

SUPREME COURT OF NOVA SCOTIA

Practice Memorandum No. 13

Foreclosure Procedures

I. General

1.1 Authority

Reference is made to the Civil Procedure Rules and, in particular, rule 5.13, 12.04 to 12.09 inclusive and rule 47.08 to 47.18 inclusive. See also the *Judicature Act*, R.S.N.S. 1989, c. 240, s. 42 regarding discontinuance of foreclosure proceedings.

1.2 Purpose

The Judges of the Supreme Court have approved a simplified procedure which can be used in most proceedings for foreclosure.

1.3 Subject

The subject of this Memorandum is the remedy of foreclosure, sale and possession. There are other well established foreclosure remedies, such as sales ordered in the course of a receivership. There are less established foreclosure remedies the Court has occasionally ordered, such as sale by completion of a mortgagor's agreement of purchase and sale. Some of the comments in this Memorandum may provide guidance in respect of other foreclosure remedies.

1.4 Choice of Procedures

Counsel may choose to use either:

(a) The simplified procedure – using only the forms attached to this Practice Memorandum; or

(b) An alternative procedure – using the same forms, deviating as may be considered necessary, and submitting a memorandum explaining and justifying each and every deviation.

II. Applications for Foreclosure, Sale and Possession

2.1 Authority

Reference is made to the Civil Procedure Rules 5.13, 12.04 to 12.09 inclusive, 47.08, 47.09, 47.12, 47.13 and 47.14.

2.2 The Simplified Procedure

(a) The simplified procedure is expected to be suitable for the majority of applications for foreclosure, sale and possession.

(b) The attached forms are mandatory if the simplified procedure is followed.

(c) The simplified procedure may be used where the only variation or amendment to the forms is the deletion of any reference to “guarantor”. Solicitors may, if appropriate, delete any reference to guarantor or insert “N/A” (not applicable).

2.3 The simplified procedure is unlikely to be suitable in applications involving:

(a) collateral mortgages;

(b) complex securities such as debentures;

(c) claims pursuant to guarantees that are not contained in the mortgage itself; and

(d) claims for less than foreclosure, sale and possession.

2.4 The Alternative Procedure

(a) The alternative procedure must be used where, apart from the exceptions permitted in the use of the simplified procedure, there is any variation or amendment in the forms.

(By way of example only, in applications for foreclosure, sale and possession, where the mortgage being foreclosed is subject to a prior mortgage, the Order will only be granted where the consent of the holders of all prior mortgages is filed, or the Court, on notice to the holders of the prior mortgages, waives the necessity for such consent. In such a circumstance, the forms applicable to the simplified procedure will have to be varied to incorporate the consent or the application to waive. To the

extent the forms are varied, there must be an accompanying memorandum filed explaining and justifying each deviation.)

(b) When the alternative procedure is used, a memorandum explaining and justifying all deviations from the standard forms must be filed. If a memorandum is not filed, the application will be refused.

(c) Claims for approval of protective disbursements and other charges will require an accompanying memorandum. The supporting documentation for recovery of protective disbursements and other charges, as set out in the Statement of Claim, must also be filed at the time of filing the application. Where the claim includes reimbursement for protective disbursements and other charges, the plaintiff's solicitor shall also disclose for inspection originals or true copies of all invoices or receipts relating to the claim and, upon the finalizing of the application, the plaintiff's solicitor shall retrieve from the file the invoices or receipts disclosed in the application. See section 3.7 for comments on recoverable protective disbursements, which comments apply equally to orders for foreclosure.

2.5 Documentation

The documentation required in all actions:

(a) The Originating Notice (Action) and Statement of Claim – may be in the attached form. The Originating Notice (Action) and Statement of Claim must be served and filed on or before the filing of the application for foreclosure. The sum to be inserted in paragraph 5(a) shall be the total outstanding as of the specified date minus the interest claimed in paragraph 4(b). If a mortgagor has made an assignment in bankruptcy, no claim for a deficiency should be made in the Statement of Claim against the bankrupt mortgagor.

(b) Affidavit of Service – must be filed on or before the filing of the application.

(c) Notice of Application – may be in the attached form. The notice must recite the Civil Procedure Rule on which the solicitor is relying in making the application.

(d) Affidavit by or on behalf of the mortgagee – may be in the form attached and may be signed by the mortgagee or by an authorized representative on behalf of the mortgagee. The statement of account attached as an exhibit must commence with the latest of either the date of the mortgage, or the last renewal, or the last assumption of the mortgage. The summary statement of account included with the statement must include all charges and payments contained in the statement of account and shall be unqualified, that is, it shall not contain any reference to “E & OE” or Errors and Omissions Excepted, or like meaning words. The affidavit shall set out the number of months the mortgage is in arrears as of the date of the affidavit and shall

also provide particulars of any payments or other arrangements made since the action was commenced.

