

As I have noted over the last few months, Sale of Land is becoming a favored option for creditor's looking to enforce their writs in Alberta. Therefore I am very pleased to provide you with the answer to our 4<sup>th</sup> and final Sale of Land question:

This month's question is: **How do you sell a property when our debtor only owns a partial interest in the property?**

If your debtor owns property in which they share ownership with a spouse, a parent, or any other person or persons, this property can still be sold under the Civil Enforcement Act of Alberta. The only difference is that we cannot sell the whole house; we can only sell your debtor's portion of the house/property.

For example if the property is owned jointly by the debtor and their spouse (50/50 ownership) – we can only sell the debtor's 50% interest in the house, not the whole house. We have managed Sale of Land files with interests as small as 1/99<sup>th</sup> ownership. There is no minimum or maximum percentage of ownership required to conduct a Sale of Land action in Alberta.

Now once again when we are conducting a partial interest sale, we only can sell the portion of the property that is equivalent to the percentage owned by your debtor. This does not mean we draw a line down the middle of the house and tell interested parties that they can purchase the left side of the house only. We explain to purchasers that they will be purchasing a 50% interest in the home. We also explain that they can reside on one side of the house, while the debtor's spouse resides on the other side of the house. The purchaser has purchased the debtor's percentage of ownership/interest in the house only. This means that the purchaser cannot reside in the home, nor can they force the spouse to move out of the home. The purchaser holds a 50% interest in the home until they obtain an Order for Partition and Sell, thereby forcing the sale of the whole home.

The order for Partition and Sale forces the remaining owner (spouse) to put the whole property up for sale. These orders are granted routinely by the courts, because the purchaser of the debtor's percentage of the property cannot have the right of use or enjoyment of the property, thereby the judge has an obligation to force the sale of the home. Once the order is received the whole home is then put up for sale (occasionally the purchaser will offer to buy the other half of the home directly from the spouse, thereby eliminating the need for the court order).

If an order is required, the whole home/property is sold and all parties receive a percentage of the sales proceeds equivalent to their percentage of ownership of the property.

### **Why would someone buy a partial interest in a home/property?**

Usually about this point of the conversation I will be asked, why would someone want to purchase 50% of a house? The answer is simple - **because it is a great investment opportunity.**

When someone buys a home under a civil enforcement action in Alberta they will buy it for less than what they would have paid for a similar house on the open market. When we sell a house under the Civil Enforcement Act we must sell it as-is where-is. This means that the purchaser will see a substantial reduction in the asking/purchase price to allow for the fact that the house cannot be viewed/inspected prior to purchase. This reduction is even higher when considering a home where a buyer is offering to purchase a partial interest. The selling agency understands and compensates buyers for the additional costs that will be involved in purchasing a partial interest home. Additional costs such as:

- The costs to obtain the order for partition and sale,
- Carrying costs for the purchaser while obtaining the order
- Realtor fees that will be incurred once the whole house is put up for sale

All of these costs are taken into consideration when determining what the selling and listing prices should be for the partial interest sale.

Conducting a Partial interest sale, provides great returns for enforcement creditors and offers great investment opportunities for purchasers looking to make a real estate investment.

### **Advantages for the Civil Enforcement Creditor**

Now let's talk about some of the advantages for you as the Enforcement Creditor. When you are looking to conduct a Partial Interest Sale of Land file you should consider the following advantages:

- Once we commence the action – we are required to serve all registered owners on the property the Notice of Intention to Sell Land
  - o This Notice makes all of the properties owners aware of the pending action and provides them an opportunity to consider purchasing the land themselves – at fair market value
  - o In a situation where the property is owned by a husband and wife, it is not uncommon for the spouse to step forward to offer settlement for their spouses debt – rather than having their home sold
  - o In some cases the other owner is willing to cooperate with the sale of the whole home recognizing that 50% of the proceeds will be payable to them. By both owners cooperating we can ask a higher overall sale price since we are now selling the home in its entirety and not just selling a partial interest in the home.
- CCE has a settlement rate of more than 80% on our Sale of Land files – this includes partial interest sale of land files.
  - o The majority of our sale of land files settle in full (including costs) before the home/property is even listed with a Realtor.
- Equity on properties in Alberta is higher than it has been in many years. House prices are expected to continue to rise in Alberta next year, despite prices being expected to level out or drop throughout the rest of the country.
  - o The more the equity in a property increases, the more money available to Enforcement Creditors to pay their judgments
- Once you have started a sale of land action, the action can be placed on hold (awaiting the growth of equity or completion of a settlement agreement) for as long as your writ is still valid (up to 10 years in most cases).
  - o You can re-commence action again at any time when a file is on hold. Your action starts off right where you left it – no need to worry about starting all over again.
  - o The Notice of Intention to Sell Land stays on title until the judgment is paid in full or until you as the instructing creditor instruct us to remove the same

### **Sale of Land as a Civil Enforcement Option in Alberta**

The number of Sale of Land files in Alberta has grown over 400% in the last 6 years alone. This is the fastest growing and most successful writ of enforcement remedy currently available in the Province of Alberta. In fact over the last three years, Consolidated has collected and paid out over \$19.8 Million Dollars in writ judgments through Sale of Land actions in the Province of Alberta alone. That averages out to \$6.6 Million Dollars a year.

If your Writ of Enforcement debtor owns land, even if they only own a partial interest in the land, you must consider a Sale of Land action as an option to collect your judgment.

I hope this four bulletin series has provided insight into your options for use Sale of Land under the Civil Enforcement Act of Alberta as way to collect your judgment(s) and your client's judgments. As always, if you have any questions with respect to a Sale of Land file, or any other civil enforcement question, please do not hesitate to contact me directly at 403-668-8804 or at [patricia.wilson@ccebailiff.ca](mailto:patricia.wilson@ccebailiff.ca)

Have a great day, and remember the kids are back to school next week and those school zones are coming back into effect. Drive safe, I hope we get a chance to talk soon,

**Patricia Wilson**

Director, Civil Enforcement



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