

PART 10: JUDGMENTS AND ORDERS

What this Part is about: This Part describes how judgments and Court orders are prepared and how they can be amended, varied or set aside, as well as how they can be enforced.

This Part also deals with:

- foreclosure actions and other actions dealing with land; and
- how judgments and orders from jurisdictions outside Saskatchewan may be registered in the Court.

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PART 10: JUDGMENTS AND ORDERS

DIVISION 1

Preparation and Entry of Judgments and Orders

Time to be stated for doing any act ordered to be done

10-1 Every judgment or order made in any cause or matter requiring any person to do any particular act other than the payment of money must state the time, or the time after service of the judgment or order, within which the act is to be done.

Notifying parties of decision or filing of reasons for judgment

10-2(1) When a judge files his or her reasons for judgment in any proceeding or issues any fiat, the local registrar shall immediately:

- (a) notify the parties to the action or their lawyers, as the case may be, of the fact; and
- (b) enter a memorandum of that notice in the court registry database.

(2) On all reserved applications, the chamber clerk or the local registrar, as the case may be, shall, immediately on giving the decision, notify the parties to the action or their lawyers, as the case may be, of the decision.

Form of order

10-3(1) An order must be in Form 10-3.

(2) An order must be sealed with the seal of the Court and state the name of the judge by whom it is made.

(3) The original order must be retained by the Court.

(4) Unless the Court directs otherwise, when an order is drawn up, the order:

- (a) must be dated showing the day of the week, month and year on which it was made; and
- (b) takes effect accordingly.

(5) If an order is issued pursuant to an application without notice, it must be drawn with the following endorsement appearing below the line indicated on the form for the signature of the chamber clerk:

“Take notice that, unless the order is consented to by the respondent or a person affected by the order or unless otherwise authorized by law, every order made without notice to the respondent or a person affected by the order may be set aside or varied on application to the Court. You should consult your lawyer as to your rights”.

(6) It is not necessary in any judgment or order to reserve liberty to apply, but any party may apply to the Court from time to time.

Preparation of judgments and orders

10-4(1) The Court may direct which party is to prepare a draft of the judgment or order pronounced by the Court, but if the Court does not do so, the successful party is responsible for preparing the draft.

- (2) Unless the Court orders otherwise, the following rules apply:
- (a) within 10 days after the judgment or order is pronounced, the responsible party shall prepare a draft of the judgment or order in accordance with the Court's pronouncement and serve it on every party in attendance at the hearing, but, if the responsible party does not prepare and serve the draft, then any other party may do so;
 - (b) within 10 days after the draft order or judgment is served, each party served may:
 - (i) approve the draft; or
 - (ii) object to the draft and apply to the Court to set the terms of the judgment or order;
 - (c) if a party does not approve or object to the draft judgment or order within the 10 days described in clause (b) but all other requirements are met and service of the draft is proved, the judgment or order may be signed and entered.
- (3) This rule does not apply to proceedings in chambers for matters arising under:
- (a) *The Child and Family Services Act*; or
 - (b) *The Enforcement of Maintenance Orders Act, 1997*.

Amended. Gaz. 15 Jly. 2016.

Entry of judgment

- 10-5(1)** Unless the Court orders otherwise, when a judgment is pronounced:
- (a) the entry of judgment must be dated as of the day on which the judgment is pronounced; and
 - (b) subject to subrule (2), the judgment takes effect from the date mentioned in clause (a).
- (2) With special leave of the Court, a judgment may be antedated or post-dated.
- (3) In all other cases not within subrules (1) and (2):
- (a) the entry of judgment must be dated as of the day on which the requisite documents are left with the proper Court officer for the purpose of that entry; and
 - (b) the judgment takes effect from the date mentioned in clause (a).
- (4) A judgment must not be entered in an action on any negotiable instrument until:
- (a) that negotiable instrument is filed with the local registrar;
 - (b) the plaintiff files an affidavit:
 - (i) stating that the original negotiable instrument does not exist or no longer exists; and
 - (ii) setting out the reasons why it does not exist or no longer exists; or

- (c) the plaintiff's lawyer files an affidavit:
 - (i) stating that he or she has made inquiries with the plaintiff and is satisfied that the original negotiable instrument does not exist or no longer exists; and
 - (ii) setting out the reasons why it does not exist or no longer exists.
- (5) If pursuant to these rules or otherwise a judgment may be entered pursuant to a fiat, a note or memorandum of an order signed by a judge, an order, a certificate or a return to a writ, the production of that fiat, note or memorandum, order, certificate or return is sufficient authority to the local registrar to enter the judgment.
- (6) On the production of the certificate of the Registrar of the Supreme Court of Canada on an appeal to that court or of a certified copy of the judgment of the Court of Appeal on an appeal to that court:
 - (a) the local registrar with whom the judgment or order appealed from was entered shall cause the certificate of the Supreme Court or the certified copy of the judgment of the Court of Appeal to be entered in the Court registry database; and
 - (b) all subsequent proceedings may be taken as if the decision had been given in the Court.

