

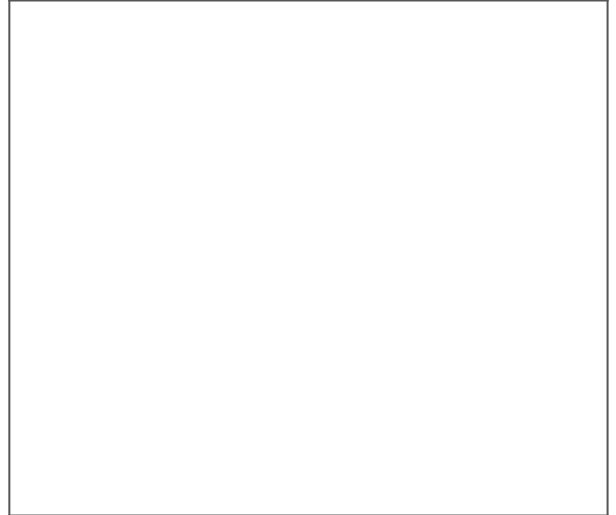
Mortgage Foreclosure Proceedings in Manitoba

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Proceedings in the Land Titles Office

With rare exceptions, mortgage foreclosure and sale proceedings are handled by way of an administrative process through the Land Titles office rather than a court action. The following is a brief description of the process:

1. Once a mortgage has been in default for at least one month, the mortgagee may file Notice Exercising Power of Sale (NEPS) in the Land Titles Office.
2. The mortgagee serves the NEPS by personal service on the mortgagor and all other persons having a registered interest in the land subsequent to the mortgage.
3. One month after service of the NEPS the mortgagee may apply to the Land Titles Office for an Order for Sale. This Order generally provides for sale by public auction, private contract or both.
4. If the order is for sale by public auction, the mortgagee must advertise the auction in a local paper and send notice by mail to all parties served with the NEPS at least 14 days before the auction.
5. The auction will be subject to a reserve bid which must not exceed the amount of money secured by the mortgage plus costs of the sale.
6. If the property does not sell at auction the mortgagor may list the property for private sale. A Notice of intention to Sell by Private Contract must be served by mail on all parties served with the NEPS. The listing agreement and any offer to purchase the property must contain provisions making any sale of the property subject to approval by the District Registrar.
7. On the closing of a private sale, the offer to purchase, transfer documents and supporting



evidence must be submitted to the District Registrar for approval. The District Registrar will require one appraisal and one opinion of value for the property which must be dated or updated within two months of the agreement of sale. The parties providing the valuations must be independent from the mortgagor, the purchaser, any listing or selling agent and each other. The purchase price must generally be at least 90 percent of the lowest estimate of value.

8. Once the mortgage has been in default for at least 6 months, and the property has been offered for sale at auction, the mortgagee may apply for a Final Notice to Redeem. This notice must be served on all parties who were served with the NEPS.
9. One month after the last service of the Final Notice to Redeem the mortgagee may apply for a Final Order of Foreclosure.
10. The mortgagee may register the Final Order of Foreclosure in the Land Titles office and transfer the title to the property to the name of the mortgagee. This will extinguish the covenants under the mortgage, including any guarantees of the mortgage debt. The mortgagee does not have to register the Final Order of Foreclosure and may choose to keep it on file and attempt to collect under the deficiency judgment.

Proceedings in the Court of Queen's Bench

There are a number of cases where the a court application may be required in connection with a mortgage foreclosure and sale proceeding, These include:

- If the alleged default is something other than failure to pay principal interest and taxes or to insure the property, the mortgagee must obtain leave of the court to issue a Notice Exercising Power of Sale;
- Leave of the court is also required where the property is farmland within the meaning of The Family Farm Protection Act;
- The mortgagee may issue a Statement of Claim for judgment under the covenant in the mortgage and/or an order for possession of the property;
- The mortgagee may also bring proceedings for an order for possession of the property by way of a Notice of Application;
- The mortgagor may bring an action for an injunction to halt the proceedings in the Land Titles Office

or for redemption of the mortgage;

- Equitable mortgages and mortgages contained in debentures may be enforced by way of an action for foreclosure through the courts.

Author Peter Sim has retired. If you would like to contact him, please contact Mikaela Fedoruk at (204) 934-2584 or mfedoruk@tdslaw.com and they would be happy to help you.

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