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Falconbridge on Mortgages, Fifth Edition

by Walter M. Traub

Release No. 28, November 2018

This work, initially formed from Dean Falconbridge's lectures at Osgoode Hall, quickly became the authoritative text on mortgages in Canada. Now in its fifth edition, under the editorial leadership of distinguished practitioner Walter M. Traub, *Falconbridge on Mortgages* is the standard reference source for those who teach and those who practise in the field, and has often been cited by the judiciary.

What's New in this Update:

This release features updates to the commentary and case law in chapter 35 (Sale Under Power of Sale) and in chapter 37 (Attornment and Distress). This release also features the addition of 3 new memoranda as well as significant additions and updates to the Legislative Defined Terms.

Highlights

Updates to the commentary and case law:

Sale Under Power of Sale — The assignor and assignee mortgagee were both controlled by the same person. On those facts the court followed *Re 2272045 Ontario Inc.* but held that where the assignment was from one entity to another, both of which were controlled by the same person, the mortgagors were not

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prejudiced by the lack of notice of the assignment because the identity of the mortgagee was always known: *Wainman v. Barrie Leasing Services Inc.*, 2018 ONSC 5717.

The new memoranda introduced with this release focuses on the following issues:

- What is the time limit to bring a motion to set aside a referee's order in a mortgage action?
- With respect to a private mortgage, if the mortgagors have not made any payments to the mortgagee in many years, and the mortgagee has not taken steps to enforce the mortgage, are the mortgagors liable to the mortgagee for the accrued interest in addition to the payment of the principal?
- Can a bad faith claim be made by an insured against the insurer for failure to pay a mortgagee under a standard mortgage clause?