Information Note

See rule 3-19 regarding when a judgment or order may be obtained by consent.

See rule 4-48 regarding entry of judgment after death of a party.

Judgment against partners or partnership

10-6(1) Unless the Court orders otherwise, if a defendant obtains judgment against a plaintiff partnership, the defendant may sign judgment against:

- (a) the partnership; and
 - (b) each partner named as a partner in the affidavit disclosing the members of the plaintiff partnership.
- (2) If a plaintiff is entitled to judgment against a partnership, or against one or more persons as partners of a partnership, the plaintiff may:
- (a) apply without notice for an order to add as a named party defendant and sign judgment against any person who:
 - (i) was served with the statement of claim and Notice to Alleged Partner and who failed to defend;
 - (ii) has admitted in the pleadings or otherwise in the proceeding that he or she was a partner; or
 - (iii) having delivered a defence or Notice of Intent to Defend, has been adjudged to have been a partner at the material time; or
 - (b) apply for an order adding as a named party defendant to whom the judgment applies any other person the plaintiff alleges to have been a partner at a material time.

- (3) On an application pursuant to subrule (2), the Court may:
 - (a) if the liability is not disputed, give leave to add the named party; or
 - (b) if liability is disputed, order that the liability of the person be tried and determined in any manner in which any issue or question in an action may be tried and determined.
- (4) The style of cause in the action must be amended according to any order made pursuant to this rule.
- (5) Subrules (2) to (4) do not apply to a person named as a defendant to the action.

Orders granted in chambers

- 10-7(1)** A chamber clerk shall attend all chambers held at a judicial centre.
- (2) The chamber clerk shall keep a minute of all proceedings in chambers and all orders granted.
- (3) All orders that are granted must:
 - (a) be prepared in accordance with the fiat recorded by the judge or by the chamber clerk under the direction of the judge;
 - (b) be prepared by the applicant or his or her lawyer; and
 - (c) be signed and dated by a local registrar and sealed with the seal of the Court.
- (4) On being signed, dated and sealed in accordance with clause (3)(c), the order is deemed to be issued.
- (5) Unless the Court directs otherwise, it is not necessary to draw up an order that has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceedings or doing any act or giving leave:
 - (a) for issuing any writ;
 - (b) for commencing any proceeding;
 - (c) for amending any writ or pleading;
 - (d) for filing any document;
 - (e) for doing any act by an officer of the Court other than a lawyer; or
 - (f) for staying proceedings until the hearing of a notice of application, petition or originating application.
- (6) In the case of an order mentioned in subrule (5), the production of a note or memorandum of the order signed by a judge, local registrar or chamber clerk is sufficient authority for doing the things mentioned in that subrule.
- (7) A direction that the costs of an order mentioned in subrule (5) are to be costs in any cause or matter is not deemed to be a special direction within the meaning of this rule.

(8) The lawyer of the person on whose application an order mentioned in subrule (5) is made shall immediately give notice in writing of the order to every person who would have been required to be served with the order if this rule had not been made.

(9) If an order is issued that pursuant to this rule is unnecessary, the assessment officer shall not allow the costs of that order.

Amended, Gaz. 13 Nov. 2015.

Enforcing return of writ or order by sheriff

10-8(1) No order is to be issued:

- (a) for the return of any writ; or
- (b) to bring to the Court any person who has been ordered to be committed.

(2) If the person issuing the writ or obtaining the order for committal or that person's lawyer serves a notice on the sheriff to return the writ or to bring the person within 10 days and the sheriff does not do so, that person is entitled to apply for an order for the committal of the sheriff.

Recording judgments, decrees and orders, certified copies

10-9(1) Every judgment or decree entered and a copy of every order issued by the local registrar must be filed with the Court.

(2) A certified copy of a judgment, decree or order under the seal of the Court is to be received for all purposes and has the same force and effect as the original judgment, decree or order.

(3) Subject to subrules (4) and (5), a judgment may be in any of Forms 10-9A to 10-9G.

(4) Subject to subrule (5), if an Act provides that an order or decision of another court or authority may be filed with the Court to be enforced as an order of the Court, then, unless the Act provides for an alternate procedure, the original or certified copy of the order or decision may be entered as a judgment of the Court when:

- (a) an address for service of the applicant is provided; and
- (b) the order or decision is endorsed with a court file number and stamped as filed by the local registrar.

(5) If only a portion of an order or decision issued by another court or authority may be filed with the Court as a decision of the Court, then a judgment for that portion of the order or decision may be entered in Form 10-9F.

