



The Law Society of Manitoba

INCORPORATED 1877 | INCORPORÉ EN 1877

REAL ESTATE

Chapter 4

Enforcement of Mortgage Security
Forms and Precedents

February 25, 2020

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1. Notice of Exercising Power of Sale

[Document follows on next page]

NOTICE OF EXERCISING POWER OF SALE

Form A The Real Property Act

1. TO: AND TO WHOM IT MAY CONCERN

2. TITLE NUMBER(S) MORTGAGE NUMBER CIVIC ADDRESS / LOCATION

3. LAND DESCRIPTION see schedule

4. (the Mortgagee) gives notice that IT IS HEREBY COMMENCING MORTGAGE SALE AND FORECLOSURE PROCEEDINGS under The Real Property Act. (a) The mortgage has been in default for at least one month. (b) THE DATE OF DEFAULT under the mortgage is. (c) The particulars of the default are as follows: Strike out inappropriate statement(s) (i) A default in the payment of principal and interest and taxes under the mortgage occurred on the day of 20. Installments totaling \$ as of the day of 20 have not been paid. (ii) Property taxes plus accrued interest and penalties in the amount of \$ have not been paid. The first missed payment of property taxes occurred on the day of 20. (iii) Proof of payment of insurance premiums for property has not been provided to the mortgagee. This proof was due to the mortgagee on the day of 20. (iv) This mortgage has matured and has not been renewed. The entire outstanding balance of \$ came due on the day of 20 and has not been paid to date. (v) This is a demand mortgage. Demand was made for \$ on the day of 20 and payment has not been made to date. (vi) see schedule (d) The Mortgagee has incurred and is incurring costs as a result of such default for which you may be liable.

5. YOU MAY STOP THESE PROCEEDINGS AT ANY TIME PRIOR TO THE SALE OF THE PROPERTY OR THE ISSUANCE OF TITLE TO THE MORTGAGEE BY EITHER BRINGING YOUR MORTGAGE BACK INTO GOOD STANDING OR PAYING THE ENTIRE MORTGAGE DEBT.

(a) HOW TO BRING THE MORTGAGE BACK INTO GOOD STANDING: Strike out inappropriate statement(s) (i) Remedy the default set out in paragraph 4. (c) above; and (ii) If the default set out above includes unpaid property taxes, you must pay all unpaid property taxes plus accrued interest and penalties that are due to the taxing authority at the time you remedy the default ; and (iii) Pay the costs of the Mortgagee for these proceedings; and (iv) Pay any further installments of principal, interest and/or taxes which may have become due after the day of 20. Your current monthly/weekly/bi-weekly installments of principal, interest and/or taxes are \$ and are payable to the Mortgagee as specified in the mortgage and any amendments thereto; and (v) Pay to the Mortgagee all amounts paid by it to bring into good standing your taxes and/or insurance premiums together with interest on such amounts at the rate of % per annum from the date of such payment by the Mortgagee to the date of your payment to the Mortgagee; and (vi) Pay to the Mortgagee interest at the rate of % per annum on any installments of principal and/or taxes that were not paid by you when due from the date such installments were due to the date of your payment to the Mortgagee. (vii) see schedule

(b) HOW TO PAY OFF THE ENTIRE MORTGAGE DEBT If you decide to pay the entire mortgage debt, you must pay the amount of \$ plus interest at the rate of % per annum from the day of 20 (currently per day) and you must also pay the costs of the Mortgagee for these proceedings.

6. FAILURE TO STOP THESE PROCEEDINGS: If you do not either (i) Remedy the Default or (ii) Pay off the Entire Mortgage Debt, as set out in 5. above, the Mortgagee will be entitled to resort to all the remedies provided under The Real Property Act, including: (a) SALE: The land may be sold by public auction or private contract or both. The parties with liability under the mortgage are liable for the entire indebtedness thereunder, and are also liable for any deficiency suffered by the Mortgagee after a sale of the land; (b) FORECLOSURE: If the land is not sold at public auction or by private contract and if the Mortgage is still in default six months after the date of default referred to above, the Mortgagee may apply to become the owner of the land (foreclose).

7. PAYMENT AND/OR INQUIRY MAY BE MADE TO: SAME AS SET OUT IN BOX #9 BELOW OR
8. SIGNATURE OF MORTGAGEE(S)/AGENT <div style="display: flex; justify-content: space-between; border-top: 1px dotted black; padding-top: 5px;"> Name signature date (YYYY/MM/DD) </div>
9. INSTRUMENT PRESENTED FOR REGISTRATION BY <i>include address, postal code, contact person and phone number and mortgagee reference #</i>

MORTGAGE SALE SCAMS

Losing your home or real estate through a mortgage sale, foreclosure is frightening. Manitoba property owners are falling victim to con artists who offer to help you save your property, but will only make things worse.

The offer may sound good, but it is probably a scam.

- The con artist may urge you to sign a paper that gives your property to the con artist in exchange for low or no payments.
- The con artist may promise to give your property back to you after you meet certain conditions, such as making payments in very tight time limits.
- The con artist may tell you this is just another way to secure a loan.

If you are contacted by somebody who says they will “help you save your property”:

- Contact your lender. They may be able to work out an agreement with you that is within your budget.
- Get advice from a trusted lawyer or accountant.
- Don't sign anything until you talk to a trusted advisor.
- Don't trust any offer to lease back your property so you can buy it back over time. The offer may sound good but the conditions often make it impossible to buy back the property.
- Don't sign any papers in blank or with blank parts; information can be added later without you knowing. Demand copies of all documents you sign.

If you feel you have been the victim of fraud, contact the police.

LAND TITLES OFFICE USE ONLY			
SEE ATTACHED LETTER/FAX/ADDITIONAL EVIDENCE FOR BOX(ES) _____			
Set for acceptance	<input type="checkbox"/>		Fee _____
Examined by:	<input type="checkbox"/>		Fee adjustment _____
Fees checked	<input type="checkbox"/>		<input type="checkbox"/> Extra Fee <input type="checkbox"/> Refund
			Registration No. _____

2. Request/Transmission

[Document follows on next page]

REQUEST / TRANSMISSION Form 15.1

1. **APPLICANT(S)** (full legal name and address for service)

see schedule

2. **APPLICATION FOR**

see schedule

3. **EVIDENCE FILED IN SUPPORT OF APPLICATION**

see schedule

4. **LAND DESCRIPTION**

AFFECTED TITLE NO.(S)

see schedule

5. **CURRENT REGISTERED OWNER(S)**

see schedule

6. **ENCUMBRANCES, LIENS AND INTERESTS** — The within document is subject to instrument number(s)

7. **EVIDENCE OF APPLICANT(S)**

1. That I am of the age of majority and have personal knowledge of the facts stated herein.
2. The registration of this instrument does not contravene the provisions of *The Farm Lands Ownership Act* because (strike out inappropriate statement(s) and sign below):
 - (a) The within land is not farm land as defined in *The Farm Lands Ownership Act*.
 - (b) The interest in the farm land is being claimed pursuant to a bona fide debt obligation.
 - (c) Other (specify section of *The Farm Lands Ownership Act*): _____
Particulars:
- 3.

..... name of applicant signature date //(YYYY/MM/DD)

..... name of applicant signature date //(YYYY/MM/DD)

see schedule

8. IMPORTANT NOTICES

By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

SINGULAR INCLUDES PLURAL AND VICE VERSA WHERE APPLICABLE. In this document "I" or "me" is to be read as including all applicants whether individual or corporate.

9. INSTRUMENT PRESENTED FOR REGISTRATION BY *(include address, postal code, contact person and phone number)*

LAND TITLES OFFICE USE ONLY

SEE ATTACHED LETTER/FAX/ADDITIONAL EVIDENCE FOR BOX(ES) _____

Set for acceptance

Examined by:

Fees checked

Fee

Fee adjustment

Extra Fee

Refund

Registration No.

/

3. Affidavit of Process Server in Support of an Application for an Order of Substitutional Service

C A N A D A) IN THE MATTER OF Mortgage Sale
) Proceedings under Mortgage No. 1001001
PROVINCE OF MANITOBA) taken by BANK OF MANITOBA against
) DEE FAULTER
T O W I T :)

I, SUSAN SEEKER, of the City of Winnipeg, in the Province of Manitoba,

Process Server,

MAKE OATH AND SAY THAT:

1. I am a process server employed with the firm of Hidem and Seeker, Process Servers.
2. On or about the 15th day of January, , I was retained by Saul Issitor to effect service of the Notice of Exercising Power of Sale with respect to the above proceedings on DEE FAULTER.
3. The address provided to me for the said DEE FAULTER was 123 Debt Street, Winnipeg, Manitoba.
4. I attended at 123 Debt Street for the purposes of attempting to effect service upon DEE FAULTER on the following dates and times:

January 16,	9:00 a.m.
January 18,	6:00 p.m.
January 19,	3:00 p.m.
January 21,	9:30 p.m.

- 5. I was unable to effect service upon DEE FAULTER at her place of residence.

- 6. I have no knowledge as to whether DEE FAULTER is employed or where her place of employment might be.

- 7. I enquired of the residents at 121 Debt Street as to whether they knew where I could locate their neighbour, DEE FAULTER and was answered in the negative.

- 8. I checked with New Listings, Manitoba Telephone System and am advised that no such change of address has been received.

SWORN BEFORE ME at the City)
)
of Winnipeg, in the Province)
)
of Manitoba, this 29th day) _____
)
of January, .)

A Commissioner for Oaths
in and for the Province of Manitoba
My commission expires:

4. Affidavit of Solicitor in Support of an Application for an Order of Substitutional Service

CANADA	)	IN THE MATTER OF Mortgage Sale
	)	Proceedings under Mortgage No. 1001001
PROVINCE OF MANITOBA	)	taken by BANK OF MANITOBA against
	)	DEE FAULTER
TO WIT:)	

I, DICK CLARKE, of the City of Winnipeg, in the Province of Manitoba,
Mortgage Officer,

MAKE OATH AND SAY:

1. THAT I am the authorized agent of BANK OF MANITOBA, the mortgagee in the above mentioned mortgage, and as such have personal knowledge of the facts herein deposed to by me.
2. THAT default occurred under the above mentioned mortgage on November 1st, _____, when an instalment of principal and interest was not made, and such default has not been remedied and still continues.

SWORN BEFORE ME at the City)	
)	
of Winnipeg, in the Province)	
)	_____
of Manitoba, this 4th day)	
)	
of March, _____)	

A Commissioner for Oaths
in and for the Province of Manitoba
My commission expires:

5. Affidavit of Mortgage Officer Concerning Default Under Mortgage

CANADA	)	IN THE MATTER OF Mortgage Sale
	)	Proceedings under Mortgage No. 1001001
PROVINCE OF MANITOBA	)	taken by BANK OF MANITOBA against
	)	DEE FAULTER
TO WIT:)	

I, DICK CLARKE, of the City of Winnipeg, in the Province of Manitoba,
Mortgage Officer,

MAKE OATH AND SAY:

1. THAT I am the authorized agent of BANK OF MANITOBA, the mortgagee in the above mentioned mortgage, and as such have personal knowledge of the facts herein deposed to by me.
2. THAT default occurred under the above mentioned mortgage on November 1st, _____, when an instalment of principal and interest was not made, and such default has not been remedied and still continues.

