

Debtor – Creditor Basics:

Enforcing on Personal and Real Property In
Saskatchewan

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Statutory Notices and Demands

A secured party may serve the following documents on a debtor *prior to* seizing or repossessing property in Saskatchewan:

1. A demand letter
2. A notice of intention to enforce security (the “**BIA Notice**”) pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”)
3. A notice of intent to realize on security pursuant to section 21 (the “**FDMA Notice**”) of the *Farm Debt Mediation Act* (the “**FDMA**”)
4. A notice of intention to take possession (the “**SFSA Section 48 Notice**”) pursuant to *The Saskatchewan Farm Security Act* (the “**SFSA**”)
5. The notice pursuant to section 12 of the SFSA (the “**SFSA Land Notice**”)

The Demand Letter

Prior to sending a demand letter, a creditor may consider the following:

1. What defaults has the debtor committed pursuant to the loan, lease or security agreements?
2. Is the debtor a farmer or a business person?
3. Is the property subject to a mortgage, security agreement or lease?
4. Is the obligation a true demand obligation, or is the creditor relying on an acceleration clause?
5. Has the loan matured?

A creditor must provide a reasonable amount of time for the debtor to repay the indebtedness (see: *Ronald Elwyn Lister Ltd. v Dunlop Canada Ltd.*, [1982] SCJ No. 38, [1982] 1 SCR 726 (SCC)).

The BIA Notice

A secured creditor or lessor may need to serve the BIA Notice if (among other things) the creditor intends to enforce against all or substantially all of the debtor's assets.

A secured creditor or lessor may serve the BIA Notice at the same time they serve the Demand Letter.

A secured creditor or lessor must typically wait 10 days after the BIA Notice has been served prior to seizing or repossessing the debtor's assets.

Service is typically effected via either personal service or registered mail.

The FDMA Notice

A “***secured creditor***” who intends to pursue a debt claim or enforce its security against a farmer should serve a FDMA Notice.

A secured creditor cannot take any further enforcement steps for a period of 15 **business** days following service of the FDMA Notice.

Service is typically effected via either registered mail or personal service. If it is sent by registered mail, service is deemed effective **seven days** after it is sent.

Two Farm Mediations

After the FDMA Notice and SFSA Land Notice have been served, the farmer and secured creditor *may* attend two mediations:

1. A mediation involving all of the farmer's creditors pursuant to the FDMA (the “**FDMA Mediation**”); and
1. A mediation pursuant to the SFSA (the “**SFSA Mediation**”).

The FDMA Mediation

A farmer may apply for either:

1. A stay of proceedings by all of the farmer's creditors, a review of the farmer's financial affairs, and mediation between the farmer and its creditors (section 5(1)(a)); or
1. A review of the farmer's financial affairs and mediation between the farmer and its secured creditors.

The SFSA Mediation will be discussed later on in the presentation.

Farm Personal Property

*The Saskatchewan Farm Security Act (The
“SFSA”)*

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Seizing Farm Equipment - Parts IV and V of the SFSA

Special rules apply to seizing farm implements.

- The first question to be asked is “is this person a farmer under the SFSA”
- If you have a farmer, the next question is what type of security interest do you have?
- Finally, are you attempting to seize a farm “implement”?

The SFSA Section 48 Notice

- These notices must be served after the FDMA Notice has been served, assuming the farmer has not invoked the mediation process.
- The section 48 notice gives the debtor Notice of the Intent to Take Possession of the collateral.
- Must be served BEFORE seizure.
- Farmer has 30 days to
 - 1) remedy arrears
 - 2) apply to Court for relief
 - 3) Strike a deal with the Creditor

Section 48 Court Applications

- Obligation on Farmer to apply to the Court.
- Operates as a relief from forfeiture application. Farmer should satisfy the Court as to:
 - Why they are in arrears;
 - How they will remedy the arrears; and
 - Why the equipment is important.
- In most cases, Court will provide farmer with some time to remedy default if they apply to the Court.

Section 48 of the SFSA

- If the farmer remedies the default, the notice is vitiated.
- In addition, if a payment, even a partial payment, is made, it vitiates the Section 48 Notice.

