



Back to the Basics: Foreclosure 101

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Regular Foreclosure Process

Regular Foreclosure Process

- **STEP 1:** CHECK LEASE FOR PARTICULARS
- **STEP 2:** SEIZE THE CONTENTS OF THE UNIT
Option #1: Cut the lock + Notice of Claim (N.O.C.)
OR
Option #2: Overlock
- **STEP 3:** WAIT ANY AMOUNT OF TIME (OR NONE)



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Regular Foreclosure Process

- **STEP 4:** MAIL OR EMAIL NOTICE OF CLAIM (EMAIL IF LEASE VERSION 2012 OR LATER)



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- **STEP 5:** WAIT AT LEAST 15 DAYS
- **STEP 6:** PUBLISH NEWSPAPER ADS

Two ads, at least 7 days apart,
but still in two consecutive weeks



Regular Foreclosure Process

- **STEP 7:** PUBLISH NEWSPAPER ADS NO SOONER THAN 15 DAYS AFTER N.O.C. SENT
(OPTIONAL) MAIL NOTICE OF PUBLIC SALE VIA REGULAR MAIL OR EMAIL
- **STEP 8:** WAIT AT LEAST 15 DAYS AFTER FIRST AD RUNS
- **STEP 9:** CONDUCT THE PUBLIC AUCTION



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Regular Foreclosure Process

- **STEP 10:** ALLOW TENANT TO REDEEM ANYTIME BEFORE “GAVEL FALLS”
- **STEP 11:** GIVE BUYER BILL OF SALE
- **STEP 12:** COLLECT SALES TAX **(IF APPLICABLE)**



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Regular Foreclosure Process

- **STEP 13:** IF EXCESS PROCEEDS, SEND NOTICE TO TENANT VIA REGULAR OR CERTIFIED MAIL
(If requested by tenant, send excess proceeds. If not requested by tenant, hold excess proceeds for two years.)
- **STEP 14:** KEEP ALL RECORDS ON FORECLOSURE SALES FOR FOUR YEARS



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Special Foreclosure Process

Special Foreclosure Process

How is the process different?

- You must determine registered ownership (TDMV or TPWD)
- Lienholder may be involved
- If there is a lienholder, then a separate notice must be given
- Two notices are required
- Provide buyer with original documents at auction to register vehicle/boat
- Do not charge sales tax to buyer; buyer pays when registering



Special Foreclosure Process

What is a vehicle?

- Trailer, Car, Truck, RV
- Essentially, “anything required to be registered”
- ATV
- Motorcycle
- Includes boat trailers
- Golf carts are NOT “vehicles”



Special Foreclosure Process

- **STEP 1:** CHECK LEASE FOR PARTICULARS

(Note: Some like to determine ownership information now)



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- **STEP 2:** “SEIZE” UNIT OR VEHICLE BY OVERLOCKING + N.O.C., CUTTING LOCK, OR WHEELBOOTING/CHAINING IF OUTSIDE

(Or gate code/card lock out + N.O.C.)

- **STEP 3:** WAIT ANY AMOUNT OF TIME (OR NONE)



Special Foreclosure Process

- **STEP 4:** MAIL OR EMAIL NOTICE OF CLAIM TO **TENANT**
(EMAIL IF LEASE VERSION 2012 OR LATER)
- **STEP 5:** GET **OWNER & LIENHOLDER** INFO
 - **FOR BOATS:** Use TPWD form 763
 - **FOR VEHICLES:** Use TDMV official form VTR-275-SSF



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Special Foreclosure Process

- **STEP 6: NOT MORE THAN 30 DAYS AFTER SEIZURE,
MAIL “NOTICE OF INTENT TO SELL” VIA VERIFIED MAIL TO
REGISTERED OWNER & LIENHOLDER
(Can be sent when N.O.C. is sent)**
- **STEP 7: PUBLISH NEWSPAPER ADS
(Same rules for ads as REGULAR foreclosure)**



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Special Foreclosure Process

- **STEP 8: (OPTIONAL)** MAIL NOTICE OF PUBLIC SALE TO TENANT
- **STEP 9:** WAIT AT LEAST 31 DAYS AFTER SENDING NOTICE OF INTENT TO SELL AND NEWSPAPER ADS HAVE BEEN PUBLISHED FOR TWO CONSECUTIVE WEEKS, WHICHEVER IS LATER, **BEFORE** HAVING AUCTION