SWORN BEFORE ME at the City)	
)	
of Winnipeg, in the Province)	
)	_____
of Manitoba, this 4th day)	
)	
of March, .)	

A Commissioner for Oaths
in and for the Province of Manitoba
My commission expires:

6. Affidavit of Service of Notice of Exercising Power of Sale

CANADA	)	IN THE MATTER OF Mortgage Sale
	)	Proceedings under Mortgage No. 1001001
PROVINCE OF MANITOBA	)	taken by BANK OF MANITOBA against
	)	DEE FAULTER
TO WIT:)	

I, SUSAN SEEKER, of the City of Winnipeg, in the Province of Manitoba,
Process Server,

MAKE OATH AND SAY:

1. THAT I was retained by Mr. Saul Issitor of the law firm Barry, Stir & Co. to effect personal service of Notice of Exercising Power of Sale attached as Exhibit "A" hereto on DEE FAULTER and the spouse or common-law partner of DEE FAULTER.
2. THAT on the 24th day of January, I did effect personal service of the Notice of Exercising Power of Sale attached hereto as Exhibit "A" upon the said DEE FAULTER by handing to her a true copy thereof.
3. THAT upon enquiry made by me to that end, DEE FAULTER advised me that she has no spouse.

SWORN BEFORE ME at the City)	
)	
of Winnipeg, in the Province)	
)	
of Manitoba, this 1st day)	_____
)	
of February, .)	

A Commissioner for Oaths
in and for the Province of Manitoba
My commission expires:

7. Advertisement for Mortgage Sale

ADVERTISEMENT

FOR MORTGAGE SALE

The building and land known as 123 Debt Street, Winnipeg, Manitoba, as described in Certificate of Title No. 11001100 will be sold at an auction on _____ day, the _____ day of _____, _____ at _____ a.m. at Standard Auction Rooms, 1 Bid Street, Winnipeg, Manitoba.

The vendor is informed that there is situate on the property a 1500 square foot bungalow with attached double garage on a 65 foot by 110 foot lot. The vendor is informed that the said dwelling is approximately 10 years old and contains 3 bedrooms, 2-1/2 bathrooms and has a wood burning fireplace in the family room. The property remains occupied by the owners.

TAXES AND PRIOR ENCUMBRANCES: Taxes are outstanding for the year 2011 in the gross amount of \$2,100.00 plus penalties. There are no prior mortgages.

RESERVE BID: The reserve bid is set at \$85,000.00.
(Alternatively: The reserve bid will be announced at the commencement of the auction sale.)

TERMS: Twenty (20%) of the purchase price in cash or certified cheque and the balance according to auction sale conditions which are posted at Standard Auction Rooms.

Further information may be obtained from:

BARRY, STIR & CO.
1350 – 699 Main Street
Winnipeg, MB R9A 1N5

Attention: Saul Issitor
Telephone: 204-222-7777

Note: If the property is vacant, and you intend to allow access to the public for viewing prior to the auction, the date and time of any such “open house” to be arranged may also be disclosed in your ad.

8. Auction Sale Conditions

District of _____

MORTGAGEE:	
LAND (DESCRIPTION):	
TITLE NUMBER(S)	MORTGAGE NUMBER(S)
* see schedule <input type="checkbox"/>	
MORTGAGEE'S SOLICITORS: (include address, postal code, contact person and phone number)	

1. The Purchaser shall obtain possession of the Land at the Purchaser's own expense.
2. Property taxes in respect of the Land are paid up to the _____ day of December, 20____. The property is sold subject to taxes and penalties accruing after that date and subject to all exceptions and reservations contained in the original Grant from the Crown and current Certificate of Title, all municipal and statutory liens having priority over the Mortgage and also subject to the provisions of The Real Property Act, amendments thereto and to the following:
3. The Purchaser shall bear all other expenses including searches, investigations, registrations, land transfer tax and GST.

4. The Purchaser shall be deemed to have relied on the Purchaser's own inspection and knowledge of the Land, its trust condition, possible liabilities and the title thereto independent of any representations by or on behalf of the Mortgagee and no error, misstatement or mistake shall annul this sale nor shall any compensation be allowed to the purchaser in respect thereof.
5. The highest bidder shall be the Purchaser and if any dispute arises between two or more bidders, the Land shall be put up again at a former bidding. No person may advance at any bidding less than an amount established by the auctioneer and no bidding shall be retracted.
6. The Land is being sold subject to a Reserve Bid of \$_____ or a Reserve Bid as announced at the sale. If the highest bid does not meet the Reserve Bid then there is no sale.
7. The successful purchaser shall, at the time of the sale, pay in cash, certified cheque or bank draft to the Mortgagee's Solicitor a deposit of _____ percent of the amount of the purchase price (or \$_____) and shall execute the within Agreement to complete the purchase according to these terms.
8. The balance of the purchase price together with interest thereon at the rate of _____% per annum from the date of the sale shall be due and payable to the Mortgagee's Solicitor within _____ days from the date of the sale.
9. The Mortgagee represents that default has been made under the Mortgage and that it has the power to sell the Land. The Mortgagee shall be responsible only for providing the Transfer of Land under Power of Sale and associated proofs and shall not be required to enter into any other covenant. The Purchaser shall obtain at the Purchaser's own expense any other documents required by the Purchaser. The Mortgagee shall have a reasonable time after payment in full of the purchase price and interest for preparation of the Transfer of Land Under Power of Sale and associated proofs.
10. If the Purchaser shall fail to pay the balance of the purchase price and interest thereon within the time set forth above, the deposit shall be absolutely forfeited to the Mortgagee who may thereupon sue the Purchaser for the balance of the purchase price and interest and resell the Land in such manner and on such terms as the Mortgagee shall think fit and any deficiency which may result from such resale after deducting all costs, charges and expenses attending to such resale shall be borne by the Purchaser and shall be recoverable by the Mortgagee as and for liquidated damages. It shall not be necessary for the Mortgagee to tender a Transfer of Land to the Purchaser in order to have recourse to these remedies.
11. Time shall be in every respect of the essence of this contract.

12. Additional terms:

At the sale by auction made this day of the Land the undersigned was the highest bidder for and declared to be the purchaser of the same at the price of \$_____, and the undersigned has paid the sum of \$_____, by way of deposit and in part payment of the purchase money, and hereby agrees to complete the said purchase according to the above conditions.

DATED the _____ day of _____, A.D. _____.

Witness

Purchaser

Witness

For the Mortgage

Purchaser's name(s) for purpose of title: _____

Name of Purchaser's(s') solicitor: _____

AFFIDAVIT OF SUBSCRIBING WITNESS

I, _____
of the _____ of _____
in the Province of Manitoba, make oath and say:

- 1. That I was personally present and did see the annexed instrument duly signed and executed by _____ the parties thereto.
- 2. That the said instrument was executed at _____
- 3. That I know the said parties and that they are each of the full age of eighteen years.
- 4. That I am a subscribing Witness to the said instrument.

SWORN before me at the _____
of _____
in the Province of Manitoba,
this _____ day of _____, _____

A Notary Public in and for the Province of Manitoba
A Commissioner for Oaths in and for the Province
of Manitoba.
My commission expires:

DECLARATION PROVING PUBLICATION

I, _____

of the _____ of _____
in the Province of Manitoba

DO SOLEMNLY DECLARE THAT:

1. I am the solicitor for the Mortgagee in the above-mentioned sale.
2. The advertisement annexed hereto and marked as Exhibit A to this declaration is the advertisement approved by the District Registrar and was published in the _____ newspaper on _____, _____.
3. The auction advertised in Exhibit A was adjourned to _____, _____ and the auctioneer announced the new date and time at the adjourned auction.
4. The auction advertised in Exhibit A was cancelled/adjourned to _____, _____ and an announcement was made at the adjourned/cancelled auction that the auction would be re-advertised. The advertisement annexed hereto and marked Exhibit B appeared in the _____ newspaper on _____, _____.
5. And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at _____
in the Province of Manitoba
this _____ day of _____ A.D. _____

A Notary Public in and for the Province of Manitoba
A Commissioner for Oaths in and for the Province
of Manitoba.
My commission expires:

DECLARATION OF AUCTIONEER

I, _____
of the _____ of _____
in the Province of Manitoba, Auctioneer do solemnly declare that:

1. I am a duly licensed auctioneer.
2. I attended at _____ on _____, _____ and offered for sale by public auction the lands and premises described in the auction sale conditions annexed hereto. A copy of the auction sale conditions was available for public view prior to the auction at the place where the auction was scheduled to take place. I read aloud the auction sale conditions and announced the amount of the reserve bid at the start of the auction. The result of the auction sale is as follows:
 - a. I declared the property sold to _____ for \$ _____, being the highest bidder.
 - b. As the highest bid received of \$ _____ was less than the amount of the reserve bid of \$ _____, I declared the sale abortive.
 - c. As there was no bid whatsoever, I declared the sale abortive.
3. I conducted the auction sale in a fair, open and proper manner and according to the best of my skill and judgment.
4. There were about _____ persons present at the said sale.

And I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect if as made under oath.

DECLARED before me at _____
in the Province of Manitoba
this _____ day of _____ A.D. _____

A Notary Public in and for the Province of Manitoba
A Commissioner for Oaths in and for the Province
of Manitoba.
My commission expires:

9. Affidavit Under *The Family Farm Protection Act*

CANADA) IN THE MATTER OF Mortgage Sale
) Proceedings under Mortgage No. 1001001
PROVINCE OF MANITOBA) taken by BANK OF MANITOBA against
) DEE FAULTER
T O W I T :)

I, DICK CLARKE, of the City of Winnipeg, in the Province of Manitoba,
Mortgage Officer,

MAKE OATH AND SAY:

1. THAT I am the authorized agent of the Bank of Manitoba, the mortgagee in the above mentioned mortgage, and as such have personal knowledge of the facts herein deposed to by me.
2. THAT the land in respect of which application is made is not farm land within the meaning of *The Family Farm Protection Act*.
3. THAT the granting of the order applied for will not contravene the provisions of *The Family Farm Protection Act*.
4. THAT the *Farm Debt Mediation Act* does not apply to these proceedings.

SWORN BEFORE ME at the City)
))
of Winnipeg, in the Province)
))
of Manitoba, this _____ day of) _____
))
_____, _____.)

A Commissioner for Oaths
in and for the Province of Manitoba
My commission expires:

10. Order for Sale by Private Contract Public Auction or Both Methods

FORM C

**MANITOBA
ORDER FOR SALE BY PRIVATE CONTRACT
PUBLIC AUCTION OR BOTH METHODS
*THE REAL PROPERTY ACT***

IMPORTANT NOTICE: THE LAND MAY BE SOLD WITHOUT FURTHER NOTICE

Application for Order for Sale No. _____

TITLE NO(S). _____

District of _____

Mortgage No. _____

Mortgagee _____

Registered Owner _____

LAND:

Upon the application of

and upon reading the evidence filed

I ORDER THAT THE MORTGAGEE may sell the above land by public auction or private contract or both methods subject to the following conditions:

- (a) A copy of this Order for Sale shall be mailed by ordinary mail to all persons previously served with the Notice of Exercising Power of Sale at the person’s address for service on record at the Land Titles office and at the person’s last known address, if different, at least 16 days before the date of the public auction or the date a private contract is submitted for approval.

