

The Foreclosure Process in British Columbia

In British Columbia, it is the judicial sale process that involves licensees most frequently. The petitioner or any of the respondents (i.e. 1st, 2nd or 3rd Mortgagee) can apply for a judicial sale, also known as a court-ordered sale, which will be carried out under the supervision of the court.

The judicial sale begins with a Demand Letter to the borrower, giving the borrower a short amount of time to pay out their mortgage. Then a petition is filed in the *BC Supreme Court* registry, which starts an action: *The Order Nisi*, which fixes the time for redemption. The redemption period, usually six months, is the time period given to the borrower to redeem the mortgage, as well as the amount required. Where a lender (respondent) applies for such an order, he or she may satisfy the court that the value of the property is high enough to satisfy the costs of the sale and the claim of the petitioner. If the property is sold by judicial sale, the petitioner is entitled to recover the difference between the sale proceeds and the mortgage debt from the borrower.

Once a petitioner or respondent has been granted a conduct of sale, they act in the role of the vendor pursuant to the Court Order, only for purposes of disposition of the asset, and can now list the property for sale with a realtor.

When a party has expressed an interest in making an offer, their realtor or the selling agent will draft an offer, directed at the Vendor (usually one of the Mortgagees.) At this point their realtor should confirm that the purchaser understands that although they will be negotiating with the vendor and a deal may be agreed on, there is still a possibility that, when the offer is presented to the courts, the offer may be subject to a sealed bid process by other purchasers.

Once the offer is made and the terms are agreed to, the Purchaser commences their Subject Period. If the purchaser removes its subjects, the offer will be presented to court.

In the courtroom, the process works as follows:

1. The vendor's lawyer presents the purchasers' offer to the Judge, (in foreclosure proceedings they are referred to as Masters.)
2. The Master asks if there are any other parties in the courtroom who would also like to submit an offer. If there is not, and the appropriate marketing has taken place and the price of the offer is market value, the Master will approve the sale. If there are competing offers in court the Master will instruct all parties, including the original purchaser to leave the courtroom and resubmit their final offer in a sealed envelope to the vendors lawyer.
3. After these offers have been submitted, the Master reviews the offers and approves the best deal.

The following chart has been reproduced with the permission of the UBC Commerce Real Estate Division.

Steps in a Foreclosure Proceeding for BC

Demand Letter
A letter accelerating the loan and giving the borrower a short period of time to pay out the mortgage or else face foreclosure.
Petition
Filed in B.C. Supreme Court registry. The lender is the petitioner, while the borrower and all other charge holders whose interests rank in priority behind the lender, are the respondents.

Order Nisi

The first order of the court. It establishes, amongst other things, the amount required to redeem the mortgage and the time period given to the borrower to redeem.

Judicial Sale

The petitioner may choose to have the property listed for sale by the court. Unless special circumstances exist, the petitioner only seeks this order at the expiry of the Redemption Period (Traditionally 6 months).

Order Approving Sale

The court approves the sale of the property. If the sale proceeds do not pay the petitioner in full, the petitioner will seek the deficiency from the respondent borrower under a court action.

Order Absolute of Foreclosure

If the redemption period has expired and if:

1. the property is worth the same amount as the mortgage debt or more;
2. the respondent borrower is judgment-proof (i.e., no assets or money to apply towards a deficiency); or
3. there are no offers under a judicial sale; the petitioner can seek an absolute order of foreclosure, under which the petitioner becomes the new registered owner and all respondents are wiped off title. No further action can be taken against the respondent borrower after the court has granted the order absolute.

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