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Special Foreclosure Process

- **STEP 10:** CONDUCT THE PUBLIC AUCTION
- **STEP 11:** TENANT CAN REDEEM ANYTIME BEFORE GAVEL FALLS
- **STEP 12:** LIENHOLDER CAN REDEEM WITHIN SPECIFIC PERIOD OF TIME (W/IN 31 DAYS AFTER NOTICE)



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Special Foreclosure Process

- **STEP 13:** GIVE BUYER BILL OF SALE
- **STEP 14:** GIVE BUYER ALL NECESSARY DOCUMENTS TO TRANSFER OWNERSHIP, INCLUDING:
 - **FOR BOATS:** TPWD Affidavit Form **PWD 309B**
 - **FOR VEHICLES:** TDMV official form **VTR-265-SSF**



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|  | | SELF-SERVICE STORAGE FACILITY LIEN FORECLOSURE | |
|--|--|--|-------------------|
| | | INSTRUCTIONS ON PAGE 2 | |
| General Information | | | |
| Vehicle Identification Number | | Year | Make |
| License plate number | | Year of license | State of issuance |
| Tenant who left vehicle on lease or rental property | | Lease or rental agreement date | |
| Self-Service Storage Facility's Lien Foreclosure/Public Sale Information | | | |
| Possession | | Date self-service storage facility took possession of motor vehicle (charge accrued) | |
| Notice of Claim (Tenant's Notice) | | Date of Notice of Claim to tenant | |
| Notice of Sale | | Date(s) of notice advertising sale | |
| Notice to Owner(s) and | | Date of Notice to Owner(s) and Lienholder(s) | |

Special Foreclosure Process

- STEP 15: DO **NOT** COLLECT SALES TAX
- STEP 16: IF EXCESS PROCEEDS, SEND NOTICE TO TENANT
(Hold excess proceeds for 2 years; send if requested)
- STEP 17: KEEP RECORDS
 - **FOR BOATS:** 4 years
 - **FOR VEHICLES:** 5 years



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Common Questions About Foreclosure

Common Questions About Foreclosure

- What about tenants who don't want to provide email?
- We don't trust email. Is it still okay to send notice of claim via certified mail?
- Can I text a tenant about his account?



Common Questions About Foreclosure

- Is an inventory of the contents for delinquent units required?
- Must I use an auctioneer for the sale?
- Do I need auction rules?
- Can the tenant bid at the auction?
- Who can bid at the auction? What if no one bids on a unit?



Common Questions About Foreclosure



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What items CANNOT be sold at auction?

- Beer, liquor, wine
- Food, drugs, cosmetics, medical devices



Common Questions About Foreclosure



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What items CANNOT be sold at auction?

- Firearms, such as semi-automatic assault weapons, machine guns, sawed-off shotguns, guns with a silencer
- Illegal weapons (brass knuckles or spike strips)





Online Auctions

Online Auctions

Effective 9-1-17 state law expressly authorizes both the long-standing foreclosure sales method, aka live in-person auction at the facility or a reasonably near public place, AND an online auction on an Internet website.



Online Auctions

- **If sale is on the internet, additional requirements are:**
 - the website must be accessible to the public, and
 - the newspaper ads must (in addition to all other required content) contain the website address
- **All else is the same!**
- **Consider adding an additional charge in your TSSA lease special provisions for the removal of an online auction from the website**



Online Auctions

Under state law, the newspaper notice advertising the sale must contain:

- (1) a general description of the property;
- (2) a statement that the property is being sold to satisfy a landlord's lien;
- (3) the tenant's name;
- (4) the address of the self-service storage facility; and
- (5) the time, place, and terms of sale.

A sample newspaper notice of an auction to be held online might look like this (the numbers in the sample ad refer to the numbers immediately above for clarity; the numbers should not be included in the ad):



Notice of Public Sale

[2] of property to satisfy a landlord's lien.

Sale to be held online at _____ [insert Internet website address].

[4] Facility is located at 900 West Street, Houston, TX 77082

[5] Bidding will open _____ [insert date and time] and conclude _____ [insert date and time]. Cleanup deposit is required. Seller reserves the right to withdraw the property at any time before the sale. Unit items sold as-is to highest bidder. Property includes the contents of spaces of the following tenant-

[3] John Doe: [1] electronics, appliances and misc. household items



Questions?



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