(b) For private contract:

- (i) The offer to purchase, transfer, transmission and evidence in support thereof shall be submitted to the District Registrar for approval;
- (ii) If a public auction advertisement has been served or the auction has been advertised but not yet held, all those persons served with the Notice of Exercising Power of Sale shall be given notice by ordinary mail at the address(es) specified in (a) hereof that a private contract is being submitted to the District Registrar for approval at least 16 days prior to the registration of the application for Approval of Private Sale.

(c) For public auction

- (i) The approved advertisement completed with date and time and, if applicable, amount of reserve bid shall be mailed, by ordinary mail at least 16 days before the public auction date, to all persons previously served with the Notice of Exercising Power of Sale at the address(es) specified in (a) hereof;
- (ii) The approved advertisement completed with date and time and, if applicable, amount of reserve bid, shall be published in one edition of _____ at least 14 days before the date of the auction;
- (iii) The auction shall be held in _____ and shall be conducted according to the approved auction sale conditions;
- (iv) An advertised auction sale may be adjourned twice provided the new date and time are announced at the adjourned auction and the total (combined) length of the adjournment(s) does not exceed six weeks;
- (v) After two adjournments or where the total (combined) length of the adjournments will exceed six weeks from the first scheduled date or where an auction is cancelled;
 - 1) An announcement shall be made at the adjourned/cancelled auction that the auction will be re-advertised;
 - 2) The auction shall be re-advertised showing the new date and time in the same manner as the original advertisement at least 14 days before the new auction date;
 - 3) The approved advertisement completed with the new date and time shall be mailed by ordinary mail at least 16 days before the new auction date to all persons previously served with the Notice of Exercising Power of Sale, Order for Sale and previous auction advertisement at the address(es) specified in (a) hereof.

Date

District Registrar

11. Order for Sale by Private Contract

FORM D

**MANITOBA
ORDER FOR SALE BY PRIVATE CONTRACT
UNDER *THE REAL PROPERTY ACT***

IMPORTANT NOTICE: THE LAND MAY BE SOLD WITHOUT FURTHER NOTICE

Application for Order for Sale No. _____

TITLE NO(S). _____

District of _____

Mortgage No. _____

Mortgagee _____

Registered Owner _____

LAND:

Upon the application of

and upon reading the evidence filed

I ORDER THAT THE MORTGAGEE may sell the above land by private contract subject to the following conditions:

- (a) A copy of this Order for Sale shall be mailed by ordinary mail to all persons previously served with the Notice of Exercising Power of Sale at the person's address for service on record at the Land Titles office and at the person's last known address, if different, at least 16 days before a private contract is submitted for approval.
- (b) The offer to purchase, transfer, transmission and evidence in support thereof shall be submitted to the District Registrar for approval.

In the event that the mortgagee is unable to sell the above land by private contract, the mortgagee may sell the land by public auction, subject to the conditions imposed by the District Registrar prior to the auction.

Date

District Registrar

12. Order for Sale by Public Auction

FORM E

**MANITOBA
ORDER FOR SALE BY PUBLIC AUCTION
UNDER THE REAL PROPERTY ACT**

IMPORTANT NOTICE: THE LAND MAY BE SOLD WITHOUT FURTHER NOTICE

Application for Order for Sale No. _____

TITLE NO(S). _____

District of _____

Mortgage No. _____

Mortgagee _____

Registered Owner _____

LAND:

Upon the application of

and upon reading the evidence filed

I ORDER THAT THE MORTGAGEE may sell the above land by public auction subject to the following conditions:

- (a) A copy of this Order for Sale, with the approved advertisement (completed with date and time and, if applicable, amount of reserve bid) attached, shall be mailed by ordinary mail to all persons previously served with the Notice of Exercising Power of Sale at the person's address for service on record at the Land Titles office and at the person's last known address, if different, at least 16 days before the date of the public auction sale;

- (b) The approved advertisement completed with date and time and, if applicable, amount of reserve bid, shall be published in one edition of _____ at least 14 days before the date of the auction;
- (c) The auction shall be held in _____ and shall be conducted according to the approved auction sale conditions;
- (d) An advertised auction may be adjourned twice provided the new date and time are announced at the adjourned auction and the total (combined) length of the adjournment(s) does not exceed six weeks;
- (e) After two adjournments, or where the total (combined) length of the adjournment(s) will exceed six weeks from the first scheduled date or where an advertised auction is cancelled:
- (i) An announcement shall be made at the adjourned/cancelled auction that the auction will be re-advertised;
 - (ii) The auction shall be re-advertised showing the new date and time in the same manner as the original advertisement at least 14 days before the new auction date;
 - (iii) The approved advertisement completed with the new date and time shall be mailed, by ordinary mail, at least 16 days before the new auction date to all persons previously served with the Notice of Exercising Power of Sale, Order for Sale and previous auction sale advertisement at the address(es) specified in (a) hereof.

In the event that a public auction is not held or is abortive, the mortgagee may sell the above land by private contract, subject to the conditions imposed by the District Registrar prior to the sale by private contract.

Date

District Registrar

13. Statement of Adjustments

STATEMENT OF ADJUSTMENTS

SALE OF: 123 DEBT STREET, WINNIPEG, MB, R3H 0K0
 FROM: BANK OF MANITOBA
 TO: GEORGE BUSCH
 AS OF: May 3rd,

=====

	DR.	CR.
To Purchase Price		\$98,000.00
By Deposit	\$20,000.00	
To interest at 13.5% per annum on \$78,000.00 from date of sale to date of closing (31 days)		894.33
To vendor's legal fees in accordance with Mortgage Sale Conditions		600.00
By balance due on closing	<u>79,494.33</u>	<u> </u>
TOTAL	\$99,494.33	\$99,494.33

E. & O.E.

STATEMENT PREPARED BY:
 BARRY, STIR & CO.
 Attorneys-at-Law
 1350 - 699 Main Street
 Winnipeg, MB R9Z 1N5

14. Transfer of Land

[Document follows on next page]

TRANSFER Form 5P

Transfer under Power of Sale Transfer of Mortgage Transfer of Leasehold Title Transfer of Encumbrance

1. TRANSFEROR(S) (Vendor(s))

see schedule

2. LAND DESCRIPTION

AFFECTED TITLE NO.(S)
MORTGAGE/ENCUMBRANCE NO.(S)

see schedule

3. ENCUMBRANCES, LIENS AND INTERESTS — The within document is subject to instrument number(s)

see schedule

4. TRANSFEREE(S) (Purchaser(s)) (full legal name, address for service and tenancy/estate/share acquired)

see schedule

5. CONSIDERATION

Receipt of \$ _____ is acknowledged.

6. FAIR MARKET VALUE AND, IF APPLICABLE, LAND TRANSFER TAX EXEMPTION EVIDENCE

- In accordance with Part III of *The Tax Administration and Miscellaneous Taxes Act*, I certify that the land affected by this transfer, as a whole, has a fair market value of \$ _____
-

..... //
 name signature date (YYYY/MM/DD)

see schedule

7. EVIDENCE OF TRANSFEROR(S)

see schedule

- I am (one of) the within transferor(s) and I am of the age of majority.
- I am (entitled to be) (the owner/one of the owners) of the described land.
- I hereby transfer the (land/lease/mortgage/encumbrance) to the Transferee(s).
- The registration of this transfer does not contravene the provisions of *The Homesteads Act* because (insert appropriate *Homesteads Act* evidence):
-

..... //
 witness signature name signature date (YYYY/MM/DD)

..... //
 witness signature name signature date (YYYY/MM/DD)

Prior to signing and witnessing this document, please carefully review the notices in Box 8.

Insert name, position and address of witness below signature. See subsection 72.5(5) of *The Real Property Act*.

8. IMPORTANT NOTICES

WHO MAY BE A WITNESS to this document: Only those persons specified in section 72.5 of *The Real Property Act* may act as a witness to this document.

NOTICE TO WITNESSES: By signing as witness you confirm that the person whose signature you witnessed:

- Is either personally known to you, or that their identity has been proven to you.

AND

- That they have acknowledged to you that they:
 - are the person named in this instrument;
 - have attained the age of majority in Manitoba; and
 - are authorized to execute this instrument.

By virtue of section 194 of *The Real Property Act*, any statement set out in this document and signed by the party making the statement has the same effect and validity as an oath, affidavit, affirmation or statutory declaration given pursuant to *The Manitoba Evidence Act*.

SINGULAR INCLUDES PLURAL AND VICE VERSA WHERE APPLICABLE. In this document "I" or "me" is to be read as including all transferors whether individual or corporate.

9. FARM LANDS OWNERSHIP DECLARATION

The registration of this instrument does not contravene the provisions of *The Farm Lands Ownership Act* because:

(strike out inappropriate statement(s) and sign below:)

- 1. The within land is not farm land as defined in *The Farm Lands Ownership Act*.
- 2. The within farm land is exempt by Manitoba Regulation 325/87 R of *The Real Property Act* (i.e. it is 5 acres or less).
- 3. Including the land in this transfer, the transferee owns, in total, less than 40 acres of farm land.
- 4. The transferee is a Canadian citizen, permanent resident of Canada, agency of the government, municipality, and local government district, qualified Canadian organization, family farm corporation or a qualified immigrant as defined in *The Farm Lands Ownership Act*.
- 5. The interest in farm land is being claimed pursuant to a bona fide debt obligation.
- 6. The transferee is exempt by the Farm Lands Ownership Board (Order enclosed).
- 7. Other (*specify section of The Farm Lands Ownership Act*):
Particulars:

.....
name **signature** **date** (YYYY/MM/DD) //

.....
name **signature** **date** (YYYY/MM/DD) //

Transferee, Transferor, or Agent

10. HOMESTEADS ACT CONSENT TO DISPOSITION AND ACKNOWLEDGEMENT

For transfer of land or transfer of leasehold title only.

Note: For consent by widow(er) or surviving common-law partner, see section 22 of *The Homesteads Act*.

I, the spouse or common-law partner of the transferor, consent to the disposition of the homestead effected by this instrument and acknowledge that:

- 1. I am the first spouse or common-law partner to acquire homestead rights in the property; or
 A previous spouse or common-law partner of the transferor acquired homestead rights in the property but those rights have been released or terminated in accordance with *The Homesteads Act*.
- 2. I am aware that *The Homesteads Act* gives me a life estate in the homestead and that I have the right to prevent this disposition of the homestead by withholding my consent.
- 3. I am aware that the effect of this consent is to give up my life estate in the homestead to the extent necessary to give effect to this disposition.
- 4. I execute this consent apart from my spouse or common-law partner freely and voluntarily without any compulsion on the part of my spouse or common-law partner.

