



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)**



- **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)
- **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)**



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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				
Texas Department of Motor Vehicles				
General Information				
Vehicle Identification Number		Year	Make	Body Style
License plate number	Year of license	State of issuance		Expiration
Tenant who left vehicle on lease or rental property		Address of tenant (Street Address, City, State, Zip)		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)		Notice of Claim made by <input type="checkbox"/> Verified mail <input type="checkbox"/> Email	Date of Notice of Claim to tenant	
Notice of Sale		Notice of Sale made by <input type="checkbox"/> Publication <input type="checkbox"/> Posting	Date(s) of notice advertising sale	
Notice to Owner(s) and Lienholder(s)		Notice to Owner(s) and Lienholder(s) made by <input type="checkbox"/> Mailed <input type="checkbox"/> Hand delivered	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

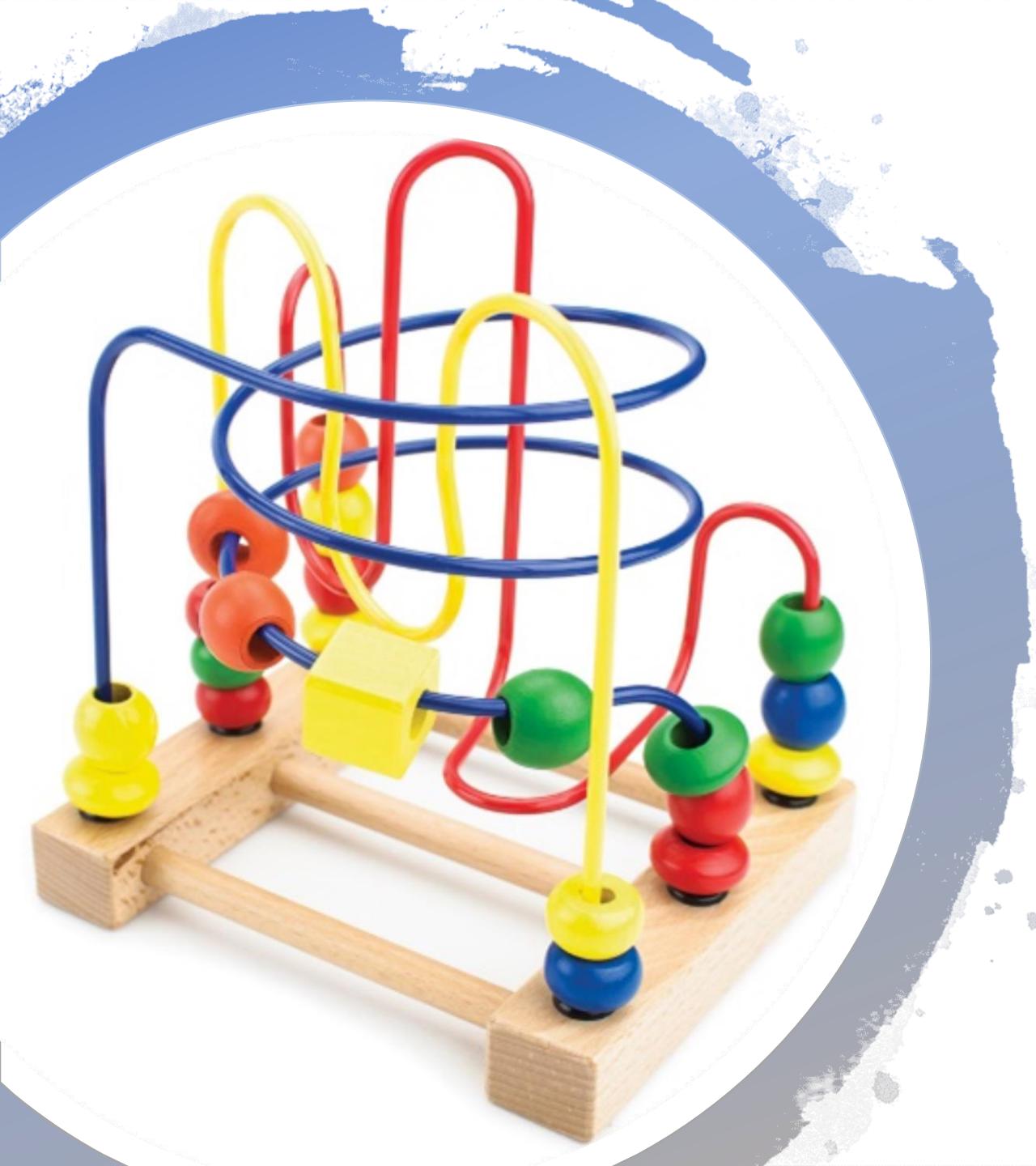
[2] of property to satisfy a landlord's lien.

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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