

SUPREME COURT OF YUKON

PRACTICE DIRECTION # 49

*Foreclosure Petition
Explanatory Notes*

When counsel are filing a foreclosure Petition under Rule 57, these Explanatory Notes should be attached to the Petition:

Explanatory Notes

This summary is not intended to replace the advice of a lawyer or the provisions of the *Rules of Court*.

Attached is a foreclosure Petition to the Supreme Court. The Petition is accompanied by an affidavit which attaches documents referred to in the Petition. This summary contains an explanation of only some of the matters which may arise in a foreclosure proceeding. The Judge who hears the application will determine what is fair to the parties and what will be ordered. The result of these proceedings may be the foreclosure of your interest in the land and a personal judgment against you for the mortgage debt.

1. If you wish to be heard by the Court before any orders are made or wish to be notified of any further proceedings, you must file a document called an "Appearance" within the time set out in the Petition at the Registry and deliver a copy to the Petitioner's address for service. A form of "Appearance" is available at the Court Registry or under Rules and Forms at www.yukoncourts.ca.
2. Any facts you wish to bring to the attention of the Court should be put in affidavit form, filed in the Court Registry and served on the other parties.
3. The petitioner is applying for the following orders:
 - (a) A declaration that the mortgage in question is in default;
 - (b) A declaration of the amount owing, which may be the full mortgage balance. If you consider the amount claimed to be incorrect, you should file an affidavit stating your position and send a copy to the petitioner's lawyer.
 - (c) Fixing a redemption period during which the balance due must be paid to avoid foreclosure. The usual redemption period is six months, but the petitioner may seek a shorter period. If you object, you should file an affidavit stating your objections and send a copy to the petitioner's lawyer;

(d) The petitioner usually seeks personal judgment against the mortgagor and any guarantors for the amount due on the mortgage at the date of the hearing and for legal costs. Such a judgment enables the petitioner to have the Sheriff seize and sell assets other than the property referred to in the mortgage.

(e) If the property is earning rent or is unoccupied, the petitioner may apply for the appointment of a Receiver to collect rents or maintain the property.

4. When the redemption period has expired, the petitioner has two options:

(a) To apply for a final order of foreclosure. In that case, the petitioner becomes the owner and is entitled to possession of the property. In that case, the petitioner can no longer seek personal judgment for the debt owing under the mortgage.

(b) To apply for an order for sale. In that case, the petitioner may list the property for sale and must seek court approval of any sale. If the sale realizes less than the mortgage debt, the mortgagors and guarantors are still responsible for the deficiency, and a personal judgment can be made against them for that amount.

5. You may apply to have the redemption period extended, but you must be able to show **both** that the property value exceeds the mortgage debt **and** that there is a reasonable prospect of payment if further time is allowed.

6. If the term of the mortgage has not run out, any respondent may apply for an order that the mortgage be reinstated on payment of all arrears and costs. Often the petitioner will voluntarily accept such arrangements through its lawyer.

7. Any respondent may apply at any time for an order that the property be sold and for conduct of sale. The petitioner and all parties who have entered an "Appearance" must be notified of such an application and of any application to approve a sale.

8. Any order for legal costs of these proceedings will be fixed by the Court and will usually be based on the Court tariff called special (solicitor and client) costs if it is set out in the mortgage agreement. The amount may be subject to review by the Court. If the petitioner takes the property by foreclosure by what is called an order absolute, these costs are no longer payable.

9. Amounts paid by the petitioner for taxes, strata fees, insurance, appraisals, inspections and other charges during the redemption period may be added to the redemption amount initially fixed by the Court.