

Ministry of Agriculture

Farm Land Security Board

Annual Report for 2021-22

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Letters of Transmittal



*The Honourable David Marit
Minister of Agriculture*

July 28, 2022

His Honour, the Honourable Russ Mirasty,
Lieutenant Governor of Saskatchewan

May it please Your Honour:

As the Minister of Saskatchewan Agriculture, it is my pleasure to submit the annual report for the Farm Land Security Board for the year ending March 31, 2022.

Respectfully submitted,



David Marit
Minister of Agriculture



*Ken McDonald
Chairperson*

July 28, 2022

The Honourable David Marit
Minister of Agriculture

Dear Minister:

It is my honour to submit for your consideration the Annual Report of the Farm Land Security Board for the year ending March 31, 2022.

The Saskatchewan Farm Security Act (the Act) establishes the Farm Land Security Board, providing it a mandate in the areas of farm foreclosures, home quarter protection and farm ownership. The Act plays a critical role in support of farm families during periods of financial instability or challenges related to their businesses.

Our Annual Report provides information on the activities of the Board, its administrators and field staff over the past year.

Respectfully submitted,



Ken McDonald
Chairman

Organizational Structure

Mission Statement

The Farm Land Security Board's mission is to effectively deliver Saskatchewan Farm Security programs in a manner responsive to the needs of the broad rural community. These programs have been instituted to support family farms during periods of financial difficulty and to stabilize the economic and social environment in rural Saskatchewan.

Governing Legislation

The Saskatchewan Farm Security Act (the Act) and its regulations govern the Farm Land Security Board (Board). The Board is responsible for Parts II, III and VI of the Act.

Farm Foreclosure Protection, Part II of the Act, supports the industry by enhancing the opportunity to resolve financial difficulties by means other than foreclosure. The Board's advice to court under Part II may help to postpone or avoid commencement of foreclosure proceedings.

Home Quarter Protection, Part III of the Act, directs the Board to exclude a mortgage from Home Quarter Protection only when it is "in the best interest" of the producer.

Farm Ownership, Part VI of the Act, allows the Board to exempt an interest in farmland held by non-eligible entities where the broader needs and opportunities of our province may be served.

Members of the Farm Land Security Board as of March 31, 2022:

Ken McDonald, Indian Head
Bryan Hadland, Weldon
Megan Rumbold, Wadena
Karla Hicks, Mortlach
Mark Bratrud, Weyburn

The Board employs staff who are situated in Regina, as well as field consultants located around the province.

Program Objectives, Activities and Impacts

Part II – Farm Foreclosures

Mandate:

The Act requires all lenders and money judgment holders to first serve notice on the farmer and on the Farm Land Security Board respecting their intention to foreclose before proceeding to court. The Act provides a financial review and mediation mechanism to assist the parties' efforts to find a settlement. If mediation is not successful, or the farmer chooses not to participate, the Act requires the Board to prepare a report for the court expressing the Board's opinion on questions stated in the Act, and any other matter the Board feels is relevant. The Act directs the court to give the report primary consideration. The statutory period allowed for the above is 150 days. Mediators are provided by the Dispute Resolution Office of the Saskatchewan Ministry of Justice.

The work of the staff and Board assists farmers facing foreclosure by clarifying their financial situation and helping them understand their legal rights and obligations. These activities help establish achievable expectations and objectives for producers as they enter the mediation process.

The program is also designed to help the court in its determination of whether allowing foreclosure to proceed would be "just and equitable." The Board's report to the court provides insight into the personal and financial circumstances of the farm family and any other factors that can contribute to achieving the objective of the Act, which is to "protect farmers against the loss of their farmland." As well, because some aspects of home quarter protection legislation are linked to the Board's opinion in the report, important legal support for farm families hinges on the report's conclusion.

Resources:

Part II, III and VI resources are shared. Five permanent full-time employees and a permanent part-time employee spend most of their time in delivering Parts II, III and VI of the Act, along with 10 specialized contract field consultants.

