



1 Judgment Creditor's Right to Sell Land – Part 7 CEA, Part 3 CE Regulations

The Civil Enforcement Act and Regulations give an enforcement creditor the right to sell land owned by the debtor.

- The sale of land must take place through a licensed Civil Enforcement Agency.
- Before you can sell the land, Section 26(b) of the Civil Enforcement Regulations requires:
 - Writ of Enforcement must be registered at Personal Property Registry
 - Writ of Enforcement must be filed against the specific property owned by the debtor as evidenced in the Certificate of Title to the land.

2 Debtor Exemptions - Part 10 CEA, Section 88

Pursuant to Part 10 Section 88 of the Civil Enforcement Act and Section 37(1)(e) of the Regulations, the debtor may be entitled to an exemption as follows:

Principal Residence: the applicable exemption for a principle residence is \$40,000. If the debtor is a co-owner of the residence, the amount of the exemption is reduced to an amount proportionate to the debtor's ownership interest in the residence.

Farms: the exemption is up to 160 acres of land if, 1) the debtor's primary occupation is farming, 2) the debtor's principal residence is located on that land and 3) the land is part of that enforcement debtor's farm.

* Exemptions do not apply to writ proceedings that are for the payment of maintenance or alimony – Section 93(c) CEA..

3 Equity and Title Assessments

1. Is there equity in the property? Often just serving the Notice of Intention to Sell Land will result in the debtor settling the debt. If however, the debtor does not voluntarily pay during the 180-day waiting period, the sale of land process is most useful when there is sufficient equity in the property to satisfy the debt. Research about property value and the current balances for prior encumbrances provides you with the necessary information to determine if there is equity in the property. The Sale of Land process and the sale of the property cannot be completed unless there is sufficient equity in the property. The Notice of Intention To Sell Land can remain on title even after the 180-day waiting period and can remain on title until such a time as there is enough equity to sell the property.

You should also take into account any debtor exemptions, i.e. the \$40,000 for a principle residence. The debtor can still make a court application after the 180-day waiting period to allow the exemption.

2. Joint Interests. If the debtor is a joint tenant or tenant in common, the sale process and procedures will change significantly. Section 76(1) provides for severing the joint interests on joint tenant's land when an agency has entered into an agreement to sell the debtor's interest.

Once the interest is sold, joint tenants become tenants in common. There is a market place for joint interests. The purchaser of a joint interest is typically purchasing to realize a profit, and may force a subsequent sale of his or her joint interest and the interest of the non-enforcement debtor through partition and sale.

3. Will a court application be required? Sale of Land files may require court applications. The Civil Enforcement Agency can execute a transfer of the enforcement debtor's interests. There are, however, some circumstances requiring a court application including: a) order for substitutional service, b) some claims for exemption and any objections to sale terms or minimum price, c) order to allow/gain access to the property, d) removal of subsequent encumbrances (not writs) that cannot be paid out from the sale price, and e) obtaining vacant possession if debtor refuses to leave.

4 Instructions to Sell Land

The instructing party's instructions to sell land must be in writing and be accompanied by the following documents:

- Filed copy of the Writ of Enforcement or the Certificate of Judgment (if the Writ of Enforcement has not yet been filed).
- PPR Verification Statement showing registration of the Writ of Enforcement at Personal Property Registry.
- Current Land Title Search (preferably no more than 1 week old).
- Municipal Address of the property to be sold.
- Letter of Instructions including an indemnity and any instructions you have regarding who will personally serve the required documents. Personal service on the debtor and any other registered owners is a requirement. In addition to the documents listed above, effective instructions will include as much information about the work or home addresses of the owners of the property as possible – to assist in service. The optimal wording for Sale of Land instructions to Consolidated should be as follows:

“Creditor instructs Consolidated to act on its Writ of Enforcement or Writ of Seizure and Sale by selling the following land owned by the enforcement debtor.”

5 Notice of Intention to Sell Land

The Civil Enforcement Agency prepares and serves the Notice of Intention to Sell Land on enforcement debtor(s) whose land is subject to the sale proceedings, on all registered owners on title and any subsequent encumbrances.

Once this Notice has been successfully served on all parties there is a 180-day waiting period during which the enforcement debtor may claim that their land is in whole or in part exempt from sale under writ proceedings.

- Once service has been completed the Civil Enforcement Agency will provide the instructing party with the affidavit of service and an invoice.
- Agency diarizes its file for 150 days from the date of service to commence preparation of the Notice of Method of Sale.

If a claim for exemption is filed: Pursuant to Section 73(2) of the Civil Enforcement Act the debtor is presumed to be entitled to the exemption, unless otherwise ordered by the court. Claims for exemption must be received by the agency within the 180-day waiting period. Filing a claim for exemption does not stop the process.

If NO claim for exemption is made: The agency may proceed without paying exemption funds to the debtor.

6 Caveats – Section 70(2) CEA, Section 46(2) CE Regulations

The Civil Enforcement Regulations require that before land may be sold under the Act by a Civil Enforcement Agency, the agency must file a caveat against the certificate of title to the land setting out the Notice of Intention to Sell Land. The caveat is filed as soon as instructions are received and processed to protect the enforcement debtor's claim.

