

Foreclosure of Real Property - Steps in Alberta by Lawfirm

Description	Reason	Time Line
Issuance of the Demand Letter	This step is not necessary if you have issued a demand before instructing our office. Alberta law indicates that a demand letter is not necessary as a borrower is deemed to know that they have defaulted under the mortgage. However, most lenders instruct us to issue a demand. At that time we will also request a one-time inspection of the property. Our demands are usually 7 - 10 days depending upon the instructions of the Lender.	Day 1
Farm Debt Mediation Notice	If the borrower earns any income from farming operations it is a requirement to provide the borrower an opportunity to mediate their debts before enforcement is commenced. A person does not have to live on a farm to earn farming income. We will always ask you this question. Notice is 15 business days. If the borrower elects for mediation, then any enforcement is stayed during that process which can take up to 6 months. If a borrower earns income from farming operations and is not given the opportunity to mediate, then any enforcement proceedings taken after will be null and void.	
Issuance of the Statement of Claim and Certificate of Lis Pendens	This is the commencement of the litigation process in Alberta. The Statement of Claim sets forth the particulars of the mortgage, the allegations of the default and the amount outstanding on the mortgage. The Certificate of Lis Pendens is the document that gets registered at the Land Titles office to give notice to all parties that there is "litigation pending" in relation to that property. We commence bi-weekly inspections of the property at this time in the Fall/Winter and monthly inspections of the property at this time in the Spring/Summer or such inspections as directed by the Lender.	Day 8 or Day 11
Service of the Statement of Claim	The Statement of Claim is immediately sent out to be personally served on the Defendant(s). Our process servers make 3	Day 8 or Day 11

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	attempts to serve the documents. Once served, the Defendant(s) have 20 days to file either a Statement of Defence (denying the default) or a Demand of Notice with the Court (acknowledging the default and providing an address for service).	
Order for Substitutional Service	If we are unsuccessful within a few days to serve the Defendant(s) personally we will apply to the Court for an Order for Substitutional Service. We determine the most likely method of the Defendant(s) being served and seek the Order accordingly. Usually on a Substitutional Service Order the time for filing a Statement of Defence or Demand of Notice is extended to 30 - 35 days.	Day 16 or 19
Ordering an Appraisal of the subject premises and preparing the Affidavit of Default	<p>Approximately 10 days prior to the date in which the time line for the Defendant(s) to file a Statement of Defence or Demand of Notice, we order an Appraisal of the property. The Appraisal will list both the current Fair Market Value of the property and Forced Sale for Cash Value of the property (the value of the property if someone was to pay cash for it today).</p> <p>We also prepare an Affidavit of Default for the mortgage administrator to execute before a Commissioner for Oaths. This Affidavit is a document that is the evidence before the Court of the particulars alleged in the Statement of Claim. The mortgage administrator will swear to the truth of the details of the mortgage and the default that has occurred. We send this to you and ask for it back on the date we are set to proceed.</p>	Day 26 or 29
Noting the Defendant(s) in Default (Filing a Praecepto to note in Default)	In most instances, the Defendant(s) do not file Court documents (a Statement of Defence or Demand of Notice). Accordingly, after the 20	Day 36 or 39

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	<p>day time period from service expires, (or 30 - 35 days after the Substitutional service date expires), we file a document called “Praecipe to Note in Default” which closes the pleadings</p>	
<p>Summary Judgment</p>	<p>Sometimes the Defendants file a Statement of Defence. In our first court application, we will apply for Summary Judgment. This is a determination by the court that the Statement of Defence filed has no merit and there is no genuine issue to be tried in the action.</p> <p>Our affidavit must meet certain requirements to comply with the Rules of Court and in some circumstances we may send you a Supplemental Affidavit to deal with any specifics issues we want to address in the Defence.</p>	
<p>Filing Court Motion for Foreclosure Relief</p>	<p>Once the pleadings have closed, we file our Motion for Foreclosure Relief. This is usually a standard form Notice of Motion encompassing every possible variable we can think of the for the application. The Motion package includes our Notice of Motion, the Affidavit of Default you swore, the Affidavit of Value and Valuator’s report (the foreclosure appraisal) and a current copy of title to the property. This Motion package is served on each of the Defendant(s) and each of the registered parties on title subsequent to your mortgage. We have to provide the Defendants with 5 clear business days notice of the proceedings (not including the day of the service or the day of the application). Accordingly most motions are set approximately 2 weeks ahead of the filing date.</p>	<p>Day 37 or 40</p>
<p>First Attendance at Court Order for Redemption</p>	<p>If the mortgage is conventional or there is equity in the property (the difference between</p>	<p>Day 60 or 65</p>