Information Note

Form 10-9A is titled “JUDGMENT IN DEFAULT OF DEFENCE IN CASE OF LIQUIDATED DEMAND AND CERTIFICATE OF ASSESSMENT OF COSTS”

Form 10-9B is titled “JUDGMENT IN DEFAULT OF DEFENCE IN ACTION FOR RECOVERY OF LAND”

Form 10-9C is titled “JUDGMENT AFTER TRIAL BY JUDGE WITHOUT A JURY”

Form 10-9D is titled “JUDGMENT AFTER TRIAL BY JUDGE WITH A JURY”

Form 10-9E is titled “JUDGMENT IN COURT FOR AMOUNT TO BE ASCERTAINED”

Form 10-9F is titled “JUDGMENT IN PURSUANCE OF AN ORDER”

Form 10-9G is titled “JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT”.

Amended. Gaz. 13 Nov. 2015.

DIVISION 2**Amendments, Further Orders, Setting Aside, Varying and Discharging Judgments and Orders****Amendment of judgment or order**

10-10 Any judgment or order may be amended:

- (a) by the local registrar on written consent of the parties or by the Court, if there are clerical mistakes or errors arising from an accidental slip or omission; or
- (b) by the Court if the judgment or order requires amendment:
 - (i) in any particular on which the Court should have but did not adjudicate; or
 - (ii) in any calculation arising out of a decision of the Court.

Further directions after judgment

10-11(1) Subject to subrule (2), the Court may make a further or other order and give further or other remedy that the Court considers may be required if in an action:

- (a) a judgment has been pronounced or an order has been made and the judgment or order has been formally drawn up and entered; and
- (b) it subsequently appears that further directions are necessary in order to insure to the party entitled to the benefit of the judgment or order the remedy to which he or she is entitled, whether costs or otherwise.

(2) The Court may give further or other remedy only if it does not necessitate any variation of the judgment or order as to any matter decided by the original judgment or order.

Information Note

See Part 11 of *The King's Bench Act* regarding directions for payment of money recoverable under a judgment.

Amended, Gaz. 13 Oct. 2023.

New judgment by notice

10-12(1) If a judgment has been recovered and the judgment creditor alleges that all or any part of the judgment remains unsatisfied, he or she may, at any time before proceedings under the judgment would be barred by *The Limitations Act*, serve on the judgment debtor a notice of application requiring the judgment debtor:

- (a) to appear before a judge in chambers; and
- (b) to show cause why the judgment creditor should not have a new judgment for the amount remaining due and unpaid on the original judgment.

(2) A proceeding pursuant to subrule (1) is deemed an action on a judgment or order of the Court.

(3) Notice of the application:

- (a) must issue in the original cause or matter; and
- (b) must be served on the judgment debtor at least 20 days before its return date.

(4) If on the return of an application pursuant to this rule the judgment debtor does not appear and the judge is satisfied as to due service of the notice of application and as to the amount still due and unpaid under the original judgment, the judge may make an order that the judgment creditor has leave to enter a new judgment for the recovery of the amount due and costs.

- (5) If the judgment debtor appears and disputes the judgment creditor's claim in whole or in part, the judge may:
- (a) give directions for the trial of an issue with or without pleadings as the circumstances of the case may require; and
 - (b) give all other necessary directions.
- (6) After the trial of an issue directed pursuant to subrule (5), the judge may make any order or give any judgment that the Court considers required.

Setting aside default judgment

10-13 Subject to rule 9-13, in the case of any judgment by default, whether by reason of non-delivery of defence or non-compliance with any of these rules or with any order of the Court, the Court may set aside or vary the judgment on those terms as to costs or otherwise that the Court considers fit.

Information Note

For judgment against parties noted in default, see Subdivision 4 of Division 2 of Part 3.

Satisfaction of judgment

10-14(1) When a judgment has been satisfied, the judgment creditor shall, at the request of the judgment debtor, execute a consent to entry of memorandum of satisfaction in Form 10-14, and the execution of the memorandum of satisfaction must be verified by affidavit of the attesting witness.

(2) On the memorandum of satisfaction being filed with the local registrar, the local registrar shall make an entry in the Court registry database that the judgment is "satisfied".

(3) If the judgment creditor refuses to execute a memorandum of satisfaction or if for any reason signature of the judgment creditor cannot be secured, the Court may make an order that the local registrar mark the judgment as "satisfied".

(4) The Court may make an order pursuant to subrule (3) without notice or on any notice that the Court may determine.

Consent to discharge of order

10-15 On consent of all parties interested, the Court may set aside, vary or discharge any order made by it.

