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1. Trudy, as trustee, must give proper notice of the sale.
2. The judgment lien is not improper.
3. A foreclosure sale deed would not be subject to any after-acquired liens on the property.

PROPER FORECLOSURE PROCEDURE

Under the Texas Property Code, a trustee must give notice of default and acceleration. This must be sent if the property is residential, the trustee must give the debtor the right to cure. Then if the debt is not paid in the stated time (generally 30 days), the trustee must give the debtor 21 days notice of the sale, with a description of the time and place of the sell, referencing the deed of trust giving him or her the authority to sell, and the amount of the debt owed. This must be done through U. S. certified mail, return receipt requested or registered mail. This notice must also be posted at the designated location for the county. Foreclosure sales occur on the first Tuesday of every month in the county in which the real property is located at the location designated by the county commissioners (generally the courthouse steps) between starting at 10 am and up to three hours thereafter or starting at 1 pm and up to three hours thereafter.

Here, Trudy sent the notice of default. This should have been sent through U. S. certified mail, return receipt requested or registered mail. This is not residential property, so there is no need to give the debtor the right to cure. If the debt is not paid in the stated time, Trudy must give the debtor 21 days notice of the sale, with a description of the time and place of the sell, referencing the deed of trust giving him or her the authority to sell, and the amount of the debt owed through U. S. certified mail, return receipt requested or registered mail. This notice must also be posted at the designated location in Washington County. The foreclosure sale will occur on the first Tuesday of the first month after notice was posted or the month indicated in the notice in Washington County at the location designated by the county commissioners (generally the courthouse steps) between starting at 10 am and up to three hours thereafter or starting at 1 pm and up to three hours thereafter.

Therefore, Trudy, as trustee must give proper notice of the sale, as described.

CREDITOR'S JUDGEMENT LIEN

Under Texas Recording Statute, an unrecorded interest in land is not valid against subsequent purchasers without notice. This is called a notice statute. An interest in land includes judgment liens. Case law has determined that judgment lienholders are included as subsequent purchasers in the recording statute. There are three forms of notice. Actual notice is when the subsequent purchaser actually knew of the interest. Constructive notice is when the subsequent purchaser would have discovered the interest through title research. Inquiry notice is when the subsequent purchaser should have known of the interest considering certain facts.

Here, Creditor filed its judgment lien before ArtCorp recorded its warranty deed. Therefore, Creditor had no notice of ArtCorp's interest. Under the Recording Statute, Creditor's judgment lien is effective, even though ArtCorp purchased the property prior to the judgment lien because ArtCorp did not record until after the judgment lien was recorded. Therefore, ArtCorp's purchase is subject to Creditor's lien.

Therefore, the judgment lien is not improper.

FORECLOSURE SALE DEED

Under Texas Property law, a foreclosure has the effect of foreclosing all junior liens on the property. The superior liens still exist. A lien is superior if it is properly established and recorded before the subject interest. A lien is a junior lien if it is established and recorded after the subject interest. A foreclosure sale deed is only subject to the superior liens, not the junior liens. Any purchase of the property prior to foreclosure is subject to all liens, including the lien held by the foreclosing creditor.

Here, there are not facts indicating any lien superior to Sal's. The only inferior lien is Creditor's judgment lien. If Bobs waits and purchases the property at the foreclosure sale, rather before the foreclosure sale, the property will not be subject to any liens. Otherwise, he is subjecting himself to Sal and Creditor's lien on the property.

Therefore, foreclosure sale deed in Bob would not be subject to any after-acquired liens on the property.

END OF EXAM

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(1) What statutory requirements must Trudy fulfill as Trustee in order to effect a proper foreclosure?

Texas law does not require that deeds of trusts be foreclosed through a judicial process; rather they can be foreclosed privately and sold at a public auction through a trustee. Because of the private nature of the transaction, the trustee must follow specific rules related to the sale. First, the trustee must give proper notice to Van 20 days before instituting foreclosure proceedings, and must give 10 days after the notice before holding the sale. Van has up to the actual foreclosure sale to remedy the default. Additionally, in the foreclosure notice, the trustee must list the date, time, and place of the sale. The notice should note that the date of the sale is the first tuesday of the month following the notice. The notice should note that the sale will be held at the local county courthouse, of the county in which the property sits. The notice must state the courthouse's designated spot for foreclosure sales or must designate the spot where the sale will be held (e.g., Travis County Courthouse, back steps at the rear of the courthouse). The notice must also include an approximate time that the sale will occur. The sale must be held between 10am - 4pm on the Tuesday noted, and the notice must designate a three hour window in which the sale will be held.

(2) Is ArtCorp correct in its assertion that the judgment lien was ineffective?

No, Art Corp was incorrect. Texas is a notice statute state. That means, to have a lien perfected before other lien creditors, the creditor must file a copy of the deed in the local county land records. Here, Art Corp did not file the warranty deed from Van until 2004 even though it obtained the deed in 2002. For this reason, the lien creditor had no constructive notice of the prior perfected interest. Once the creditor filed, he perfected first, and had priority over Art Corp's later perfection. Had Art Corp filed first, the deed would have been recorded as transferred to Art Corp and when the creditor attached a lien judgment against Van's property, it would not have attached to Whiteacre.

(3) Assuming Trudy effects a proper foreclosure, discuss whether Bob would be better off if he bought Whiteacre at the foreclosure sale.

Bob would be better off because the foreclosure sale would eliminate the creditor's lien judgment. Trudy filed and perfected first against Van. Trudy's lien is therefore superior

subsequent liens, including the lien creditor's judgment lien which until foreclosure is still attached to the property. If Bob negotiates with Art Corp and the foreclosure sale does not go through, then the 50K judgment lien would still be attached and Bob and Art Corp would still have to deal with it by having to pay off the creditor or by working out some other arrangement with Van and the creditor, etc. If instead Bob allows the trustee to foreclose on the Trudy's lien, and Bob is able to purchase it at a public sale, the foreclosure on the superior judgment lien would wipe out the inferior judgment lien. As Bob would be able to buy it after the judgment lien had been eliminated by the foreclosure, he would be in a better position in terms of his ownership rights regarding Whiteacre.

END OF EXAM