

RULE 57 – FORECLOSURE AND CANCELLATION

Commencement

- (1) A proceeding for foreclosure of the equitable right to redeem mortgaged property or for redemption shall be commenced by Petition for Foreclosure in Form 2B.

Service

- (2) All persons whose interest in or claim to the mortgaged property is sought to be extinguished and all persons against whom any relief is sought shall be made respondents, and unless the court otherwise orders, it is not necessary to join any other person as a respondent.

Joinder of claim or party

- (3) Notwithstanding Rule 10(1) a petitioner under this rule may join in the proceeding any claim arising out of the mortgage or out of any bond or collateral security or obligation given for the mortgage debt and may join as a party any person who is liable to pay the mortgage debt.

Person filing interest after certificate of pending litigation

- (4) A person who registers or files in a land title office an interest, right or claim in or to the mortgaged property after the petitioner has registered a certificate of pending litigation in respect of the proceeding against the mortgaged property, need not be served with the petition and is bound by an order made in the proceeding, but the person may enter an appearance in the proceeding.
- (4.1) The following shall govern the filing and setting aside of certificates of pending litigation in the Land Titles Office and in the Office of the Mining Recorder:
 - (a) where an action is commenced in which an interest or estate in land or a mining claim is in question, the clerk may issue a Certificate of Pending Litigation in Form 117;
 - (b) a party who seeks a certificate of pending litigation shall include, in the pleading that commences the action, a claim for it with a description of the land or mining claim in question sufficient, for the purpose of registration in a Land Titles Office to identify the land, or in the Office of the Mining Recorder to identify the claim;
 - (c) a certificate of pending litigation shall be served with the originating document in the action on all parties to the action;
 - (d) a person affected by the issuance or registration of a certificate of pending litigation may apply to the court, on notice, for an order setting aside the certificate or discharging the registration of the certificate;

- (e) on an application under paragraph 4.1(d), the court may make such order as it considers just, including giving directions for the summary determination of any issue relating to the issuance or registration of the certificate; or
- (f) the clerk shall issue, without an order, a Withdrawal of Certificate of Pending Litigation in Form 118 at the request of the party who sought it.

Powers of the court

- (5) The court may:
 - (a) make a final order of foreclosure or order that a respondent shall, within a redemption period that the court may fix, or promptly, pay to the petitioner what is due under the mortgage and for costs, and that, in default of payment, the respondent shall be foreclosed of their equity of redemption;
 - (b) determine summarily or order that an account be taken of, and that the clerk certify, what is due to the petitioner or to any person on the date of hearing of the petition or the accounting and either:
 - (i) the daily amount of interest; or
 - (ii) if the daily amount of interest may fluctuate, the method for calculating such interestfrom the date of the hearing of the petition or the accounting to the expiration of the period of redemption;
 - (c) determine summarily or order an inquiry to determine any issues raised between respondents, including priorities;
 - (d) determine summarily or order an inquiry to determine whether a person should be served with the petition for foreclosure;
 - (e) order at what times, on what terms and in what order of priority respondents may redeem the mortgaged property and that in default they shall be foreclosed of any interest, right or claim in or to the mortgaged property;
 - (f) grant judgment for any amount found due, or which may be certified to be due on an accounting;
 - (g) order a sale of the mortgaged property;
 - (h) grant further or corollary relief; and
 - (i) make an order under Rule 50(12).

Final order

- (6) In default of payment in accordance with an order made under subrule (5), a final order of foreclosure may be granted against a respondent on application by the petitioner.

Order for sale

- (7) A party of record may apply at any time for an order that the mortgaged property be sold or be put up for sale.

Inquiry to settle terms of sale

- (8) The court may order an inquiry to settle the terms of a sale.

Order confirming sale

- (9) Notwithstanding that the time for redemption has not expired, the person having conduct of a sale may apply to the court for an order confirming the sale, directing the disposition of the proceeds and vesting title in the purchaser.

Notice to assess costs

- (10) A respondent desiring to redeem may, upon paying to the petitioner the amount due under the mortgage, give notice to the petitioner to assess costs, and if, within 14 days of delivery of the notice, the petitioner has not filed a bill of costs for assessment, the petitioner shall not be entitled to costs.

Agreement for sale

- (11) This rule applies to a proceeding by a vendor on an agreement for sale of land in which a claim is made for specific performance of an agreement for sale and for its cancellation upon failure to perform.