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Background

LRC 47—Report on the Calculation of Interest on Foreclosure

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The ultimate remedy of a person who has been granted a mortgage over land (a *mortgagee*) is to foreclose on the interest of the landowner who has granted the mortgage to secure a loan from the mortgagee or other obligation owing to the mortgagee (a *mortgagor*). *Foreclosure* is the name of the legal process by which a mortgagor is deprived of its interest in the mortgaged property in satisfaction of the debt (or other obligation) owing to the mortgagee. In British Columbia, foreclosure is a highly structured procedure that takes place in court. If the court grants an initial order (called an order *nisi*) to the mortgagee, then the mortgagee has a period of time (called the *redemption period*) to redeem its interest in the property by satisfying the outstanding debt (or other obligation). In British Columbia, the redemption period typically lasts for six months after the date on which the order *nisi* is granted. If the mortgagor is unable to redeem its interest in the mortgaged property during this time, then the mortgagee may obtain an order *absolute* of foreclosure, which terminates the mortgagor's interest and transfers it to the mortgagee, or, alternatively, the property may be sold to a third party under the supervision of the court.

This report focuses on the specific issue of how to calculate the interest payable to a mortgagee on a foreclosure. The issue came to a head when, in a short space in the late 1970s, two conflicting rulings came out of the British Columbia Supreme Court. The first ruling questioned what had been, up until then, the settled practice of the court, which was to order interest payable for the entire six-month redemption period. It held that interest should only be payable to the date on which the mortgagor paid the amount that was due. The second rule affirmed the settled practice of calculating interest based on the whole six-month redemption period, regardless of when the amount owing was paid.

The report delves into the historical rationale for the settled practice of calculating interest over the entire redemption period and examines the practice in other jurisdictions. Then, the report provides a thorough analysis of the issues raised in the two rules and reviews the responses received to the working paper on this topic. Finally, the report recommends that legislation be enacted to provide that the usual order in these circumstances calculate interest as of the date of payment of the amount owing. The court would be empowered to vary this order, if the circumstances warranted it.

Further Developments

See *Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 28 (now *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 19).