DIVISION 3

Enforcement of Judgments and Orders

Judgment or order to be obeyed without demand

10-16 If any person is by any judgment or order directed to pay any money or deliver up or transfer any property to another person:

- (a) it is not necessary for the judgment creditor to make any demand for the money or property; and
- (b) the person against whom the direction is made shall obey, without demand, the judgment or order on being duly served with the judgment or order.

Conditional judgment, breach or non-performance of condition

10-17 If any person has obtained any judgment or order on condition, the judgment or order does not specifically provide for default and the person has not complied with the condition:

- (a) the person is deemed to have waived or abandoned the judgment or order so far as it is beneficial to himself or herself; and
- (b) unless the Court orders otherwise, any other person interested in the matter may, on breach or non-performance of the condition and after 2 days' notice to the party entitled to the benefit of the judgment or order, either:
 - (i) take any steps that the judgment or order may warrant; or
 - (ii) take any proceedings that might have been taken if no judgment or order had been made.

Information Note

See rule 10-19 regarding enforcement of conditional judgments.

Enforcing payment of money

10-18(1) Subject to subrules (2) and (3), every person to whom any sum of money or any costs are payable under a judgment or order is entitled, as soon as the money or costs are payable, to enforce that judgment or order in any manner authorized by law.

(2) If the judgment or order mentioned in subrule (1) is for payment within a period mentioned in the order, a person may take any enforcement measure only after the expiration of that period.

(3) At or after the time of giving judgment or making an order, the Court may stay any enforcement measure until the time the Court considers fit.

Information Note

A judgment governed by *The Enforcement of Money Judgments Act* must be enforced in accordance with the procedures established pursuant to that Act.

DIVISION 4**Executions*****Subdivision 1******Executions Generally*****Execution of judgment on condition**

10-19(1) If a judgment or order entitles a party to any remedy subject to or on the fulfilment of any condition or contingency and the party fulfils the condition or contingency, the party may:

- (a) serve a demand on the party against whom he or she is entitled to the remedy; and
 - (b) after serving the demand, apply to the Court for leave to issue execution against the party against whom he or she is entitled to the remedy.
- (2) On an application pursuant to this rule, if the Court is satisfied that the right to a remedy has arisen according to the terms of the judgment or order, the Court may:
- (a) order that execution issue accordingly; or
 - (b) direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in any action may be tried.

Information Note

See rule 10-17 regarding non-compliance with condition.

Leave to issue execution in certain cases

10-20(1) The party alleging to be entitled to the execution may apply to the Court, without notice or on any notice that the Court shall determine, for leave to issue the execution if:

- (a) any change has taken place by death or otherwise in the parties entitled or liable to execution; or
 - (b) a party is entitled to execution on a judgment of assets *in futuro*.
- (2) If the Court is satisfied that the party applying is entitled to issue execution, the Court may:
- (a) make an order to that effect; or
 - (b) order that any issue or question necessary to determine the rights of the parties be tried in any of the ways in which any question in any action may be tried.
- (3) In an order pursuant to subrule (2), the Court may impose any terms as to costs or otherwise that the Court considers just.

Set-off of judgments

10-21(1) If there are judgments between the same parties in separate actions or in the same action, the Court may order that one judgment be set off against another and direct that execution may issue with respect to the balance only.

(2) An order for set-off against a judgment for maintenance must not be made if hardship would be caused by that order.

Enforcement of orders

10-22 Every order of the Court in any cause or matter may be enforced against all persons bound by the order in the same manner as a judgment to the same effect.

Execution by or against a person not a party

10-23(1) Any person who is not a party to a cause or matter and who obtains any order or in whose favour any order is made is entitled to enforce the order by the same process as if he or she were a party to the cause or matter.

(2) Any person who is not a party to a cause or matter and against whom a judgment or order issued in the cause or matter may be enforced is liable to the same process for enforcing the judgment or order as if he or she were a party to the cause or matter.

Application for remedy by judgment debtor

10-24(1) The writ of *audita querela* is abolished.

(2) A party against whom a judgment has been given may apply to the Court for a stay of execution or other remedy against the judgment on the ground of facts that have arisen too late to be pleaded.

(3) On an application pursuant to subrule (2), the Court may give any remedy on any terms that the Court considers just.

Court may order act to be done at expense of party refusing

10-25(1) If a mandamus granted in an action or otherwise or a mandatory order, injunction or judgment for the specific performance of any contract is not complied with, the Court, in addition to or instead of proceeding against the disobedient party for contempt, may direct that the act required to be done be done so far as is practicable and at the cost of the disobedient party:

- (a) by the party who obtained the judgment or order; or
- (b) by another person appointed by the Court.

(2) On completing the act mentioned in subrule (1):

- (a) the expenses incurred may be ascertained in the manner that the Court may direct; and
- (b) execution may issue for the amount ascertained and costs.

