

FORECLOSURE FEE AND DISBURSEMENT **GUIDELINE - ALBERTA**

Effective September 1, 2017

This guideline is a resource prepared for assessment officers of the Court of King's Bench of Alberta and for litigants. It is intended to provide guidance with respect to the assessment of costs in residential foreclosure actions.

Assessment officers exercise a discretion with respect to the evaluation of foreclosure costs. This guideline is not meant to fetter the exercise of their discretion provided that it is exercised pursuant to directions given by the Court pursuant to Rule 10.34.

Since the steps taken in foreclosure action typically follow a set pattern, the approach taken in this guideline is to assign a range of fees for standard stages in a foreclosure action. The other alternative would have been to consider costs on a 'time' basis, where the predominant factor was the time actually spent by the plaintiff's lawyer in advancing the foreclosure action. The difficulty with a time-based approach is that it rewards the inefficient lawyer, and punishes the efficient lawyer. The lump sum fee amounts contained in this guideline are meant to estimate the typical fees which would be paid to a competent lawyer with reasonable seniority and reasonable experience in conducting residential foreclosures.

This guideline is not meant to apply to situations which are out of the ordinary, for example, where a foreclosure is defended and the plaintiff is denied summary judgment.

HOW TO USE THIS GUIDELINE:

FEES GUIDELINE:

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The fees in the following categories are to be added together. So, for example, if the plaintiff has completed step A and step B, the fee amount would be the total of the amount shown in A plus the amount shown in B.

With respect to disbursements and other charges, they are divided into two categories, namely, disbursements requiring documentary support (dealt with in Appendix Y) and disbursements not requiring documentary support (dealt with in Appendix Z).

Appendices Y and Z were prepared through a consultation between the Clerk's office, the Alberta foreclosure bar and the Court. They will be updated periodically.

If a disagreement regarding fees, disbursements and other charges remains following an assessment, the parties are encouraged to attend before the Justice or Applications Judge who granted the order in order to obtain guidance in that regard.

Note:

The fees awarded pursuant to this guideline will be subjected to an annual adjustment, calculated on December 31st every year for use during the following year, commencing with an adjustment calculated on December 31, 2015 for use during 2016, by taking the total fees and adjusting the total by the amount of inflation or deflation occurring since December 31, 2014, calculated using the Consumer Price Index

A claim for fees pursuant to this guideline shall be accompanied by a certification from the plaintiff's lawyer that the fees being claimed would be payable pursuant to the retainer arrangement between the plaintiff and the plaintiff's lawyer even if there were insufficient proceeds to pay out the principal and interest owing under the mortgage under foreclosure.

APPENDIX Y:

DISBURSEMENTS REQUIRING DOCUMENTARY SUPPORT

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Amounts claimed in this category will be allowed only if the plaintiff provides documentation, supported by affidavit evidence, satisfactory to the assessment officer. Copies of invoices or receipts for disbursements are to be provided.

The range of charges set out in Appendix Y is meant to estimate typical charges for this type of disbursement. Provided that they are given substantiating documentation, Assessment Officers are to allow costs that fall within those ranges. Charges that exceed the maximum in the range for the service provided should be reduced unless there is a reasonable explanation for the higher cost.

APPENDIX Z:

DISBURSEMENTS NOT REQUIRING DOCUMENTARY SUPPORT

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The amounts assigned in Appendix Z are meant to compensate a plaintiff for disbursements and other charges where the provision of specific documentary support is not practical. Amounts claimed within these guidelines will be allowed.

FEES SUMMARY:

STEP A:

Cost: \$1,300.00 to \$1,500.00.

All Steps Up to and including Noting in Default

- Obtain and review instructions from client
- Obtain and review title and taxes
- Obtain and review client's security from land titles office
- Review client's statement as to the amount owing
- Issue demand letter
- Communicate with property manager
- Communicate with defendant
- Communicate with client
- Communicate with any subsequent encumbrancer
- Prepare and review statement of claim
- Prepare and review CLP
- File documents at the court house
- Register the CLP at land titles
- Review title from land titles
- Send title with CLP to client
- Instruct service of the statement of claim
- Communicate with process server
- Review of affidavit of service
- Either note in default or receive and review statement of defence or demand for notice

STEP B:

Cost: \$1,300.00 to \$1,500.00.

Steps following noting in default to completion of first substantive application

This would include a redemption order, an immediate order for sale to plaintiff, or an immediate foreclosure order.