(e) Affidavit of Solicitor – may be in the form attached. It must state that the period for filing a defence has expired. The certificate of title may be in the form attached but the certificate and particulars must date back to at least the date of the deed or conveyance to the original mortgagor and the certificate must be dated no more than fourteen days before the interlocutory notice. Where the plaintiff or the plaintiff’s solicitor has knowledge of any mortgage or other encumbrance in priority to the date of the deed or conveyance to the original mortgagor, the particulars shall include full disclosure of such mortgage or other encumbrance and the certificate shall be amended accordingly. If the parcel has been registered pursuant to the *Land Registration Act*, alternate clause 4 in the form attached is to be used. If a mortgagor has made an assignment in bankruptcy, a true copy of the assignment is to be exhibited to the solicitor’s affidavit.

(f) Order for Foreclosure – may be in the form attached. The order must incorporate by reference the standard procedure for sheriff’s sales in the form attached to this Practice Memorandum or with such variations or deviations, together with the accompanying memorandum, as the circumstances may require.

The Order should not provide for recovery of interest on an amount which already includes interest accrued after the date referred to in paragraph 5(a) of the Statement of Claim. Interest from that date to the date of the Order on the sum specified in paragraph 5(a) of the Statement of Claim is included in the amount settled in paragraph 1 of the Order, and should not be capitalized. To avoid recovery of “interest on interest” after the action is started, the Order paragraph 1 should provide:

IT IS ORDERED that the amount due to the plaintiff _____, on the mortgage being foreclosed is settled at the sum of \$ _____, with interest on \$ _____ [insert the sum upon which interest is claimed set out in paragraph 5(a) of the Statement of Claim] at the rate of _____ % per annum from _____, 20____, to the earlier of the date of payment by the sheriff to the plaintiff or twenty (20) days following the date of the sale of the lands by the sheriff, together with any other charges and protective disbursements as approved by the Court, and costs to be taxed.

The Order shall contain an abbreviated description of the lands which includes reference to the registration particulars of the mortgage being foreclosed. If available, the abbreviated description shall contain the civic number or the street or highway address of the lands, the PID number of the parcel and a statement whether the parcel has or has not been registered pursuant to the *Land Registration Act*. The abbreviated description, in any event, must contain sufficient particulars

to enable the public to identify and locate the lands being foreclosed and sold. The description shall also contain a brief description of any known prior mortgage or other encumbrance, rights-of-way and easements, that either benefit or encumber the lands being foreclosed.

2.6 Some Advice

(a) Sometimes the abstract shows prior encumbrances or other interests prior to the mortgage under foreclosure without these having been provided in the order for sale or in the advertisements. As it is the Court offering the title for sale, all title defects known to the Court must be brought to the attention of bidders. The order must make the sale subject to prior interests and the advertisement should mention such interests. As regards earlier mortgages not marked released but thought to have been repaid, the judge may require the order provide the sheriff shall not proceed without a recorded release. Where a life tenancy or a joint tenancy was determined by death, the judge may require production of a death certificate.

(b) Judges are of the view that residential properties are best advertised in local papers with good local circulation. Counsel are encouraged to investigate cost and circulation.

(c) In too many cases the summary cannot be reconciled with the accounting. For the affidavit of the mortgagee to be true and for the judge to have confidence in it, it must be possible to see where the summary figures came from in the detailed accounting. Further, it is necessary that the form of the summary follow that provided in the practice memorandum.

(d) All claims advanced on the application for an order for sale must be claimed in the Statement of Claim. Sometimes protective disbursements have not been claimed. Sometimes a higher rate of interest is advanced. The Court will require amendment and further service.

(e) Foreclosure proceedings will conform with the rules respecting parties. Where a mortgagor is bankrupt, the trustee is a proper defendant and it must be served in the usual way. Where the mortgagor is deceased, the proper party is the executor, administrator or court appointed representative, and the plaintiff must get a representative appointed if there is none. Also, where the equity has been conveyed, the mortgagor need not be a party unless a deficiency judgment is sought, but the new owner is not a subsequent encumbrancer within rule 5.13(2) and must be a defendant.

(f) Where more than one lot is mortgaged the order should clearly state which is to be sold or both. If both, whether together. If separate, in what order. Also, with separate sales the order should provide the sheriff with a clear direction for

calculating the credit towards the second sale.