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	<p>the balance outstanding on title to your mortgage versus the fair market value of the property), then the first Order we apply for is called a Redemption Order. This Order declares the balance outstanding on the mortgage and sets a redemption period (which is the time in which the borrower has to bring the mortgage back into good standing, failing which the property will be put up for sale). The redemption period can be as short as 1 day or as long as 6 months on residential properties and as long as 1 year on farm land.</p>	
<p>Expiry Redemption Period</p>	<p>This is the date in which the Defendant had to bring the mortgage into good standing. If matured, the mortgage must be paid out in full. If the mortgage is not brought into good standing or paid out in full, then the property will be put up for Sale.</p>	<p>Depends on Redemption Order</p>
<p>Methods of Sale</p>	<p>There are 3 methods of sale in Alberta.</p> <p>The first, if the mortgage is conventional and there is no equity in the property is to post the property for sale on Kijiji. The advertisement will be posted for 7 business days and tenders generally close 7 days after the expiry of the posting.</p> <p>The second method, if there is some but little equity in the property, is to advertise the property for sale in a newspaper local to the location of the property. It is usually advertised twice in the paper with tenders closing 10 days after the second advertisement.</p> <p>The third method if there is equity in the property is for the court to list the property for sale on the multiple listing service with a realtor. The property is generally listed for</p>	

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	<p>sale for a period of 90 days.</p> <p>Please note that in all 3 methods of sale, you are not the seller. The Court of Queen's Bench of Alberta is the seller.</p>	
Tenders Close	<p>If the property was posted on the bulletin board as a method of sale or advertised for sale in the newspaper, this is the date in which any prospective purchasers have to submit their offers in writing to the clerks office at Queen's Bench in the Judicial District in which the action was commenced. All tenders must be in writing and must accompany a bank draft or money order for 10% of the value of the offer.</p>	<p>25 days after advertising</p>
Instructing Judicial Listing	<p>If there has been time from the granting of the Redemption Order to the expiry of the redemption period, we request, in advance, from the realtor a current market analysis of the subject property. We do this to determine whether the listing price in the Redemption Order is an accurate reflection of the market. If the market analysis comes in less than the appraised value, we will apply to the court to reduce the list price in advance of the actual listing. If the market analysis comes in higher than the appraised value, we can increase the list price without a further court order.</p> <p>All realtors are instructed through the court ordered judicial listing. There is no listing contract signed with the realtor.</p> <p>Commissions are generally when the sale price is less than \$156,000.00 a commission of 5.5% (plus GST) or when the sale price is more than \$156,000.00 a commission of 7%</p>	