Section 57 Notice - Notice of Possession

- If 40 days have passed since the first notice and, if applicable, the farmer did not remedy the default pursuant to an agreement or Court Order, the creditor may seize the equipment.
- The farmer needs to then serve notice pursuant to section 57 of the SFSA, the Notice of Possession

Section 57 - Notice of Possession

- This notice comes after seizure but before sale.
- Again, any payment accepted may vitiate the notice.
- While there are no reported decisions on section 57, it is likely again a relief from forfeiture application.
- A farmer cannot apply to the Court again if they did so after receiving the section 48 notice.

If 40 days pass from the date the Section 57 notice is served, the creditor may proceed with sale.

Section 55 of the SFSA

If a creditor takes possession of an implement or disposes of an implement contrary to Part IV of the SFSA, the creditor is subject to significant consequences pursuant to section 55 of the SFSA.

- The loan/lease agreement is cancelled;
- The farmer is released from all liability with respect to the implement under the loan/lease agreement; **and**
- Debtor is entitled to damages of 1.5x the value of the collateral seized.

Enforcing GSA's and Judgment

When enforcing against a farmer on a GSA or Judgment, a farmer may have certain exemptions from seizure under the SFSA, in addition to those under the BIA or *The Enforcement of Money Judgments Act* (“**EMJA**”).

The exemptions are set out under Part V of the SFSA.

Part V of the SFSA

Part V of the SFSA provides expansive exemptions to farmers.

Exceptions:

- Corporations do not get exemptions
- PMSI interests are not subject to exemptions
- Farmer must apply to Court and prove exemptions, not automatic.

Most common exemption issues before the Court:

- Equipment
- Crop and crop proceeds

Part IV notices still required. Then, if an exemption is claimed, an application comes before the Court by way of Originating Application

Part V of the SFSA - Enforcing on Crop - Section 66(c), (i) and (j)

Perhaps the most expansive exemption, crop and the proceeds of crop are exempt as follows:

1. proceeds necessary to provide for fuel and heating until next harvest
2. proceeds to purchase seed to sow the land next year – an exemption up to two bushels per acre
3. proceeds needed to pay all remaining unpaid harvest expenses, as well as reasonable home and farming expenses until next harvest.

Note: The Farmer will be required to lead detailed evidence of their farming plan and expenses for the next year.

Part V of the SFSA - Enforcing on Equipment

Section 66(d) of the SFSA provides an exemption for:

all livestock, farm machinery and equipment, including one automobile or one farm truck, that are reasonably necessary for the proper and efficient conduct of the farmer's agricultural operations for the next 12 months;

A contextual analysis, a creditor will be unable to enforce on equipment that the farmer requires to run his farm for the next year.

Among other things, the Farmer must prove:

1. The size of their farm;
2. That they are a farmer;
3. The equipment they have; and
4. How they use it/why it is truly necessary.

Recent case law makes it clear that the farmer must provide specifics. It is more than simply stating "I am a farmer and I need a combine" (see *Herrnbock vs Input Capital*, 2020 SKCA 120 for an example).

Section 66(d) - Enforcing on Equipment

Note that if an exemption is proven, the security interest remains.

The creditor may be permitted to enforce when the farmer's equipment is no longer exempt. The most common example is the equity in equipment on a voluntary sale, if the proceeds are not reinvested in new, exempt equipment.

Exempt equipment that is sold, where the proceeds used to purchase similar equipment, maintains its exemption and the equity is not seizable.

Non-Farm Personal Property



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To Seize or Sue - Section 18 of *The Limitation of Civil Rights Act* (the “LCRA”)

- Section 18 governs the enforcement of conditional sales contracts.
- Sask is a generally a seize only jurisdiction for conditional sales contracts.
- If you have a security interest pursuant to a conditional sales contract (Think most purchase money financings), subject to limited exceptions, you are limited to seizure.

Some exceptions to section 18 of the LCRA

1. You obtained a corporate waiver at the time financing was obtained - section 40 of the LCRA - This does not apply to individuals.
2. The chattel you are enforcing on is part of an airplane
3. It was a true lease and not a conditional sales contract - see the factors set out in *Mercado Capital*, 2007 SKQB 56
4. The debtor willfully damages the security, affecting the value of the recovery.
5. It would be unjust or inequitable to limit the right to sue - For example, the debtor has relocated the security and it cannot be located.

Getting Around Section 18 of the LCRA

While one cannot sue the debtor, they have other options:

1. If the debtor is a corporation and no corporate waiver was obtained, the creditor can seek a guarantee from the directors and/or shareholders; or
2. If the debtor is an individual, the creditor can seek a guarantee from third parties.

The creditor likely can NOT get additional security from the original debtor to secure any shortfall on a conditional sales contract.

