

Mortgage Sale and Foreclosure Documents: A Registration Guide

Version 4.0
August 25, 2020



Contents

Introduction: When to use this guide	2
A Note on Forms:	2
Application for Order for Sale (AFOS) - Auction or private sale.....	4
Request Sale Price Approval (RSPA)	4
Application for approval of private sale - Mortgage Sale Request (MSREQ).....	5
Transfer Under Power of Sale (TPS) - Successful auction sale	6
Application for Final Order of Foreclosure (AFOF)	6
File Request Final Order of Foreclosure (RFOF) - When filed on its own	7
File Final Order of Foreclosure (FOF) – If mortgagee is now ready to take title and has already received Form I.....	7
File Request Final Order of Foreclosure (RFOF) - If mortgagee wants to take title immediately.....	8

Introduction: When to use this guide

This guide was devised to assist solicitors presenting mortgage sale series for registration with Teranet Manitoba in hopes of streamlining the process. It provides brief explanations of the forms and supporting evidence required at various stages in mortgage sale proceedings. It is not intended to be a comprehensive guide to mortgage sale and foreclosure proceedings. Nor is it a substitute for the careful application of legal skill and judgment. Solicitors acting for mortgagees and purchasers of properties subject to mortgage sale and foreclosure proceedings should ensure they are suitably familiar with all application legislation, rules, and salient legal principles, including, but not limited to, those found in:

- (1) *The Real Property Act;*
- (2) *The Mortgage Act;* and,
- (3) *The Rules for Mortgage Sale and Foreclosure Proceedings Under The Real Property Act.*

The *Rules for Mortgage Sale and Foreclosure Proceedings Under The Real Property Act* are located on our website at <https://teranetmanitoba.ca/>

A Note on Forms:

This document references several forms. Those forms available for download on our website (<https://teranetmanitoba.ca/>) include:

- Form 15.1 — Request/Transmission
- Form 17.1 — Registration Details Application
- Form 5P — Transfer
- Form 4 (Form A) — Notice of Exercising Power of Sale (NEPS)
- Form B — Auction Sale Conditions (see <https://teranetmanitoba.ca/>)
- Form G — Notice of Intention to Sell by Private Contract (see <https://teranetmanitoba.ca/>)
- Form 33 - Final Order of Foreclosure (FOF) placeholder form (see <https://teranetmanitoba.ca/news-updates/registrar-general-directives-and-notices/>)

The following forms are created by Teranet Manitoba in an earlier stage of mortgage sale and foreclosure proceedings and are supplied to the solicitor by the vendor prior to registration:

- Form C — Order For Sale
- Form F — Order Approving Sale Price
- Form H — Order of Foreclosure
- Form I — Final Order of Foreclosure (FOF)
- Approved Advertisement — Created by lender's solicitor (no form number)

Application for Order for Sale (AFOS) - Auction or private sale

An application to the District Registrar to make an order authorizing and empowering the mortgagee to sell the land may be filed in the land titles office no earlier than one month after the date of the last service of the NEPS.

Please register the document and accompanying evidence in the following order:

1. AFOS registered using a **Request/Transmission form** (Form 15.1) and signed by the mortgagee or agent for the mortgagee accompanied by the following supporting documents:
 - Affidavit of continuing default
 - Affidavit of farmlands
 - Affidavit of homestead
 - Affidavit(s) of service of NEPS
 - Attach exhibits
 - Draft mortgage sale advertisement (when requested manner of sale includes sale at auction)
 - Auction Sale Conditions (Form B)(when requested manner of sale includes sale at auction)

Request Sale Price Approval (RSPA)

This is an **optional** registration which can be registered **prior** to the submission of private sale (MSREQ) documents, using Form 15.1.

Please register the document and accompanying evidence in the following order:

1. RSPA registered using Form 15.1 and signed by the mortgagee or agent for the mortgagee accompanied by the following supporting documents:
 - Offer to purchase
 - Appraisal and statements under Section 7 of the [Rules for Mortgage Sale and Foreclosure Proceedings Under The Real Property Act](#)

- Opinion of value and statements under Section 7 of the [Rules for Mortgage Sale and Foreclosure Proceedings Under The Real Property Act](#)
- Listing history (if applicable)

Upon acceptance of the RSPA, Form F (Order Approving Sale Price) will be issued to the registering party. The sale price will be approved for a period of six months. Should the mortgagee wish to proceed with a private sale within the six months, please follow the instructions for registering a Mortgage Sale Request. Please note there is no requirement to re-register the Offer to purchase, Appraisal and Opinion of Value upon filing of the MSREQ after approval of the RSPA.