Objectives:

The primary objective of the program is to assist farmers and creditors facing possible foreclosure to understand and resolve the underlying financial issues, thereby keeping farmers on the land and in rural communities. An additional benefit is to provide a fair and effective means of resolving farm financial difficulties without involving the court system.

Activities:

Field Analysis and Mediation Preparation

Following receipt of a Notice of Intention to Foreclose, Board staff assigns the matter to a field consultant. It is the field consultant's responsibility to meet with the farm family to adequately prepare them for the mediation opportunity. The consultant will create a financial report for the farm family in order to review and analyze the financial situation. Discussions about their personal and financial situation and their legal rights and obligations occur. Through these discussions, the field consultant helps the family establish goals for the mediation process and beyond. The financial report is provided to the farmer, the mediator and the creditor. The consultant will accompany the farmer to the mediation meeting acting as a resource and a support to the family. The field consultant also contacts the creditor as part of the review process to inform the creditor prior to mediation.

When the review and mediation activities do not find a suitable solution, the creditor may ask for the Board's report to the court. Upon receiving such a request, the Board appoints a consultant with specialized training to research the request. Requests for the Board's report to the court often occur several months after the mediation meeting. In these cases, the Board's research will include updating the farm's financial statement and gathering of other relevant information.

The Board will interview the lender and the farmer when necessary in preparation of the report. The report provides primary advice to the court in its determination of whether leave is granted to advance into a foreclosure action.

The Act, through the provision of a field consultant, the process of mediation, and the requirement of a court report, has avoided initiation of foreclosure actions in a significant number of cases. Although repayment arrangements with the Notice creditor are not always achieved, other arrangements including new creditor refinancing, and the sale of assets, improve the farm family's financial outlook.

NOTICES SERVED: BY CREDITOR

Fiscal Year	FCC	Credit Unions	Other	Chartered Banks	Total
2019-2020	39	33	33	39	144
2020-2021	42	20	18	25	105
2021-2022	19	22	23	25	89

Notices of Intent to Foreclose may involve more than one mortgage.

Observations:

The number of farms served a Notice of Intention to Foreclose on farmland is not the only indicator of financial difficulties. Federally mandated programs facilitate arrangements involving debt secured to livestock, equipment and crops. As well, farms that are dissolved or reduced through voluntary liquidations, or successfully restructured through private arrangements with their lenders, are not reflected within the formal program numbers.

Creditors continue to use money judgments to attach unpaid livestock, equipment and crop input debt to land. Money judgement Notices of Intention to Foreclose have become more common in the last few fiscal years. This trend continues.

Court Reports

The Board's report to the court provides primary advice to the court for its decision whether a foreclosure action should be allowed to proceed. In addition to addressing the critical questions of whether the farm family has a reasonable possibility of paying the mortgage, and whether a sincere and reasonable effort is being made to pay the mortgage, the Board can comment on any issue it deems relevant to the situation. The report is distributed initially to the farmer, the creditor and their legal counsel. Once the creditor advises the Board of its court application, the report is issued to the court.

PART II – COURT REPORTS REQUESTED (a)

Fiscal Year	Providing Opinion	Providing No Opinion (b)	Resolved (c)	Total
2019-2020	68	28	10	106
2020-2021	37	21	2	60
2021-2022	35	21	8	64

a. Not all court reports initiated by lenders are issued to the court.

b. Court report issued when Board's assistance is declined by the farmer.

c. Prior to issuing a preliminary court report, a resolution of the file occurs. The Board does not track resolutions that take place once a court report is issued to the court.

A Notice of Intention to Foreclose has a three-year lifespan and therefore Board activities may involve a notice served in previous years. In 2021-22 the number of Board reports, where an opinion was provided, was in line with the previous year.

The Board continues to work at increasing farmer participation through education and communication. It also provides its field staff with recent court decisions and professional advice to fully prepare producers for meaningful mediation.

The completion of a legal foreclosure is not a common occurrence. The existence of equity in Saskatchewan farm mortgages, due to stable or increasing land values, may convince farmers to accept a sale of land to salvage remaining equity.

A significant number of report requests resolve without the Board completing its report. Likewise, many completed reports resolve before the parties appear in court.