- Prepare and review affidavit of default
- Communicate with client
- Review executed affidavit of default
- Communicate with appraiser
- Review affidavit of value
- Prepare any necessary supplemental affidavit
- Review and obtain new title search
- File court documents
- Service of application package
- Preparation and review of affidavit of service

- Filing of affidavit of service
- Checking on service and obtaining confirmation of deliveries of application package
- Communicate with client
- Communicate with defendants or solicitors for defendants on form of order being sought
- Prepare and review checklist for court
- Prepare and review order
- Attend at court
- File order
- Instruct service of order
- Prepare affidavit of service and file same

STEP C:

Cost: \$1,300.00 to \$1,500.00.

Steps following the first substantive order to completion of a second substantive application.

This would include orders following an earlier redemption order, such as order for foreclosure, sale to the plaintiff, or confirming sale to a third party.

- Prepare final affidavit of default
- Review client's statement
- Check on service of prior order
- Communicate with property manager
- Communicate with client
- Communicate with defendants or solicitors for defendants on form of order being sought
- Communicate with subsequent encumbrancers
- Obtain updated title and tax search
- Prepare application
- Review final affidavit of default
- Instruct service of motion package
- Prepare affidavit of service
- Check and confirm service of motion on all parties
- Prepare and review checklist for court
- Prepare and review order
- Attend at court
- File order
- Instruct service of order
- Prepare affidavit of service and file same

STEP D: **Cost: \$150.00 to \$200.00.**

Court appearance where plaintiff's application is adjourned at the request of anyone other than the plaintiff.

If the application is **contested and extended**, plaintiff's counsel may, at the time, seek the court's permission to increase this allowance to **\$300.00 to \$400.00**. Where the adjournment is for the purpose of **obtaining sealed tenders** due to multiple bids - **\$400.00 to \$500.00**.

STEP E: **Cost \$350.00 to \$450.00.**

Obtaining a standard ex parte order such as a substitutional service order, preservation order, and ex parte orders rejecting tenders.

STEP F: **Cost \$800.00 to \$1,000.00.**

Obtaining orders on notice, not covered by A, B or C, such as extending a listing, reducing a listing price, or rejecting tenders on notice.

- Update title search
- Prepare any affidavit evidence
- Prepare application
- Instruct service of application package
- Prepare affidavit of service
- Check and confirm service of motion on all parties
- Prepare and review checklist for court
- Prepare and review order
- Attend at court
- File order
- Instruct service of order
- Prepare affidavit of service and file same

STEP G: **Cost \$600.00 to \$800.00.**

Responding to applications brought on notice by defendants or others.

STEP H: **Cost \$650.00 to \$750.00.**

1. Work done to facilitate judicial listing.

- Hire realtor and make listing arrangements
- Obtain market analysis from realtor

- Obtain updated tax search
- Review market analysis for consideration of increase in list price or application to reduce list price
- Communicate with realtor
- Review MLS confirmation
- Review any offers

If more than 3 offers are received then the fee shall be increased by \$150.00.

Cost \$325.00

2. Work done to facilitate any second or third or more judicial listings

- Hire realtor and make listing arrangements
- Obtain market analysis from realtor
- Obtain updated tax search
- Review market analysis for consideration of increase in list price or application to reduce list price
- Communicate with realtor
- Review MLS confirmation
- Review any offers

STEP I:

Cost \$400.00 to \$500.00.

Work done to facilitate posting on court house bulletin board or Kijiji.

- Post ad at the court house or on Kijiji
- Conduct tender search
- Review tender search
- Prepare affidavit of posting and tender search
- Communicate with client

If more than 3 offers are received then the fee shall be increased by \$150.00

STEP J:

Cost \$500.00 to \$600.00.

Work done to facilitate newspaper advertisement:

- Post ad in the newspaper
- Communicate with newspaper
- Review affidavit of publication from newspaper
- Conduct tender search
- Prepare affidavit of tender search
- Communicate with any potential tenderers
- Communicate with client
- Communicate with subsequent encumbrancers

If more than 3 offers are received then the fee shall be increased by \$150.00

STEP K:

Cost \$900.00 to \$1,000.00.

Conveyance to a third party following an order confirming sale.

