

RULES COMMITTEE

- Texas non-judicial foreclosure process governed by Texas Property Code, 51.002, et seq. and contractual documents
- Non-judicial foreclosure process - default under deed of trust triggering power of sale and non-judicial foreclosure
- Texas Supreme Court Order to proceed with foreclosure –
 - Default under deed of trust triggers Application for Order to proceed with foreclosure under Rules 735 and 736
 - Expedited process for obtaining Order to proceed with foreclosure
- After default and granting of Order to proceed with foreclosure –
 - Proceed with non-judicial foreclosure
 - 21 day notice of foreclosure and sale at courthouse steps on first Tuesday of every month at County Courthouse where property is located
- Big picture factors for priority ad valorem tax liens
 - Rules 735 and 736 are working – being applied by the legislature to more foreclosure processes
 - Coordinate administration with Court Clerks, Coordinators, and presiding Judges
 - Due process service on all lien holders of record and effect on title companies dealing with lien priority of ad valorem taxes
 - Dealing with ad valorem taxes that previously required judicial foreclosure – must protect all parties – creditor, debtor, lien holder, ad valorem tax governmental entities, consumers, title companies, etc.
 - Long process for adding priority ad valorem liens to Rules 735 and 736
 - Priority – do not disturb 150 years of property title laws – need certainty to keep land titles marketable for all

RULES 735 AND 736 TEXAS RULES OF CIVIL PROCEDURE –

HISTORY

- Texas Supreme Court was originally required to develop an order to proceed with foreclosure when voters of Texas approved home equity loans in the Texas Constitution, 1996
- Texas Supreme Court appointed Foreclosure Task Force to propose Rules
- Diverse Task Force with representation from consumers, bar, pro bono, mortgage companies, title companies, lenders, etc.
- Careful not to interfere with certainty and marketability of real property land titles
- Rules 735 and 736 designed for situations where defendant does not file an answer –
 - only issue is the right of applicant to obtain an order to proceed with foreclosure
 - automatic abatement and dismissal without prejudice, if notice of another district court suit contesting foreclosure is filed in the court where the application is pending
- Rules 735 and 736 presented to Texas Supreme Court Advisory Rules Committee and approved by Texas Supreme Court in 1996
- 1999 – Legislature approved reverse mortgages with direction for Texas Supreme Court to adopt an order for proceeding with foreclosure of reverse mortgages
 - Task Force proposed changes to Rules 735 and 736 to include reverse mortgages
 - Approved by Texas Supreme Court
- 2007 Legislature directed order for foreclosure of property ad valorem tax lien
- Task Force met many times with broad representation of affected interests, including notice to holders of recorded pre-existing first liens on property

- Task Force proposing approval for adding provision to Rules 735 and 736 for obtaining an order to proceed with foreclosure of ad valorem tax liens – additions to Rules 735 and 736 unanimously approved by the Texas Supreme Court Task Force.