

Foreclosure Orders

When a mortgagor is in default under a registered mortgage instrument, the mortgagee is entitled to commence proceedings to realise his security by sale or to foreclose the mortgage by acquiring title to the property in satisfaction of the mortgage debt. In both situations the mortgagee's interest in the property is the estate and interest of the mortgagor at the time of registration of the mortgage. Thus, in law, foreclosure orders when registered will extinguish all subsequent interests in property registered after the mortgage being foreclosed except a Lease registered with the consent of the mortgagee. Section 109 of the Registration of Titles Act provides for foreclosure by the mortgagee in the case of default in payment of the principal sum and interest.

Mortgage of a Lease

A Mortgage of a Lease may foreclose against the Lease, the recital to the form of application being varied accordingly.

Default

In the case of mortgages payable on demand there can be no default until demand has been made. The demand should be in writing and served upon the registered proprietor of the land. Default must continue for one month or such period as specified by the mortgage document, after the date of repayment arises before notice to pay the money owing can be properly served. Notice to pay must be in writing.

Otherwise the mortgagee should establish that default occurred in payment of interest or principal or both and that default has continued up to the time of the application for foreclosure such period being not less than six (6) months.

Service

Service can be made as provided for in Section 105, which is, by personal service upon the mortgagor, leaving the notice on a conspicuous place on the mortgaged land or by registered post. The address of the registered proprietor in the Register Book may be used or the address provided for in the mortgage documents. Where the service is by registered post it should be proved by statutory declaration of the person who posted the notice and copy of the notice and post office receipt for the registered letter exhibited. In marking the Post Office receipt an exhibit the endorsement must be on the receipt itself and not on a paper to which the receipt is attached. If the Notice of Sale and Foreclosure has been served personally, a Statutory Declaration to that effect should be given and the form varied.

Advertisement of Intended Sale

The mortgagee is expected to sell the land as if he is the registered owner and secure the best price. The number of advertisements may vary according to the value of the land and the amount owing on the mortgage. The advertisement should identify the land and state the Volume and Folio number of the Title. Evidence that the land was offered for sale should be clearly stated and certificate of the auctioneer submitted. The Certificate of the auctioneer should identify the land and state the date and hour

of auction sale. If no offer was made, the certificate and statutory declaration should say so. If an offer was made the amount should be stated and the mortgagee should state that it was not sufficient to satisfy the moneys secured by the mortgage together with the expenses incurred by the sale or that it was less than the reserved price.

Notice of Intention to Apply for Foreclosure

After the failed sale attempt the mortgagee should serve notice of intention to apply for foreclosure. The practice of the notice stated above should be used. In addition to service on the registered proprietor notice must be served on every person appearing on the Register to have an estate or interest in the land subsequent to the registration of the mortgage to which the foreclosure relates. This would include a Caveator on whom notice should be served on the address provided for in the caveat.

Value

The current value of the land including all improvements thereon must be stated.

The applicant must describe all the buildings, constructions and other improvements existing on the land at the date of the application.

Statement of Account

Statement of account reveals normal conditions attending all cases of default.

Publication in Newspaper

The Registrar will direct the applicant to advertise the land for private sale appointment a time of not less than six (6) weeks from the date of the first advertisement after which the Registrar shall issue an order for foreclosure unless in the interval sufficient amount has been obtained by sale to satisfy the principal and interest and all expenses occasioned by the sale. Section 120

When the prescribed notices have been published and the time appointed therein has passed the applicant must lodge a final declaration exhibiting the relevant section of the Newspaper and the Declaration should show that no sufficient amount has been obtained by the sale of such lands to satisfy the principal and interest moneys secured and all expenses occasioned by such sale and foreclosure proceedings, that no offer sufficient to satisfy the moneys owing on the mortgage has been made and that the mortgagor has not up to the date of the Declaration made any tender of an amount sufficient to satisfy such moneys and that such moneys still remain owing.

Foreclosure Order

The Foreclosure Order along with the duplicate Certificate of Title will be taken up by the applicant for payment of Stamp Duty and Transfer Tax. The Foreclosure Order with a back sheet attached must be lodged for registration along with the fee for registration and the fee for a new Certificate of Title.

Applications by Corporate Bodies

If a corporate body is the mortgagee, the application should read:

“TO THE REGISTRAR OF TITLES

The A. Co. Ltd being registered as the proprietor of a Mortgage No
_____ on the day/month/year over the whole of the land
described in the schedule hereto comprised in Certificate of Title dated the
day/month/year hereby applies for a Foreclosure Order in respect of the
said land and in support a Statutory Declaration by the Secretary of the
said Company is hereto attached.

DATED the day/month/year

The Common Seal of the said A. Co. Ltd
Was hereunto affixed by resolution of the Board
Of Directors in the presence of _____
Director and _____ Secretary

Before me:

Justice of the Peace

The Declaration of the Secretary should follow the remainder of the form varied to suit the facts of the case.

Effect of Foreclosure Order

An order for foreclosure when made and entered in the Register Book has the effect of vesting the mortgagee as registered proprietor of the lands in the mortgage freed and discharged from any estate or interest of the mortgagor and from any mortgage or encumbrance registered subsequent to the mortgage in respect of which the order is made except a lease to which the mortgagee had consented in writing. On Foreclosure the Title issued to the mortgagee is absolute and unimpeachable in the absence of fraud when he becomes the registered proprietor.

GENERAL

1. The duplicate Certificate of Title and duplicate mortgage must be produced with the application for foreclosure.
2. A separate application must be made for each mortgage except where two or more mortgages over the same property are involved.
3. If the mortgage is a contributory one then the Foreclosure will vest the interest foreclosed in the mortgages in the proportion set out in such mortgage.
4. Notices validly given by a mortgagee may be relied on by a transferee of that mortgage when applying for foreclosure.

5. The application form is readily available on our website www.nla.gov.jm or the intranet.
6. Review Sections 109; 119-120 of the Registration of Titles Act.

FEE

Fee No. 18

The fee on lodging the application is Three Hundred Dollars (\$300.00)

Declaration as to Service of Notices

IN THE MATTER of the Registration of Titles Act.

A N D

IN THE MATTER of an application to the Registrar of Titles for an Order for Foreclosure in respect of land comprised in Mortgage No _____ registered at Volume _____ Folio _____ in the Register Book of Titles.

I, [name of person servicing notice] of [address] do solemnly and sincerely declare as follows:

1. That I am a [occupation] employed by [name of company] or adjusted as required.
2. That on the [day] of [month] [year] I posted a notice a copy of which is hereto annexed and marked "A" [Notice to Pay] and addressed to [name of mortgagor] of [address] by registered letter and that the paper hereto

annexed and marked “B” is the post office receipt for the said registered letter.

3. That on the [day] of [month], [year] I posted a Notice a copy of which is hereto annexed and marked “C” [Notice of Intention to Apply for Foreclosure] addressed to [name of all interested parties] of [address] by registered letter and that the paper hereto annexed and marked “D” is the post office receipt for the said registered letter.

AND I MAKE this solemn declaration etc.

Certificate of Auctioneer

I, [name of auctioneer], of [address] licensed auctioneer DO HEREBY CERTIFY that at the hour of [time] on the [day], [month], [year] at the office of [name of place] at [address] I offered for sale by public auction the land comprised in the above mentioned mortgage being [description of land] and that no offer was made at the said public auction for the said land OR that the highest offer made was [state amount].

Dated the [day] of [month], [year]