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FALCONBRIDGE ON MORTGAGES, FIFTH EDITION

by Walter M. Traub
Release No. 4, December 2023

This work, initially formed from Dean Falconbridge's lectures at Osgoode Hall, quickly became the authoritative text on mortgages in Canada. Now in its fifth edition, under the editorial leadership of distinguished practitioner Walter M. Traub, *Falconbridge on Mortgages* is the standard reference source for those who teach and those who practise in the field, and has often been cited by the judiciary.

What's New in this Update:

This release features updates to the commentary and case law in Chapters 7 (Priorities in Equity), 8 (Priorities under the Registry Act and the Land Titles Act), 9 (Consolidation and Tacking), 14 (Transferee of the Equity of Redemption), 22 (Action for Possession), 27 (Action or Judgment for Sale), 29 (Action for Redemption), 30 (Limitation of Actions), 31 (Accounting in a Mortgage Action), 33 (Regulation of Mortgage Interest), Chapter 34 (Costs), Chapter 35 (Sale under Power of Sale) and 36 (Appointment of Receiver).

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Highlights:

- **Priorities in Equity — § 7:6. Purchaser for Value Without Notice** — In 2021, the borrower defaulted on a loan secured in part on his property. The lender bank served a notice of sale in April 2022, but only a few months later in July the borrower entered into an intended arm's length lease with long-term tenants who had paid \$30,000 in advance for a year's rental. In these circumstances, the court found the tenants were bona fide purchasers for value of a leasehold interest in the property; they had no notice of either the borrower's default or the bank's steps towards enforcement. The tenants and bank were both innocent parties who had been defrauded by the borrower; moreover the bank's own delays in enforcement were in part what facilitated the borrower being able to ostensibly rent to the tenants. Having regard to the interests of both the tenants and the lender, the court permitted the tenants to remain in the property for the balance of the lease's term, while confirming that the lender had full rights to possession and was considered the landlord in lieu of the borrower: *Canadian Imperial Bank of Commerce v. Pena*, 2022 ONSC 6941, 2022 CarswellOnt 17655.
- **Action for Possession — § 22:6. Obtaining Possession** — In this case, a motion for a stay pending appeal was also granted in a commercial property matter, even though the impact was to intertwine with separate enforcement proceedings arising from a default judgment for possession on a different (but related) matter involving a residential property: *Dramel Limited v. Multani*, 2023 ONCA 540, 2023 CarswellOnt 12423.
- **Appointment of Receiver — § 36:1. Receivers Generally** — the Ontario Court of Appeal recently considered the wording of the order and its impact on whether a mortgagee had the right to redeem at any time, even though the court-approved sale process was already underway: *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONCA 548, aff'g 2022 ONSC 4135, rel'd decision at 2023 ONSC 832.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
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