- Prepare trust letter
- Instruct property inspector re: possession
- Obtain new title and tax search and review
- Prepare statement of adjustments
- Prepare letter to the registrar re: funds received
- Prepare letter to the registrar re: description of purchaser
- Prepare affidavit of transferee
- Receive and review conveyancing instructions from realtor
- Review commission calculations
- Communicate with realtor
- Communicate with lawyer for purchaser
- Communicate with property manager
- Receive cash to close and letter from purchasers solicitor and review
- Pay municipal taxes
- Communicate with client re: payout of mortgage
- Prepare affidavit of receipts and disbursements
- Prepare certificate of payment into court
- File documents
- Instruct service of statement of receipts and disbursements
- Prepare affidavit of service and file same
- Diarize for final inspection and utilities
- Review of further invoices

STEP L:

Cost \$125.00 per payment.

Processing payments from debtor (cinderella order).

- Communicate with defendant
- Receive and process payments
- Forward funds to and report to client
- Provide assessment or review office with dates and amounts of payment

STEP M:

Cost \$150.00

Preparation of bill of costs for ex parte review by assessment officer:

- Prepare detailed accounts
- File detailed accounts
- Communicate any extraordinary matters beyond regular guidelines to assessment officer
- Diarize for return of taxed assessment
(No fee is allowed in the case of a final order unless and until a redemption occurred)

STEP N: **Cost \$400.00 to \$500.00.**

Preparation, attendance and assessment of bill of costs.

- Prepare appointment for assessment
- Communicate with assessment office
- Prepare detailed bills of costs
- File documents
- Instruct service of documents
- Prepare affidavit of service
- Confirm service of documents
- Prepare for assessment appointment
- Attend at assessment appointment
- File assessed document
- Service of received document
- Prepare affidavit of service
- Diarize for expiry of appeal period
(No fee is allowed in the case of a final order unless and until a redemption occurred)

STEP O: **Cost \$300.00.**

Preparation and filing of writ of enforcement.

STEP P: **Cost \$500.00.**

Obtaining possession via civil enforcement agency.

STEP Q:

Arranging for disposal or sale of chattels left on the property

1. Disposal or sale of goods worth under \$2,000.00 **Cost \$500.00.**
2. Sale of goods worth over \$2,000.00 **Cost \$750.00.**

STEP R:

Communicating with prior financial encumbrancer for updates, such as prior mortgage or condominium corporation but not municipal taxes, including arranging for payment of arrears

Under prior encumbrances **Cost \$300.00**

Communicating with residents' association

Cost \$150.00

For fees in dealing with Subsequent encumbrancers send letter of explanation to the officer.

STEP S:

Providing **payout statements or arrears letters** to the defendant:
for each statement or letter **after the first one** provided.

Cost \$250.00

STEP T:

Steps taken when redemption occurs after commencement of foreclosure proceedings including discontinuing the action, removing the CLP and disbursing funds.

Processing payment of arrears or payouts or transfers:
Including all discontinuances, discharges, accountings
holdbacks, registration of discharges, etc.

Cost \$500.00 - \$700.00

DISBURSEMENTS UNDER APPENDIX Y

1. **Agents Fees** are to be allowed, provided that:
 - (a) the amounts charged by the agent are reasonable, having regard to the work done by the agent; and
 - (b) fees for the same work are not claimed in the fee section of the mortgagee's Bill of Costs and the total of the amounts claimed for the agent's work and the fees charged by the mortgagee's solicitors should not exceed the maximum amounts allowed under the Fee Guideline. Agent's fees should be specifically broken down in the Bill of Costs under the categories established under the Fee Guideline.
2. **Appraisal fees** are to be allowed in full unless:
 - (a) they are significantly above the norm and the solicitors for the mortgagee are unable to justify the higher cost to the satisfaction of the assessment officer; or
 - (b) there is more than one appraisal in a 6 month period and no reasonable explanation for obtaining more than one, such as renovations, damage incurred, the opportunity for an interior inspection, a change in the market, or a court order directing an appraisal to be obtained.
3. **Court runner fees, couriers fees, postage costs and photocopying charges** (at 25 cents per page) can be claimed under Appendix A where the mortgagee can provide either a specific accounting or page count for the item. Otherwise they can be claimed under Appendix Z. Printing costs can be claimed regardless of the nature of the document being printed, e.g. pleadings, faxes, emails, etc.
4. **Preservation costs and repair expenses** are granted to preserve and protect vacant property. Reasonable steps are also permitted in order to preserve the mortgagor's equity and ensure the property remains safe to the public. The services normally required to preserve and protect vacant property are, but are not limited to:
 - (a) securing the property, including rekeying or the changing of locks;
 - (b) winterizing the property, including the flushing of lines;
 - (c) removing items that may, if they remain on the property, cause deterioration of the property; and,
 - (d) removing items to facilitate a judicial sale.