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	<p>of the first \$100,000.00 and 3% on the next \$400,000.00 and 1% on the balance (plus GST).</p> <p>When realtors are instructed they are specifically advised that deletions to the standard purchase contract are required to any offer received. These deletions are to ensure that the Court of Queen’s Bench is not making any representations or warranties with respect to the property and that the purchaser is buying the property as is, where is, on possession. In addition, the usual Schedule “A” must be attached to any offer received. (Attached hereto). Finally, it is not usual for us to take any offer to court that is conditional. Prospective purchasers can make a conditional offer but it will not be taken to court to consider until the conditions are waived.</p>	
<p>Judicial Listing Expires</p>	<p>If the property was listed for sale by the court with a realtor on the MLS, this is the date that the listing expires. Prior to this date we will be asking the realtor to prepare a summary of their listing and a current market analysis for the property. This affidavit would include all the marketing efforts of the realtor and information as to whether or not the defendants cooperated with the judicial listing. We will also be asking for an updated statement from you to prepare a Final Affidavit of Default evidencing the new balance owing under your mortgage.</p>	<p>90 days after the listing commences</p>
<p>Second Attendance at Court - Order for Foreclosure or Order for Sale to the Plaintiff</p>	<p>If there is no equity in the property and the mortgage is insured through CMHC, GE or Canada Guarantee insurance or a mortgage to a Corporation, we would apply directly for these types of orders. An Order for Foreclosure is obtained where there is little equity in the property and the amount</p>	<p>Depends on Redemption Order or if immediate Day 60 or 65</p>

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	<p>outstanding, including legal fees does not exceed the fair market value of the property. This Order extinguishes the debt and provides you with possession of the property 30 days from the date of the Order.</p> <p>If the mortgage product is conventional, even if the indebtedness exceeds the fair market value of the property - you can only obtain an Order for Foreclosure.</p> <p>We register this Order at Land Titles for you to transfer title into your name.</p> <p>An Order for Sale to the Plaintiff is an Order we obtain where there is no equity in the property and the mortgage is insured. This is an Order that sells the property to the Lender for Fair Market Value and grants the Lender a Deficiency Judgment for the difference between the balance outstanding on the mortgage and the fair market value of the property.</p> <p>We register this Order at Land Titles for you to transfer title into your name.</p>	
<p>Possession</p>	<p>Upon the expiry of the 30 day time period for possession, if the Defendant(s) do not voluntarily vacate the property we instruct our bailiff service to physically remove the Defendant(s) from the property and change the locks. We do allow the Defendant(s) the opportunity to re-attend at the property to remove their personal belongings, provided they are accompanied by the property inspector and pay that inspector's fees for attending.</p>	<p>30 days from Possession Order</p>

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	<p>If the defendants leave personal property at the premises when vacating we have the right to remove same if it is worth less than \$2000.00 or the cost to remove same would result in a recovery of less than \$2000.00.</p> <p>If worth more than \$2000.00 then the goods must be stored for a period of 30 days at which time they can be sold at auction.</p> <p>Unless you have a security agreement on personal property any recovery on this auction would be paid into court after payment of all expenses.</p>	
Writ of Enforcement	<p>If you are entitled to an Order for Sale to the Plaintiff, a Writ of Enforcement is the document that evidences the amount of the Deficiency Judgment. This document is filed at the Court House and at Personal Property Registry to give notice to the public of your judgment.</p>	
Preservation Order	<p>If at any time throughout the foreclosure proceedings we become aware that the subject property is vacant and/or abandoned, we apply to the Court for an Order to Preserve the property. Our property inspectors then attend at the property and change the locks and send us both a “secure report” indicating the condition of the property. With the secure report the property manager provides photographs of the property.</p>	
Receiver Order	<p>If at any time throughout the foreclosure proceedings we become aware that the subject property is occupied by a tenant (and there is little equity in the property) we would consider applying to the court for a Receiver Order directing the tenant to pay the monthly rental payment to our offices (to forward to</p>	

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	<p>your office). This does not make you the manager of the property but only the party to collect rent.</p> <p>We generally do not recommend this step as tenants tend not to pay rent in normal residential situations. If you try to enforce proceedings against a tenant, that action is not subject to your solicitor client costs contract with the defendants. If you do collect rent you become responsible for the tenant's damage deposit.</p>	
<p>Condominium Fees</p>	<p>Based upon a recent decision of the Alberta Court of Queens Bench, it has been determined that not all condominium fees form a priority to a registered mortgage. Those fees that form a priority must specifically be stated to be part of the monthly assessment and interest and form a charge against the land. If they do not specifically state this they may not be a priority. Accordingly you do not want to simply pay all outstanding condominium fees and charges without having the bylaws reviewed to determine its priority to your mortgage.</p>	
<p>Types of Mortgages - Conventional - any uninsured mortgage in Alberta - Insured - mortgage with less than 25% down at the time of purchase and insured either through CMHC, GE or Canada Guarantee</p>	<p>On a Conventional Mortgage product, Alberta Law indicates that the property must be advertised for sale unless the property is vacant, or granted by a corporation.</p>	
<p>Bankruptcy</p>	<p>When the borrower files Bankruptcy or a Consumer Proposal, their personal property becomes subject to the Bankrupt Estate.</p>	

