

## **MINOR MISTAKES DOES NOT VOID FORECLOSURE SALE**

The Fifth Circuit Court of Appeals recently [held](#) that a notice of default with an incorrect curing deadline was a minor defect under the deed of trust that did not void an otherwise valid foreclosure sale under Texas law. The record demonstrated that proper notice would have made no difference because the error resulted in no harm or prejudice to the borrower.

The borrower requested the court to set aside a foreclosure sale because the lender sent a notice of default with a curing deadline thirty days from the day the notice was printed, even though the deed of trust required a deadline, not less than thirty days from the date the notice was given. Although the notice of default stated that further delinquency would result in acceleration, the lender did not accelerate the loan until the borrower was 313 days delinquent. Before accelerating, the lender offered multiple loan-modification proposals, including offering to (i) modify the terms of the loan; (ii) reduce the monthly payment; and (iii) provide interest-free deferment. The lender sold the property to the Federal Home Loan Mortgage Corporation.

The Fifth Circuit rejected the borrower's argument that the foreclosure sale must be set aside because the incorrect curing deadline failed to conform to the terms of the deed of trust. The court agreed with the district court finding that the borrower could not demonstrate that defects in the notice of default produced real-world harm. The court noted that **the purpose of a curing deadline is to provide notice and an opportunity to cure the default**, which this borrower received for nearly nine months. The court explained that while “‘terms of a deed of trust must be strictly followed,’ ... **harmless mistakes do not void otherwise-valid foreclosure sales.**” The court compared this case to other Texas Supreme Court cases and concluded that the incorrect curing deadline was a harmless mistake. The court also explained that proper notice would not have changed the outcome because the borrower lacked sufficient funds to remediate the delinquency.