Enforcement of judgment against corporation

10-26 With leave of the Court, a judgment or order against a corporation that is wilfully disobeyed by the corporation may be enforced:

- (a) by sequestration against its corporate property; or
- (b) by an order of committal against the directors or other officers of the corporation.

Execution of delivery of property or recovery of assessed value

10-27(1) If by judgment or order of the Court any party is entitled to the recovery of any property other than land or money, the party may issue a writ of delivery of the property without giving the other party the option of retaining the property on payment of the assessed value, if any.

(2) In the writ mentioned in subrule (1), a sheriff may, at the option of the party entitled to recovery, be commanded, if the property other than land or money cannot be found, to cause to be made of the judgment debtor's goods the assessed value, if any, of the property with costs.

(3) If the party issuing the writ mentioned in subrule (1) is entitled to recover damages or costs against another party, the sheriff may be required by the writ to cause to be made of the judgment debtor's goods the amount of the damages, costs or damages and costs, as the case may be.

(4) A writ for the purposes of this rule must be in Form 10-27.

Writ of possession for recovery of land

10-28(1) A judgment or order that a party recover possession of any land or that any person named in the judgment or order deliver up possession of any land to some other person may be enforced by writ of possession without any order for the purpose.

(2) A writ of possession may be issued only after 15 days after the entry of the judgment or service of a copy of the order.

(3) A writ of possession must be in Form 10-28.

(4) A writ of possession is effective to enable the sheriff to maintain the party entitled to possession in possession of the land as against:

- (a) any party bound by the proceedings; or
- (b) any person or persons claiming through or under a party bound by the proceedings.

Order for committal

10-29(1) A judgment requiring any person to do any act other than pay money, or to abstain from doing anything, may be enforced by committal.

(2) For the purposes of this rule, it is not necessary to apply for a writ of attachment.

Recovery of land and costs

10-30 On any judgment or order for the recovery or delivery of possession of any land and costs:

- (a) the judgment or order for the recovery or delivery of possession of the land may be enforced by issuance of a writ of possession; and
- (b) the judgment or order for costs may, after being assessed, be enforced in accordance with the provisions of *The Enforcement of Money Judgments Act*.

Writ of sequestration

10-31(1) If a person is taken or detained in custody under an order for committal for contempt of Court, on proof that the person has been so taken or is so detained, the party prosecuting the judgment is entitled on application to the Court to a writ of sequestration against the estate and effects of the person in custody.

(2) The Court may grant a writ of sequestration against the estate and effects of a person refusing or neglecting to obey the judgment if an order for committal for contempt of Court cannot be executed against the person by reason of:

- (a) the person being out of the jurisdiction of the Court;
 - (b) the person having absconded; or
 - (c) the impossibility of finding the person with due diligence.
- (3) A writ of sequestration must be directed to the sheriff unless otherwise ordered.

When committed to jail for contempt Court may modify order

10-32(1) If a person has been committed to jail for contempt of Court or is in custody pursuant to that committal, the Court may modify the order and limit the term of imprisonment or grant any other remedy that the Court considers just.

(2) Any remedy granted to a person pursuant to this rule does not relieve that person from any civil liability.

Subdivision 2

Discovery in Aid of Execution

Questioning of judgment debtor

10-33(1) A judgment creditor or party entitled to enforce a judgment that has not been fully performed or satisfied may, without order, question the judgment debtor pursuant to these rules concerning any matter related to the judgment, including questions the judgment creditor or other party requires to enquire fully into:

- (a) any reason existing for non-payment or non-performance of the judgment;
 - (b) whether the judgment debtor has, had or may have means or assets to satisfy the judgment or has made any disposition or transfer of the assets either before or after the recovery of judgment; and
 - (c) whether the judgment debtor intends to obey the judgment of the Court or has any lawful reason for not doing so.
- (2) The local registrar for the judicial centre at which the judgment was obtained or for the judicial centre nearest to which the judgment debtor resides may issue an appointment for questioning of the judgment debtor.

- (3) The appointment for questioning:
 - (a) must be in Form 10-33; and
 - (b) must fix the time and place for the questioning.
- (4) On service of a copy of the appointment for questioning and the payment of proper conduct money, the judgment debtor shall:
 - (a) attend at the time and place appointed; and
 - (b) submit to questioning.
- (5) On application to the Court without notice, any employee or former employee of the judgment debtor and, if the judgment debtor is a corporation, any officer or employee may be directed to attend for questioning.
- (6) On application to the Court with notice, the Court may direct that any of the following attend for questioning:
 - (a) any person or firm or any member of a firm to which any property has been transferred or assigned that the Court is satisfied ought to have been applied towards the payment of the judgment; or
 - (b) any officer or employee of a corporation to which any property has been transferred or assigned that the Court is satisfied ought to have been applied towards the payment of the judgment.
- (7) Subject to subrule (8), questioning pursuant to this rule is to be for the purpose of discovery only and no order is to be made on the evidence given on the questioning.
- (8) Any evidence given on the questioning may be read:
 - (a) in any subsequent proceedings between the same parties or between the judgment creditor and transferee of the property of the judgment debtor; or
 - (b) in any proceedings to obtain payment directly or indirectly whether by attachment of debts, equitable execution or otherwise.

