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Practice in Mortgage Remedies in Ontario (Fifth Edition)

**Marriott and Dunn
Release No. 3, July 2025**

Marriott and Dunn: Practice in Mortgage Remedies in Ontario, 5th Edition, provides the most comprehensive step-by-step review of the procedures governing foreclosure, judicial sale, and power of sale in Ontario. Fifteen chapters provide the busy practitioner with a ready reference to every aspect of the power of sale remedy with the most comprehensive case law review of the process in Ontario. The notice of sale itself, including parties to be served and the service requirements, sale without notice, the right to redeem, injunctive relief, the marketing process, the mortgagee's duties in conducting the sale, the registration process, accounting for the sale proceedings and costs receive chapter-by-chapter coverage.

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This release features updates to the case law and commentary in Chapters 1 Preliminary Considerations, 2 Available Remedies, 7 Judgments, Taking Accounts and References, 25 Exercising the Power of Sale, 30 Right to Redeem, 38 Recovering the Deficiency, 39 Mortgagee's Costs, 44 Interest, 46 Possession, Distress and Attornment, 54 Court Appointments, 59 Bankruptcy and Insolvency Act, 63 Marine Mortgages — Enforcement, and Appendix WPJ Words and Phrases.

HIGHLIGHTS

- **GENERAL MATTERS — INTEREST — CRIMINAL RATE OF INTEREST** — Effective January 1, 2025, the criminal interest rate provisions of the *Criminal Code* were amended. Changes to s. 347 of the *Criminal Code* create a new offence of entering, offering to enter, or advertising an offer to enter an agreement that provides for the receipt of interest at the criminal rate and lowering the criminal interest rate from an annual rate that exceeds an effective annual rate of 60% to an annual rate that exceeds an effective annual rate of 35%.
- **RECEIVERSHIPS — RECEIVERS AND MANAGERS** — In *Mel Cohen Realty Ltd. v. Merget Holdings Inc.*, 2025 CarswellOnt 2201 (Ont. S.C.J.), mortgagee under a vendor take back mortgage brought an application for the appointment of a receiver under the *Bankruptcy and Insolvency Act*, *Court of Justice Act*, or both. The applicant had served a demand under the mortgage before proceedings were commenced but had taken no steps toward a power of sale or to commence a mortgage action. (The respondent disputed the validity of the underlying security or the amount owing, and advanced claims for equitable setoff and indemnities.) In declining an order to appoint a receiver, the court considered the following factors:
 - a) There was ongoing litigation in which the mortgagor challenged the validity of the mortgage and, without evidence that the mortgagor was otherwise failing to pay its debts and obligations, the failure to pay amounts owing under the challenged mortgage was not sufficient evidence of insolvency;
 - b) Where the mortgage does not contain a contractual right to appoint a receiver, the bar for granting this extraordinary relief is high;
 - c) An order for a receiver under s. 101 of the *Courts of Justice Act* is an interlocutory order, and therefore a free-standing application brought for this relief will not be lightly entertained;
 - d) The equity in the property appears to be more than enough to adequately cover the mortgage debt; and
 - e) A receiver is not necessary to protect the value of the property nor is there any apparent benefit to an immediate sale. The disputed funds could be paid into court and there was no evidence that other creditors would benefit from the protection of a court-appointed receiver.
- **SPECIFIC LAWS — BANKRUPTCY AND INSOLVENCY ACT** — Where one of multiple debtors files an assignment in bankruptcy, it is an error of law to stay the proceeding against the non-bankrupt parties (*Monterozza v. Matthews*, 2025 CarswellOnt 131 (Ont. S.C.J. (Div. Ct.))).