7 Notice of Method of Sale – Section 74 CEA

Prior to proceeding to this next step the Civil Enforcement Agency will be required to determine the following:

Choose a method of sale. The Civil Enforcement Act allows any commercially reasonable method to sell property. An MLS listing using a realtor is most common, however other methods are available as well, including a private sale to the creditor, a private sale to a third party, a sale by tender, auction, or a judicial sale.

Choose the type of appraisal required. A certified appraisal or a realtor's market evaluation is generally required to establish the market value of the property and a minimum sale price. Sale of a joint interest is usually accomplished by private sale or tender.

Minimum price. A minimum price should be included in the Notice of Method of Sale.

The Notice must state that any person who objects to the land being sold for the proposed minimum sale price must serve a notice of objection on the agency within 30 days from the day of being served with the Notice of Method of Sale. (Section 74(3)(a through c)

- a) If an objection to minimum price is received, the civil enforcement agency is NOT permitted to sell the land, except on terms approved by the court
- b) If NO objection is received the civil enforcement agency may enter into a listing contract or make other sale arrangements. The sale amount must exceed the proposed minimum price.

To proceed with service of the Notice of Method of Sale the agency requires the following documents, which can also be obtained by the agency:

- New Land Title Search
- PPR Related Writ Search
- Tax Certificate
- Municipal Address of the property to be sold
- Method of Sale – including the name and contact information of the realtor, or instructions to use one or of our realtors.

8 Settlement or Cancellation - Notice of Withdrawal – Section 70(3)(a) CEA

The agency should receive instructions to settle and close the file in writing. A Notice of Withdrawal must be served on all parties by regular mail and the caveat must be discharged, if applicable.

If there is sufficient equity in the property to satisfy the claim, Consolidated will insist on full recovery of all costs and indebtedness from the debtor. If the enforcement debtor is prepared to settle, an updated statement of costs should be forwarded to the agency, and the agency will coordinate the payment of all costs. Note that other creditors have the right to insist on payment before the proceedings are withdrawn.

- Edmonton** – 4482 – 97 Street Edmonton, AB T6E 5R9
- Calgary** – 300 801 Manning Road NE, Calgary, AB T2E 7M8
- Email:** calgary@ccebailiff.ca or edmonton@ccebailiff.ca

Phone: 780 448-5833

Fax: 780 448-0698

Phone: 403 262-8800

Fax: 403 262-8801

Website: www.ccebailiff.ca

General Information

Date: _____ Your reference #: _____ Contact: _____

ENFORCEMENT CREDITOR: _____

ENFORCEMENT DEBTOR: _____

With respect to this matter, we act on behalf of the Enforcement Creditor. Pursuant to Part 7 of the *Civil Enforcement Act*, you are hereby instructed to sell the following lands (legal land description) on behalf of the Enforcement Creditor:

The municipal address for the property is _____

Service Instructions (The act requires personal service on the debtor)

- Personal Service
- We will personally serve the documents

Debtor Address: _____

Debtor's Phone: _____ Debtor's Email: _____

Best time to effect service (residential): _____ Hours of Operation (Commercial): _____

Other Information that would be helpful: _____

We will file a Caveat early in the process to ensure that you maintain control over the process and recover your costs.

Attachments

- Filed copy of Enforcement Creditor's Writ of Enforcement
- Current Land Titles Search evidencing registration of the writ against title (obtained recently)
- Copy of verification statement showing registration of the Writ at Personal Property Registry
- Copy of the first page of the related Judgment
- Retainer – In Town \$1,107.75 / Out of Town \$1,323.00

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Contract and Indemnity

Contract for Services

The undersigned Instructing Party hereby warrants to Consolidated Civil Enforcement Inc. (Consolidated) that it is the enforcing party, or that it is the lawful agent of the enforcing party or is otherwise legally authorized to give instructions on behalf of the enforcing party to Consolidated and that it has determined that the enforcement activities instructed herein are lawful. Upon instructing Consolidated, the Instructing Party shall be responsible for the costs of such services, including all costs required to lawfully complete, suspend or withdraw civil enforcement activities. The Instructing Party agrees to pay for all services performed and invoiced by Consolidated within 30 days of the invoice date. Such services will be charged at the rate published by Consolidated with the Sheriff for the Province of Alberta. The Instructing Party shall pay interest on overdue amounts at a rate of 18% per annum, calculated annually, not in advance. The Instructing Party further agrees to provide deposits or other advances for civil enforcement services to be performed upon the request of Consolidated.

Instructing Party (Individual or Legal Name of Company): _____

Address: _____

Phone: _____ **Fax:** _____ **Email:** _____

Signature (Required) **Name (please print)**

Indemnity

The undersigned confirms that enforcement instructions given to Consolidated are lawful and factually accurate and hereby indemnifies on a solicitor and his own client basis Consolidated, and its directors, shareholders, employees, and agents in respect of its fees, charges and disbursements and in respect of any suit, liability, or claim for damages that might be incurred by it in respect of any function carried out on the enforcement instructions. However, this indemnity shall not extend to any liability arising from the negligence or willful misconduct of Consolidated. This indemnity shall remain in force with respect to all services requested from time to time. In the event of litigation to which this indemnity applies, the undersigned agrees to fund, during the course of such litigation, the legal defense costs of Consolidated and its directors, shareholders, employees, and agents. The undersigned further agrees to provide additional indemnities, bonds or assurances as required by Consolidated from time to time.

(Individual or Legal Name of Company): _____

Address, Phone and Fax (if different from above): _____

Signature (Required) **Name (please print)**