Assessment officers are to allow these costs, whether the services were provided by a property management company or another third party (e.g. locksmith, plumber, waste disposal company, civil enforcement agency).
5. **Inspections:** The Court and assessment officers recognize that secured properties must be inspected on a routine basis. Factors such as the weather are to be taken into account

when determined the reasonability of inspections. For example, during the winter is may be reasonable to allow for inspections every week as opposed to every two weeks.

6. **Clean Up, Garbage Removal or Scrub and Shine:** The Court and assessment officers recognize that vacant properties often require basic maintenance in order to attract the best value and provide a lived in appearance to avoid vandalism.
7. **Snow Removal and Lawn Maintenance:** Subject to the guidelines set out below, the costs incurred by the mortgagee for snow removal and lawn maintenance services for a vacant property are to be allowed, whether the services were provided by a property management company or another third party:

Snow removal should be undertaken only to the extent, and for the periods of time, required to:

- (a) comply with municipal bylaws;
- (b) provide access to the main entry door of the residence to facilitate judicial listings of the property, where judicial listings are ordered;
- (c) facilitate the removal of mail deliveries to the property, where deliveries are being made; and
- (d) provide access to the main entry door for any other reasonable purpose, where the need for access can be explained and justified.

Lawn maintenance should be limited to the amount required to present a “lived-in” appearance. Typically, backyard maintenance should be limited to the amount required to comply with municipal bylaws. This is particularly so in the case of acreage properties.

8. **NSF fees** from the date of default to the issuance of the statement of claim shall be limited to \$50.00 per occasion to a maximum of \$250.00.
9. **Attempted service fees** shall be limited to three attempts at the same address unless a satisfactory explanation is given for the appropriateness of more attempts.
10. **Usual, non-taxable disbursements** are to be **allowed in full unless** it is determined that the product or service purchased was **clearly unnecessary**, having regard to the circumstances prevailing at the time. Unusual non-taxable disbursements are to be explained. These disbursements may be allowed or disallowed on a case-by-case basis.
11. Charges for Access to the Plaintiff’s (or a third party’s) **collection software** and charges for **file storage will not** be allowed.

APPENDIX Y

TYPICAL CHARGES

Disbursement	In Municipalities	Out of large Municipalities - Smaller Cities or Towns	Remote Areas
Appraisals	\$450.00 - \$500.00	\$600.00 - \$700.00	\$700.00 - \$900.00
Process Servers (per Defendant)			
Statement of Claim	\$70.00 - \$90.00	\$125.00 - \$150.00	\$200.00 - \$400.00
Attempted Service	\$30.00 - \$40.00	\$50.00 - \$75.00	\$200.00 - \$350.00
Posting Order for Possession to the Door	\$50.00 - \$60.00	\$60.00 - \$75.00	\$150.00 - \$250.00
Mileage		\$0.75/km	\$0.75 / km
Administration and Affidavit	\$50.00	\$50.00	\$50.00
Property Management			
Inspections Secured - Weekly Oct - March - Biweekly April - Sept. Monthly	\$50.00 - \$60.00	\$60.00 - \$75.00	\$75.00 - \$100.00
Snow Removal/Lawn Mowing	\$50.00 - \$60.00	\$400.00 - \$500.00	\$500.00 - \$750.00
Secure Costs including Lock Change	\$300.00 - \$400.00	\$400.00 - \$500.00	\$500.00 - \$750.00
Clean up and Garbage Removal or Scrub & Shine	\$1000.00 - \$1,250.00	\$1,250.00 - \$1,500.00	\$1,500.00 - \$2,000.00
Repairs	anything over \$750.00 requires explanation		

CHARGES UNDER APPENDIX Z

Appendix Z lists charges that are to be allowed by assessment officers without specific invoices or documentation. The rates and amounts that are specified in Appendix Z are the maximums that should be allowed.

APPENDIX Z
DEEMED DISBURSEMENTS

Disbursement	Cost
Delivery Expenses (postage and courier)	\$125.00 per application
Photocopies (includes copies, faxes and printed emails)	\$240.00 first application \$120.00 second application
Court Runner	\$15.00 per account rendered (in house) \$60.00 per account rendered (outside service)
Long Distance	\$20.00 per account