2.7 Notice of Public Auction

The plaintiff shall give notice of public auction, in the form attached:

- (a) at least twenty (20) days before the public auction by ordinary mail, postage prepaid, to the defendant at the address of the mortgaged premises and also, when that address is different from the last-known address, at the last-known address;
- (b) at least twenty (20) days before the public auction by registered or certified mail to each subsequent encumbrancer appearing on the Certificate of a Solicitor at the last-known address of such encumbrancer or its solicitor; and
- (c) by advertising the public auction by two (2) insertions, the first insertion at least twenty (20) days prior to the sale and the second insertion not more than ten (10) days prior to the sale, in a newspaper sold within the county or counties in which the lands are located.

2.8 Sale Procedure

The sale by public auction shall be conducted in accordance with the prescribed Standard Procedure for Sheriff's Sales by Public Auction – Instructions to Sheriff, or as close thereto as is possible in the circumstances.

2.9 Post-Sale Procedure:

After the sale by public auction, the plaintiff shall apply to the prothonotary for an order confirming the sale. In support of the application, the plaintiff or the plaintiff's solicitor shall file an affidavit which may be in the form attached. The following items shall be exhibited to the affidavit:

- (a) a true copy of the plaintiff's certificate of taxation of costs;
- (b) the original or true copies of the tear sheets of the advertisements of public auction, showing the Notice of Sale, name of newspaper and dates of publication;
- (c) a true copy of confirmation of delivery of Notice of Public Auction to any subsequent encumbrancer, and a copy of the letter and Notice of Public Auction sent to the defendant by ordinary mail;
- (d) a Sheriff's Report in the form attached, certified by the sheriff, deputy sheriff or authorized person who conducted the sale;

(e) if the public auction was postponed, particulars of the postponement, and of any relevant Notice or advertisement.

2.10 Costs

Reference is made to Civil Procedure Rule 63 - Tariff E. Counsel will submit to the taxing authority a Bill of Costs and substantiate each item claimed as a disbursement.

2.11 Default Judgment

By virtue of rule 47.09(1), default judgment shall occur automatically, subject to later quantification, on the earlier of 20 days after the date of sale by public auction, or the date of payment to the sheriff. Judgment for any amount due shall not be subsequently entered before the proceeds of sale have been realized and any deficiency has been determined by the court. Therefore, a Certificate of Judgment cannot be issued by the prothonotary, nor recorded in the Registry of Deeds, until such amount has been determined.

III. Applications For Deficiency Judgment or Distribution of Surplus

3.1 Authority

Reference is made to Civil Procedure Rules 47.09(1), (2), 47.10(1), (2) and (3) and 47.11.

3.2 Purpose

The plaintiff's claim crystallizes in the Order for Foreclosure, Sale and Possession. The order confirming sale confirms the provisions of the Order for Foreclosure, Sale and Possession were carried out. It cannot confirm or otherwise deal with any claim the plaintiff may have which accrued after the date of the Order for Foreclosure, Sale and Possession.

3.3 General Provisions

(a) The originals or true copies of all invoices or receipts relating to the claim must be available in court for inspection. The plaintiff's solicitor shall file an accompanying memorandum explaining and justifying each item claimed.

(b) The amount will be determined by adjusting the mortgage debt as settled in the Order for Foreclosure, Sale and Possession. In addition to the amounts evidenced by the order and the Sheriff's Report, the Court will take into account interest to the date of default judgment, judgment interest after that date, taxation of costs, taxation of disbursements and protective disbursements after commencement of action except

those included in the amount settled by the Order for Foreclosure, Sale and Possession. Particulars of protective disbursements and taxable disbursements are to be set out in an affidavit and must include sufficient detail to show work done or material provided, the necessity of work or material, the necessity of other kinds of charges and the recoverability of the charges.

(c) Notice of all applications, together with all supporting documentation, shall be given to the mortgagor and, where there is a surplus, to all subsequent encumbrancers disclosed in the certificate attached to the affidavit of the solicitor upon the application for foreclosure, sale and possession, and on any subsequent encumbrancer disclosed in a sub-search to the date of filing of the Notice of Application. Such service shall be effective by registered or certified mail or as otherwise ordered by the Court.

3.4 Claim for Surplus

(a) Each subsequent encumbrancer intending to make a claim to all or any part of the surplus is required, in advance of the application, to file an affidavit in proof of its claim.

(b) The Court will order distribution of the surplus to encumbrancers according to their priorities.