If difficulty enforcing judgment other than for money

- 10-34(1)** If any difficulty arises in or about the execution or enforcement of a judgment or order other than for the recovery or payment of money, any interested party may apply to the Court for the attendance and questioning of any party or otherwise.
- (2) On an application pursuant to subrule (1), the Court may:
 - (a) make any order that it considers just; and
 - (b) direct how the judgment or order may be enforced or executed.

Conduct money, production of documents, rules of questioning, disobedience

10-35 Any person liable to be questioned pursuant to this subdivision:

- (a) is entitled to the same conduct money and payment for expenses and loss of time as on attendance at trial in Court;
- (b) may be compelled to attend and testify and to produce books and documents in the same manner as in the case of a witness on a trial; and
- (c) is subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters with respect to which he or she may be questioned as in the case of a witness on a trial.

Costs

10-36 The costs of any application pursuant to this subdivision and of any proceedings arising from or incidental to an application are to be paid, in the first instance, by the party applying, but if the Court is satisfied that the proceedings were justified, the Court may direct the judgment debtor to pay the costs.

DIVISION 5**Foreclosure and Cancellation Proceedings****Foreclosure actions, Recovery on covenant only**

10-37(1) A statement of claim may be used to commence an action by a mortgagee or a mortgagee's personal representatives or assigns:

- (a) for the foreclosure of the equity of redemption;
 - (b) for the sale or possession of the mortgaged premises;
 - (c) for the recovery of any moneys payable under the mortgage;
 - (d) for the appointment of a receiver; or
 - (e) for any other incidental remedy.
- (2) Subject to this Division, the general procedure and practice of the Court must be adopted and applied in all actions commenced pursuant to this Division.
- (3) In an action to recover only the amount due under a mortgage, the proceedings must be carried on pursuant to the general rules.

Actions pursuant to *The Land Contracts (Actions) Act, 2018* or *The Limitation of Civil Rights Act*

10-38 Except where inconsistent with *The Land Contracts (Actions) Act, 2018* or *The Limitation of Civil Rights Act*, these rules apply to proceedings pursuant to those Acts.

Notice of application for leave to commence an action pursuant to *The Land Contracts (Actions) Act, 2018*

10-39(1) A notice of application for leave to commence an action pursuant to *The Land Contracts (Actions) Act, 2018* must be in Form 10-39A.

(2) The notice of application mentioned in subsection (1) must be accompanied by an affidavit of the applicant setting out the state of the respondent's account:

- (a) in Form 10-39B in the case of an action respecting a mortgage; or
- (b) in Form 10-39C in the case of an action respecting an agreement for the sale of land.

New. Gaz. 6 Sep. 2019.

Claim in mortgage action

10-40(1) Except as otherwise provided in this Division, the claim in all actions commenced pursuant to this Division must:

- (a) be in Form 10-40A; and
- (b) include the notice to defendant in Form 3-9 on the first page.

(2) In a claim pursuant to this Division, it is not necessary to allege to any greater extent than is indicated in Form 10-40A:

- (a) any term, covenant or condition expressed or implied in the mortgage or in any agreement:
 - (i) to extend the time for payment pursuant to the mortgage; or
 - (ii) to vary the terms or conditions of the mortgage; or
- (b) any other fact.

(3) If Form 10-40A is duly completed, all terms, covenants, conditions and allegations necessary to support the plaintiff's claim pursuant to the mortgage or any agreement relating to the mortgage are deemed to have been duly pleaded.

(4) All persons who appear from the records of the Land Titles Registry to have an interest in the equity of redemption must be named as defendants.

(5) A defendant is entitled at any time by notice in writing to demand particulars of the amount claimed by the plaintiff.

(6) Within 3 days after the receipt of the notice mentioned in subrule (5), the plaintiff shall:

- (a) deliver to the defendant a statement of account setting out the full particulars of the amount claimed by the plaintiff; or
- (b) mail the statement mentioned in clause (a) to the defendant by registered mail to the address given by the defendant in the notice.

(7) If the plaintiff fails to comply with a demand pursuant to subrule (5), the defendant may, without delivering any defence to the statement of claim, apply to the Court for an order staying the action as against the defendant until the demand is complied with.

