § 14.15 Enforcement of contractual landlord's liens

## **CHAPTER 15. BANKRUPTCY AND REORGANIZATION ISSUES AFFECTING FORECLOSURE**

- § 15.01 Overview of the Bankruptcy Code
- § 15.02 The automatic stay
- § 15.03 Expiration of stay
- § 15.04 Termination of stay through litigation
- § 15.05 Reinstatement of payment obligations in reorganization proceedings under a plan of debt adjustment

## **CHAPTER 16. PROPERTY EXEMPTIONS**

- § 16.01 Introduction
- § 16.02 Postpetition transformation of exempt property

### **A. TEXAS HOMESTEAD EXEMPTION**

- § 16.03 History of constitutional and statutory provisions
- § 16.05 Nature of homestead property
- § 16.05.1 Estoppel *[New]*
- § 16.06 Federal tax liens and the homestead exemption
- § 16.07 Rural homestead
- § 16.08 Urban homestead
- § 16.09 Business homestead
- § 16.10 Homestead exemption and maintenance liens

### **B. PERSONAL PROPERTY EXEMPTIONS**

- § 16.12 Analysis of particular provisions of § 42.002
- § 16.13 Home furnishings
- § 16.14 Tools of trade
- § 16.15 Clothing and jewelry
- § 16.19 Life insurance
- § 16.21 Retirement plans

### **C. FEDERAL BANKRUPTCY EXEMPTIONS**

- § 16.22 History of statutory provision
- § 16.23 Analysis of particular provisions of § 522(d)
- § 16.24 Comparison with Texas exemptions

TABLE OF CONTENTS

**CHAPTER 17. TAXATION OF  
FORECLOSURES, DEEDS IN LIEU OF  
FORECLOSURE, AND ABANDONMENTS**

**A. TAX CONSEQUENCES TO THE MORTGAGEE**

- § 17.02 Foreclosure
- § 17.03 Bad debt loss on foreclosure
- § 17.04 Character of bad debt loss—General rule
- § 17.05 Exceptions
- § 17.06 Timing of bad debt loss
- § 17.08 Debt purchased at a discount
- § 17.10 Accrued interest
- § 17.11 Sale to mortgagee—Gain or additional loss
- § 17.12 Character of gain or additional loss
- § 17.17 Gain or loss
- § 17.19 Basis
- § 17.20 Repossession by the seller-mortgagee

**B. TAX CONSEQUENCES TO THE MORTGAGOR**

- § 17.28 Sale or exchange treatment in foreclosure
- § 17.30 Limitations on recognition of gain
- § 17.37 Character of gain or loss
- § 17.38 Abandonment
- § 17.41 Foreclosure reporting requirement
- § 17.42 Cancellation of indebtedness reporting by financial entities

**CHAPTER 18. FORECLOSURE OF  
INTELLECTUAL PROPERTY**

- § 18.01 Introduction
- § 18.02 Requirements for perfecting security interests in intellectual property
- § 18.05 After acquired intellectual property
- § 18.07 Disposition of intellectual property at foreclosure

**Table of Laws and Rules**

**Table of Cases**

**Index**