3.5 Claim for Deficiency

(a) Applications for a deficiency judgment must be made within six months of the sheriff's sale on ten days notice. A deficiency occurs where "the amount realized is insufficient to pay the amount found to be due to a plaintiff for principal, interest and disbursements as authorized by the mortgage instruments and costs". Where the mortgagor has so contracted and the mortgagee has so pleaded, the mortgagee has the right "to expend moneys to protect the property and to recover the same on a claim on the covenants so long as the expenditures were properly and reasonably incurred to realize the best price possible so as to minimize a claim for a deficiency against the mortgagor." (*Nova Scotia Savings and Loan Co. v. MacKay and MacCulloch* (1980), 41 N.S.R. (2d) 432 (S.C.-T.D.) at para. 16 quoted with approval in *Royal Bank of Canada v. Marjen Investments Ltd.* (1998), 164 N.S.R. (2d) 293 (C.A.) at para. 59.) The Court will allow only those items which: (a) are authorized by the mortgage; (b) were necessarily expended for the purpose of preserving and protecting the property; and (c) are demonstrated by evidence to have been necessary and reasonable, the specifics of which are set out in an affidavit of the mortgagee or its officer.

(b) The affidavit in support of the application for deficiency judgment should contain the following: a copy of the sheriff's report, order confirming sale, appraisal

report(s), certificate of taxation, evidence supporting protective disbursements as set out in paragraph 3.5 and a calculation of the amount of the deficiency.

3.6 All amounts retained by the mortgagee's solicitor shall be supported by a solicitor's statement of account.

3.7 Commentary on Protective Disbursements

A claim for a protective disbursement must be supported by evidence and explained in a chambers memorandum. A claim for a protective disbursement will not be allowed unless the mortgage provides for both the payment and its inclusion in the mortgage debt. The memorandum should refer to the term relied upon and if its meaning is in any way open to interpretation, the memorandum should provide a submission for interpretation mindful that the term is part of an adhesion contract. The affidavit on behalf of the mortgagee must contain sufficient detail so the Court can ascertain whether the disbursement is within the wording of the mortgage, whether the expenditure was necessary and whether the amount was reasonable. The following comments describe experiences of chambers judges in recent years, with the intention that this may provide some guidance as to claims that will likely be unsuccessful, claims that will require sound explanation and claims the amount of which will be closely scrutinized.

(a) Administrative Fees – Fees charged for efforts made by employees, such as on account of a missed payment or an NSF cheque or to inspect the mortgaged premises, have generally been rejected.

(b) Credit Reports, Trace Searches and Demand Letters – The cost of these has generally been refused. Disbursements for reports or searches may be taxable if they were incurred to effect service or used in an application for substituted service.

(c) Appraisals and Surveys – Ordinarily one appraisal is allowed as a taxable disbursement on a deficiency judgment application. Generally, judges have refused to allow the cost of appraisals or surveys obtained for the mortgagee's own purposes.

(d) House Sitting – Applicants may expect close scrutiny of the cost and necessity, including frequency, of charges for mowing, snow removal, cleaning, maintenance, repairs and inspection. Commissions or flat fees, such as “weekly inspection” or “maintenance fee”, are not generally allowed unless the cost is, by evidence, tied to specific services and justified.

(e) Insurance – Premiums for policies insuring against fire and similar perils will only be allowed upon proof that the mortgagor's policy was terminated. The mortgagee should also file with the court an undertaking that the balance will be credited against the mortgage debt if the policy is cancelled before its usual expiry.

Premiums for liability policies are generally not allowed.

(f) Costs Associated with Environmental Concerns – In order for the cost of an environmental assessment or any remedial work to be allowed, there must be evidence establishing the need for the assessment or remedial work. The need to replace an oil tank must be proved before the cost of replacing the tank is allowed.

(g) Improvements – The need for and cost of making improvements, such as replacing a chimney or furnace or rebuilding a deck, will be closely scrutinized. There will be a presumption that an improvement made after appraisal increases the property's value, and its cost will not usually be included in a deficiency judgment.

(h) Real Estate Commission – Some mortgagees receive a reduction in the amount of the real estate commission charged on sale of a property. The mortgagor is to receive the benefit of any such reduction. A mortgagee is only entitled to receive credit for the amount of the real estate commission actually paid.

3.8 Documentation

The documentation required on all applications is:

(a) Notice of Application – The notice must refer to the Civil Procedure Rule being relied upon, and must enumerate which of the three claims is being made. If there is a claim for a surplus, the notice must be directed to the defendant and all subsequent encumbrancers and it must include counsel's certificate that all subsequent encumbrancers are listed.

