

Information update

Since *Can't Pay Your Mortgage?* was printed in July 2009, there have been some important changes to the Supreme Court Civil Rules. As a result, some of the processes and form numbers that appear in the booklet have changed. This update explains these changes. Many of the changes are highlighted in bold text.

Introduction

Page 2 — What you can do if you're facing foreclosure

Updated flowchart: You no longer need to file an Appearance. The first step under "Go to court" — "Once the Petition is served, file an Appearance *within seven days*" — no longer applies and can be ignored. The remaining steps are accurate and can be followed in the order in which they appear.

C. Go to Court

Page 5 — What happens after the demand letter

Second paragraph: To start the court action, the lender's lawyer files a Petition at the local **Supreme Court registry and then registers it in the land title office.**

Page 6 — What is in the Petition

Second paragraph: Attached to the Petition is at least one Affidavit (a written statement **from the lender**, swearing that the list of facts is correct) with attachments such as a copy of your mortgage, the title search, tax bills, and other related documents.

Page 6 — What you can do after receiving the Petition

Step 1: You no longer need to file an Appearance. This step no longer applies and can be ignored. The remaining steps are accurate and can be followed in the order in which they appear.

Page 7 — 1. File an Appearance

You no longer need to file an Appearance. This section no longer applies and can be ignored.

Page 8 — Sample Appearance (Form 8)

You no longer need to file an Appearance. This sample form no longer applies and can be ignored.

Page 10 — 3. Choose your line of defence or response to the Petition

Updated Note: The Petition will usually ask for a personal judgment against you and any guarantors involved in the mortgage transaction. If this is the case, ask for an adjournment (postponement) of the application for a judgment. A judgment against you will badly reduce your credit rating, and you will not be able to refinance.

Pages 10 – 11 — 5. Prepare and deliver a Response document and supporting Affidavit

First paragraph: You no longer need to file an Appearance. **You must prepare a document called a Response (Form 67). This document must be delivered to the lender and any other named respondents (along with supporting Affidavits) *within 21 days after the date on which the Petition was served on you.*** In your Response you must state which parts of the relief asked for in the Petition (by the lender) you oppose and which parts you don't oppose. Your Response must also list all supporting Affidavits and other documents you intend to rely on at the hearing of the Petition.

New Note: If you live outside of BC, you have longer than 21 days to deliver these documents.

Fifth paragraph: You **also need to** prepare an Affidavit and deliver it **along with your Response** to the lender's lawyer. This is a sworn statement that sets out the facts of your case. See page 19 for examples of what to include in your Affidavit.

Seventh and eighth paragraphs: The information in these paragraphs is out of date and can be ignored.

Addition: You must file the Response (Form 67) and any supporting Affidavits *within 21 days* after the date on which the Petition was served on you. For more detailed information on filling out the Response (Form 67) and any supporting Affidavits, see the Courts of British Columbia website at www.courts.gov.bc.ca. On the left-hand navigation bar, click Self-Represented Litigants > Supreme Court. On the page that appears, under If you want to learn about court procedures and documents, click guidebooks. There are two guidebooks that will be useful to you: Under Getting Started, click Defending a Proceeding Started by Petition; under Pre-Trial, click A Guide to Preparing Your Affidavit. These booklets provide links to court forms, including to a Response (Form 67) and Affidavits. The forms can be filled out online and printed.

Page 11 — 6. Go to court, listen carefully to the proceedings, and present your arguments

Fourth paragraph (addition): Often, the lender's lawyer will give the judge a written list of the orders that he or she is seeking. This is called a Statement of Relief. It's a good idea to ask for the Statement of Relief.

Page 12 — Sample Response form (Form 124)

The Response form is now **Form 67**. The form has changed from the sample provided, and the sample form can be ignored.

Addition: For more detailed information on filling out the Response form, see the Courts of British Columbia website at www.courts.gov.bc.ca. On the left-hand navigation bar, click Self-Represented Litigants > Supreme Court. On the page that appears, under If you want to learn about court procedures and documents, click guidebooks. Under Getting Started, click Defending a Proceeding Started by Petition.

Page 13 — Co-operating with the lender to sell your home

Third paragraph: To do this, you would file a **Response** and then co-operate with lender and his or her lawyer. You can negotiate to stay in your home while it is being sold, but remember that interest will keep adding up while you stay.

Page 14 — 7. Study any order the court makes

Third paragraph: Depending on the circumstances, **orders may also be made at or after the time of the Order Nisi, granting:**

- an Order for Conduct of Sale, giving the lender the right to be in control of the sale;
- an Order setting out how any tenants (renters) are to pay their rent during the foreclosure; *and*
- the terms for the real estate listing agreement.

Page 16 — Important information for tenants

Third paragraph: You no longer need to file an Appearance.

Who Can Help

Page 17 — Dial-A-Law

Website: www.dialalaw.org (on the left-hand navigation bar, click Housing)

Page 17 — Civil Chambers Duty Counsel Project

The e-mail address provided is no longer in use. Call the phone number provided instead.

Page 18 — Pro Bono Law of British Columbia

Pro Bono Law of British Columbia and the Western Canada Society to Access Justice have merged to form the **Access Pro Bono Society of British Columbia**. Replace the first and third resource entries on this page with:

Access Pro Bono Society of British Columbia

In the Lower Mainland: 604-878-7400

Outside the Lower Mainland: 1-877-762-6664 (call no charge)

Website: www.accessprobono.ca

New resource: Vancouver Justice Access Centre

Address: 290 – 800 Hornby Street, Vancouver, BC

In the Lower Mainland: 604-660-2084

Outside the Lower Mainland: 1-800-663-7867 (call no charge and ask to be connected to 604-660-2084)

Website: www.gov.bc.ca/ag (click Justice Access Centres > Vancouver)

How to Draft an Affidavit

Page 20 — Step 7

Second paragraph: The “Drafting your own Affidavit” guide is no longer available.

Addition: See also the Courts of British Columbia’s “A Guide to Preparing Your Affidavit” on their website at www.courts.gov.bc.ca. On the left-hand navigation bar, click Self-Represented Litigants > Supreme Court. On the page that appears, under If you want to learn about court procedures and documents, click guidebooks. Under Pre-Trial, click A Guide to Preparing Your Affidavit.

This publication explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person’s case is different, you may need to get legal help. The information in this insert is up to date as of March 2011.