The Notices to Seize and Sell

The Personal Property Security Act, 1993 (the “**PPSA**”) requires notice to be given when property is seized and before it is sold.

Section 59 of the PPSA requires certain notices to be given after seizure, but at least 20 days prior to sale of the equipment. Notice must be given to:

1. The debtor
2. Any party who may have a registered interest (serial numbered or general secured) in the personal property registry against the equipment
3. Any other person who has provided the creditor with a demand for written notice

Note: There are exceptions to requiring notice where, among other things, the collateral seized may be perishable or subject to a very quick diminution in value.

Section 59 of the PPSA - The Notice of Disposition

The notice under section 59 of the PPSA must state:

1. What was seized;
2. How the sale can be prevented (i.e. what amount is owing to redeem the debt);
3. The total balance owing;
4. The cost of seizure that must be paid by the debtor/other creditor;
5. The method of sale;
6. Advising of the right to redeem; and
7. Advising the debtor may be liable for the shortfall, subject to other applicable laws (such as section 18 of the *LCRA*)

Section 60 of the PPSA - After the Sale

Section 60 of the PPSA sets out the manner in which excess proceeds, or a deficiency, must be dealt with.

In addition, any other secured creditor, or the debtor, may request an accounting from the sale. The creditor should ensure accurate records are kept of how the property was disposed of and where the collateral went.

Suing on the Deficiency

After sale, and assuming there are no roadblocks preventing suit on a deficiency such as section 18 of the LCRA or section 46 of SFSA, the debtor can sue on a deficit.

Section 46 of the SFSA is the farming equivalent to section 18 of the LCRA, but **cannot** be waived by corporations.

The creditor can then, assuming judgment is obtained, enforce pursuant to EMJA.



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Real Property

Step 1 Farm Foreclosures: The SFSA Land Notice

A mortgagee intending to commence an action for foreclosure, sale or possession of mortgaged farm land, or for the recovery of any money payable under a mortgage secured against farm land must serve the SFSA Land Notice .

Service of the SFSA Land Notice triggers the Saskatchewan Farm Land Security Board's (the "**Board**") process and the SFSA Mediation.

The SFSA Land Notice can be served concurrently with the FDMA Notice, BIA Notice and Demand Letter.

The SFSA Land Notice may be served by way of personal service, registered mail, or alternative methods authorized by Court (i.e. substitutional service order).

The SFSA Mediation and the Board's Process

After the SFSA Land Notice has been served on the Board and the farmer the Board has 150 days to complete its process (the “**Board's Process**”).

The Board's Process includes:

1. Conducting a financial review of the farmer's financial affairs;
2. Facilitating the SFSA Mediation. The SFSA Mediation is **mandatory**; and
3. Preparing a Court Report which will be filed at the Court of King's Bench.

Enforcing against Saskatchewan Farm Land Section 11 Court Application

After the Board's Process is complete the mortgagee may apply for a Court order allowing it to start a foreclosure action against the farmer.

The Court must give “primary consideration” to the Court Report.

To be successful, the lender must prove that **either**:

1. the farmer does not have a reasonable possibility of meeting its obligations to repay the lender under the mortgage; **or**
2. the farmer is not making a sincere and reasonable effort.

If the mortgagee satisfies one of these criteria, the Court may still rule that it is “inequitable” to grant the order sought by the mortgagee (see: section 19 of the SFSA).

Enforcing against Saskatchewan Farm Land Section 11 Court Application

The Court is primarily concerned with equitable considerations, **not** legal defences to the debt or validity of the mortgage.

The Court may make one of the following orders:

- (1) Order that further inquiries be made;
- (2) Adjourn the application;
- (3) Order that section 9(1)(d) of the SFSA does not apply; or
- (4) Dismiss the application (a dismissal can have lasting, negative consequences for a mortgagee).

Non-Farm Foreclosures (Residential & Commercial)

Residential Foreclosure Overview Overview

Obtain Leave to Com→ice
Required



Issue Statement of Claim



Order Nisi for Foreclosure OR Judicial Sale

Final Order for Foreclosure OR Order Confirming Sale

Commercial Foreclosure

Leave Not

The Land Contracts (Actions) Act, 2018 (the “**LCAA**”)- Non-Farm Foreclosure

Does The LCAA Apply?

The LCAA governs the non-farm foreclosure process in Saskatchewan.