(b) Affidavit by or on behalf of the mortgagee – There will be attached to this affidavit as exhibits all documents necessary to establish each of the claims being made by the plaintiff. These shall include the following:

- (1) a statement showing the calculation of the plaintiff's claim for interest, the rate used and the per diem amount;
- (2) a listing of any protective disbursements claimed which were not already included in the Order for Foreclosure, Sale and Possession and which are otherwise permitted by this Memorandum. The list shall itemize each disbursement by category and show the total amount claimed in each category. Information must be provided to demonstrate the necessity for incurring the protective disbursements, and;
- (3) statement showing details and calculation of any claim for judgment interest accruing after the date of judgment up to and including the

date of application, and in any event no longer than six months after the date of sale.

(c) Affidavit of Service.

3.9 Costs

Reference is made to Civil Procedure Rule 63 - Tariff E.

Upon this application, counsel will submit a bill of costs covering all services and disbursements which are directly connected with the foreclosure proceeding, and be prepared to substantiate each item claimed as a disbursement. The Court will at this time tax the bill of costs by awarding an all-inclusive amount covering the Application for Foreclosure, Sale and Possession, together with disbursements as substantiated. Alternatively, the Court may order disbursements to be taxed.

The Court will not approve disbursements which are in any way artificial. For example: legal accounts for searching or sub-searching title, attendance fees, office overhead charges and fees paid to another solicitor for work which is normally covered in the award of costs.

IV. Foreclosure of Collateral Mortgages

- 4.1 The principal difference between foreclosure of a collateral mortgage compared to foreclosure of a standard mortgage is that the foreclosure documentation will be required to set forth the particulars of the instrument to which the mortgage is collateral, and to establish that all conditions precedent to the enforcement of that instrument have been fulfilled.
- 4.2 Mortgagees wishing to foreclose a collateral mortgage may use the simple standardized Statement of Claim and other documentation, but amended, especially in regard to paragraph 2, to disclose the nature and particulars of the collateral instrument and the steps which have been taken to fulfill the conditions precedent to enforcement.
- 4.3 Because of the necessary amendments to the standardized Statement of Claim, and other documentation, the solicitor for the plaintiff is required to file an accompanying memorandum explaining and justifying each amendment.
- 4.4 An alternative foreclosure procedure may also be available to creditors who hold collateral mortgages. A collateral mortgagee may first sue and obtain judgment for the amount owing upon the collateral security, and then move to foreclose the mortgage and sell the property. Since the mortgagee would already have a judgment for 100% of the amount owing, there would appear to be no reason why it should

apply for a deficiency judgment. However, in case it might apply, the Order for Foreclosure, Sale and Possession must include additional paragraphs such as the following:

IT IS ORDERED that ten (10) days' notice of the application for settlement be given to the defendant in accordance with the Rules.

IT IS FURTHER ORDERED that on the application for settlement, the plaintiff, as a condition of obtaining the order, shall satisfy the Court that the defendant has been given credit against the judgment entered against the defendant on the day of , 20 , for the fair value of the property.

In this regard, reference is made to *Credit Union Atlantic Limited v. Bonang* (1996), 145 N.S.R. (2d) 175 (C.A.).

Note, if this procedure is followed, costs will not be allowed on an application for deficiency judgment.

STANDARD PROCEDURE FOR SHERIFF'S SALE BY PUBLIC AUCTION

INSTRUCTIONS TO THE SHERIFF

1. Upon receipt from a plaintiff or plaintiff's solicitor of a certified copy of an Order for Foreclosure, Sale and Possession, six (6) copies of the description of the lands to be sold and six (6) copies of the notice of public auction, the sheriff, deputy sheriff or person authorized by court order shall proceed to sell the lands (and chattels, if applicable) by public auction, commencing at the time and place specified in the notice, unless
 - (a) the plaintiff or the solicitor files a notice of discontinuance of the proceeding with the prothonotary and a certified copy of the notice is delivered to the sheriff prior to the time of sale; or
 - (b) the plaintiff, the solicitor, the sheriff, deputy sheriff or person authorized by court order, makes a public announcement at the time and place of sale, postponing the sale to a date certain, (only one postponement may take place without further court order) and;
 - (i) if the postponement is for thirty (30) days, or less, no further or other notice or publication is required; or
 - (ii) if the postponement is for more than thirty (30) days, the sheriff shall sell the lands (and chattels) at the time and place specified in a revised notice mailed by registered or certified mail to the mortgagor and subsequent encumbrancers, and advertised by one (1) insertion in one of the same newspapers as previously advertised, at least ten (10) days before the new date of sale; or
 - (c) the Court otherwise orders.
2.
 - (a) The minimum permissible bid is an amount equal to the sum of the sheriff's fees and outstanding property taxes.
 - (b) The purchaser at the time of sale shall pay to the sheriff a deposit of ten per cent (10%) of the amount of the purchase price by cash, bank draft, solicitor's trust cheque or certified cheque.
 - (c) Not later than twenty (20) days following the date of sale, or such later date not exceeding a further twenty (20) days consented to in writing by the plaintiff or the solicitor, the purchaser shall pay the balance of the purchase price to the sheriff, at which time the sheriff shall deliver the Deed (and Bill of Sale, if applicable) to the