Application for approval of private sale - Mortgage Sale Request (MSREQ)

Please register the MSREQ documents and accompanying evidence in the following order:

1. MSREQ registered using Form 15.1 and signed by the mortgagee or agent for the mortgagee accompanied by the following supporting documents:
 - Affidavit of continuing default
 - Affidavit of service of **Order for Sale** (Form C) and mortgage sale advertisement (if auction held) **or**, if auction was not held, affidavit of service of Form C and statements which specify that the auction advertisement was not published or served on any party
 - Attach exhibits
 - If the auction advertisement was published or served on any party but the auction was not held, evidence of service of **Notice of Intention to Sell by Private Contract** (Form G) is required.
 - Attach exhibits
 - If an Application for Final Order of Foreclosure (AFOF) has been filed on title and **Final Notice** (Form H) was issued, evidence whether Form H was ever served on any party and, if so, evidence of service of Form G is required
 - Signed declaration proving publication (see Form B)(if applicable)
 - Attach exhibits
 - Signed declaration of auctioneer (see Form B)(if applicable)

- Offer to purchase/agreement for sale of land
 - Appraisal and statements under Section 7 of the [Rules for Mortgage Sale and Foreclosure Proceedings Under The Real Property Act](#)
 - Opinion of value and statements under Section 7 of the [Rules for Mortgage Sale and Foreclosure Proceedings Under The Real Property Act](#)
 - Affidavits of bona fide provided by the mortgagee and purchaser
2. Transfer Under Power of Sale (TPS) registered using **Transfer form** (Form 5P)
 3. Transmission of Land (TRANL) registered using a Form 15.1 and signed by the purchaser(s)
 4. Other registrations filed in series, such as Mortgages, Caveats, etc.

Transfer Under Power of Sale (TPS) - Successful auction sale

Please register the documents (and accompanying evidence) in the following order:

1. TPS registered using **Form 5P**
 - Affidavit of continuing default
 - Affidavit of service of Form C and mortgage sale advertisement
 - Attach exhibits
 - Completed and signed **Auction Sale Conditions** (Form B) including signed affidavit of witness, and:
 - Signed declaration proving publication (see Form B)
 - Attach exhibits
 - Signed declaration of auctioneer (see Form B)
 - Affidavits of bona fide provided by the mortgagee and purchaser
2. TRANL registered using Form 15.1 and signed by the purchaser
3. Other registrations filed in series, such as Mortgages, Caveats, etc.

Application for Final Order of Foreclosure (AFOF) - If mortgagee wants to start proceedings to take title

Please register the document (and accompanying evidence) in the following order:

1. AFOF/Final notice to redeem registered using Form 15.1 and signed by the mortgagee or agent for the mortgagee

- Affidavits of continuing default and farmland
- Affidavit of service of Form C and mortgage sale advertisement
 - Attach exhibits
- Signed declaration proving publication (see Form B)
 - Attach exhibits
- Signed declaration of auctioneer (see Form B)

Upon acceptance of the AFOF, a **Final Notice to Redeem**(Form H) will be sent to the registering party.

File Request Final Order of Foreclosure (RFOF) - When filed on its own

Used when the mortgagee wants to proceed to the next stage of foreclosure but is not yet ready to take title.

Please register the document (and accompanying evidence) in the following order:

1. RFOF registered using Form 15.1 and signed by the mortgagee or agent for the mortgagee
 - Affidavit of continuing default and homestead
 - Affidavit of personal service of Form H and attach exhibits

Upon acceptance of the RFOF, a **Final Order of Foreclosure** (FOF, Form I) will be sent to the registering party.

File Final Order of Foreclosure (FOF) – If mortgagee is now ready to take title and has already received Form I

Used when the mortgagee has made the decision to take title after Form I has been issued.

Please register the documents (and accompanying evidence) in the following order:

1. FOF (Final Order of Foreclosure) registered using Form I
 - Affidavit of continuing default

2. TRANL (Transmission of Land) registered using Form 15.1 and signed by the mortgagee and **not** the agent/solicitor
3. Other registrations filed in series, such as Mortgages, Caveats, etc.

File Request Final Order of Foreclosure (RFOF) - If mortgagee wants to take title immediately

Please note that the FOF and Transmission of Land do not have to be filed in series with the RFOF when the mortgagee is not yet ready to take title. If the client files the RFOF, FOF and Transmission of Land in series, use the FOF placeholder form (Form 33 on our website). Title will then issue in the name of the mortgagee.

Please register the documents (and accompanying evidence) in the following order:

1. RFOF (Request for Final Order of Foreclosure) registered using Form 15.1 and signed by the mortgagee or agent for the mortgagee
 - Affidavit of continuing default and homestead
 - Affidavit of personal service of Form H and attach exhibits
2. FOF (Final Order of Foreclosure) registered using the FOF placeholder form (Form 33)
3. TRANL (Transmission of Land) registered using Form 15.1 and signed by the mortgagee and **not** the agent/solicitor
4. Other registrations filed in series, such as Mortgages, Caveats, etc.

The placeholder form must be registered in series with every *Request for Final Order of Foreclosure* (RFOF) submitted for registration where the *Final Order of Foreclosure* (FOF) is to be registered in series after the RFOF.