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2 **PART VII. RULES RELATING TO SPECIAL PROCEEDINGS**
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4 **SECTION 1. PROCEDURES RELATED TO HOME EQUITY, REVERSE**
5 **MORTGAGE, HOME EQUITY LINE OF CREDIT, TRANSFERRED OR**
6 **PROPERTY TAX LOAN, AND PROPERTY OWNERS' ASSOCIATION LIEN**
7 **FORECLOSURES**

8 **Rule 735. COURT ORDER REQUIRED FORECLOSURES**

9 **735.1. Liens Requiring A Court Order**

10 A party seeking to foreclose a lien requiring a court order for: (a) a home equity,
11 reverse mortgage, or home equity line of credit - Article XVI, Section 50(a)(6),
12 Section 50(k), and Section 50(t), Texas Constitution; (b) transferred or property tax
13 loan - Section 32.06 and Section 32.065, Tax Code; or (c) property owners'
14 association assessment lien - Section 209.0092, Property Code may obtain: (a) a
15 judgment for judicial foreclosure; or (b) an expedited order under Rule 736 from a
16 district court in a county where all or part of the real property encumbered by the
17 lien sought to be foreclosed is located or from a court with equivalent jurisdiction.

18 **735.2. Other Statutory and Contractual Foreclosure**
19 **Provisions Unchanged**

20 (a) Obtaining an expedited order under Rule 736 does not change any foreclosure
21 requirement or duty imposed under applicable law and the terms of the loan
22 agreement, contract, or lien sought to be foreclosed.

23 (b) The only issue to be determined in a Rule 736 proceeding is whether a person
24 may proceed with foreclosure under applicable law and the terms of the loan
25 agreement, contract, or lien sought to be foreclosed.

26 **Rule 736. EXPEDITED FORECLOSURE PROCEEDING**

27 **736.1. Application**

28 (a) A party seeking an expedited order allowing a foreclosure to proceed must file
29 an application styled "In re: Order for Foreclosure Concerning [state: property's
30 mailing address] under Tex. R. Civ. Proc. 736" and identify each person described in
31 subsection (b)(1). An application may not be filed until the opportunity to cure
32 under applicable law and the loan agreement, contract, or lien sought to be
33 foreclosed has expired.

34 (b) The application shall:

35 (1) Identify by name and last known address each party as follows: (A)
36 "Petitioner" – the person legally authorized to prosecute the foreclosure; (B)
37 "Respondent" – each person who, according to the records of the servicer of the lien
38 sought to be foreclosed: (i) breached an obligation secured by the lien; (ii) except for
39 a property owners' association lien, each mortgagor of the lien sought to be
40 foreclosed; and (iii) for a transferred or property tax lien or contract sought to be
41 foreclosed, each owner of the property and the holder of any recorded preexisting
42 first lien secured by the property.

43 (2) Identify the property encumbered by the lien sought to be foreclosed by
44 its commonly known street address and legal description.

45 (3) Describe or state: (A) the type of lien in Rule 735.1 sought to be
46 foreclosed and its constitutional or statutory reference; (B) the authority of the
47 party seeking foreclosure; (C) each person obligated to pay the lien sought to be
48 foreclosed; (D) except for a property owners' association lien, each mortgagor of the
49 lien sought to be foreclosed who is not a maker or assumer of the underlying debt;
50 (E) as of a date that is not more than sixty days prior the date the application is
51 filed: (i) the number of months the obligation secured by the lien sought to be
52 foreclosed is in default, (ii) the amount required to cure the default, (iii) and the
53 amount required to pay off the lien; (F) that the requisite notice to cure the default
54 has been mailed to each person as required under applicable law and the loan
55 agreement, contract, or lien sought to be foreclosed; and (G) that before the
56 application was filed, any other action required under applicable law and the loan
57 agreement, contract, or lien sought to be foreclosed was performed.

58 (4) For a transferred or property tax lien or contract, state all allegations
59 required to be contained in the application in accordance with Section 32.06(c-1)(1),
60 Tax Code.

61 (5) Conspicuously state that if the petitioner obtains a court order, the
62 petitioner will proceed with a foreclosure of the property in accordance with
63 applicable law and the terms of the lien sought to be foreclosed.

64 (6) Include an affidavit of material facts in accordance with Rule 166a(f)
65 signed by petitioner or the servicer of the petitioner establishing the basis for
66 foreclosure and, depending on the type of lien sought to be foreclosed, attach a
67 legible copy of: (1) the note, original recorded lien or pertinent part of a property
68 owners' association declaration establishing the lien, and current assignment of the
69 lien, if assigned; (2) each notice required to be mailed to any person under
70 applicable law and the loan agreement, contract or lien sought to be foreclosed
71 before the application was filed and proof of mailing of each notice; (3) for a

transferred or property tax lien or contract, the **sworn document**¹ and certified statement attesting to the transfer of the lien.

736.2. Costs

All filing, citation, mailing, service, and other court costs and fees shall be taxed as costs of court and paid by petitioner at the time of filing an application with the clerk of the court.

736.3. Service of Citation by Mail

(a) The clerk of the court shall mail by first class mail a citation, with the application attached, to each respondent and to "Occupant of [state: property's mailing address] at the address provided in the application." To compensate for the costs of mailing a citation, the clerk of the court may collect a reasonable fee not to exceed \$10.00 for each citation mailed.

(b) The response date for any citation mailed to a respondent is the first Monday after the expiration of 38 days from the date the citation was placed in the custody of the U.S. Postal Service in accordance with the clerk of the court's standard mailing procedures. A response date is not applicable for a citation mailed or served on the "Occupant" of the property sought to be foreclosed.