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	<p>If the Trustee believes there is equity in the property, beyond each owner's \$40,000.00 personal exemption, the Trustee will file a Bankruptcy Order on title to the property. If this is filed, we must obtain permission from the Trustee to proceed with the foreclosure action or any proceedings taken will be null and void.</p> <p>If there is no notice on title, the foreclosure will continue as in the ordinary course with notice of all steps taken being given to the Trustee as well as the borrower.</p> <p>If the mortgage is insured, deficiency judgment can not be obtained against the borrower. We seek a declaration as to the amount of deficiency in any Order for Sale to the Plaintiff and there will be no Writ work completed in that circumstance.</p>	
<p>Deceased borrower</p>	<p>The Rules of Court in Alberta indicate that you can not proceed with an action against a deceased party without leave of the Court.</p> <p>The Court wants to make sure that we take steps to try and have a representative appointed to act for the Estate.</p> <p>The normal process when we determine that a party to the proceedings has passed is that we conduct a probate search across Alberta to determine if any steps have been taken to have matters in the Estate dealt with.</p> <p>If there is an application for Probate that has been filed, we write to the party applying to be the Executor of the Estate and ask them to be the Administrator of the Estate for the foreclosure purposes. We send them a</p>	

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	<p>Consent form to complete for that purpose. If there is no application for Probate we would write to any relative or interested party we have become aware of.</p> <p>Once a reasonable period of time has passed (between 7 - 10 days) if we do not have a reply from the Executor or relative, we apply to the court to proceed with the foreclosure without any party representing the Estate and we obtain an Order for Leave to Proceed.</p> <p>These steps can delay commencement of proceedings or the next step in the proceedings by 2 - 3 weeks.</p>	

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Schedule "A"

This is Schedule "A" to the Real Estate Purchase Contract entered into between:

(The "Seller")

- and -

(The "Buyer")

of

(The "Property")

The terms of this schedule replace, modify or add to the terms of the agreement of purchase and sale (the "Real Estate Purchase Contract") to which this schedule is attached. Where there is any inconsistency between the terms of this Schedule and the Real Estate Purchase Contract, the provisions of this Schedule shall prevail.

"AS IS - WHERE IS"

1. The Buyer acknowledges and agrees to purchase the Property, all buildings and improvements located on the Property, and any and all fixtures ("Attached Goods") included in the Real Estate Purchase Contract or included in the sale of the Property "as is" and "where is" *as of the date of Possession*, and agrees with the Seller that neither the Seller, nor its agents or representatives have made any representations or warranties with respect to the Property, any buildings or improvements located on the Property, or any Attached Goods included in the sale of the Property. Without limiting the generality of the foregoing, the Buyer agrees that neither the Seller nor its agents have made any representations or warranties with respect to:

- (a) the condition of any buildings or improvements located on the Property;
- (b) the existence or condition of any Attached Goods or Unattached Goods included in the Real Estate Purchase Contract or otherwise sold with the Property;
- (c) whether the Property complies with any existing land

use or zoning bylaws or regulations, or municipal development agreements or plans;

(d) the location of any buildings and other improvements on the Property and whether such location complies with any applicable municipal bylaws or regulations;

(e) whether or not any buildings or improvements located on the property encroach onto any neighboring lands or any easements or rights of way;

(f) whether or not any buildings or improvements located on any neighboring lands encroach onto the Property;

(g) the size and dimensions of the Property or any buildings or improvements located thereon;

(h) whether or not the Property is contaminated with any hazardous substance within the meaning of the *Environmental Protection and Enhancement Act*; and

(i) whether or not any of the buildings or other improvements located on the Property have been insulated with urea formaldehyde insulation.