.....
name of spouse or common-law partner **signature of spouse or common-law partner** **date** (YYYY/MM/DD) //

.....
name of witness **signature of witness** **date** (YYYY/MM/DD) //

A Notary Public in and for the Province of Manitoba

A Commissioner for Oaths in and for the Province of Manitoba

My commission expires: _____

Or other person authorized to take affidavits under *The Manitoba Evidence Act* (*specify*): _____

11. INSTRUMENT PRESENTED FOR REGISTRATION BY (*include address, postal code, contact person and phone number*)

15. Affidavit of Service by Mailing Mortgage Sale Advertisement

CANADA) IN THE MATTER OF Mortgage Sale
) Proceedings under Mortgage No. 1001001
 PROVINCE OF MANITOBA) taken by JANE SMITH against
) DEE FAULTER
 T O W I T :)

I, JANE SMITH, of the City of Winnipeg, in the Province of Manitoba, Legal Assistant,

MAKE OATH AND SAY:

1. THAT I did on the 10th day of March, , personally mail a true copy of the Mortgage Sale Advertisement attached hereto and marked as Exhibit "A" and a true copy of the Order for Sale attached hereto and marked as Exhibit "B" to this my Affidavit with postage prepaid, to the following:

- (a) 123 Debt Street, Winnipeg, Manitoba;
- (b) Trans Canada Beneficial Finance Co., 14 Portage Avenue, Winnipeg, Manitoba.

SWORN BEFORE ME at the City)
)
 of Winnipeg, in the Province)
)
 of Manitoba, this 12th day of) _____
)
 March, .)

 A Commissioner for Oaths
 in and for the Province of Manitoba
 My commission expires:

16. Affidavit of Bona Fides of Mortgagee

CANADA) IN THE MATTER OF Mortgage Sale
) Proceedings under Mortgage No. 1001001
 PROVINCE OF MANITOBA) taken by BANK OF MANITOBA against
) DEE FAULTER and private sale to
 T O W I T :) WILLIAM AND MARY BYERS

I, DICK CLARKE, of the City of Winnipeg, in the Province of Manitoba, Mortgage Officer,

MAKE OATH AND SAY:

1. I am the authorized agent of BANK OF MANITOBA, the Mortgagee in connection with the above proceedings and as such have personal knowledge of the facts hereinafter deposed to by me.
2. The said BANK OF MANITOBA is not connected in any way with the said WILLIAM AND MARY BYERS.
3. The said parties are dealing at arm's length with one another in connection with the sale of the subject property and the said sale is bona fide and is for valuable consideration.

SWORN BEFORE ME at the City)
)
 of Winnipeg, in the Province)
)
 of Manitoba, this day) _____
)
 of , .)

 A Commissioner for Oaths
 in and for the Province of Manitoba
 My commission expires:

17. Affidavit of Bona Fides of Purchaser

CANADA) IN THE MATTER OF Mortgage Sale
) Proceedings under Mortgage No. 1001001
 PROVINCE OF MANITOBA) taken by BANK OF MANITOBA against
) DEE FAULTER and private sale to
 T O W I T :) WILLIAM AND MARY BYERS

I, WILLIAM BYERS, Teacher and I, MARY BYERS, Dentist, both of the City of Winnipeg,
 in the Province of Manitoba,

SEVERALLY MAKE OATH AND SAY:

1. I am one of the purchasers in connection with the above proceedings and as such have personal knowledge of the facts hereinafter deposed to by me.
2. That we are not connected in any way with the said BANK OF MANITOBA.
3. The said parties are dealing at arm’s length with one another in connection with the sale of the subject property and the said sale is bona fide and is for valuable consideration.

SWORN BEFORE ME at the City)
)
 of Winnipeg, in the Province)
)
 of Manitoba, this day) _____
)
 of , .)

 A Commissioner for Oaths
 in and for the Province of Manitoba
 My commission expires:

18. Receipt and Acknowledgement

THE REAL PROPERTY ACT (MANITOBA)

IN THE MATTER OF: Sale Proceedings under Mortgage No. 1001001 taken by
BANK OF MANITOBA against DEE FAULTER

TRANS CANADA BENEFICIAL FINANCE CO. hereby represents and warrants to BANK OF MANITOBA as follows:

1. THAT TRANS CANADA BENEFICIAL FINANCE CO. is a subsequent mortgagee by virtue of a certain mortgage, which was registered in the Winnipeg Land Titles Office on August 1st, _____, as No. 12345678 affecting the land described as follows:

Lot 46, Block 3, Plan 18532 WLTO, in RL 78, Parish of Saint Vital

2. THAT the said mortgage secured the sum of TEN THOUSAND (\$10,000.00) DOLLARS.

3. THAT TRANS CANADA BENEFICIAL FINANCE CO. is entitled as the said subsequent mortgagee to whatever surplus monies which may have been realized by the mortgage sale proceedings under the said Act, in respect of a certain mortgage registered in the Winnipeg Land Titles Office aforesaid under mortgage no. 1001001 in the name of BANK OF MANITOBA, up to the amount owing and unpaid under said mortgage no. 12345678 in favour of TRANS CANADA BENEFICIAL FINANCE CO.

4. THAT there was, as at April 4, _____, outstanding the sum of NINE THOUSAND FIVE HUNDRED (\$9,500.00) Dollars together with interest thereon at 25% per annum due and owing under the said mortgage no. 12345678 in favour of TRANS CANADA BENEFICIAL FINANCE CO. prior to the application of surplus funds as herein set forth.

TRANS CANADA BENEFICIAL FINANCE CO. hereby acknowledges that it has received from BANK OF MANITOBA the sum of ONE THOUSAND FIVE HUNDRED (\$1,500.00) DOLLARS of the said amount due and owing and TRANS CANADA BENEFICIAL FINANCE CO. hereby releases and discharges the said BANK OF MANITOBA, its successors and assigns and the land from all claims, reckonings and accounts in respect of the said mortgage sale proceedings.

IN WITNESS WHEREOF TRANS CANADA BENEFICIAL FINANCE CO. has caused its corporate seal to be hereunto affixed, attested by the signature of its proper officers in that behalf, this _____ day of _____

TRANS CANADA BENEFICIAL FINANCE CO.

Per: _____

Per: _____

19. Order Approving Sale Price

FORM F

MANITOBA ORDER APPROVING SALE PRICE UNDER *THE REAL PROPERTY ACT*

District of _____

Application No. _____

TITLE NO(S). _____

Mortgage No. _____

Mortgagee _____

Registered Owner _____

LAND:

Upon the application of

and upon reviewing the evidence and valuations submitted, I hereby approve a sale price for the land of \$_____. This is an Order approving the sale price only and is not an Order allowing or approving a private sale.

The approval of sale price expires _____, _____.

Date

District Registrar

20. Notice of Intention to Sell by Private Contract

FORM G

NOTICE OF INTENTION TO SELL BY PRIVATE CONTRACT

Re _____
(civic address/location)

MORTGAGE NO. _____

Mortgagee _____

Registered Owner _____

Title No. _____

LAND:

Take notice that the undersigned intends to sell the above property by private sale and not by public auction and will be submitting the Agreement of Purchase and Sale for the above property to the District Registrar of the _____ Land Titles Office for approval after the expiration of 16 days after the date of mailing of this notice, without any further notice to you.

Date this _____ day of _____, _____.

Mortgagee

21. Schedule "A" to an Offer to Purchase

SCHEDULE "A" to an OFFER TO PURCHASE MADE BY _____

TO _____ DATED THE _____ DAY OF _____, _____

RE: _____

NOTWITHSTANDING any other terms in the offer to purchase real estate (the "Offer") to which this Schedule is Attached, to the contrary, it is understood and agreed as between the Purchaser and Vendor that the following terms and conditions and statements shall supersede any terms and conditions or statements contained in the Offer. In the event of any discrepancy between a provision of the Offer and this Schedule, this Schedule shall govern.

1. The Vendor states that it is a Vendor by virtue of its Power of Sale contained in a Mortgage/Debenture registered in the Winnipeg Land Titles Office as Mortgage No. _____ (the "Mortgage") and that the Mortgage has been transferred to the Vendor. The Vendor warrants only that it has the power to sell the property by virtue of the Mortgage and the provisions contained therein.
2. The agreement of purchase and sale arising from the acceptance of this Offer is subject to the approval of the District Registrar of the Winnipeg Land Titles Office.
3. The Vendor's obligations hereunder are subject to the condition that none of the Mortgagors under the mortgage nor anyone acting on their behalf or any other person having a right to redeem the Mortgage or place it in good standing takes proceedings against the Vendor to prevent the sale of the property, the effect of which proceedings would be to prevent the Vendor from being able to complete the closing of the purchase and sale of the property as contemplated by the terms of the Offer.
4. The Offer and the Vendor's obligations thereunder are subject to the Vendor being able to complete the sale of the property pursuant to the Power of Sale contained in the Mortgage.
5. The Offer and the Vendor's obligations thereunder are subject to the Vendor not being restrained or enjoined from completing the transaction contemplated herein by a court of competent jurisdiction or by the filing or registration of any document preventing the Vendor from giving good title to the Purchaser.

6. If the Registrar of the Winnipeg Land Titles Office does not approve the sale or permit registrations to be completed causing title to the property to issue to the Purchaser, or if the Mortgagors under the Mortgage or persons on behalf of the Mortgagors take proceedings against the Vendor to complete the sale of the property, the effect of which proceedings would be to prevent the Vendor from being able to complete the closing of the purchase and sale as contemplated in the Offer, then the Vendor shall have the right to terminate the Offer and upon having given written notice to the Purchaser that it is so doing, the Vendor shall immediately return the deposit paid hereunder to the Purchaser and the Offer shall thereupon be null and void and the Vendor shall have no further obligation to the Purchaser. Written notice for the purpose of this paragraph shall be deemed to have been validly given if received by the real estate agent herein or the Purchaser's solicitors.

7. The Purchaser undertakes not to make any renovations to the property until the District Registrar has approved this Offer and has caused title to issue in the name of the Purchaser. Furthermore, in the event that the transaction is terminated in accordance with the preceding paragraph, the Purchaser agrees immediately to vacate the property and to return possession of same to the Vendor in the same condition as when the Purchaser took possession.

8. The Vendor shall not be required to furnish any abstracts of title and shall only be required to provide such deeds, copies thereof, or evidence of title as are in its possession or control.

9. The Purchaser shall get possession of the property at the Purchaser's own expense, provided that the Vendor will cooperate with the Purchaser and respond to any reasonable request of the Purchaser in an attempt to provide such possession. Whether such request is reasonable shall be in the sole discretion of the Vendor's solicitors. The Vendor shall provide the Purchaser with only those keys to the property which are in its possession. Any costs or proceedings required to obtain possession shall be the sole responsibility of the Purchaser.

10. The Purchaser shall be solely responsible for all registration costs (including, without limitation, Land Transfer Tax) payable in connection with the registration of the transfer documentation, including, without limitation, Transfer of Land, Request to Approve Sale and Transmission Application. The Vendor agrees that the Purchaser's responsibility to pay registration costs with respect to all documents other than Transfer of Land and the payment of Land Transfer Tax will be limited to \$100.00. Each of the Vendor and the Purchaser will be responsible for its own legal fees.