Exceptions:

- Corporate Mortgagors: Corporate mortgagors may waive the application of the LCAA pursuant to the terms of any standard mortgage.
- Commercial Property: A lender does not require leave to commence respecting an individual mortgagor if the mortgaged property is used solely for commercial purposes

Step 1 - Obtaining Leave to Commence

Step 1 - Is leave to commence required?

Yes, unless the mortgagor is a corporation or the mortgage property is used solely for commercial purposes.

Court Application - Applying for Leave to Commence

- The lender must serve the mortgagors and the Provincial Mediation Board with the prescribed forms minimally 60 days prior to the Hearing Date
- Prescribed forms: Notice of Application for Leave to Commence Action & Affidavit Regarding State of Respondent's Account Under Mortgage (KB Forms 10-39A, B & C)

Obtaining Leave (Cont'd)

- Along with the prescribed forms, the lender must also file the following information with its application:
 - Statement of the mortgage account
 - Other prevailing conditions (ie, who is residing in the property, property tax arrears, etc).
 - A copy of the mortgage
 - Reasonable evidence of the value of the land
 - Reasonable evidence of value: Appraisal prepared by an appraiser or Comparative Market Analysis prepared by a realtor (often done as “drive-by”)
- Twenty-five to 5 days prior to the Hearing date, the lender must serve the mortgagor with updated information (Supplementary Affidavit)
- The lender must also now serve an Appearance Day Memorandum on the mortgagor
- Pre-leave costs must be requested at the leave application (*Bridgewater v. Haines*, 2012 SKQB 257; *Westfield Twins Condominium Corporation v. Wilchuk*, 2021 SKQB 23) and are only awarded under rare and exceptional circumstances, for example when the mortgagor is a “chronic offender”

Hearing for Leave to Commence

At the Hearing, the Court will consider all relevant information and may decide to:

- Adjourn the hearing from time to time for a period of not more than 8 months
- Grant the application for leave to commence the action
- Dismiss the application for leave to commence an action, or
- Make any other decision the judge considers appropriate

The Court exercises a supervisory jurisdiction over foreclosure proceedings to ensure that the processes of law are followed and that the lender does not take advantage of its position (*Royal Bank of Canada v. Pearl Boutique Ltd.*, 2020 SKQB 106)

Cautionary note: Be prepared that a leave application will likely be adjourned at least once. To avoid increased legal costs, you may suggest that instead of continual adjournments, the Claim issue but not for a period of 30 to 60 days under certain circumstances.

Purchase Money or Non-Purchase Money?

Purchase Money Mortgage - the funds borrowed by the mortgagor were used to purchase the mortgaged property.

- Section 2 of the LCRA, restricts the lender from suing on the personal covenant and the lender is restricted to its action on the land (unless the mortgagor is a corporation which has waived the application of the LCRA).

Non-Purchase Money Mortgage - the funds borrowed by the mortgagor were used for a purpose other than to purchase the mortgaged property.

- The lender has the right to sell the property by judicial sale and, if the proceeds of the sale do not retire the mortgage debt, the lender can sue the mortgagors on their covenant to pay
- Guarantors are also liable on the deficiency judgment

Hybrid Mortgage - a portion of the funds borrowed were used to purchase the mortgaged property and a portion of the funds were used for another purpose.

- The lender has the right to sell the property by judicial sale and, if the proceeds of the sale do not retire the mortgage debt, the lender can sue the mortgagors on their covenant to pay

Step 2 - Statement of Claim - Both Farm and Non-Farm

Once the Court grants leave to commence (under the LCCA or SFSA), (or if a corporate mortgagor has waived the LCAA or the property is used solely for commercial purposes, other than farming) the lender will commence its action by Statement of Claim.

- **Statement of Claim in a mortgage action - KB Form 10-40A**
- Statement of Claim includes the following information:
 - The specific details of the mortgage and registration
 - Whether the mortgage has been transferred or assumed
 - Any amendments or extensions to the mortgage
 - Legal description of the mortgaged land
 - particulars of the indebtedness and the repayment terms including the interest rate
 - Whether the lender is able to sue on the covenant
 - Whether leave to commence was necessary and, if so, what date leave was granted
 - Whether the lender is claiming solicitor-client costs
 - Any other relevant facts
 - The relief requested by the lender

Statement of Claim (Cont'd)

- Statement of Claim may request the following remedies:
 - Judgment against the mortgagor
 - Foreclosure
 - Sale of the mortgaged premises
 - The appointment of a receiver of the rents, issues, profits of the mortgaged premises; and
 - Costs
- A new title search should be obtained to ensure that all parties who have an interest in the land are named as defendants in the action and served with the Claim
- Pursuant to a 2021 decision of the Court of Queen's Bench, *Conexus Credit Union v. Benko*, 2021 SKQB 321, the Statement of Claim for a mortgage debt can only include the mortgage claim and no non-mortgage debts such as a consumer loan, line of credit or overdraft.

