

Part 49 Foreclosure and Specific Performance Actions

Definitions

683 In this Part,

- (a) “foreclosure action” includes the following:
 - (i) proceedings for recovery of money secured by a mortgage, agreement for sale or encumbrance;
 - (ii) proceedings for enforcement of any provision of a mortgage, agreement for sale or encumbrance;
 - (iii) proceedings for sale, foreclosure, redemption or specific performance with respect to land, with or without other security, that is subject to a mortgage, agreement for sale or encumbrance;
- (b) “mortgaged property” means the land and any collateral security referred to in a foreclosure action;
- (c) “order for foreclosure” includes an order cancelling or determining an agreement for sale;
- (d) “order nisi” includes an order for specific performance.

AR 390/68 s683;277/95;3/96;243/96

General rules apply

684 Except as provided in this Part or as may be ordered by the Court the general rules of practice and procedure apply to a foreclosure action.

AR 390/68 s696;277/95

Notice of Address for Service

685(1) Encumbrancers, tenants, offerors, tenderers and defendants whether or not they have been noted in default may file and serve on the plaintiff a Notice of Address for Service containing

- (a) an address for service located within Alberta, and
- (b) a statement showing
 - (i) the name of the person who filed the Notice of Address for Service, and
 - (ii) whether the Notice of the Address for Service is filed by the encumbrancer, tenant, offeror, tenderer or defendant in person or by a solicitor on that person’s

behalf.

(2) An address for service given under subrule (1) may be at a location other than one referred to in Rule 5(1)(b)(i).

AR 277/95 s41;3/96

Service and notice

686(1) At any time after the statement of claim in a foreclosure action has been served, any other documents in the foreclosure action may, subject to subrules (2), (3) and (5), be served

- (a) by personal service;
 - (b) by leaving the documents at or sending the documents by registered mail to
 - (i) the address for service provided by the party to be served,
 - (ii) subject to subclause (iii), the address for service on title, or the most recent address provided in any document filed
 - (A) against the title to the mortgaged property,
 - (B) in the general register at the Land Titles Office, or
 - (C) in the Personal Property Registry,by the party to be served,
 - (iii) the address of the mortgaged land, if the party to be served still resides or carries on business there, or
 - (iv) the address of the offeror or tenderer provided in an offer or tender made on the mortgaged property;
- (c) by any other method of service ordered by the Court.

(2) Where a document that is a statement of a defence, a demand of notice or a Notice of Address for Service has been filed and served on the plaintiff, notice of any application shall be given to each person who filed and served any of those documents.

(3) Subject to subrule (2), notice of any application shall be given to all defendants and subsequent encumbrancers where the application is for one or more of the following:

- (a) an order nisi;

- (b) an order that the mortgaged property be offered for sale;
 - (c) an order for foreclosure;
 - (d) an order confirming sale to the plaintiff or otherwise;
 - (e) an order for possession but not a preservation order;
 - (f) an order for personal judgment;
 - (g) an order for the appointment of a receiver-manager.
- (4) Where one or more offers or tenders have been made on the mortgaged property, notice of an application for any of the relief set out in subrule (3) shall be given to each offeror or tenderer.
- (5) Notwithstanding subrules (1), (2) and (3), the Court may dispense with service or notice or make any other order that the Court considers appropriate in all the circumstances.
- (6) Where a defendant has not filed a defence or demand of notice, the plaintiff shall note the defendants in default before making an application for any of the relief referred to in subrule (3)(a) to (f).
- (7) A defendant may be noted in default, notwithstanding the filing and service of a Notice of Address for Service.

AR 390/68 s686;277/95;3/96

Affidavit of value

687 Unless otherwise ordered, an affidavit of value shall be filed before an application is made for any of the relief referred to in Rule 686(3)(a) to (e).

AR 390/68 s686(7);277/95

Subsequent encumbrancers

688 A plaintiff in a foreclosure action shall not make any subsequent encumbrancer a party to the action unless possession is claimed from the subsequent encumbrancer.

AR 390/68 s687;277/95

Offering the mortgaged property for sale

689(1) The Court may offer the mortgaged property or any part of that property for sale,

- (a) at a time and place,
- (b) in any manner, and
- (c) at any price,

that the Court considers proper.

