

## Publisher's Note

2019 — Release 1

Previous release was 2018-6

### From Your Library:

Marriott and Dunn

# Practice in Mortgage Remedies in Ontario (Fifth Edition)

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

This release features updates to the case law and commentary in Chapters: 1 (Preliminary Considerations), 2 (Available Remedies), 6 (Originating Process, Pleadings and Defences), 10 (Taking Accounts on The Reference), 26 (Notice of Sale), 29 (Service of the Notice of Sale), 33 (Sale Proceedings), 36 (Transfer Documentation), 42 (Priorities - Generally), 44 (Interest), 45 (Construction Liens), 46 (Possession, Distress and Attornment), 50 (Mortgagee's Insurance Coverages), 51 (Guarantees), 54 (Court Appointments), and 56 (Mortgages Under The Condominium Act, 1998). This release also features updates to the case law and commentary in Appendix A.

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- **Service of the Notice of Sale — Notice by Registered Mail** — The lower court’s decision in *Stanbarr* was reversed on appeal. The validity of the notice of sale was not at issue in the appeal. Nevertheless, the Court of Appeal found that the trial judge erred in finding that the purchaser had notice of a defect in the power of sale. The Court of Appeal held that it is not a defect in the power of sale process that a notice of sale is not received by the intended recipient. It is only a defect if the notice was not sent in the prescribed manner. The email on which the trial judge relied for her finding, only indicated that a notice of sale had not been received and therefore it could not be imputed to the purchaser that it had actual notice that the notice of sale had not been sent in the prescribed manner as had been found by the lower court: *Stanbarr Services Limited v. Metropolis Properties Inc.*, 2018 ONCA 244, 2018 CarswellOnt 3665 (C.A.).
- **Court Appointments — Duties — Sale of the Property** — The court considered a mortgagee’s motion for leave to appeal an order approving a receiver’s sale of a mortgaged property. The mortgagee argued that the receiver failed to consult on the sale and marketing process and that a realtor had advised the mortgagee that the property ought to have been listed for a higher amount. In dismissing the motion, the court noted that the motion judge had considered the principles and procedure set out in *Royal Bank v. Soundair Corp.* Specifically, the receiver obtained an appraisal, appropriately listed the property, received and negotiated offers, and eventually sold the property for above appraised value. Moreover, the appraisals obtained were available to all creditors and the mortgagee chose not to obtain the information until the receiver was seeking court approval. The court also held that there is no positive obligation on a receiver to consult with subsequent mortgagees as to a particular sale process or listing price: *M Handelman Investments Limited v. Drotos.*, 2018 ONCA 581, 2018 CarswellOnt 10201 (C.A.).