

Enforcement of Security Against Farm Land in Manitoba

published 03/08/2012

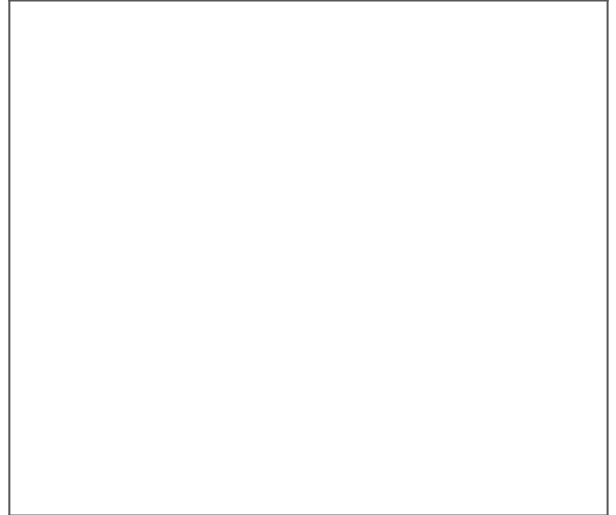
Farmers in Manitoba are not like other debtors. They have special legislative protection which is intended to prevent creditors from seizing and selling farm land without giving the farmer a reasonable opportunity to repay the debt. Creditors who seek to enforce security against farmers must take a number of extra steps before they can proceed. If a creditor fails to follow the proper procedures, any action taken by the creditor to enforce its security will be void.

The first step is to give a Notice of Intention to Enforce Security under The Farm Debt Mediation Act of Canada. This notice can be sent to the farmer along with a demand and Notice to Enforce Security under the Bankruptcy and Insolvency Act. The creditor must wait at least fifteen days from the date the notice is received by the farmer before taking any further steps to enforce its security. This notice must be given by creditors who hold security against any property of the farmer.

The farmer may then apply to the administrator of the Farm Debt Mediation service for a stay of proceedings and a mediation. If the farmer qualifies for mediation, the administrator appoints a review officer to review the farmer's financial situation and formulate a recovery plan.

A mediator then convenes a meeting between the farmer and all creditors to review the recovery plan and attempt to negotiate an arrangement with creditors. Once an arrangement with creditors is signed, or the mediator concludes that an arrangement cannot be reached, the stay of proceedings will terminate. Participation in the mediation is voluntary and creditors who do not agree to the arrangement with creditors are not bound by it.

Once the proceedings under the federal act have been completed, a creditor who seeks to seize and sell farm land must then make an application to the Court of Queen's Bench under The Family Farm Protection Act for leave to proceed. Leave must be obtained before the



creditor can issue a notice exercising power of sale under a mortgage, file a Notice of Application for a judgment sale or appoint a receiver. The application is served on the farmer and The Farm Debt Mediation Board of Manitoba. The application must then be adjourned for at least ninety days to allow the board to conduct an investigation and make a report to the court.

The judge who hears the application considers a number of factors, including whether the value of the land exceeds the amount owing and whether the farmer has put forward a reasonable proposal to repay the loan. The judge may either grant the creditor leave to proceed or adjourn the application to allow the farmer more time to pay.

Finally, a creditor who reaches the stage of offering farm land for sale must take into account the provisions of The Farm Lands Ownership Act. This Act prevents persons who are not Canadian citizens or permanent residents or corporations controlled by Canadian citizens or permanent residents from acquiring more than forty acres of farm land in Manitoba. A foreign purchaser may apply to the Manitoba Farm Lands Ownership Board for an exemption order. This Act applies to all farm land, whether or not it is currently being farmed or the current owner is a farmer.

Author Peter Sim has retired. If you would like to contact him, please contact Mikaela Fedoruk at (204) 934-2584 or mfedoruk@tdslaw.com and they would be happy to help you.

DISCLAIMER: *This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at kdl@tdslaw.com, or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.*

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.