When the situation does proceed to court, a judicial sale, as opposed to foreclosure, is more common. By judicial sale, the mortgage creditor avoids having to hold the land and avoids the right of first refusal the Act provides the farmer. Judicial sales are a means to satisfy a number of mortgagees or writ holders who thereby share in the proceeds of the liquidated property. A judicial sale also allows the creditor to sue the farmer for any deficiency.

Judicial sales should not be considered to be of neutral impact on farm families. It is common that property sold by judicial sale is discounted in value. The farmer can also bear significant legal and court costs and loses the benefit of the right of first refusal that is a feature of *The Saskatchewan Farm Security Act*.

Part III – Home Quarter Protection

Mandate:

Home quarter protection has been a cornerstone of Saskatchewan farm protection legislation since the early 1940s. The protection stays the registration of a final order for foreclosure on the home quarter, as long as the farmer continues to live on the homestead. A farmer and a lender may co-apply to the Board to have a mortgage excluded from this protection. The Board is empowered to exclude the mortgage from protection when, in the opinion of the Board, it would benefit the farmer. The program helps farmers and creditors consider a broader range of financing options as opposed to attaching debt to their home quarters.

Resources:

Part II, III and VI resources are shared. Five permanent full-time employees and a permanent part-time employee spend most of their time in delivering Parts II, III and VI of the Act, along with 10 specialized contract field consultants.

Objectives:

The mandate of home quarter protection is achieved by clarifying with farmers their security options and examining their ability to service the mortgage obligations. Before the Board will order a mortgage excluded from the protection, it must be convinced the farmer can repay the loan and that other suitable security is not available. Additionally, it must be convinced that any aspect of a loan which appears uncharacteristic of typical lending practices has been fully discussed with the parties.

Activities:

Co-applications are reviewed by Board staff. Staff may contact the farmer and the creditor as part of the review and may request additional information concerning the farm financial situation. Staff may analyze the farm budget and security options to establish that the loan is affordable and that more suitable security arrangements are not possible. In some situations, the co-application is assigned to a field consultant who will meet with the farmer and the creditor to prepare a report for the Board.

A decision to refuse the requested exclusion order only occurs after clear evidence that either the loan is not serviceable or that alternate satisfactory security options are available.

Rather than deny an application, the Board will work with the parties to find acceptable alternatives. Alternatives include issuing exclusion orders that state explicit conditions. Such conditions may release a home site from the mortgage if the loan fails, or release the home quarter once the principal is reduced to a specified amount. This work results in a very low incidence of applications being denied.

PART III DISPOSITION OF HOME QUARTER CO-APPLICATIONS

Fiscal Year	Orders Issued	Orders Denied	Return/Withdrawal	Total
2019-2020	99	0	25	124
2020-2021	85	0	19	104
2021-2022	71	0	17	88

The Board continues to update its class exclusion orders, which reduces the number of co-applications received.

Impacts:

The Board's activities help to maintain the security of farm family home quarters by ensuring that debt obligations are serviceable when a home quarter is involved and that options for securing debt are considered. These activities increase farmer knowledge of risk management and contribute to the stability of rural communities.

DISTRIBUTION OF HOME QUARTER CO-APPLICATIONS BY PURPOSE CATEGORY

	2019-2020	2020-2021	2021-2022
Construction	9%	12%	8%
Purchase	14%	16%	14%
Debt Restructure	56%	56%	66%
Revolving Credit	18%	8%	3%
Debt Settlement	1%	1%	0%
Other	3%	8%	9%

Observations:

In the 2021-22 fiscal year, the number of home quarter co-applications to the Board decreased once again. The percentage of co-applications with Debt Restructure purpose was higher than in 2021-22.

Lenders continue to offer new sophisticated mortgage products that allow a variety of loans to attach to a single mortgage. Farmers are comfortable with these products and want borrowing to be flexible and easy. Prior to granting an exclusionary order, the Board works with the creditor and farmer to identify the loans attached to any style of mortgage.

