



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Lawrence Rubin and the Professional Standards (Real Estate) Committee

Date: March 26, 2021

Subject: Professional Standards (Real Estate) 3.8 – Judicial Sales

For: **Approval** **Introduction** **Information**

DATE	Council	Introduction
March 26, 2021		
	Council	Approval

Recommendation/Motion:

This is the introduction to Council of revised standard 3.8 – Judicial Sales – by the Professional Standards (Real Estate) Committee. Following introduction, the standard will be circulated to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval. An equity lens was applied while revising this standard.

Executive Summary:

One of the Committee's mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. After annual review, the Committee determined that the current standard, approved by Council on November 22, 2002, required updating to align with current practice and legislation. The revised standard adds references to Auctioneer's Deeds and sets out steps if the current owner is a bankrupt.

Exhibit:

Revised Standard 3.8 – Judicial Sales with rationale for the revisions.

Existing Standard	Proposed Standard	Rationale
<p>STANDARD</p> <p>When a lawyer is advising a client on the purchase of a parcel at a sheriff's sale under the <i>Sale of Land under Execution Act</i>, the lawyer must advise the client that a Sheriff's Deed under the <i>Act</i> conveys only the interest that the judgment debtor had in the parcel at the time the judgment was first registered, or that the judgment debtor subsequently acquires. The lawyer must further advise the client that the Sheriff's Deed cannot be relied upon to convey marketable title, without full enquiry.</p> <p>When a lawyer is advising a client acquiring a parcel in a foreclosure action, the lawyer must advise the client that a Sheriff's Deed conveys only the interest that the mortgagor</p>	<p>STANDARD</p> <p>When a lawyer is advising a client on the purchase of a parcel at a sheriff's sale under the <i>Sale of Land under Execution Act</i>, the lawyer must advise the client that a Sheriff's Deed under the <i>Act</i> conveys only the interest that the judgment debtor had in the parcel at the time the judgment was first registered, or that the judgment debtor subsequently acquires. The lawyer must further advise the client that the Sheriff's Deed cannot be relied upon as a root of title, or to convey marketable title, in the absence of a full title search.¹</p> <p>When a lawyer is advising a client acquiring a parcel in a foreclosure action, the lawyer must advise the client that a Sheriff's or Auctioneer's² Deed conveys only the interest that the mortgagor had in the parcel at the time of the making of the mortgage, or that the mortgagor subsequently acquired³. The lawyer must further advise the client that the Sheriff's or Auctioneer's Deed cannot be relied upon as a root of title, or to convey marketable title, in the absence of a full title search.⁴</p> <p>When a lawyer acting for a secured lender in a judicial sale knows or has reason to believe that a property under foreclosure or other judicial sale process is shown on public records as being owned by a person who has made an assignment or has been petitioned into bankruptcy, the lawyer must ensure that the relevant</p>	<p>After annual review, the Committee determined that the current standard, approved by Council on November 22, 2002, required updating to align with current practice and legislation. The revised standard adds references to Auctioneer's Deeds and sets out steps if the current owner is a bankrupt.</p>

had in the parcel at the time of the making of the mortgage. The lawyer must further advise the client that the Sheriff's Deed cannot be relied upon to convey marketable title, without full enquiry.

FOOTNOTES

1. *Sale of Land Under Execution Act*, R.S.N.S. 1989, c. 409

ADDITIONAL RESOURCES

- Effect per *Sale of Land Under Execution Act*, R.S.N.S. 1989, c. 409, s. 13, as am. *Land Registration Act*, S.N.S. 2001, c. 6, s. 125
- Effect on foreclosure: *Rawding v. Peninsula Land Corp.*(1990), 99 N.S.R. (2d) 77, per Jones J.A. (N.S.S.C.A.D.)
- Appearance in parcel register: *Land Registration*

assignment has been registered or recorded and that the Trustee has notice of the proceedings, unless the lawyer is satisfied that the property has not vested in the Trustee or has re-vested in the person shown on the public record as the owner.⁵

A lawyer acting for a purchaser in a judicial sale must review the enabling order and advise the client on the nature of title, if any, transferred or authorized to be transferred by the order.⁶

FOOTNOTES

1 Sale of Land Under Execution Act, RSNS 1989, c. 409

2 See generally Civil Procedure Rule 72 which permits foreclosure auctions to be conducted by persons, approved by the Court, other than the sheriff.

3 Refer generally to Civil Procedure Rule 72, Form 35.12, *Rawding v. Peninsula Land Corp.* (1990), 99 NSR (2d) 77; 1990 CanLii 4242 (NSSC, AD)

4 The lawyer must also consider, in the case of a parcel not registered under the Land Registration Act, whether the transfer is a migration "trigger" under s. 37 of the Land Registration Act and whether and by whom the migration is to be effected. [see standard 1.5 Documentation of Advice and Instruction]

5 Bankruptcy and Insolvency Act, RSC 1985, c. B-3, s. 71; as to disclaimers, see s. 20. See also [Gavel (Re), 2021 NSSC 5]; as to the

<p><i>Act</i>, S.N.S. 2001, c. 6, s. 32(1)</p> <ul style="list-style-type: none"> • Security interests: <i>Land Registration Act</i>, S.N.S. 2001, c. 6, s. 51-52 • Judgments: <i>Land Registration Act</i>, S.N.S. 2001, c. 6, s. 65-69 	<p>effect of the failure to record an assignment, see <i>Re Ross</i> 2020 NSSC 36 and [<u>Gavel, 2021 NSSC 5</u>]</p> <p>6 For judicial authority to grant vesting orders under s. 243 of the Bankruptcy and Insolvency Act, see <i>Royal Bank of Canada v. Eastern Infrastructure Inc. and Allcrete Restoration Limited</i>, 2019 NSSC 297.</p>	
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