11. The Purchaser acknowledges that there are no representations and/or warranties whatsoever in connection with the property and particularly that there are no representations or warranties with respect to urea formaldehyde foam insulation, radon gas, the condition, fitness, zoning or lawful use of the property or the physical condition thereof. The Purchaser agrees to accept the property in an "as is" condition and subject to any and all outstanding work orders or notices of infraction as of the date of closing and subject to

the existing municipal or other governmental by-laws, restrictions or orders affecting its use including subdivision agreements and easements. The Purchaser acknowledges and agrees that the purchase of the property has been made entirely in reliance upon the Purchaser's own inspection and investigation of the property and without limiting the generality of the foregoing, the Purchaser acknowledges and agrees that the Vendor will not be responsible for any defects, latent or patent, which may have existed as at the date of possession. The Vendor shall not be liable for any outstanding loans under *The Property Tax and Insulation Assistance Act* or for any loans outstanding under statute of similar nature and there shall be no adjustment on closing in respect of same.

12. The Purchaser acknowledges and agrees that the fixtures and chattels currently in the property are to be taken by the Purchaser at the Purchaser's own risk completely, without representation or warranty of any kind from the Vendor as to the ownership or state of repair of such fixtures or chattels.

13. The Purchaser acknowledges that any information supplied to the Purchaser by the Vendor or its agents or representatives is and was supplied without any representation or warranty and that the responsibility for verification of any such information shall be wholly the responsibility of the Purchaser.

14. The Purchaser accepts any and all encroachments on or over the property upon which the property is situated and shall not hold the Vendor responsible with respect to same.

15. The Vendor makes no representations as to compliance with the City of Winnipeg Fire By-Laws, if applicable, and the Purchaser shall assume full responsibility with respect to same and the cost of same.

16. The Purchaser shall provide, only if available, any existing building location certificate with respect to the property, provided that the Vendor shall not be held to have made any representations or warranties with respect to the same.

17. In the event that the property is subject to a tenancy, upon the date of closing the Purchaser shall take full responsibility for the status of any existing tenancy relationship, including responsibility for compliance with rent regulations, if any, and any claims currently outstanding with the Residential Tenancies Branch and the Purchaser shall indemnify the Vendor with respect to same. There shall be no adjustment for security deposits that have not actually been received by the Vendor and the Purchaser shall assume full responsibility for same and shall provide satisfactory evidence to the Vendor that the Purchaser has remitted all security deposits to the Director of Residential Tenancies or has established a security deposit account in accordance with the provisions of *The Residential Tenancies Act*. This paragraph is intended by the Purchaser to be a complete waiver and release of any right of recovery against the Vendor that may exist pursuant to *The Residential Tenancies Act*.

18. Upon the date of closing, the Purchaser shall, to the extent required by the *Excise Tax Act* (Canada), be responsible for the payment of any and all goods and services tax, where applicable, and any similar tax payable pursuant to any successor legislation. The Purchaser shall pay same on the date of closing to the Vendor, which shall, in accordance with the requirements of law, remit same to the appropriate government authority. It is expressly understood and agreed that the purchase price does not include Goods and Services Tax.

19. The property is sold subject to all exceptions and reservations contained in the original grant from the Crown, and is also subject to the provisions of *The Real Property Act* and *The Condominium Act* and amendments thereto.

20. The acceptance of this Offer by the Vendor may be in the form of a fax or telecopied communication and such acceptance shall be accepted by all parties as a valid and binding acceptance of the Offer to Purchase.

21. The terms and conditions and covenants contained in this Schedule "A" are all for the benefit of the Vendor and any or more of them may be waived by the Vendor only, by notice of waiver in writing.

WITNESS my (our) hands(s) this _____ day of _____, _____

Witness

Purchaser

Witness

Purchaser

IN WITNESS WHEREOF _____ has
accepted this Offer to Purchase this _____ day of _____, _____

Per: _____

22. Application for an Order of Foreclosure and Affidavit of Mortgagee

TO: THE DISTRICT REGISTRAR
WINNIPEG LAND TITLES OFFICE
WINNIPEG, MANITOBA

Bank of Manitoba (hereinafter referred to as the "mortgagee") hereby applies for a Final Order of Foreclosure, under the provisions of "*The Real Property Act*" under and by virtue of the said Final Order of Foreclosure to be registered as owner of the land hereinafter described under "*The Real Property Act*" and declares:

1. THAT the said mortgagee claims to be entitled to a Final Order of Foreclosure and to be registered as aforesaid under and by virtue of a mortgage made by JOHN SELLER, as mortgagor, to WINNIPEG TRUST COMPANY, as mortgagee, which said mortgage was registered in the Winnipeg Land Titles Office as No. 1001001 on the 15th day of November, _____.
2. THAT the land referred to is legally described as follows:
Lot 46, Block 3, Plan 18532 WLTO, in RL 78, Parish of Saint Vital.
3. THAT there are no documents or evidence of title affecting the said land in its possession or under its control other than those included in the schedule hereto.
4. THAT the land is currently owner occupied.
5. THAT the land, together with all buildings and other improvements thereon, is of the value of \$90,000.00.
6. THAT the said mortgage was given to secure the repayment of a loan or advance of \$95,000.00 with interest thereon in the manner therein set forth.
7. THAT default was made in payment of principal and interest on November 1, _____, and that such default has ever since continued and still continues.

8. THAT the said property was offered for sale by public auction at Gray's Carter's Auction Rooms, Licensed Auctioneers, 33 Princess Street, in the City of Winnipeg, in the Province of Manitoba, on the 4th day of April, _____, after due advertisement and after notice of sale had been served on all interested parties, as required by the provisions of the Act.

9. THAT there was no bid at the said sale and that same was declared abortive.

OR

9. THAT the amount of the highest bid at the sale, being \$, was not sufficient to meet the reserve bid and that same was declared abortive.

10. THAT BANK OF MANITOBA knows of no reason why it should not be entitled to a Final Order of Foreclosure and be registered as owner of the property hereinbefore described.

IN WITNESS WHEREOF BANK OF MANITOBA has hereunto caused to be affixed its corporate seal, duly attested by the hands of its proper officers in that behalf, this 6th day of June, _____.

BANK OF MONTREAL

Per: _____

Per: _____

23. Notice of Application for Order of Foreclosure/Final Notice to Redeem

[Document follows on next page]

**Notice of Application for Order of Foreclosure/
Final Notice to Redeem under *The Real Property Act***

FORM H / FORMULE H

MANITOBA CONSUMER AND
CORPORATE AFFAIRS
LAND TITLES

CONSUMMATION ET CORPORATIONS
MANITOBA
TITRES FONCIERS

NOTICE OF APPLICATION
for Order of Foreclosure/Final Notice to Redeem
under *The Real Property Act*

AVIS DE DEMANDE
d'ordre de forclusion (avis de rachat)
Loi sur les biens réels

District of/ District de	_____		
Re / Objet :	_____		
	(civic address/location)(adresse de voirie / emplacement) (optional / facultatif)		
1. TO / DESTINATAIRE :	* see schedule <input type="checkbox"/> * voir l'annexe		
2. TITLE NUMBERS N^{os} DU TITRE		MORTGAGE NUMBER N^o DE L'HYPOTHEQUE	
3. LAND / BIEN-FONDS (description)	* see schedule <input type="checkbox"/> * voir l'annexe		
4.	(the Mortgagee) / (créancier hypothécaire)		
<p>has applied pursuant to <i>The Real Property Act</i> for an Order of Foreclosure and the District Registrar has directed that this Notice be served on you requiring you to redeem the Land from the Mortgage within one month from the date you are served with this notice.</p> <p>To redeem the Land from the Mortgage you must either:</p> <p>(a) pay all amounts in arrears and perform all covenants in default; or</p> <p>(b) pay an amount sufficient to satisfy the principal and interest and other monies secured by the Mortgage; and you must pay the expenses occasioned by the proceedings under the Mortgage.</p> <p>If the land is not redeemed from the Mortgage, unless you obtain a court Order stopping the proceedings, upon application, an Order of Foreclosure will issue and the Mortgagee will, upon registration of the Order, become the owner of the Land and you will have no further right, title, interest or equity of redemption in the Land. The land may be redeemed at any time prior to the issue of title to the land to the mortgagee.</p>	<p>a demandé un ordre de forclusion en vertu de la <i>Loi sur les biens réels</i> et le registraire de district a ordonné que vous soit signifié le présent avis vous enjoignant de racheter l'hypothèque grevant le bien-fonds dans un délai d'un mois suivant la date de signification du présent avis.</p> <p>Pour racheter le bien-fonds au créancier hypothécaire, vous devez :</p> <p>a) soit payer tout arriéré et remplir tous les engagements non exécutés;</p> <p>b) soit payer un montant permettant de régler le principal et l'intérêt ainsi que les autres sommes garanties par l'hypothèque.</p> <p>De plus, vous devez payer les dépenses entraînées par les procédures liées à l'hypothèque.</p> <p>À moins que vous ne rachetiez l'hypothèque grevant le bien-fonds ou que vous n'obteniez une ordonnance du tribunal suspendant les procédures, un ordre de forclusion sera donné, sur demande, et le créancier hypothécaire deviendra, dès l'enregistrement de l'ordre, le propriétaire du bien-fonds sans que vous puissiez exercer quelque droit de rachat sur le bien-fonds. Ce bien-fonds peut être racheté à tout moment avant la délivrance d'un titre s'y rapportant au créancier hypothécaire.</p>		
5. SIGNATURE OF ASSISTANT/DEPUTY DISTRICT REGISTRAR SIGNATURE DE L'ASSISTANT AU REGISTRAIRE DE DISTRICT OU DU REGISTRAIRE DE DISTRICT ADJOINT	_____		DATE Y M D A M J _____
6. TO REDEEM THE LAND CONTACT: POUR RACHETER LE BIEN-FONDS, COMMUNIQUER AVEC :	_____		

24. Order for Foreclosure

FORM I

**MANITOBA
ORDER OF FORECLOSURE
THE REAL PROPERTY ACT**

District of _____

Application No. _____

TITLE NO(S). _____

Mortgage No. _____

Mortgagee _____

Encumbrancer _____

Registered Owner _____

LAND:

Upon the application of the mortgagee/encumbrancer stating that default has occurred and continues; and that the sale at auction was abortive.

AND UPON receiving proof that the notice of application has been served upon the parties interested, and that the time appointed in the notice has expired;

AND UPON, FURTHER, reviewing all other evidence required by the District Registrar.

IT IS HEREBY ORDERED

- (1) THAT upon the registration of this order, the land vests in the mortgagee/encumbrancer;
- (2) THAT the title to the land will issue free from all right and equity of redemption on the part of the following:
 - (a) the mortgagor/encumbrance of the land set out above;
 - (b) the owner of the land subject to an encumbrance;
 - (c) any person served with the foreclosure notice, and
 - (d) any person claiming through or under one of the above subsequently to the mortgage or encumbrance.
- (3) THAT upon the registration of this order, the mortgagee/encumbrancer shall be deemed a transferee of the land, and become the owner thereof, and upon transmission is entitled to receive a title therefor.

