

Nova Scotia Supreme Court Practice Memorandum
Amendment
June 24, 2016

Practice Memorandum 1 “Foreclosure Procedures” is amended as follows:

1. The words in paragraph 2.5(f) “standard procedure for sheriff’s sales” are replaced with “Instructions for Conduct of Foreclosure Auction”.
2. The following is added to paragraph 3.5 as subparagraph (c):

A mortgagee who wishes to have the hearing of a motion for a deficiency judgment adjourned must make a motion for an adjournment to a date certain, unless a judge permits a motion for an adjournment without day. The motion for an adjournment to a date certain may be made by correspondence that includes representations about the reasons for the request, any previous adjournments, when the mortgagee will be ready, the consent of the mortgagor if the notice of motion has been served, and a convenient time and date for the adjourned motion to be heard. If the reason for the adjournment is a need for substitute service, the representations should include an estimate of the time required to obtain and give effect to an order for substitute service. If it is because a sale has been agreed to, information on the time needed to close should be provided

3. The form titled “Standard Procedure for Sheriff’s Sale by Public Auction” attached to the practice memorandum is replaced with the attached “Instructions for Conduct of Foreclosure Auction”.
4. The words “standard procedure for sheriff’s sale by public auction” in paragraph 3 of the form of “order for foreclosure, sale, and possession” are replaced with “standard instructions for conduct of foreclosure auction”.

Certificate

I, Joseph P. Kennedy, Chief Justice of the Supreme Court of Nova Scotia, certify that on June 24, 2016, a majority of the judges of the court made the foregoing amendments to Practice Memorandum 1.

Signed June 24, 2016

Joseph P. Kennedy
Chief Justice of the Supreme
Court of Nova Scotia

Instructions for Conduct of Foreclosure Auction

Introduction

These are instructions to a sheriff, deputy sheriff, or lawyer who conducts a public auction under an order for foreclosure, sale, and possession. They are to be followed, unless an order provides otherwise.

Scheduling auction

Plaintiff's counsel and you will set a time and date for the auction. It is to be held in the courthouse in the county in which the lands are located.

Order, descriptions, and notice

Plaintiff's counsel will deliver a certified copy of the order for foreclosure, sale, and possession to you. You must show it to anyone who inquires until you deliver a report about the auction and sale. Counsel will also supply you with six copies of the description of the lands to be auctioned, the notice of public auction, and the list of any moveables to be sold with the land. You must cause a copy of the notice to be posted in a public place at the courthouse where the sale is to be held, and replace it if it comes to your attention that the notice is removed before the sale.

Municipal taxes

You will obtain, directly or from plaintiff's counsel, a tax certificate showing the amount of municipal taxes that are a charge against the lands ahead of the mortgage under foreclosure.

Postponement of auction

You and plaintiff's counsel may change the time and date for the auction before a notice of the sale is given or an advertisement is posted or set for publication. The plaintiff may require the auction to be postponed after the notice is given or the advertisement is posted or set for publication. You and plaintiff's counsel will schedule a new time and date. If it is thirty days or less from the original date, the plaintiff need not deliver new notices or publish new advertisements, but you, your agent, plaintiff's counsel, or counsel's agent must make an announcement at the advertised time, date, and place about the new time and date. Otherwise, the requirements for notice and advertisement apply, and efforts should be made to inform potential bidders who may arrive at the original time and date.

Cancellation of auction

You must cancel the auction when you receive a certified copy of either a notice of discontinuance of the foreclosure proceeding or an order cancelling the auction.

Conduct of auction

At the time scheduled for the auction you will announce the auction by reading the notice of public auction. You will then read aloud or distribute the terms of sale, call for bids, note and solicit bids, give warning when you are about to knock the property down

to the apparent highest bidder, and sell the lands, and any moveables that are included, to the highest bidder.

Terms of sale

You will read aloud, or deliver a copy of, the following terms at the time of the auction and before you call for bids:

- (1) The auctioneer will ignore a bid less than the sum of the auctioneer's fees, the cost of the tax certificate, and municipal taxes that form a charge on the lands ahead of the mortgage under foreclosure, which sum is referred to in these instructions as the minimum bid.
- (2) The purchaser must pay a deposit of ten percent of the sale price, or the amount of the minimum bid, whichever is greater to the auctioneer immediately after the auction.
- (3) The purchaser must pay the ten percent by cash, bank draft, solicitor's trust cheque, or cheque certified by a recognized financial institution.
- (4) The purchaser must pay the balance to the auctioneer no later than fifteen days after the sale.
- (5) The purchaser and the plaintiff may agree in writing to extend the deadline for payment of the balance to as many as thirty days after the sale.
- (6) In exchange for payment of the balance of the purchase price, the auctioneer will deliver to the purchaser a deed referencing the mortgage under foreclosure and its registration or recording details and conveying whatever interest in the lands the mortgagor had when the mortgage was made or afterwards. If moveables are included, the auctioneer will deliver a bill of sale describing them.
- (7) The deposit is forfeited if the purchaser fails to pay the balance of the purchase price by the deadline.
- (8) The sale is also governed by the terms of the order for foreclosure, sale, and possession, any other order pertaining to the auction or the sale, the published advertisement of the auction, and the laws about public auctions and foreclosure and sale.

Closing

You must complete the sale as provided in the order for foreclosure, sale, and possession, the terms of sale, and any further order, unless the plaintiff is the purchaser and the amount bid does not exceed the sum of the minimum bid and the amount of the mortgage debt settled by the order for foreclosure, sale, and possession. In that later circumstance, you may obtain only the amount of the minimum bid from the plaintiff, and

distribute it to cover your fees, the cost of the tax certificate, and the municipal taxes. In all other cases, you must distribute the proceeds of sale first to the costs covered by the minimum bid, next to the plaintiff to cover the amount of the mortgage debt settled by the order for foreclosure, sale, and possession and any further order, and lastly to the prothonotary to await an order distributing surplus funds.

Failure to deliver deposit

You have discretion when the purchaser fails to deliver the deposit immediately after the sale. You may do one of the following:

- (1) terminate the sale, declare the auction over, and report to the court;
- (2) terminate the sale, ascertain that other potential bidders did not leave and that the second highest bidder stands by that bid, and continue the auction starting at the second highest bid;
- (3) if you are satisfied that the purchaser neglected to get the deposit in a required form and may be able to do so before any other potential bidders leave, give the purchaser a reasonable time to get the deposit in a required form, failing which you will exercise the first or second discretion.

Failure to pay balance

You must terminate the sale and report to the court when a purchaser fails to pay the balance of the purchase price before the deadline for closing.

Distribution of deposit after termination

You must distribute the deposit first to your fees and expenses, next to municipal taxes that form a charge ahead of the mortgage, and lastly to the mortgage debt when a sale is terminated because the purchaser fails to pay the balance of the purchase price.

New auction after termination

You and the plaintiff's counsel may schedule a new auction after you terminate a sale. The requirements in the order for foreclosure, sale, and possession for notice and advertising apply to the new auction, as do these instructions and any further order.