purchaser or the purchaser's nominee. If the purchaser fails to make payment of the balance of the purchase price within the period fixed, the deposit is forfeited and shall be applied first to sheriff's fees, second to outstanding property taxes, and third to the plaintiff's claim. On default, the sheriff, deputy sheriff or authorized person shall re-sell the lands (and chattels) at the time and place specified in a new notice, which shall be published in accordance with the terms of the original order.

(d) When the mortgagee is the purchaser at sale and no other person is entitled to any part of the proceeds of sale, the sheriff may, upon receipt of the amount of the minimum permissible bid, deliver the Deed to the purchaser or its nominee.
[Amend. 6/97]

3. The Deed shall contain a reference to the registration particulars of the mortgage foreclosed.
4. The sheriff shall, after payment of sheriff's fees and property taxes, pay out of the remaining proceeds of such sale, by disbursing to the plaintiff or the solicitor the amount due on the mortgage foreclosed, costs as taxed and the balance (if any) to the prothonotary of the Supreme Court until further order.

FORM

STATEMENT OF CLAIM

20

No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PLAINTIFF

- and -

DEFENDANT

- and -

DEFENDANT-GUARANTOR

STATEMENT OF CLAIM

1. In this proceeding, plaintiff includes all plaintiffs, and is the mortgagee, and defendant includes all defendants, and is the mortgagor of the lands located at
County, Nova Scotia.

2. Particulars of the mortgage are:

- (a) Date:
- (b) Name of Mortgagor(s):
- (c) Name of Mortgagee(s):
- (d) Amount Secured:
- (e) The Description: Schedule "A"
- (f) Interest chargeable: % per annum, calculated half-yearly not in advance.
- (g) Recorded: Registry of Deeds, County, in Book at Page .
[Recorded: Land Registration Office, County, identified by
PID Number .]

3. Particulars of the mortgage have been changed by the following subsequent relevant agreements:

<u>Agreement</u>	<u>Date</u>	<u>Amendment Effected</u>
(a)		
(b)		

4. Default in payment has been made under the terms of the mortgage and consequently the following amounts are due as of _____, 20__ :

(a) Principal balance	\$
(b) Interest	\$
(c) Taxes (debit or credit)	\$
(d) Protective disbursements	\$
(e) Other	\$ _____
Total outstanding	\$ _____

Particulars of the above amounts are available at the address of the plaintiff and the office of the plaintiff's solicitor.

5. The plaintiff claims against the defendant:

- (a) Payment of the total outstanding, together with interest at the rate set out in the mortgage, as amended, on the sum of \$ _____, from _____, 20__ until the date of default judgment;
- (b) Charges and expenses incurred in connection with the lands and the mortgage, together with interest on these amounts at the rate set out in the mortgage, as amended, until the date of default judgment;
- (c) Interest on the amounts of any arrears from the date the payment or payments are due until the date of default judgment;
- (d) Costs;
- (e) In default of payment of the foregoing amounts, an Order for Foreclosure, Sale and Possession; and
- (f) An order for the deficiency, if any, between the amount realized after sale pursuant to the Order for Foreclosure, Sale and Possession and the aggregate due, as claimed above.

6. The plaintiff claims against each defendant who has any interest or equity of redemption in

the lands an Order for Foreclosure, Sale and Possession.

7. In this proceeding, defendant-guarantor includes all individual guarantors against whom the plaintiff claims for:

- (a) Payment of amounts guaranteed pursuant to the mortgage and calculated in accordance with paragraph 5; and
- (b) Judgment against the defendant-guarantor, in default of payment of the foregoing amounts.

DATED at _____, Nova Scotia, the _____ day of _____, 20__.

Solicitor for the Plaintiff
Whose name and address are:

TO: The Defendant

Solicitor or Agent

FORM

**INTERLOCUTORY NOTICE
(EX PARTE APPLICATION)**

20

No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PLAINTIFF

- and -

DEFENDANT

- and -

DEFENDANT-GUARANTOR

**INTERLOCUTORY NOTICE
(EX PARTE APPLICATION)**

TAKE NOTICE that an application will be made on behalf of the plaintiff to a judge presiding in Chambers at the Court House, _____ in _____, Nova Scotia, on _____, the _____ day of _____, 20____, at the hour of _____ o'clock in the forenoon, or as soon thereafter as the application can be made, for an Order for Foreclosure, Sale and Possession, pursuant to Civil Procedure Rule 47.