(2) Where the Court orders that the mortgaged property, or any part of that property, be listed with a realtor, a listing agreement approved by the Court shall, unless otherwise ordered by the Court, be appended to and form part of the order granted.

AR 390/68 s689;277/95

Sale to the plaintiff

690(1) Where the plaintiff seeks an order selling the mortgaged property or any part of that property to the plaintiff, the Court shall consider whether an attempt at public sale should precede the plaintiff's application.

(2) In exercising its discretion under subrule (1), the Court shall consider at least the following:

- (a) the nature of the mortgaged property;
- (b) the value of the mortgaged property;
- (c) the existing market for the mortgaged property;
- (d) the amount owed on the plaintiff's security against the mortgaged property;
- (e) the amount owed for prior encumbrances, municipal taxes, condominium assessments or any other applicable prior charges against the mortgaged property.

(3) Subject to subrule (4), in granting an order selling the mortgaged property or any part of that property to the plaintiff, the Court, having considered the relevant factors including those set out in subrule (2), shall determine the fair value at which the plaintiff may purchase the mortgaged property.

(4) Where the plaintiff makes an offer or tender on mortgaged property following an order that the mortgaged property be offered for sale, the Court shall consider, in addition to the factors set out in subrule (2), the following:

- (a) the offer or tender of the plaintiff;
- (b) the presence or absence of other offers and tenders;
- (c) the amounts of any offers and tenders;
- (d) any terms or conditions.

AR 277/95 s41;3/96

Order confirming sale

691(1) Where the Court has ordered that the mortgaged property or any part of that property be offered for sale by tenders filed in Court, the plaintiff shall apply for

- (a) an order confirming sale, or
- (b) an order rejecting tenders and directing the return of the deposits paid in respect of the rejected tenders,

within 25 days after the date set for the reception of tenders.

(2) Where money is paid into Court pursuant to an order confirming the sale, the clerk shall provide a certificate of payment into Court.

(3) Where a certificate of payment into Court has been provided under subrule (2), the certificate of payment into Court shall be registered at the Land Titles Office concurrently with the order confirming sale.

(4) On granting an order confirming the sale, the Court may provide any directions that the Court considers appropriate to facilitate the closing of the sale.

AR 390/68 s691;277/95;3/96

Evidence

692 Prior to the application for an order nisi, an order that the mortgaged property be offered for sale, an order for foreclosure, an order confirming sale or an order appointing a receiver, the plaintiff shall file

- (a) a certified copy of all the current titles to the mortgaged land,
- (b) in the case of an application made during the period of time commencing on April 18, 1995 and terminating 3 years from that date, a General Register Certificate, and
- (c) where the mortgaged property includes chattels, a Personal Property Registry printed result of a search according to name, in the name of each of the current registered owners, or the purchasers in the case of an agreement for sale.

AR 390/68 s692;277/95

Checking of calculations - taxing of costs

693(1) When the Court grants an order declaring the balance owing to the plaintiff or grants judgment against any party,

- (a) the plaintiff shall file a statement of mortgage indebtedness, unless otherwise ordered by the Court,
- (b) the clerk or the taxing officer shall tax the costs, if so required by the order, and
- (c) the clerk shall
 - (i) check the plaintiff's calculations,

- (ii) correct the amounts in the order, if necessary,
- (iii) sign the order as authorized by Rule 321, and
- (iv) return the order to the plaintiff or the plaintiff's counsel.

(2) Once the order has been returned to the plaintiff or the plaintiff's counsel under subrule (1)(c)(iv), the plaintiff or the plaintiff's counsel may proceed to enter the order.

(3) If the plaintiff disagrees with

- (a) the taxation of costs, if done without appearance, or
- (b) corrections made by the clerk under subrule (1)(c)(ii),

the plaintiff may, prior to entry of the order under subrule (2),

- (c) appear before or speak to the clerk or taxing officer to explain the plaintiff's figures or costs, or
- (d) if not satisfied with the clerk's taxation or corrections or the taxing officer's taxation, reattend before the master or judge granting the order, at which time the plaintiff shall provide to the Court any corrections, bill of costs, notes or other materials from the clerk or taxing officer.

AR 390/68 s693;277/95;3/96

Repealed

694 to 698 Repealed AR 277/95 s41.