

# **The Power of Sale Process in Ontario**

© 2017 Power of Sales Ontario, [powerofsalesontario.ca](http://powerofsalesontario.ca)

A power of sale is the most common mortgage remedy used by mortgagees of land in Ontario. When a borrower fails to uphold the terms of the mortgage a power of sale can be used to recover the lender's principal, interest and expenses. Like many legal processes, the lender must follow a strict process in order to follow through with the eviction of the mortgagor and the eventual sale of the property.

## **The Power of Sale Timeline in Ontario**

### **Step 1: The Borrower Defaults on the Mortgage**

The power of sale process begins after the borrower breaks the terms of the mortgage agreement. Typically, the borrower has failed to make one or more mortgage payments. Other defaults include the breach of a covenant in the mortgage: failure to insure the property, pay realty taxes, purposefully damaging the property, or using the property for an illegal use or activity. In the case of a breach of covenant the lender must contact the borrower in writing to notify them that they are in default of the mortgage terms and give them an opportunity to remedy the default. In the case of a failure to make mortgage payments this is not a requirement.

### **Step 2: The Lender Delivers a Notice of Sale and Related Notices**

The lender must wait at least 15 days after the default to deliver a Notice of Sale Under Mortgage. There is also a requirement to give notice under the *Bankruptcy Act* and the *Farm Debt Mediation Act*, the latter two notices being mailed to the mortgagor in advance of delivery of the Notice of Sale.

The content of the Notice of Sale and to whom it must be mailed is governed by provisions of the *Mortgages Act*. It is mailed by prepaid registered mail to every party shown as a mortgagor and guarantor in the mortgage, as well as to all other parties who have an interest in the mortgaged property. These would include, subsequent mortgagees, any persons with liens registered against the property, and execution creditors. After the Notice of Sale is mailed, the lender must wait 35 days (or 40 days if the property is occupied by a married couple) before taking any further steps.

*(Sections 26 (1) and 31 (1))*

### Notice of Sale under Mortgage

Take notice that default has been made in payment of the money due under a certain mortgage dated the ..... day of ....., 20....., made between *(here state parties and describe mortgaged property)* which mortgage was registered on the ..... day of ....., 20....., in the registry division, etc. *(and, if the mortgage has been assigned, add: and which mortgage was assigned to the undersigned on the ..... day of ....., 20.....).*

And I hereby give you notice that the amount now due on the mortgage for principal money, interest *(if so, add: taxes, insurance premiums, or other matters)* and costs, respectively, are as follows:

*(Set out items claimed to be due)*

And unless the said sums are paid on or before the ..... day of ....., 20..... *(a day not less than forty-five days from the service of the notice where the power of sale is exercised under Part II, or a day not less than thirty-five days from the service of the notice where Part III applies)*, I shall sell the property covered by the said mortgage under the provisions contained in it *(or if so: under Part II of the Mortgages Act)*.

This notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

Dated the ..... day of ....., 20.....

(Signed).....

Mortgagee

This Sample Notice of Sale Under Mortgage Document is Copyright of the Queen's Printer for Ontario

### **Step 3: The Borrower is Given Time to Pay off the Mortgage Debt**

The waiting period after the Notice of Sale is delivered is referred to as the redemption period, during which the borrower must either bring the mortgage into good standing if it is not due or pay off the entire mortgage debt including legal fees incurred by the lender to enforce his rights.

If the mortgagor does not pay what is owed prior to the expiry of the redemption period, the lender is able to issue a Statement of Claim for the collection of the Debt owed and for possession of the property. The eviction of the mortgagor and others living at the property the lender can follow the approved practices which will allow him to list the property for sale on MLS and sell it.

### **Step 4: The Lender Applies to Take Possession of the Property**

After the Statement of Claim is issued and served if the mortgagor does not file a Statement of Defence, the lender can sign default judgment. After signing default judgment the lender must

then bring a court motion to ask the court for leave to allow for the issuance of a Writ of Possession. Once the Writ of Possession is issued by the court office the lender delivers it to the Sheriff of the jurisdiction in which the mortgaged property is located. The sheriff schedules a date to evict the mortgagors (often the homeowner and his family) and gives them an opportunity to move out of the house. If they do not move out voluntarily, the sheriff will attend and arrange for the removal of the occupants.

Form 60C

*Courts of Justice Act*  
**WRIT OF POSSESSION**  
*(General heading)*

*(Court seal)*

**WRIT OF POSSESSION**

TO the Sheriff of the *(name of county or district)*

Under an order of this court made on *(date)* in favour of *(name of party who obtained order)*, YOU ARE DIRECTED to enter and take possession of the following land and premises in your county or district: *(Set out a description of the land and premises.)*

AND YOU ARE DIRECTED to give possession of the above land and premises without delay to *(name of party who obtained order)*.

Date ..... Issued by .....  
Local registrar  
Address of  
court office

Renewed by order made on *(date)*.

.....  
Local registrar

RCP-E 60C (November 1, 2005)

This Sample Writ of Possession Document is Copyright of the Queen's Printer for Ontario

### Step 5: The Lender Evicts the Homeowners and Takes Possession of the Property

Once the homeowners are evicted the lender will proceed to sell the home, typically using a licensed real estate agent. To protect the lender, two appraisals of the property are secured as the lender must ensure that he sells the property for market value. Special clauses are inserted into the offer that clearly state that the property is being sold on an “as is” basis.

## **Step 6: The Property is Sold and the Proceeds from the Sale are Used to Pay Off Debts**

When the sale is completed and the money is received, the proceeds of the sale are paid out in the following order:

1. The expenses incurred by the lender in selling the property are paid first. This includes the real estate agent's fee, the real estate's lawyer's fees, and other related fees and expenses.
2. Payment of lender's principal and interest and other sums to which the lender is entitled are next to be paid from the proceeds of the sale.
3. If any funds are left over after the previous payments then payment is made to subsequent mortgagees, lien claimants and execution creditors in the priority in which they were registered until the funds are exhausted.
4. Any remaining money after all other parties have been paid must go to the former homeowner.

Often, the costs associated with conducting the power of sale process are such that the homeowner will receive little to no proceeds from the sale of the property. In addition, if the mortgage lender is unable to fully recover their entire investment principal, they can file a Writ of Execution for the remaining sum owed with the local sheriff.

### **Important Legal Notice**

One must always remember that the above discussion about the Power of Sale process is for information purposes only and is not meant to be an exhaustive discussion of the entire process that is available to a mortgage lender in the face of default of the mortgagor. Any lender who is experiencing a mortgage default should seek legal advice as to how they should proceed. In addition, the borrower has rights in the face of a power of sale and should consult a lawyer when they receive a Notice of Sale Under Mortgage.

### **About Ron Alphonso and PowerOfSalesOntario.ca**

Ron Alphonso is the principal mortgage broker at Mortgage Broker Store and created [powerofsalesontario.ca](http://powerofsalesontario.ca) as a specialized online resource. Ron has been able to help many Ontario homeowners in power of sale situations. The stories of Ron and his clients have been featured in Toronto Life, Global News, The Toronto Star and numerous other media outlets. Ron specializes exclusively in helping people in difficult situations including: bad credit mortgages, second mortgages, and stopping Power of Sale and foreclosure proceedings. Ron is always happy to speak with people to discuss the different financial options available to them. If you need Ron's advice, feel free to call him directly at 416-499-2122 or email him at [ron@powerofsalesontario.ca](mailto:ron@powerofsalesontario.ca).