

Information & Instructions: Deed in lieu of foreclosure

PREVIEW

1. Statutory Review: The attorney should review the following section from the Texas Probate Code prior to using a deed in lieu of foreclosure:

2. **Sec. 51.006. Deed-of-Trust Foreclosure After Deed in Lieu of Foreclosure**

(a.) This section applies to a holder of a debt under a deed of trust who accepts from the debtor a deed conveying real property subject to the deed of trust in satisfaction of the debt.

(b.) The holder of a debt may void a deed conveying real property in satisfaction of the debt before the fourth anniversary of the date the deed is executed and foreclosed under the original deed of trust if:

(1) the debtor fails to disclose to the holder of the debt a lien or other encumbrance on the property before executing the deed conveying the property to the holder of the debt in satisfaction of the debt; and

(2) the holder of the debt has no personal knowledge of the undisclosed lien or encumbrance on the property.

(c) A third party may conclusively rely upon the affidavit of the holder of a debt stating that the holder has voided the deed as provided in this section.

(d) If the holder elects to void a deed in lieu of foreclosure as provided in this section, the priority of its deed of trust shall not be affected or impaired by the execution of the deed in lieu of foreclosure.

(e) If a holder accepts a deed in lieu of foreclosure, the holder may foreclose its deed of trust as provided in said deed of trust without electing to void the deed. The priority of such deed of trust shall not be affected or impaired by the deed in lieu of foreclosure.

Section 2 of 1995 legislation provides:

"This Act applies only to a holder of a debt who accepts a deed conveying property in satisfaction of a debt on or after the effective date of this Act."

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THANK YOU

1. In order to avoid the foreclosure process, the Holder of the Note may wish to have the Debtor sign a Deed to the Holder of the Note in lieu of participating in the foreclosure procedure.

2. Many lenders do not use a Deed in Lieu of Foreclosure since liens placed on the property after the date that the Debtor acquired the property remain intact and are not extinguished.

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3. Furthermore, the Debtor will probably take the position that he or she is released from the obligations on the Note by giving a Deed in Lieu of Foreclosure.

4. In view of the recent case law the practitioner should review Flag-Redfern Oil Co. et al v. Humble Exploration Inc. et al, 744 SW2d 6 (Tex 1987), before deciding whether a Deed in Lieu of Foreclosure should be used. Many practitioners are discontinuing the use of a Deed in Lieu of Foreclosure due to the issues raised in this case.

Form: Deed in lieu of foreclosure

State of Texas
County of [Name]

Pursuant to that one certain Deed of Trust dated _____, filed for record in the Office of the County Clerk of [Name] County, Texas on _____, under Clerk's File No. [Number], executed by [Name] and spouse ("Mortgagors") Mortgagors conveyed all of their right, title and interest in and to that one certain parcel of real property situated in [Name] County, Texas and described as [set forth legal description and street address], together with all improvements thereon and including any other property set forth in the Deed of Trust, to [name] ("Trustee") for the purpose of securing the payment of that one certain Real Estate Lien Note, dated _____, in the original principal amount of \$[Amount] [Add, if appropriate: the same being further extended by a Real Estate Construction Extension Letter Agreement filed for record on _____ under [Name] County Clerk's File No. [Number]]; and

The Deed of Trust was filed in the Official Public Real Property Records of [Name] County, Texas under Clerk's File No. [Number], reference to which is hereby made for all purposes; and

The Note described above and any and all other indebtedness secured by the Deed of Trust are payable to the order of [name of holder of note] ("Beneficiary"); and

There is now due and owing on the Note the entire principal balance of the Note and accrued interest; and

[Name] [name of holder of note] is the holder of the Note and of the Lien securing it; and

The Note and Deed of Trust are in default and the entire unpaid balance is immediately due and payable and the Beneficiary has announced its intention to enforce the power of sale set forth in the Deed of Trust and Promissory Note and

After acceleration and maturity of the Note and Deed of Trust and after demands on the Maker thereof for payment and failure of the Maker to pay the same, the Holder of the Note has secured the Agreement of Mortgagors to release and relinquish all of their right, title, and interest in and to the property described above, pursuant to this Deed in Lieu of Foreclosure; and

The said Mortgagors wish to have the entire right, title and interest of foreclosure proceedings; and

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PREVIEW

The parties acknowledge the consideration of Grantee's agreement not to foreclose on the Note and Deed of Trust [add, if appropriate: or pursue any action to recover any amounts owing over and above the principal owing on the Note, including interest, taxes, or any other amounts whatsoever], which consideration is not considered to be of greater value than the property conveyed by this Deed;

Therefore, the Grantors hereby grant, sell, and convey the property described above to [name of holder of note] as Grantee, to have and to hold, together with all the rights and appurtenances thereto, belonging to the said Grantee, its successors and assigns, forever; and Mortgagors, Grantors in the Deed of Trust, and their successors and assigns warrant and will forever defend all rights in the property of Grantee and its successors and assigns, against every person whomsoever, lawfully claiming or attempting to claim the property of any part thereof.

Signed on _____.

PLEASE DO NOT COPY

[Name]

State of Texas

County of _____

This instrument was acknowledged before me on _____ by _____

THIS DOCUMENT

Signature of officer

Notary's typed or printed name

My commission expires: _____

THANK YOU

[for Notary's Stamp]

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