

Consumer Land Mortgage Lending

Prepared For: Legal Education Society of Alberta

Land Mortgage Financing and Enforcement Fundamentals

Presented by:

R. W. Steen

Witten LLP

Edmonton, Alberta

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FORECLOSURE PROCESS

1. Initial Review and Considerations

(a) **Is the mortgagor a farmer?**

A farmer is "...any individual, corporation, cooperative, partnership or other association of persons that is engaged in farming for commercial purposes and that meets any prescribed criteria.

Is the property occupied

Are you dealing with a conventional mortgage or one where *in personam* relief is allowed

What security has been given to your client

Has the mortgage matured or is there an ability to pay arrears

2. Starting the Foreclosure Action

(a) **Demand Letter**

Demand Letters are optional. Some lenders do not require one. If it is not required, commence the action in the normal course.

(b) **Sending a Demand Letter**

Expiry Time – give 10 days, vary if warranted

Calculation of what is due and owing to our client

Initial Legal Costs – include in the payout amount

Borrower's Costs – include costs already incurred

Property management charges

Require Payment of Taxes

Require Payment of Condo Fees

Require Payment of Next Installment Due if Due Within 14 days. Set out the amount of the next payment if it is known

Require Confirmation of Fire Insurance

(c) **Payout**

At any time after a demand letter is sent, up until the expiry of a redemption period (as granted Redemption Order), the mortgagor may request an arrears or payout statement in accordance with section 38(2), (4) & (5) of the *Law of Property Act*. They may redeem the mortgage by either paying just the arrears (if the mortgage has not yet matured), or the full outstanding balance.

(i) Payout of arrears

Before giving an arrears statement you must check to ensure that the mortgage has not matured. If the mortgage has matured the full balance is due and only a payout statement should be given.

(ii) Payout of outstanding balance

Prior to providing a balance to the mortgagor, ensure you confirm numbers with your client and include your solicitor client costs.

(d) Initial Searches & Inquiries

(i) Title Search

An Historical Title Search must be conducted if the name of the current registered owner is not the same as the original mortgagor and if:

- the original mortgagor was a corporation; or
- the mortgage is a CMHC insured mortgage; or
- the mortgage is a High Ratio Insured mortgage.

Where more than one title is secured by the same mortgage (such as parking stalls and storage units at a condominium) all of those titles must be searched.

(ii) Mortgage

(iii) Other Encumbrances

Obtain copies of other registered encumbrances such as caveats protecting beneficial interests.

(iv) Tax Search

Conduct a search of the taxing authority for the property and seek instructions to pay taxes in arrears to reduce penalties and interest charges.

(v) Condo Fees

Obtain the Condominium Plan Additional Sheet from Land Titles if it is necessary to determine the contact information (registered office) of the condominium corporation in order to inquire about condo fees.

Taking the *King* decision into consideration, pay the properly chargeable Condo Fees.

(vi) Amount Owing

Confirm these amounts with the client before issuing the Statement of Claim.