

DODD-FRANK ACT AMENDING REAL ESTATE SETTLEMENT PROCEDURES ACT AND TRUTH IN LENDING ACT MORTGAGE SERVICING RULES

REGULATION X (Section 1024.41) 12 CFR 1024

(1) *Pre-foreclosure review period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

- (i) A borrower's mortgage loan obligation is more than 120 days delinquent;
- (ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or
- (iii) The servicer is joining the foreclosure action of a subordinate lienholder.

New comments regarding Pre-Foreclosure review period from the Consumer Financial Protection Bureau (“CFPB”):

“When the foreclosure procedure under applicable State law does not require a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.”

In Texas, this comment allows notice of delinquency, notice of default with 20-day allowance to cure, and notice of acceleration of the entirety of the note.

In Texas only the Notice of Trustee Sale is required to be recorded and posted at the courthouse.

CFPB noted that the loss mitigation provisions and 120-day notice requirement apply only to “principal residences” of borrower. Consequently, if the property is abandoned or vacant, these servicing rules do not apply.

The 120-day notice does not apply if the borrower violated the due-on-sale clause of the deed of trust or if the servicer is joining the foreclosure action of a subordinate lien holder.

WHAT IS THE LEGAL DEFINITION OF “DELINQUENT”?

Section 1024.39(a) Live contact definition:

“1. *Delinquency.* A borrower is delinquent for purposes of §1024.39 as follows:

- i. Delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee.

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