AND TAKE NOTICE in support of the application the plaintiff files three affidavits: in proof of service, of the plaintiff's solicitor, and by or on behalf of the plaintiff.

DATED at _____, Nova Scotia, the _____ day of _____, 20____.

Solicitor for the Plaintiff

**FORM
AFFIDAVIT**

20

No.

BETWEEN:

PLAINTIFF

- and -

DEFENDANT

- and -

DEFENDANT-GUARANTOR

AFFIDAVIT

I, _____ of _____, _____ County, Nova Scotia, make oath and say as follows:

1. As solicitor for the plaintiff, I am familiar with this matter and say the following statements herein are correct.
2. This is an application for foreclosure, sale and possession.
3. The lands being foreclosed are/are not registered pursuant to the *Land Registration Act*. [The lands being foreclosed are identified by PID _____.]
4. Exhibit "A" is the Certificate of _____, Solicitor of the Supreme Court of Nova Scotia, dated _____, 20____, containing a list and particulars of all recorded instruments affecting the title of the lands being foreclosed since the date of the deed or conveyance to the original mortgagor.

PARTICULARS

CERTIFICATE

(To be used if parcel registered pursuant to the *Land Registration Act*.)

I CERTIFY that listed below are the particulars of all recorded and registered instruments shown on the parcel register attached to my accompanying affidavit as Exhibit “A”.

Dated at _____, Nova Scotia, the _____ day of _____, 20__ .

**Solicitor of the Supreme Court of
Nova Scotia**

PARTICULARS

**FORM
AFFIDAVIT**

20

No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PLAINTIFF

- and -

DEFENDANT

- and -

DEFENDANT-GUARANTOR

AFFIDAVIT

I, _____ of _____, _____ County, Nova Scotia, make oath and say as follows:

1. As _____ the mortgagee, I am familiar with this matter and say all statements herein are correct.
2. I have read over the Statement of Claim in this proceeding and say the contents are true.
3. By mortgage dated _____, 20____, and recorded in the (Registry of Deeds for _____ County, Nova Scotia, in Book _____ at Page _____) (Land Registration Office for _____ County as number _____), in the original principal amount of \$ _____, a certified copy of which mortgage is attached as Exhibit "A", the defendant, _____, mortgaged lands which are situate at _____, _____ County, Nova Scotia.
4. Exhibit "B" contains a statement detailing the dates and amounts of all charges and payments made on account of the mortgage since the _____, and a summary statement of account.

I have reviewed all entries and calculations, and they are correct.

5. As of the date of this affidavit, the mortgage is _____ months in arrears.

6. The following payments and/or other arrangements have been made since this foreclosure action was commenced:

7. Exhibit "C" contains a listing, together with true copies, of all relevant agreements subsequent to the mortgage changing the particulars of the mortgage.

8. Exhibit "D" contains a listing and particulars of all charges including protective disbursements made on account of the mortgage and shown on the summary statement of account in Exhibit "B". The originals or true copies of invoices or receipts will be disclosed to the Court upon filing of this application and, upon request, to the defendant and the guarantor.

SWORN TO at _____,)
County,)
Nova Scotia, the _____ day of)
_____, 20____, before me:)
)
)
)
_____)
A Barrister of the Supreme Court)
of Nova Scotia)

FORM

SUMMARY STATEMENT OF ACCOUNT

Date: _____

MORTGAGED PROPERTY (Address): _____

As of this date, the following is a summary of the mortgage account:

1.	Principal amount (as of the latest of: date of mortgage/ latest renewal/latest assumption)	\$
2.	Subsequent interest accrued	\$
3.	Subsequent other charges	\$
4.	Subsequent payments made	\$
5.	Principal, interest and other charges outstanding	\$
6.	Taxes (debit or credit)	\$
7.	AMOUNT CLAIMED	\$

Signature of Deponent

FORM

ORDER FOR FORECLOSURE, SALE AND POSSESSION

20

No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PLAINTIFF

- and -

DEFENDANT

- and -

DEFENDANT-GUARANTOR

ORDER FOR FORECLOSURE, SALE AND POSSESSION

BEFORE THE HONOURABLE JUSTICE

UPON MOTION on behalf of the plaintiff, _____ :

1. **IT IS ORDERED** that the amount due to the plaintiff _____, on the mortgage being foreclosed is settled at the sum of \$ _____, with interest on \$ _____ at the rate of _____ % per annum from _____, 20____, to the earlier of the date of payment by the sheriff to the plaintiff or twenty (20) days following the date of the sale of the lands by the sheriff, together with any other charges and protective disbursements as approved by the Court, and costs to be taxed.