Date

Deputy District Registrar
Assistant District Registrar

25. Demand for Possession

To: DEE FAULTER

AND TO WHOM IT MAY CONCERN

TAKE NOTICE THAT PURSUANT to the terms and provisions of Mortgage No. 1001001 and "The Real Property Act", R.S.M. 1987 c. R30 and amendments thereto, title to the lands and premises described in said Mortgage No. 1001001, namely 123 Debt Street, in the City of Winnipeg, in the Province of Manitoba, issued out of the Winnipeg Land Titles Office by way of Final Order of Foreclosure in the name of BANK OF MANITOBA, said title being registered in the Winnipeg Land Titles Office as No. 1876543 dated the 18th day of July, .

AND FURTHER TAKE NOTICE that any and all rights, title, equity or right of redemption that you may have had in the said lands were thereby barred and foreclosed and FURTHER TAKE NOTICE that the said BANK OF MANITOBA is now entitled to vacant possession of the said lands and premises.

AND FURTHER TAKE NOTICE THAT IN THE EVENT THAT YOU DO NOT DELIVER UP QUIET, PEACEFUL AND VACANT POSSESSION OF THE SAID LANDS AND PREMISES TO THE SAID BANK OF MANITOBA WITHIN SEVEN DAYS AFTER SERVICE OF THIS NOTICE, AN APPLICATION TO A COURT HAVING JURISDICTION IN THE MATTER WILL IMMEDIATELY THEREAFTER BE MADE WITHOUT FURTHER NOTICE TO YOU.

DATED at the City of Winnipeg, this 25th day of July, _____.

BANK OF MANITOBA

Per: _____
Solicitor and Agent

26. Demand for Possession and Inspection

TO: DEE FAULTER

AND TO WHOM IT MAY CONCERN:

TAKE NOTICE THAT PURSUANT to the terms and provisions of Mortgage No. 1001001 registered in the Winnipeg Land Titles Office and pursuant to the terms and provisions of *The Real Property Act*, R.S.M. 1987, c. R30 and amendments thereto, Bank of Manitoba hereby demands:

1. Possession of the lands and premises described in said Mortgage No. 1001001 and commonly known as 123 Debt Street, Winnipeg, Manitoba; and
2. Immediate access to the lands and premises for the purpose of conducting an inspection and appraisal, and in any event no later than 24 hours after service of this notice.

AND FURTHER TAKE NOTICE THAT, there having been default under the Mortgage No. 1001001, Bank of Manitoba is entitled to take possession of the lands and premises.

AND FURTHER TAKE NOTICE THAT IN THE EVENT THAT YOU DO NOT DELIVER UP QUIET, PEACEFUL AND VACANT POSSESSION OF THE SAID LANDS AND PREMISES TO THE SAID BANK OF MANITOBA BY _____, AN APPLICATION TO A COURT HAVING JURISDICTION IN THE MATTER WILL IMMEDIATELY THEREAFTER BE MADE WITHOUT FURTHER NOTICE TO YOU.

DATED at the City of Winnipeg, this _____ day of _____, _____.

BANK OF MANITOBA

Per: _____
Solicitor and Agent

27. Statement of Claim

File No. CI-

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

plaintiff,

- and -

DEE FAULTER,

defendant.

STATEMENT OF CLAIM

TO THE DEFENDANT, DEE FAULTER

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

August 16, _____

Issued by _____
Deputy Registrar

TO: Dee Faulter
123 Debt Street
Winnipeg, MB R2G 7K9

CLAIM

1. The plaintiff claims:
 - (a) An order of this court directed to the defendant, ordering the defendant forthwith to deliver up peaceful, quiet and vacant possession of the property commonly known as 123 Debt Street, Winnipeg, Manitoba;
 - (b) Costs of this action.

2. The plaintiff is a chartered bank having its head office in the City of Winnipeg, in Manitoba.

3. The defendant, DEE FAULTER, resides at 123 Debt Street, Winnipeg, Manitoba and her occupation is unknown to the plaintiff.

4. On or about the 14th day of November, _____, for valuable consideration, and in consideration of a loan from Winnipeg Trust Company to them, John Seller and Jane Seller executed a mortgage under *The Real Property Act* of Manitoba, as mortgagors, in favour of the said Winnipeg Trust Company, as mortgagee, upon the security of the following described property (hereinafter referred to as the "Property"):

Lot 46, Block 3, Plan 18532, WLTO in RL 78, Parish of St. Vital

which mortgage is duly registered in the Winnipeg Land Titles Office on the 15th day of November, _____ as No. 1001001 (hereafter referred to as the "Mortgage").

5. By transfer of Mortgage registered in the Winnipeg Land Titles Office on January 3rd, _____, the said Winnipeg Trust Company did transfer to Bank of Manitoba all of its right, title and interest in and to the said Mortgage.

6. On or about July 1st, _____, the defendant became registered owner of the said property by way of Transfer of Land from the said John Seller and Jane Seller in favour of the defendant. The Transfer of Land did not negative the covenant contained in section 77 of *The Real Property Act*, R.S.M. 1987, c. R30.

7. The monthly instalment due under the said Mortgage due on the 1st day of November, _____ was not paid by the defendant on the due date thereof and no further instalments have been paid up to the date hereof.

8. Pursuant to the provisions of *The Real Property Act*, the plaintiff filed a Notice of Exercising Power of Sale in the Winnipeg Land Titles Office on the 16th day of January, _____ as No. 1911111 in keeping with the terms and provisions of said Mortgage No. 1001001.

9. All persons required by law to be served with a copy of the said Notice of Exercising Power of Sale were so personally served and the plaintiff applied for and obtained an Order for Sale of the said property from the District Registrar of the Land Titles Office for the district of Winnipeg and the said property was thereafter, in keeping with the said Order for Sale, duly advertised and the sale by public auction was held at the City of Winnipeg, in the

Province of Manitoba, in keeping with the order of the said District Registrar and the said mortgage sale proved abortive.

10. Subsequently, the plaintiff applied to the District Registrar of the Land Titles Office for the District of Winnipeg for a Final Order of Foreclosure and to be registered as owner of the said property under *The Real Property Act* and pursuant to the provisions of Mortgage No. 1001001.

11. Subsequently, a Notice of Application for Final Order of Foreclosure was issued out of the Winnipeg Land Titles Office under the seal of the District Registrar thereof, and all parties entitled to service of a full, true and correct copy of the Notice of Application were so personally served and thereafter evidence of continued default on the part of the defendant was filed in the Winnipeg Land Titles Office pursuant to the statutes in such case made and provided.

12. On or about the 18th day of July, _____, title to the said property issued in the name of Bank of Manitoba, said title being recorded in the Winnipeg Land Titles Office as No. 1876543. The title of Bank of Manitoba to the said property is free and clear of all registered caveats, liens and encumbrances whatsoever and all right, title, interest and equity and right of redemption which the defendant had in the said property was thereby debarred and foreclosed.

13. On the 26th day of July, _____, the plaintiff did cause to be served upon the defendant a Demand for Possession of the said property, a full, true and correct copy of which Demand for Possession is attached hereto.

14. The plaintiff states that it has done all things necessary and all required times have elapsed and it is entitled to have vacant possession of the said property but the defendant remains in possession of the said property and refuses to deliver up quiet, peaceful and vacant possession of the property to the plaintiff.

August 16, _____

BARRY, STIR & CO.
Attorneys-at-law
1350 - 699 Main Street
Winnipeg, MB R9Z 1N5
Phone No.: 204-222-7777
Attention: Saul Issitor

28. Default Judgment

File No. CI-

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

plaintiff

- and -

DEE FAULTER,

defendant

DEFAULT JUDGMENT

(RECOVERY OF POSSESSION OF LAND)

BARRY, STIR & CO.
Attorneys-at-law
1350 – 699 Main Street
Winnipeg, MB R9Z 1N5

Phone: 204-222-7777
Attention: Saul Issitor

(File No. 123)

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

plaintiff

- and -

DEE FAULTER,

defendant.

DEFAULT JUDGMENT

On reading the statement of claim in this action and the proof of service of the statement of claim on the defendant, filed, and the defendant having been noted in default:

1. IT IS ORDERED AND ADJUDGED that the defendant delivers to the plaintiff possession of the following land:

Lot 46, Block 3, Plan 18532, WLTO in RL 78, Parish of St. Vital.

2. IT IS ORDERED AND ADJUDGED that the defendant pays to the plaintiff the sum of \$_____ for the costs of this action.

The costs fixed by and payable under this judgment bear interest at the rate of ____% percent per year from its date.

August 28, _____

Signed by _____
Deputy Registrar

Address of court office:
204G - 408 York Avenue
Winnipeg, MB R3C 0P9

29. Affidavit of Service of Judgment

File No. CI-

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

plaintiff

- and -

DEE FAULTER,

defendant.

**AFFIDAVIT OF SERVICE OF
SUSAN SEEKER
SWORN THE 23rd DAY OF SEPTEMBER, _____.**

BARRY, STIR & CO.
Barristers & Solicitors
1350 - 699 Main Street
Winnipeg, Manitoba
R9Z 1N5

Phone: 204-222-7777
Attention: Saul Issitor

(File No. 123)

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

Plaintiff

- and -

DEE FAULTER,

Defendant.

**AFFIDAVIT OF SERVICE OF
SUSAN SEEKER
SWORN THE 23rd DAY OF SEPTEMBER, _____.**

I, SUSAN SEEKER, of the City of Winnipeg, in the Province of Manitoba,

MAKE OATH AND SAY (or AFFIRM) THAT:

1. On September 22, at 5:00 p.m., I served DEE FAULTER with the Judgment of this Court herein by leaving a copy with her at 123 Debt Street, Winnipeg, Manitoba.
2. I was able to identify the person by means of her admission of her identity.

SWORN BEFORE ME at the City)
 Of Winnipeg, in the Province of)
 Manitoba, this 23rd day of)
 September, _____.)
)
)
 _____)

SUSAN SEEKER

A Commissioner for Oaths in and for
the Province of Manitoba.

My commission expires:

30. Affidavit of Continued Occupation

File No. CI-

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

plaintiff

- and -

DEE FAULTER,

defendant.

AFFIDAVIT OF CONTINUED OCCUPATION
SAUL ISSITOR
SWORN THE 28th DAY OF SEPTEMBER, _____.

BARRY, STIR & CO.
Barristers & Solicitors
1350 – 699 Main Street
Winnipeg, MB R9Z 1N5

Phone: 204-222-7777
Attention: Saul Issitor

(File No. 123)

File No. CI-

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

Plaintiff

- and -

DEE FAULTER,

Defendant.

**AFFIDAVIT OF CONTINUED OCCUPATION
SAUL ISSITOR
SWORN THE 28th DAY OF SEPTEMBER, ____.**

I, SAUL ISSITOR, of the City of Winnipeg, in the Province of Manitoba,

MAKE OATH AND SAY (or AFFIRM):

1. That I am the solicitor of the Plaintiff and accordingly have personal knowledge of the facts herein deposed to by me save and except only to the extent that same are herein stated to be based on information and belief.
2. That on August 28th, ____, a judgment was entered in this Honourable Court in this matter.
3. That I am informed by the Affidavit of Service of Susan Seeker, Process Server, dated September 23rd, ____, that the said judgment was served on the defendant on September 22nd, ____.