- (8) On an application pursuant to subrule (7), the Court may grant the order on those terms as to costs or otherwise that the Court considers just.
- (9) The plaintiff may serve by registered mail a true copy of the statement of claim in any action commenced pursuant to this Division on any of the defendants, other than:
- (a) the defendant who was the registered owner of the mortgaged premises at the time of the issue of the statement of claim; and
 - (b) those defendants against whom judgment for the recovery of money is claimed.
- (10) Service pursuant to subrule (9) is sufficient, if a post office confirmation of delivery to the person to be served is produced as an exhibit to the affidavit of service.
- (11) The affidavit of service for the purposes of subrules (9) and (10) must be in Form 10-40B.

Amended. Gaz. 13 Nov. 2015.

Service on parties interested

10-41 On an application for order nisi, the Court shall direct all of the following persons to be served with a copy of the order nisi by registered mail:

- (a) persons who appear from the material before the Court to have acquired any lien, charge or incumbrance on the mortgaged land;
- (b) persons who appear from the material before the Court to have otherwise become interested in the subject matter of the action subsequent to the issue of the statement of claim.

Certificates by local registrar and lawyer

10-42(1) On the request of the plaintiff, the local registrar may search the Court record and file a certificate of search in Form 10-42A as proof that no payment has been made to the credit of the action.

(2) The plaintiff's lawyer may file a certificate of lawyer in Form 10-42B as proof that no payment has been made to the office of the plaintiff's lawyer to the credit of the action.

Determination of amount due

10-43(1) On an application for order nisi, the Court shall determine the amount due:

- (a) under the mortgage; or
 - (b) under any provision of an agreement to extend the time for payment under the mortgage or to vary the terms and conditions of the mortgage.
- (2) For the purpose of subrule (1), the Court:
- (a) may make any order for reference for the purpose of taking the accounts that may be necessary; and
 - (b) shall fix a time within which the defendant or defendants may redeem the mortgage.

- (3) An order nisi for foreclosure:
 - (a) for a non-matured mortgage is to be in Form 10-43A1; and
 - (b) for a matured or demand mortgage is to be in Form 10-43A2.
- (3.1) The applicant for an order under this rule shall file a draft order in the applicable form, with all additions, insertions and changes underlined.
- (4) In determining the amount due and required to redeem the mortgage, the plaintiff may estimate the amount of and give credit for anticipated rents and profits to be derived from the land in question before the expiration of the period of redemption.
- (5) If the amount actually received does not exceed the amount estimated pursuant to subrule (4), it is not necessary by reason of the rents and profits having been received to reopen the account and fix a new period of redemption.
- (6) Except as otherwise provided in this rule, if the state of the accounts ascertained by a judgment or order under this rule is changed before the date fixed for redemption:
 - (a) the plaintiff may apply, without notice or on any notice that the Court may determine, to fix the amount to be paid in lieu of the amount previously ascertained; and
 - (b) on an application pursuant to clause (a), the Court may fix a new period of redemption.
- (7) If the day appointed for payment by any order nisi under this rule has not arrived and the state of the account has been changed by payment or otherwise, the plaintiff may give notice, by registered mail if no defence has been delivered, to the party by whom the money is payable that:
 - (a) the plaintiff gives the party credit for a sum certain to be named in the notice; and
 - (b) the plaintiff claims that there remains due with respect to the mortgage a sum certain to be named in the notice.
- (8) If a notice of credit is given pursuant to subrule (7) and if the sums named in the notice appear proper to be allowed and paid, the final order may be granted in Form 10-43B without fixing a new period of redemption, but the party to whom the notice is given may apply to the Court to fix, by reference or otherwise, the amounts proper to be allowed and paid instead of the amounts mentioned in the notice.
- (9) If after the expiry of the period of redemption but before the final order is made, the plaintiff receives any money by way of rents and profits of the land in question, the Court may make the final order in Form 10-43B without fixing a new period of redemption.

Immediate possession in or after order nisi

10-44(1) If in any action commenced pursuant to this Division the plaintiff asks in the statement of claim for immediate possession of the land in question, the Court may, on the application for order nisi, direct that the plaintiff is to have immediate possession of that land.

(2) If an order for possession is not made on the application for order nisi, the plaintiff may apply to the Court for an order that, at any time after the order nisi has been made and before the expiry of the period fixed for redemption, the plaintiff is to have immediate possession of that land.

(3) An application pursuant to subrule (2) must be made on any notice that the Court may direct.

(4) On an application pursuant to subrule (2), the Court may grant the order applied for.

