

Question 8 – July 2014 – Selected Answer 1

1. No, this was not a valid non-judicial foreclosure sale. Non-judicial foreclosure sales are authorized in Texas; however, they are subject to strict requirements. First, after default on the loan, if the house is a person's homestead, the bank must give the homeowner debtor 20 days to cure the default before sending notice of the foreclosure. If the default is not cured within 20 days, the bank must send notice of the foreclosure sale to the debtor. This notice must be sent at least 21 days before the date of the sale, and it must include the following: the actual date of the sale, the place of the sale, and the earliest time at which the sale will begin. In addition to sending the notice, the bank must post the notice at the county courthouse of the county where the property is located as well as anywhere else required by the county. The foreclosure sale must take place on the first Tuesday of the month, on the courthouse steps of the county where the property is located, between the hours of 10AM and 4PM. Here, Bank didn't comply with most of these requirements. First, there is no indication of whether Sarah's house is her homestead, but if so, the Bank was required to give Sarah a 20 day period to cure the default before sending notice of the foreclosure sale. They did not do this. The Bank also failed to send proper notice. The Bank's notice did not contain the exact date and time of the sale or the location, but only an approximate date that was within the 21 day advanced notice requirement period. Again, this was improper. Next, the Bank's foreclosure sale did not take place on the first Tuesday of the month as it was conducted on June 15, the second week of the month. Finally, the sale took place on the courthouse steps of Dallas County, not Travis County, where Sarah's property was located. All these inconsistencies result in the non-judicial foreclosure sale being improperly conducted.

2. No, the Bank was not required to complete and give the Buyer a Seller's Disclosure of Property Condition. Generally, in Texas, all sellers, of both new and used residential property, are required to provide a Seller's Disclosure of Property Condition. However, one of the statutory exceptions applies for a home sold by a bank after a foreclosure sale. Here, the Bank bought Sarah's home through a foreclosure sale and subsequently sold the house to a buyer. This fact patten fits under the statutory exception, and consequently, no disclosure is required to be given.

Question 8 – July 2014 – Selected Answer 2

1. The non-judicial foreclosure sale is invalid. The issue is whether ABC and Trustee followed the proper procedure in conducting a non-judicial foreclosure sale. In Texas, to conduct a valid non-judicial foreclosure sale on property secured by a deed of trust, several procedures must be followed. First, if a party is in default, they must be given 20 days notice to cure the default. If the default is not cured, then notice of the non-judicial foreclosure sale must give at 21 days in advance. The notice must be posted at the courthouse in the county where the property is located, filed with the clerk of the county, and posted on the county clerk's website if possible. The notice must state the when and where the sale is to be conducted and the earliest time at which it can be conducted. Strict compliance with these standards is required. Here, Sarah was in default because of her illness. This does not excuse her default. The bank properly accelerated the loan. Then on 4/30/12, the bank sent notice to S of the foreclosure sale. The notice is inadequate because it did not provide 20 days for her to cure the default. The notice said the sale would occur after 5/15/12, which is not 20 days after the notice was given. Further, after the 20 day to cure deadline, the notice of sale must then give 21 days notice of the sale. Here, there are less than 21 days between 4/30 and 5/15, so the 21 day notice is also not met. The notice said the sale may be conducted at any time and place after 5/15. This is also incorrect. Non-judicial foreclosures must be conducted on the first Tuesday of the month following the 21 day notice, between the hours of 10 am and 4 pm, and at the steps of the county courthouse or other location designated by the county commissioners. The statement "any time and place" is not accurate according to these rules. Thus, the notice is insufficient. The Trustee properly posted the notice with the clerk in Travis County, but the fire station was an incorrect location to place the notice according to the rule above. The notice should have been placed at the county courthouse instead. The county commissioners may not change the location of where the notice may be placed, so the fire station is improper. The Trustee also conducted

the sale in the wrong place. The county commissioners stated that sales are to be conducted on the courthouse steps in Travis County. Here, the sale took place in Dallas County at the bank's office, so the sale is invalid. The sale also took place on June 15, 2012, which is not the first Tuesday in June on any calendar in any year. As such, the sale is invalid. There are no facts indicating the time the sale took place. The bank is allowed to bid on the property at a properly conducted non-judicial foreclosure sale, but based on the above discussion; the non-judicial foreclosure sale is clearly invalid on many grounds.

2. The bank is not required to complete a seller's disclosure of property condition on a house it acquired through non-judicial foreclosure. The issue is whether the bank's sale of the property required the bank to provide a seller's disclosure of the property condition. In Texas, a seller must provide a seller's disclosure of property condition before the buyer and seller enter into a contract for sale. The seller must accurately fill out the form and fill it out in good faith. However, a bank may sell a foreclosed house "as is", and thus the bank does not have to fill out and provide a seller's disclosure. The bank likely doesn't have adequate knowledge of the property to complete a helpful seller's disclosure anyway. Here, the bank acquired the property via a non-judicial foreclosure sale (an invalid one at that). The bank then turned around sold the property to a buyer. As such, the bank is not required to give the buyer a seller's disclosure of property condition in this case.