Foreclosure or Judicial Sale?

- The next step is the application for an Order Nisi. Legally, it is the most important step, but it is not the final step. At this stage the lender must decide between two remedies: foreclosure or judicial sale.
- Foreclosure: taking title to the land in the lender's name in full satisfaction of the mortgage debt (s.6 LCRA and s. 25 SFSA). The lender keeps the surplus or suffers the loss.
- Judicial Sale: the process of selling the land pursuant to a court order strictly directing the terms of sale

Foreclosure or Judicial Sale? (Cont'd)

- Considerations :
 - Foreclosure extinguishes mortgage debt: Only non-farm corporations can waive this protection. If the lender wants to maintain an action against guarantors or the mortgagor, they must proceed by judicial sale.
 - Foreclosure and the Right of First refusal: Owners of farm land are given the right of first refusal to purchase land upon sale by the lender upon foreclosure. However, if farm land is sold by judicial order, farmers lose their right of first refusal to purchase the land: *Barrett v. Royal Bank* (1989), 77 Sask. R. 196.
 - Deficiency protection: Pursuant to Section 2 of the LCRA and Section 25 of the SFSA, a mortgagee has no action on the covenant for payment contained in a mortgage or agreement for sale given for the purpose of securing the purchase price or part of the purchase price of the land affected by the mortgage. If the lender cannot sue the mortgagor on the promise to pay, its sole remedy is the action against land. As a judicial sale is costlier and less efficient, the lender may desire to pursue foreclosure.
 - Environmental Contamination: If the land may be environmentally contaminated, the lender will not want to accept title into its name via foreclosure and should proceed by judicial sale.
 - Equity: If the land has significant equity, the lender may be required to proceed via judicial sale.



Step 3 - Order Nisi for Foreclosure

Order Nisi for Foreclosure - KB Forms 10-43

- Order Nisi for Foreclosure sets a redemption period (typically 90 days but can range from one day to 120 days or more)
- If the mortgagor fails to reinstate the mortgage (if applicable) or redeem the land during the redemption period, the land will be transferred to the lender upon a further application for a Final Order for Foreclosure

Step 4 - Final Order for Foreclosure

Final Order for Foreclosure - KB Form 10-43B

- Upon expiry of the redemption period in the Order Nisi for Foreclosure, the lender will apply to court for a Final Order for Foreclosure.
- The Final Order for Foreclosure, after issued by the Court and served upon the defendants, is submitted to the Land Titles Office to act as a Transfer to transfer title to land to the lender, or its nominee.
- As the foreclosure extinguishes the mortgage debt, the Final Order concludes the foreclosure process.

Step 3 - Order Nisi for Judicial Sale

Order Nisi for Judicial Sale - KB Forms 10-47

- Judicial Sale is an equitable remedy that is used by lenders when the lender does not want to take title to the land into its name and/or wants to sue the mortgagor for any shortfall
- Only granted by the court in accordance with the Rules of equity (*Co-operative Trust Company of Canada v. O'Grady*, 1986 WWR 731, (SaskCA))
- If the mortgagor fails to reinstate the mortgage (if applicable) or redeem the land during the redemption period, the land will be sold according to the terms of the Order Nisi for Sale
- Order Nisi for Judicial Sale (to sell by tender or auction) Form 10-47A
- Order Nisi for Sale by Real Estate Listing (to sell by realtor's listing agreement) Form 10-47C

Order Nisi for Judicial Sale (Cont'd)

Order Nisi for Judicial Sale/Sale by Real Estate Listing:

- Redemption period (to redeem the land and/or reinstate the mortgage)
- Judgment, if allowable
- Method of sale (listing agreement, tender or auction)
- Upset Price
- Appointment of Selling Officer
- Real Estate Listing - Commission payable, deposit upon receipt of offer to purchase, length of listing period
- Tender/Auction - time for advertising, deposit

Upset Price

Upset Price - minimum price that a property may be sold for pursuant to the Order Nisi for Judicial Sale