4. That the defendant has failed to deliver up possession of the land described in the said judgment in accordance with the said judgment.

5. That I make this Affidavit in support of the issue of an order for possession from this Honourable Court.

SWORN BEFORE ME at the City)
Of Winnipeg, in the Province of)
Manitoba, this 28th day of)
September, _____.)
)
)
_____)

SAUL ISSITOR

A Commissioner for Oaths in and
for the Province of Manitoba.
My commission expires:

31. Order for Possession

File No. CI-

BETWEEN:

THE QUEEN'S BENCH
WINNIPEG CENTRE

BANK OF MANITOBA,

- and -

DEE FAULTER,

plaintiff

defendant.

ORDER

BARRY, STIR & CO.
Barristers & Solicitors
1350 – 699 Main Street
Winnipeg, MB R9Z 1N5

Phone: 204-222-7777
Attention: Saul Issitor

(File No. 123)

THE QUEEN'S BENCH
WINNIPEG CENTRE

THE HONOURABLE

)
)
)

The 29th day of September, ____.

BETWEEN:

BANK OF MANITOBA,

plaintiff

- and -

DEE FAULTER,

defendant.

ORDER

THIS MOTION, made by BANK OF MANITOBA, for an order for possession of the property commonly known as 123 Debt Street, Winnipeg, Manitoba, made without notice, was heard this day, at the court house, Winnipeg, Manitoba.

ON READING the Affidavit of Susan Seeker and on hearing the submissions of counsel for the plaintiff.

1. THIS COURT ORDERS that the defendant, DEE FAULTER, is hereby ordered to deliver to BANK OF MANITOBA possession of all that land described as follows:

Lot 46, Block 3, Plan 18532, WLTO in RL 78, Parish of St. Vital

and commonly known as 123 Debt Street, in the City of Winnipeg, in the Province of Manitoba.

September 29, ____.

(Signature of judge officer)

32. Notice of Application

File No. CI

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

BANK OF MANITOBA,

applicant,

- and -

DEE FAULTER,

respondent.

APPLICATION UNDER QUEEN'S BENCH RULE 14.05

NOTICE OF APPLICATION

HEARING DATE:

Thursday, ____ at 10:00 a.m.

BARRY, STIR & CO.
Barristers & Solicitors
1350 - 699 Main Street
Winnipeg, MB R9Z 1N5

Saul Issitor
Phone No.204- 222-7777

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

BANK OF MANITOBA,

applicant,

- and -

DEE FAULTER,

respondent.

APPLICATION UNDER QUEEN'S BENCH RULE 14.05

NOTICE OF APPLICATION

TO THE RESPONDENT, DEE FAULTER

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge, on Thursday, _____ at 10:00 o'clock in the forenoon, at the Law Courts, Broadway and Kennedy Street, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 4 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Issued by _____
Deputy Registrar

TO: DEE FAULTER
123 Debt Street
Winnipeg, MB R2G 7K9
204-777-2222

APPLICATION

1. The applicant makes application for:
 - (a) An order, if required, pursuant to Queen's Bench Rule 3.02(1) abridging the time for service of the within application on the respondent;
 - (b) An order that the respondent deliver to the applicant vacant possession of the lands and premises commonly described as 123 Debt Street, Winnipeg, Manitoba, and legally described as:

Lot 46 Block 3 Plan 18532 WLTO in RL 78, Parish of St. Vital

(hereinafter referred to as "the property");

- (c) An order that the respondent deliver to the applicant all keys to the property;
- (d) An order that if the respondent fails to deliver vacant possession in accordance with paragraphs (b) and (c) above, leave is hereby granted to the applicant to enter and take possession of the property with the assistance of the Sheriff, Winnipeg Judicial Centre;
- (e) An order that the applicant, upon entering and taking possession of the property with the assistance of the Sheriff, is hereby permitted to change the locks thereon;
- (f) An order that the applicant, upon entering and taking possession of the property, may take an inventory of any and all of the respondent's or other personal effects located on the property and may make arrangements to remove and store said personal effects at the expense of the respondent;
- (g) An order that a copy of this order be posted on the door of the property;
- (h) Damages in an amount to be determined by this Honourable Court;
- (i) Such further or other relief as to this Honourable Court may seem just and appropriate.

2. The grounds for the application are:

- (a) The applicant is the mortgagee pursuant to a real property mortgage executed by the respondent and registered against the property in the Winnipeg Land Titles Office as No. 1001001 (hereinafter referred to as "the mortgage"), which mortgage is and has been in default since _____;
- (b) The applicant has demanded possession of the property; however, the respondent has not delivered up same;
- (c) The respondent remains in unlawful possession without the consent of the applicant;
- (d) Sections 62 and 113 of *The Real Property Act*, R.S.M. 1988, Chap. R30 and amendments thereto;
- (e) Court of Queen's Bench Rules 14.05(2)(iv) and (v);
- (f) *The Law of Property Act*, and in particular sections 4 and 6 of that Act;
- (g) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The Affidavit of Dick Clarke, sworn the ___ day of _____, filed;
- (b) Such further or other evidence or material as counsel may advise and this Honourable Court may permit.

Date _____, _____

BARRY, STIR & CO.
1350 - 699 Main Street
Winnipeg, MB R9Z 1N5
Phone No. 204-222-7777
Lawyers for the applicant

TO: DEE FAULTER
123 Debt Street
Winnipeg, MB R2G 7K9
204-777-2222

33. Affidavit

File No. CI

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

BANK OF MANITOBA,

applicant,

- and -

DEE FAULTER,

respondent.

**AFFIDAVIT OF DICK CLARKE
SWORN THE DAY OF
HEARING DATE: AT 10:00 A.M.**

BARRY, STIR & CO.
Barristers & Solicitors
1350 - 699 Main Street
Winnipeg, MB R9Z 1N5

Saul Issitor

Phone No. 204-222-7777

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

applicant,

- and -

DEE FAULTER,

respondent.

AFFIDAVIT OF DICK CLARKE
SWORN THE ___ DAY OF _____, ____

I, DICK CLARKE, of the City of Winnipeg, in the Province of Manitoba,
Mortgage Officer,

MAKE OATH AND SAY:

1. I am a Mortgage Officer employed with the Bank of Manitoba, and as such have personal knowledge of the matters and facts hereinafter deposed to by me except where same are stated to be based upon information and belief, and which I verily believe to be true.

2. On or about November 14,____, John Seller and Jane Seller executed a real property mortgage in favour of the applicant, securing the principal sum of \$96,000.00 (hereinafter referred to as "the mortgage"), which mortgage was registered asno. 1001001 against certain lands and premises evidenced by certificate of title no. 1100110 in the Winnipeg Land Titles Office, being the lands and premises commonly known as 123 Debt Street, Winnipeg, Manitoba, and legally described as follows:

Lot 46 Block 3 Plan 18532 WLTO in RL 78, Parish of St. Vital

(hereinafter referred to as "the property"). Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of the mortgage.

3. The respondent purchased the property on or about July 1, ____, and title issued to her on or about July 12, ____. The respondent assumed the mortgage and commenced making payments to the applicant under the terms of that mortgage. Attached hereto and marked as Exhibit "B" to this my Affidavit is a true copy of the status of title for the property dated September 28, ____.

4. The respondent has failed to make the installment payments of principal and interest since ____, and which totals \$ ____.

5. The applicant has taken the following steps in the mortgage sale and foreclosure proceedings:

(a) On or about ____, Notice of Exercising Power of Sale was registered in the Winnipeg Land Titles Office as no. ____ (hereinafter referred to as "the NEPS"), which is attached hereto and marked as Exhibit "D" to this my Affidavit;

(b) The NEPS was served on the respondent on ____;

(c) The respondent contacted the offices of the applicant on ____, requesting a payout balance for the mortgage, inclusive of all costs, in that she intended to arrange for a refinancing of the mortgage;

(d) On ____, I wrote to the respondent advising as to the payout amount. Attached hereto and marked Exhibit "F" to this my affidavit is copy of my letter of ____;

(e) On ____, the respondent contacted the offices of the applicant and indicated that she now did not wish to refinance the mortgage, but was unable to make any alternative proposals which were reasonable or acceptable to the applicant;

(f) On or about ____, the applicant applied for and was granted an Order for Sale of the property;

(g) The auction sale was held on ____ and was declared abortive;

(h) The applicant applied for and received a Notice of Application for Final Order of Foreclosure on (hereinafter referred to as "the NAFOF"), which is attached hereto and marked as Exhibit "G" to this my Affidavit;

(i) The NAFOF was served upon the respondent on or about ____;

(j) The applicant, through its solicitors, caused to serve upon the respondent a Demand for Possession and Inspection dated _____ and service was effected on _____. Attached hereto and marked collectively as Exhibit "I" to this my Affidavit is a true copy of the Affidavit of Service and the Demand for Possession and Inspection upon the respondent;

(k) The applicant applied for the issuance of the Final Order of Foreclosure (hereinafter referred to as the "FOF") and the FOF issued _____. Attached hereto and marked as Exhibit "J" to this my Affidavit is a true copy of the FOF.

(1) The applicant has not registered the FOF, as the applicant has obtained Judgment against the respondent under the covenant contained in the Mortgage, in Court of Queen's Bench Suit No. _____. The applicant anticipates that a deficiency may result after a sale of the property, and wishes its rights under the judgment to be preserved in that event.

6. A letter was delivered to the respondent on _____ requiring that she vacate the property and deliver keys to our office by _____ at 10:00 a.m. Attached hereto and marked as Exhibit "L" to this my affidavit is copy of my said letter of _____.

7. On _____, I caused an inspection of the property to be conducted by a bailiff, namely Susan Seeker. I am informed by Susan Seeker and do verily believe that she attended at the property on that date and found the property to be occupied.

8. Pursuant to all of the foregoing, the applicant is entitled to possession of the property pursuant to its rights under the mortgage.

9. I make this Affidavit *bona fide*.

SWORN BEFORE ME in the City _____)
of Winnipeg, in the Province _____)
of Manitoba, this _____ day _____)
of _____)
_____)
_____)
_____)

Commissioner for Oaths in and
for the Province of Manitoba
My commission expires:

DICK CLARKE

34. Motions Brief

File No. CI

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

BANK OF MANITOBA,

applicant,

- and -

DEE FAULTER,

respondent.

MOTIONS BRIEF

BARRY, STIR & CO.
Barristers & Solicitors
1350 - 699 Main Street
Winnipeg, MB R9Z 1N5

Saul Issitor

Phone No. 222-7777

**THE QUEEN'S BENCH
WINNIPEG CENTRE**

BETWEEN:

BANK OF MANITOBA,

applicant,

- and -

DEE FAULTER,

respondent.

MOTIONS BRIEF

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A. DOCUMENTS TO BE RELIED UPON

1. Notice of Application, dated _____
2. Affidavit of Dick Clarke, sworn _____
3. Such further and other documents as counsel may advise and this Honourable Court may allow.