Actions respecting agreements for sale of land

10-45(1) The provisions of this Division applicable to mortgage actions apply, with necessary modification, to actions by vendors, or their personal representatives or assignees:

- (a) for specific performance or cancellation of agreements for the sale of land;
- (b) for sale or possession of the land sold pursuant to any agreement for the sale of land; or
- (c) for any other remedy that may be granted pursuant to the provisions of any agreement for the sale of land.

(2) For the purposes of this rule:

- (a) the claim in all actions with respect to an agreement for sale of land is to be in Form 10-45A;
- (b) an order nisi for cancellation of an agreement for sale of land is to be in Form 10-45B; and
- (c) a final order for cancellation of an agreement for sale of land is to be in Form 10-45C.

DIVISION 6

Sale of Land and Partition

Court may order sale of real property

10-46(1) If in any cause or matter relating to real property the Court considers it necessary or expedient that all or any part of the real property should be sold, the Court may order the real property to be sold.

(2) Any party who is bound by an order pursuant to this rule and who possesses the real property, or is in receipt of the rents and profits of the real property, must deliver up the possession or receipt to:

- (a) the purchaser; or
- (b) any other person named in the order.

Manner of carrying out sale, mortgage, etc., when ordered by Court

10-47(1) If a sale, mortgage, partition or exchange of real property is ordered, the Court may, in addition to any other power it has, authorize the sale, mortgage, partition or exchange to be carried out:

- (a) by laying proposals before the judge in chambers for his or her sanction; or
- (b) subject to subrule (3), by proceedings out of Court.

(2) Any moneys resulting from the sale, mortgage, partition or exchange must be paid into Court or to trustees, or otherwise dealt with as the judge in chambers may order.

(3) The judge in chambers shall not authorize proceeding out of Court, unless the judge is satisfied by evidence that the judge considers sufficient that all persons interested in the real property to be sold, mortgaged, partitioned, or exchanged:

- (a) are before the Court; or
- (b) are bound by the order for sale, mortgage, partition or exchange.

(4) Every order authorizing proceedings out of Court must contain:

- (a) a declaration that the chambers judge is satisfied as required by subrule (3); and
- (b) a statement of the evidence on which the declaration is made.

(5) For the purposes of this rule:

- (a) an order nisi for sale of land subject to a non-matured mortgage is to be in Form 10-47A;
- (b) an order nisi for sale of land subject to a matured or demand mortgage is to be in Form 10-47B;

- (c) an order nisi for sale of land subject to a non-matured mortgage by real estate listing is to be in Form 10-47C;
 - (d) an order nisi for sale of land subject to a matured or demand mortgage by real estate listing is to be in Form 10-47D; and
 - (e) an order confirming sale is to be in Form 10-47E.
- (6) The applicant for an order under this rule shall file a draft order in the applicable form, with all additions, insertions and changes underlined.
- (7) An applicant for an order under this rule who seeks solicitor and client costs shall identify in the materials filed in support of the application the contractual provision relied on to claim those costs.

Amended. Gaz. 15 Jly. 2016; Amended. Gaz. 25 Apr. 2025.

Order for sale in debenture holders' action

10-48(1) This rule applies to debenture holders' actions if:

- (a) the debenture holders are entitled to a charge by virtue of the debentures, a trust deed or otherwise;
 - (b) the plaintiff is suing on behalf of himself or herself and other debenture holders; and
 - (c) the judge is of the opinion that there must eventually be a sale.
- (2) In the circumstances mentioned in subrule (1), the judge may direct a sale before judgment and also after judgment, before all the persons interested are ascertained or served.

Sale requires approval of Court

10-49(1) Unless the Court orders otherwise, if a judgment is given or an order made, whether in Court or in chambers, directing any property be sold, the property must be sold to the best purchaser.

- (2) For the purposes of this rule, the best purchaser is the person so approved by the Court.
- (3) All proper parties shall join in the sale and conveyance in accordance with any direction of the Court.

Special directions

10-50 The Court may give any special directions that the Court considers just respecting:

- (a) the carrying out or execution of a judgment or order pursuant to this Division; or
- (b) the service of a judgment or order on any persons who are not parties.

DIVISION 7**Registration of Judgments Made Outside Saskatchewan****Registration of judgments made outside Saskatchewan**

10-51(1) These rules apply to all proceedings taken under statutory provisions for registration of judgments or orders made outside Saskatchewan in the Court of King's Bench for Saskatchewan, including proceedings pursuant to:

- (a) *The Enforcement of Canadian Judgments Act, 2002*;
- (b) *The Reciprocal Enforcement of Judgments Act, 1996*;
- (c) *The Judgments Extension Act*;
- (d) *The Enforcement of Foreign Judgments Act*; and
- (e) *The Canada-United Kingdom Judgments Enforcement Act*.

(2) The fees and costs payable for services rendered are to be those that are provided for similar services in the Tariff.

Amended, Gaz. 13 Oct. 2023.