(c) Service of the citation by mail is complete when it is deposited into the custody of the U.S. Postal Service in a properly addressed, postage prepaid envelope. For a citation mailed by the clerk, the return of service is the date and time the citation was placed in the custody of the U.S. Postal Service in accordance with the clerk's standard mailing procedures.

736.31. Service of Citation on the Property

(a) The clerk shall prepare a second citation addressed to "Occupant of [state: property's mailing address]" for service on the property by an authorized person under Rule 103. The citation shall be placed in an envelope without any other markings except the conspicuous notation "To the Occupant of [state: property's mailing address] - Important Legal Document Inside" and served on any person over the age of sixteen (16) years occupying the property. If service on a person is unsuccessful, the citation shall be served by securely affixing the envelope to the front door or main entry of the property.

(b) If the property cannot be accessed or is located in a gated community, within 24 hours of the attempted delivery of citation on the property, the process server shall place the citation into a prepaid wrapper or envelope addressed to "Occupant of [state: property's mailing address]" with the conspicuous notation "DO NOT RETURN TO SENDER" into the custody of the U.S. Postal Service's express mail

¹ One Task Force member argues the "sworn statement" requirement be struck

service or a commercial delivery service that provides proof of delivery as a customary business practice. The return of service shall be in accordance with Rule 107. If service is by express mail or commercial delivery service, the deliverer and its tracking number shall be stated on the return of service.

736.32. Service on the Holder of a Recorded Preexisting First Lien

If the lien sought to be foreclosed is a transferred or property tax lien or contract, the current mortgagee or the mortgage servicer of a recorded preexisting first lien shall be served with citation under Rule 106.

736.4. Discovery

No discovery is permitted in a Rule 736 proceeding.

736.5. Response

(a) A response shall be signed in accordance with Rule 57 and may be in the form of a general denial under Rule 92, except that a respondent must affirmatively plead: (1) why the respondent believes a respondent did not sign a loan agreement document 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 in accordance with Rule 95.

(b) The court shall, without a hearing, strike and dismiss any counterclaim, cross claim, third party claim, intervention, or cause of action filed by any person in a Rule 736 proceeding.

736.6 Hearing Required When Response Filed

The court shall not conduct a hearing under this rule unless a response is filed. The hearing must be held not earlier than 20 days and not more than 30 days after a request for a hearing is made.

736.7. If No Response Filed

(a) If a respondent does not file a response, the petitioner must file with the clerk of the court a motion and proposed order to obtain a default order. The motion and order may not be filed until the due date for the respondent's response has expired.

(b) If a respondent does not file a response, all facts alleged in an application and supported by the affidavit of material facts shall constitute prima facie evidence of the truth of the matters alleged.

(c) No hearing is required if the respondent fails to file a response. The presiding judge shall sign a default order no earlier than 10 days and no later than 30 days after a respondent's response date expires.

736.8 Order

(a) An order shall describe: (A) the material facts establishing the basis for foreclosure; (B) the property to be foreclosed by commonly known mailing address and legal description; (C) name and last known address of each respondent subject to the order; and (D) the recording or indexing information of each lien to be foreclosed.

(b) An order is final and is not subject to a motion for rehearing, new trial, bill of review, or appeal. Any challenge to a Rule 736 order must be made in a suit filed in a separate, independent, original proceeding in a court of competent jurisdiction.

(c) The return of service must be on file with the clerk of the court for at least 10 days, before the presiding judge may sign an order.

736.9. Effect of the Order

An order is without prejudice and has no res judicata, collateral estoppel, estoppel by judgment, or other effect in any other judicial proceeding. After an order is obtained, a person may proceed with the foreclosure process under applicable law and the terms of the lien sought to be foreclosed.

736.10. Bankruptcy

If a respondent provides proof to the clerk of the court that respondent filed bankruptcy before an order is signed, the proceeding under this rule shall be dismissed.

736.11. Automatic Stay and Dismissal If Independent Suit Filed

(a) A proceeding or order under this rule is automatically stayed if the respondent files a separate, original proceeding in a court of competent jurisdiction that puts in issue any matter related to origination, servicing, or enforcement of the loan agreement, contract or lien sought to be foreclosed prior to 5:00 p.m. on the Monday before the scheduled foreclosure sale.

(b) Respondent must give prompt notice of the filing of the suit to petitioner or petitioner's attorney and the foreclosure trustee or substitute trustee by any reasonable means necessary to stop the scheduled foreclosure sale.

(c) Within ten days of filing suit, the respondent shall file a motion and order to dismiss or vacate with the clerk of the court in which the application was filed giving notice that respondent has filed an original proceeding contesting the right to foreclose in a court of competent jurisdiction. If no order has been signed, the court

178 shall dismiss a pending proceeding. If an order has been signed, the court shall
179 vacate the Rule 736 order.

180 (d) If the automatic stay under this rule is in effect, any foreclosure sale of the
181 property is void. Within 10 business days of notice that the foreclosure sale was
182 void, the trustee or substitute trustee shall return to the buyer of the foreclosed
183 property the purchase price paid by the buyer.

184 (e) The court may enforce the Rule 736 process under Chapters 9 and 10, Civil
185 Practices and Remedies Code.

186 **736.12. Attachment of Order to Trustee's Deed**

187 A conformed copy of the order must be attached to the trustee or substitute trustee's
188 foreclosure deed.

189 **736.13. Promulgated Forms**

190 The Texas Supreme Court may publish at www.supreme.courts.state.tx.us or as an
191 Appendix to the Texas Rules of Civil Procedure promulgated forms that conform to
192 this rule.

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195 **WORD COUNT** **2,168**

196 **ORIGINAL RULE** **1,875**

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