

Publisher's Note

2018 — Release 4

Previous release was 2018-3

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Marriott and Dunn

Practice in Mortgage Remedies in Ontario (Fifth Edition)

Marriott and Dunn: Practice in Mortgage Remedies in Ontario, 5th Edition, provides the most comprehensive step-by-step review of the procedures governing foreclosure, judicial sale, and power of sale in Ontario. Fifteen chapters provide the busy practitioner with a ready reference to every aspect of the power of sale remedy with the most comprehensive case law review of the process in Ontario. The notice of sale itself, including parties to be served and the service requirements, sale without notice, the right to redeem, injunctive relief, the marketing process, the mortgagee's duties in conducting the sale, the registration process, accounting for the sale proceedings and costs receive chapter-by-chapter coverage.

This release features updates to the case law and commentary in Chapters: 1 (Preliminary Considerations), 2 (Available Remedies), 10 (Taking Accounts on The Reference), 14 (Redemption), and 20 (Costs). As well, updates have been made to the Words & Phrases section.

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- **Preliminary Considerations — Certificate of Pending Litigation** — In *De Luca v. Zomparelli*, 2018 ONSC 3789, 2018 CarswellOnt 9799 (S.C.J.), the Ontario Superior Court refused to grant a certificate of pending litigation where the plaintiff had made an unsecured loan to the defendant and the defendant had used the funds to pay expenses associated with the property in question. The court found that the payments did not give the plaintiff an interest in land by way of a claim to a beneficial ownership or an equitable mortgage.
- **Costs — Mortgagee’s Right to Costs of Action** — The courts have also introduced a “special circumstances” component to the contractual right to solicitor and client costs typically set out in standard mortgage terms such that, in the absence of “special circumstances”, the court will enforce the contract. “Special circumstances” include improper conduct in the conduct of proceedings or some basis in equity upon which the court may find that the contractual provision ought not to be enforced *TSCC No. 2051 v. Georgian Clairlea Inc.*, 2018 ONSC 4086, 2018 CarswellOnt 11292 (S.C.J.).