

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

FALCONBRIDGE ON MORTGAGES, FIFTH EDITION

by Walter M. Traub

Release No. 3, September 2025

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 case law and commentary in Chapter 12 (Execution Creditors of the Mortgagee), Chapter 19 (Discharge of Charge), Chapter 23 (Actions on the Covenant), Chapter 26 (Judgment for Foreclosure), Chapter 28 (Mortgage Enforcement in an Insolvency Context), Chapter 35 (Sale under Power of Sale) and Appendix IF—Issues in Focus.

THOMSON REUTERS®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

Highlights:

- **EXTINGUISHMENT OF MORTGAGE—DISCHARGE OF CHARGE—RIGHT TO RECONVEYANCE**—In some circumstances, the mortgagee’s delay in registering a discharge will lead to losses for which it can be liable to the mortgagor. In *De Rita v. 1266078 Ontario Inc.* (2024), 61 R.P.R. (6th) 254, 2024 CarswellOnt 8673, 2024 A.C.W.S. 2973, 2024 ONCA 460 (Ont. C.A.), affirmed 61 R.P.R. (6th) 231, 2023 CarswellOnt 21441, 2023 A.C.W.S. 6702, 2023 ONSC 7541 (Ont. S.C.J.), for example, the mortgagor successfully claimed for damages caused by the mortgagee’s refusal to register the discharge promptly, despite several requests. That refusal had precluded the mortgagor from refinancing the property, which in turn prevented him from closing on a subsequent investment opportunity. The mortgagor’s losses were not considered too remote; the mortgagee could be taken to foresee the consequences of continuing to encumber title even once the charge was spent. On the facts, the mortgagee knew the mortgagor earned a living by buying, selling and managing a portfolio of commercial real estate. It was therefore reasonably foreseeable by the mortgagee, at the time of entering the contract, that its unlawful impairment of title would threaten the mortgagor’s access to the equity in his real estate, and by extension would result in lost business opportunities. Further, in this case the mortgagor expressly advised the mortgagee that a delayed discharge would jeopardize a pending new investment. In calculating the mortgagee’s liability, the court ruled that the correct measure of damages in this scenario was difference between: (1) the purchase price of the new property; and (2) its estimated value when the mortgagor was finally able to re-enter the market.
- **STATUTORY OR CONTRACTUAL RIGHTS—SALE UNDER POWER OF SALE—WHEN THE POWER MAY BE EXERCISED—FARM DEBT MEDIATION ACT**—In the event that the mortgagor is a “farmer” within the meaning of the *Farm Debt Mediation Act*, S.C. 1997, c. 21, a mortgagee must serve the farmer with at least 15 business days’ notice of intent to enforce any remedy or commence any proceedings, pursuant to s. 21. If such notice is not given, s. 22 provides that the mortgagee’s enforcement actions are null and void, as in *Vista Mortgage Capital Corporation v. MacSweeney et al*, 2025 CarswellOnt 6275, 2025 ONSC 2322 (Ont. S.C.J.): “In the present case, the statement of claim was issued and served prior to notice being provided under the terms of the [Act]. It matters not that the claim was held in abeyance pending completion of the notice and mediation provisions contained within the [Act]. The penalty contained within the [Act] is mandatory. Neither r. 2 of the [Ontario] *Rules of Civil Procedure*, nor any other equitable remedy can oust the mandatory penalty provision contained within the [Act]. As the claim was commenced in contravention of the notice provisions of the [Act], the claim is a nullity and is *void ab initio*.”