Part VI – Farm Ownership

Mandate:

Saskatchewan’s farm ownership legislation reflects the continuing commitment of the Government of Saskatchewan to legislate and regulate the ownership of Saskatchewan farmland by non-Canadian entities.

Resources

Part II, III and VI resources are shared. Five permanent full-time employees and a permanent part-time employee spend most of their time in delivering Parts II, III and VI of the Act, along with 10 specialized contract field consultants.

Objectives

The Board seeks to preserve ownership and operation of Saskatchewan farmland by Canadians or Canadian-owned entities through ensuring compliance with farm ownership legislation. The Board also maintains an internal objective to remain current in the area of agriculture and land-related issues. This contributes positively to its decisions regarding farmland ownership.

Activities

Responsibilities of the Board include the granting or denial of applications for exemption or extension, issuing orders for divestment or orders for administrative penalties and recommending court action for violation of farm ownership provisions under the Act. In 2021-22, the Board’s duty to uphold the legislation’s farm ownership provisions led to a court-ordered sale of land held by non-residents.

When individuals or corporations acquire or plan to acquire holdings that exceed that allowed by statute, the Board considers the interests of all affected parties in making its determinations. Staff assigned to this aspect of the program monitor changes of title respecting farmland.

Activity Detail

The Board monitors transfers of interest in Saskatchewan’s agricultural land by reviewing and analyzing data provided by Information Services Corporation.

The Board has implemented a declaration process to ensure compliance with *The Saskatchewan Farm Security Act*. The legal community has generally accepted this process and is assisting by providing declarations as part of its land transfer processes.

Application for Exemption

The Board has the authority to consider applications for exemption which, if approved, allow non-eligible individuals or non-Canadian entities to have or to acquire a land holding in excess of that allowed under the Act. The following table summarizes the Board’s activity in applications for exemption. Categories were developed for the common requests for exemption received by the Board.

FARM OWNERSHIP EXEMPTION STATISTICS

Exemption Category	2018-19		2019-20		2020-21		2021-22	
	#	Acres ³						
Intending to Reside	8	5,219	7	4,129	4	532	10	3,050
Commercial Development	2	68	10	3,362	9	432	3	779
Mining, Forestry, Petroleum ¹	6	7,069	7	12,126	8	13,721	12	17,744
Intensive Livestock	1	160	2	15,028	3	489	0	0
Other	8	15,403	4	5,004	3	14,365	0	0
Inheritance-Estate Planning	3	2,400	3	4,480	6	1,393	2	1,789
Wind Power, Solar Power ²	6	38,324	3	220,080	5	181,863	3	100,472
Recreational Property	0	0	1	39	0	0	2	154
Total Exemptions Granted	34	68,642	37	264,248	38	212,794	32	123,988
Exemptions Denied	2	31,760	1	482	9	3,834	5	11,129

¹ Includes options to purchase for mining projects.

² Includes options to lease for potential wind and solar power generation projects.

³ Some exemption orders were extensions of previously existing orders. Those orders are included in the table but their acres are not.

2021-22 Financial Results

The Farm Land Security Board is supported by the Board Governance and Operations Unit of the Ministry of Agriculture. The Board Governance and Operations Unit also provides support to other boards and carries out other activities. The following financial information represents expenses and revenues reported by the Ministry associated with the Farm Land Security Board.

Expenses:

The Board Governance and Operations Unit of the Ministry of Agriculture incurred actual expenses in the 2021-22 fiscal year of \$730,170 (2021-22 budget—\$1,107,878) primarily for support of the Farm Land Security Board but also related to other activities of the unit.

Expenses (thousand dollars)	2021-22	2020-21	2019-20
Salaries	460.6	453.3	439.3
Other Expenses	269.6	416.2	466.4
Total	730.2	869.5	905.7

Revenue:

Fees generated in revenue by the Ministry.

Revenue (thousand dollars)	2021-22	2020-21	2019-20
Notice Application Fee	38.2	28.3	44.3
Land Sale Data Fee	227.7	282.2	128.0
Farm Ownership Fee	3.2	3.8	4.1
Total	269.1	314.3	176.4