B. LIST OF AUTHORITIES TO BE RELIED UPON

1. *The Real Property Act*, R.S.M. 1988, c. R30, Sections 62(1)(a) and 113
2. *Falconbridge on Mortgages*, Rayner and McLaren (4th edition) 1977, pages 411 - 415
3. *The Law of Property Act*, R.S.M. 1987, c. L90, Sections 4 and 6
4. *Royal Bank of Canada v. Omoerah*, Manitoba C.A., May 17, 1995, Suit No. AI 95-30-02197

C. POINTS TO BE ARGUED

1. A mortgagee is entitled to possession of the mortgaged property in the event the mortgage is in default or has matured. (*The Real Property Act, Falconbridge on Mortgages, The Law of Property Act*)
2. On May 17, 1995, the Court of Appeal of Manitoba determined that the mere fact of default under a mortgage entitled a mortgagee to an order of possession. (*Royal Bank v. Omoerah*)
3. The respondent defaulted under her mortgage by failure to pay installments of principal and interest since _____, which default continues (Paragraph 4 of the Affidavit of Dick Clarke).

4. The applicant is therefore entitled to an immediate order of possession of the property.

5. All of which is respectfully submitted.

_____ , _____

BARRY, STIR & CO.
Barristers & Solicitors
1350 - 699 Main Street
Winnipeg, MB R9Z 1N5
Phone No. 204-222-7777
Saul Issitor
Lawyers for the applicant

35. Order

File No. CI

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

applicant,

and -

DEE FAULTER

respondents.

ORDER

BARRY, STIR & CO.
Barristers & Solicitors
1350 – 699 Main Street
Winnipeg, MB R9Z 1N5

Phone: 204-222-7777
Attention: Saul Issitor

(File No. 123)

THE QUEEN'S BENCH
WINNIPEG CENTRE

THE HONOURABLE) day, the day of
JUSTICE)

BETWEEN:

BANK OF MANITOBA,

applicant,

and -

DEE FAULTER

respondents.

ORDER

THIS APPLICATION, made by the Applicant was made this day at the Law Courts Building, Broadway and Kennedy Street, in the City of Winnipeg, Manitoba.

ON READING the Affidavit of Dick Clark, sworn September __, __, filed, and on hearing the submissions for counsel for the applicant, and the respondents who appeared in person:

1. THIS COURT ORDERS that the respondents deliver to the applicant by no later than _____, ____, vacant possession of the lands and premises municipally described as _____ Winnipeg, Manitoba, and legally described as follows:

Certificate of Title No.:
"legal description of mortgaged land" (the "Property");

2. THIS COURT ORDERS that the respondents deliver to the applicant by no later than _____, ____ all keys to the Property.
3. THAT THIS COURT ORDERS that, if the respondents fail to deliver vacant possession in accordance with paragraphs 1 and 2 hereof, leave is hereby granted to the applicant to enter and take possession of the Property with the assistance of the Sheriff, Winnipeg Judicial Centre.
4. THAT THIS COURT ORDERS that the applicant, upon entering and taking possession of the Property with the assistance of the Sheriff, is hereby permitted to change the locks thereon.
5. THIS COURT ORDERS that the Applicant, upon entering and taking possession of the Property, shall take an inventory of any and all of the respondents' or other personal effects located on the Property and may make arrangements to remove and store said personal effects at the expense of the respondents.
6. THIS COURT ORDERS that a copy of this Order shall be served on the respondents either in person or by ordinary mail forthwith after filing and, in the event of ordinary mail, service shall be deemed to have been made four days after the date of such mailing.
7. THIS COURT ORDERS that the applicant is entitled to its proper costs and disbursements of the application to be taxed as against the respondents.

September __, ____.

(Signature of judge officer)

36. Statement of Claim

File No. CI

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

plaintiff,

and

DEE FAULTER,

defendant.

STATEMENT OF CLAIM

BARRY, STIR & CO.
Barristers & Solicitors
1350 – 699 Main Street
Winnipeg, MB R9Z 1N5

Phone: 204-222-7777
Attention: Saul Issitor

(File No. 123)

THE QUEEN'S BENCH

WINNIPEG CENTRE

BETWEEN:

BANK OF MANITOBA,

plaintiff,

and

DEE FAULTER,

defendant.

STATEMENT OF CLAIM

TO THE DEFENDANT, DEE FAULTER

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 45 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750 for costs and have the costs assessed by the court.

January 16, _____

Issued by _____
Deputy Registrar

TO: DEE FAULTER
123 Debt Street
Winnipeg, MB R2G 7K9
204-777-2222

CLAIM

1. The plaintiff claims:
 - (a) Judgment in the sum of \$94,862.38;
 - (b) Interest thereon at the rate of 13.5% per *annum* (\$35.09 per diem) computed from November 1, ___ to date of payment;
 - (c) The costs of this action.

2. The plaintiff is a Chartered Bank having its head office in the City of Winnipeg, in Manitoba.

3. The defendant, DEE FAULTER, resides at 123 Debt Street, Winnipeg, Manitoba and her occupation is unknown to the plaintiff.

4. On or about the 14th day of November, ___, for valuable consideration, and in consideration of a loan from Winnipeg Trust Company to them, John Seller and Jane Seller executed a mortgage under *The Real Property Act* of Manitoba, as mortgagors, in favour of the said Winnipeg Trust Company, as mortgagee, upon the security of the following described property (hereinafter referred to as "the property"):

Lot 46, Block 3, Plan 18532, WLTO in RL 78, Parish of St. Vital

which mortgage was duly registered in the Winnipeg Land Titles Office on the 15th day of November as No. 1001001 (hereinafter referred to as "the mortgage").

5. Under the terms of the said mortgage, the defendant covenanted to pay to the plaintiff and its successors and assigns the sum of \$96,000.00 dollars in the manner therein set forth.

6. Under the terms of the said mortgage, the defendant further covenanted to pay to the plaintiff interest on the principal sum of the mortgage or so much thereof as from time to time remained unpaid at the rate of 13.5% percent per annum.

7. The said mortgage further provided in part that the taking of a judgment or judgments under any of the covenants contained in the mortgage would not operate as a merger of the said covenants or affect the mortgagee's right to interest at the rate and times set forth in the said mortgage.

8. By Transfer of Mortgage registered in the Winnipeg Land Titles Office on January 3, ____, the said Winnipeg Trust Company did transfer to Bank of Manitoba all of its right, title and interest in and to the said mortgage.

9. On July 1, ____, the defendant became registered owner of the said property by way of Transfer of Land from the said John Seller and Jane Seller in favour of the defendant. The Transfer of Land did not negative the covenant contained in section 77 of *The Real Property Act*, R.S.M., 1987, c. R30.

10. The monthly installment due under the said mortgage on the 1st day of November, ____, in the sum of \$1,092.52 was not paid by the defendant on the due date thereof, and no further installments have been paid up to the date hereof.

11. The defendant thus being in default under the said mortgage, the plaintiff demanded payment in the full sum of \$94,862.38, together with interest at the rate of 13½% per annum (\$35.09 per diem) computed from the 1st day of November, ____, but the defendant has refused or neglected and continues to refuse or neglect to pay the same.

January 16,

BARRY, STIR & CO.
Barristers & Solicitors
1350 699 Main Street
Winnipeg, MB R9Z 1N5

Phone No. 204-2227777

Attention: Saul Issitor
Solicitors for the plaintiff

(File No. 123)

37. Notice to Tenants

NOTICE

FROM: BANK OF MANITOBA
TO: WHOM IT MAY CONCERN
AND TO: VERONICA TENANT

TAKE NOTICE that BANK OF MANITOBA is the mortgagee of real property mortgage no. 1001001 from your landlord, DEE FAULTER, as mortgagor, which mortgage was registered in the Winnipeg Land Titles Office on the 15th day of November, ____, covering the lands and premises commonly known as 123 Debt Street, Winnipeg, Manitoba, and legally described as follows:

Lot 46, Block 3, Plan 18532 WLTO in RL 78, Parish of St. Vital

AND THAT your landlord, the said mortgagor, is now in arrears of payments to the extent of \$3,000.00 on account of interest as at January 1, ____; AND THAT the further sum of \$1,000.00 each month will be due on account of interest due under the said mortgage.

AND THAT you are required as tenant of the said mortgagor to pay to BANK OF MANITOBA, at the offices of its solicitors, BARRY, STIR & CO., Barristers & Solicitors, 1350 - 699 Main Street, Winnipeg, Manitoba, R9Z 1N5 the rent due for the premises you now occupy on the above lands, or so much of such rent as has not already been paid;

AND THAT you are to continue to pay such rent to BANK OF MANITOBA from time to time as it falls due UNTIL FURTHER NOTICE in writing from BANK OF MANITOBA or its solicitors to the extent of and to be applied on account of the said interest due and hereafter to become due;

AND TAKE NOTICE that you are to pay such rent to BANK OF MANITOBA and no other, as BANK OF MANITOBA will not be accountable for any rent not received by it; all rent monies received by BANK OF MANITOBA from you shall be pro tanto satisfaction of the rent owing by you to the said mortgagor;

AND TAKE NOTICE that all rent monies payable by you are to be paid to BANK OF MANITOBA by forwarding to its solicitors, BARRY, STIR & CO., Barristers & Solicitors, 1350 - 699 Main Street, Winnipeg, Manitoba, R9Z 1N5 your cheque payable to Barry, Stir & Co. in trust for BANK OF MANITOBA in an amount of the rent due for the premises you now occupy on the above land, or so much of such rent as has not already been paid;

AND FURTHER TAKE NOTICE that if you default in payment of rent or pay your rent to any person other than BANK OF MANITOBA then subject to the exemptions from seizure to which you are entitled by law, BANK OF MANITOBA may recover such rent from you and in the same manner and with the same rights as if the relationship of landlord and tenant existed between BANK OF MANITOBA and you.

THIS NOTICE is served upon you pursuant to Section 38 of *The Landlord and Tenant Act*.

DATED at Winnipeg, Manitoba, this _____ day of January,

BANK OF MANITOBA

Per: _____

Saul Issitor
Solicitor and Agent

38. Notice of Intention to Enforce Security

NOTICE OF INTENTION TO ENFORCE SECURITY

(FORM 115)

TO: DEE FAULTER, an insolvent person

AND TO: WHOM IT MAY CONCERN

TAKE NOTICE THAT:

1. BANK OF MANITOBA, a secured creditor, intends to enforce its security on the property of the insolvent person described below:

Commonly known as:

123 Debt Street, Winnipeg, Manitoba

Legally known as:

Lot 46, Block 3, Plan 18532 WLTO in RL 78, Parish of St. Vital

2. The security that is enforced is in the form of a Real Property Mortgage registered in the Winnipeg Land Titles Office as No. 1001001, which Mortgage was made by John Seller and Jane Seller in favour of Winnipeg Trust Company.
3. As of November 1, , the total amount of indebtedness secured by the security was \$94,862.38.
4. The secured creditor will not have the right to enforce the security until after the expiry of the 10day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Winnipeg, Manitoba, this day of January,

BANK OF MANITOBA by Agent,
BARRY, STIR & CO.

Saul Issitor
Barrister and Solicitor