- Section 5 of the LCRA, requires an upset price to be set in the Order Nisi
- The upset price informs the maximum deficiency judgment, where applicable
- Upset price is standardly 85% of the value of the land
- General principles governing the upset price:
 - Must consider the present value of the property & prevailing market conditions
 - A balance to ensure a reasonable price on one hand, but also ensure the sale is not abortive on the other hand (*Saskatoon Credit Union v. Goertz* (1989) 73 Sask R 81 (CA))

Appointment of Selling Officer

Selling Officer - An independent lawyer who oversees the sale of the property

- Case law states the Selling Officer should not be the lender's solicitor due to the obvious conflict of interest (*Affinity Credit Union 2013 v. Algnier*, 2020 SKQB 174)
- However, the Court of Appeal left it open that under certain circumstances it may be allowable to have the lender's solicitor act as Selling Officer (*The Toronto Dominion Bank v Sader*, 2021 SKCA 154)
- The Court has yet to expressly outline the role of the Selling Officer

Amending the Order Nisi

Following issuance of an Order Nisi for Sale, the lender may wish to apply to Court to amend the terms of the Order Nisi.

- The most common applications to amend the Order Nisi for Sale:
 - **Extend the list period** - if the property does not sell during the initial list period set in the Order Nisi, the lender will want to apply to court to extend the listing
 - **Reduce the upset price** - if the property is unable to sell above the upset price set in the Order Nisi, the lender will want to apply to court reduce the upset price
 - For example, the condition of the property may have deteriorated, market prices may have dropped, length of market exposure etc.

Step 4 - Order Confirming Sale

Order Confirming Sale - KB Form 10-47E

- Once an offer to purchase is received and conditionally accepted by the Selling Officer, the lender applies to Court to have the sale confirmed by an Order Confirming Sale
- The decision to grant (or refuse) an Order Confirming Sale is governed by the terms of the Order Nisi and the general law
- Subject to judicial supervision

Order Confirming Sale (Cont'd)

- Application for an Order Confirming Sale:
 - the lender will serve the mortgagor with a draft Order and an Affidavit appending the conditionally accepted offer to purchase
 - the Order Nisi provides that any conditionally accepted offer is subject to confirmation by the Court within three weeks after the date of the acceptance of the offer, or within such further time as the Court may order
 - the lender will not apply for an Order Confirming Sale until the buyers' conditions have been removed
- Draft Order Confirming Sale:
 - names the purchasers and the purchase price
 - order provides that the Registrar of Land Titles will accept an application to set up a new title based on the terms of the Order (the issued Order acts as the transfer)
 - directs persons in possession to give up possession in 20 days of being served with issued Order
 - May also direct the order of payment of the sale proceeds (property taxes, commissions, selling officers fees, payment to the mortgage, legal fees etc.)

Cap on Legal Fees

Solicitor-Client Costs in Foreclosure

- The lender may request legal fees in the Order Confirming Sale or may apply to have costs assessed in a separate application
- Lender bears the onus of proving it is entitled to solicitor-client costs
 - The mortgage will contain a clause allowing solicitor-client costs
 - Section 10(3) of The LCAA allows the Credit Union to request costs
 - According to Rule 11-20, all awards of solicitor-client costs are subject to judicial oversight
- The common law cap of \$5,000 (*First National Financial GP Corporation v. Maurice*, 2021 SKQB 248)
 - the “standard costs approach” to provide certainty to parties
 - Standard award can be varied either up or down depending on the circumstances
 - If requesting more than the standard award of legal fees, the lender must explain the reasons why it should be awarded more than \$5,000
 - \$5,000 cap for fees, does not include disbursements and taxes

Other Issues for Consideration

- *Is the property validly insured?*
 - Ensure that property is validly insured, either by the mortgagor or the lender
- *Is the property abandoned?*
 - If so, have the property secured and winterized, if appropriate
- *Property tax arrears?*
 - The lender may wish to pay the property taxes, particularly on a property subject to tax enforcement proceedings

Unique SFSA Foreclosure Considerations

Three unique aspects to farm foreclosures in Saskatchewan:

1. The Right of First Refusal (s. 27 of the SFSA)
2. A mortgagee's recoverable collections costs are limited (s. 33 of the SFSA)
3. A mortgagee may be restricted from taking out a final order foreclosure with respect to a farmer's homestead (s. 44 of the SFSA)



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Questions?