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Practice in Mortgage Remedies in Ontario (Fifth Edition)

Marriott and Dunn

Release No. 6, November 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, 6 Originating Process, Pleadings and Defences, 26 Notice of Sale, 32 Injunctive and Other Relief, 33 Sale Proceedings, 42 Priorities—Generally, 44 Interest, 48 Residential Rental Premises, 50 Mortgagee’s Insurance Coverages, 54 Court Appointments, 62 Marine Mortgages—Generally, 63 Marine Mortgages—Enforcement and Appendix A Mortgage Statutes in Ontario and Mortgages Act (Annotated).

HIGHLIGHTS

- **FORECLOSURE — PRELIMINARY CONSIDERATIONS — LIMITATIONS UNDER THE REAL PROPERTY LIMITATIONS ACT — ACKNOWLEDGEMENTS OF DEBT AND/OR PARTIAL PAYMENT** — In *Hermina Developments Inc. v. Epireon Capital Limited et al.*, 2025 CarswellOnt 12417 (Ont. S.C.J.), the court relied on the underlying principle that a new payment constitutes a new promise to pay, thereby resetting the limitation period. The court determined that to interrupt the 10-year limitation period, the payment must be made by the person being sued for payment or their agent. Accordingly, in the context of a principal-guarantor relationship, a purposive interpretation of the *Real Property Limitations Act* requires the court to determine whether the payment reflects a promise to pay solely by the payor, or whether it also implies a promise to pay by the other party in the principal-surety relationship. Payment by a guarantor may extend the limitation period against the guarantor by a further 10 years from the date of payment but does not extend the limitation period against the principal debtor.
- **POWER OF SALE — NOTICE OF SALE — STATEMENT OF AMOUNTS DUE UNDER THE MORTGAGE** — In *AST Trust Company (Canada) v. Joseph-Walker*, 2025 CarswellOnt 11241 (Ont. C.A.), Ontario’s Court of Appeal upheld the motion judge’s decision that payment of the three-month interest bonus on default was enforceable. The mortgage agreement contained a term providing payment of the three-month interest bonus, which the motion judge found to be enforceable, stating “[i]n respect of [A’s] entitlement to a payment of three months’ interest, I find this to be an enforceable term of the Mortgage. In so finding, I am guided by the Court of Appeal’s recent decision in *Devi Financial Inc. v. Everwood Place Ltd.*, 2022 ONCA 104, [2022] O.J. No. 569. There, the Court upheld the lower court’s ruling that the bonus, a term agreed to between the parties, was properly included in the amount owing to the mortgagee.”
- **GENERAL MATTERS — INTEREST — FLOATING RATE OF INTEREST** — In *Vant Geloof v. Grewal*, 2025 CarswellBC 2416 (B.C. S.C.) the British Columbia Superior Court of Justice considered a mortgage agreement that contained interest provisions which increased the interest rate after 60 days. However, because the mortgage was also for a term of 60 days, the increase only became effective after the mortgage matured and become due. The court held that the increase in interest was in violation of s. 8 of the Interest Act and therefore created a penalty in the form of an increased rate for the non-performance. The court held that the original interest rate should be applied, similar to the Ontario decision in *Rokhsefat and Kazemzadeh-Khorasgha v. 8758603 Canada Corp.*, 2018 CarswellOnt 9336 (Ont. S.C.J.).