2. **AND IT IS ORDERED** that the plaintiff shall have judgment, subject to later quantification, against the defendant and the guarantor, and possession of the lands as against the defendant, effective the earlier of the date of payment by the sheriff to the plaintiff of the amounts due to the plaintiff or twenty (20) days following the date of the sale of the lands by the sheriff.

3. **AND IT IS ORDERED** that all the interest and equity of redemption of the defendant and of all persons claiming through the defendant in the lands described in the mortgage are forever

barred and foreclosed, and shall be sold by the sheriff at a public auction conducted in accordance with the standard procedure for sheriff's sales authorized by the Civil Procedure Rules, which is incorporated by reference except only to the extent varied by this or further order of the Court, unless before the time of sale the amount due, together with costs, are paid to the plaintiff.

4. **AND IT IS ORDERED** that the plaintiff shall give at least twenty (20) days notice of public auction to the defendant by ordinary mail and to each recorded subsequent encumbrancer by registered or certified mail, and advertise the public auction by two (2) insertions, the first in the _____ at least twenty (20) days prior to the date of sale, and the second in the _____, not more than ten (10) days prior to the date of sale, and the abbreviated description of the lands contained in Schedule "A" is approved for use in all notices and advertisements.

5. **AND IT IS ORDERED** that the plaintiff shall record a true copy of this Order in the parcel register for the lands described in the mortgage.

6. **AND IT IS ORDERED** that on or after application for confirmation of the sheriff's sale, the plaintiff may apply to assess the amount of any deficiency. [Note: no deficiency is to be claimed against a bankrupt mortgagor.]

DATED at _____, Nova Scotia, the _____ day of _____, 20 _____.

PROTHONOTARY

FORM

NOTICE OF PUBLIC AUCTION

20

No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PLAINTIFF

- and -

DEFENDANT

- and -

DEFENDANT-GUARANTOR

NOTICE OF PUBLIC AUCTION

TO BE SOLD AT PUBLIC AUCTION pursuant to an Order for Foreclosure, Sale and Possession granted by the Court, unless before the time of sale the amount due to the plaintiff on the mortgage foreclosed, plus costs to be taxed, are paid:

PROPERTY:

[Insert authorized description]

A copy of the description of the property, as contained in the mortgage foreclosed, is on file at the sheriff's office and may be inspected during business hours.

DATE OF SALE: , 20 .

TIME OF SALE: 12:00 o'clock noon local time.

PLACE OF SALE: The Law Courts, , Nova Scotia.

TERMS: Ten per cent (10%) deposit (payable by cash, certified cheque or solicitor's trust cheque) at the time of sale, remainder within twenty (20) days upon delivery of deed.

DATED at , Nova Scotia, the day of , 20 .

High Sheriff in and for the
County of

[Name and address]
Solicitor for the Plaintiff

**FORM
AFFIDAVIT**

20

No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PLAINTIFF

- and -

DEFENDANT

- and -

DEFENDANT-GUARANTOR

AFFIDAVIT

I, _____ of _____, _____ County, Nova Scotia, make oath and say as follows:

1. As solicitor for the plaintiff, I am familiar with this matter and say the following statements are correct.
2. Pursuant to the Order for Foreclosure, Sale and Possession herein dated the _____ day of _____, 20____, Notice of the Public Auction was sent to the defendant by ordinary mail on _____, 20____, a true copy of which Notice is attached as Exhibit "A".
3. Exhibit "B" are true copies of confirmations of delivery to the subsequent encumbrancers of the Notice of Public Auction in accordance with the Order for Foreclosure herein.
4. Exhibit "C" are true copies of the Notice of Public Auction which were published in the _____, a newspaper published at _____, Nova Scotia on _____, 20____ and _____, 20____.

5. Exhibit "D" is a true copy of a Certificate of Taxation issued in the Small Claims Court of Nova Scotia on _____, 20____, in the amount of \$ _____.

6. Exhibit "E" is the Sheriff's Report for the sale of the mortgaged property which was held by the sheriff in and for _____ County on _____, 20____.

SWORN TO at _____,)
County,)
Nova Scotia, the _____ day of)
_____, 20____, before me:)
)
)
)
_____)
A Barrister of the Supreme Court)
of Nova Scotia)