The Buyer shall not call for compliance with, or satisfaction of, any work orders, deficiency notices, orders to comply, or any other Building Code, Fire Code or Regulations, whether environmental or otherwise, and whether imposed by law, equity or any regulatory authority.

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OWNERSHIP OF UNATTACHED GOODS

2. The Buyer agrees that the Seller is selling only such interest as it may have in any Attached Goods referred to in the Real Estate Purchase Contract which may be located on the Property as at the date of Possession, and the Seller does not warrant that it has title to such Attached Goods. The Seller specifically warrants it has no interest in the Unattached Goods and that no unattached goods are being sold, transferred, or conveyed hereunder. Further, the Buyer agrees that the Seller will not be liable for or responsible for the removal of any Unattached goods found or left on the Property prior to or on the date of Possession. On closing, the Buyer may have possession of the Attached Goods which are then on or about the Property on an "as is" basis, subject to the rights claimed by the prior registered owner, and the Seller will not provide a Bill of Sale, Warranty, or other title document to the Buyer. Further, there will be no adjustment or abatement of any kind to the Purchase Price with respect to any Attached Goods or Unattached Goods.

REAL PROPERTY REPORT

3. The Seller will not and is not required to provide the Buyer with a real property report. The Seller will not provide any other documentation, titles, copies of encumbrances, etc. to the Buyer.

CONDOMINIUM

4. If the Property is a condominium:

(a) the Seller is not required to provide any condominium documentation to the Buyer, and the Buyer shall be solely responsible to obtain any condominium documentation he may require. Without limiting the generality of the foregoing, the Buyer must obtain on his own and at his sole cost and expense any estoppel certificate, copy of the condominium bylaws, certificate of insurance and financial statements for the Condominium Corporation that he may require;

(b) the Buyer must satisfy himself with the condition of the condominium unit, the common property, and the financial condition of the condominium corporation and agrees that neither the Seller, nor its agents, have made any representations or warranties pertaining to same including, without limiting the generality of the foregoing, the adequacy of any reserve fund the condominium corporation might have, any potential special assessments which might be levied by the condominium corporation, or the existence of any legal actions pending against the condominium corporation;

(c) the Seller shall be responsible for amounts payable up

to the closing date on account of any condominium fees and special assessments levied by the condominium corporation.

GOODS AND SERVICES TAX (G.S.T.)

5. In addition to the purchase price payable hereunder, the Buyer shall pay to the Seller and indemnify the Seller against all Goods and Services Tax ("G.S.T.") payable on the purchase price as required by the *Excise Tax Act*. The Seller will not provide to the Buyer a Certificate of Exempt Supply, or any other certificate certifying that this purchase and sale transaction is not subject to the Goods and Services Tax. Should the Seller fail to collect G.S.T. from the Buyer, it shall not be construed by the Buyer as a certification by the Seller that no G.S.T. is payable by the Buyer hereunder, and the Buyer shall remain liable for any G.S.T. which might be payable with respect to this transaction.

FORECLOSURE PROCEEDINGS

6. If this offer is being made pursuant to or in a Court of Queen's Bench foreclosure proceedings, such offer may only be accepted by order of said Court and is subject to the terms of that Order. Any agreement arising out of the Seller's acceptance of this offer is conditional upon the approval thereof of the said Court. The Buyer acknowledges that in the event of redemption of the mortgage or sale of the property by the Defendant, then this Agreement shall be at an end and the deposit will be returned to the Buyer without interest or deduction, and the parties will have no further obligations hereunder.

CASH TO CLOSE

7. Possession of the property will not be provided to the Purchaser until such time as the entire cash to close is paid and unconditionally released to the Seller.

Buyer's Initials

Date: