

Subject: **LIQUIDATORS**

BACKGROUND

A liquidator is an individual or corporation appointed by the court, or by a corporation which wishes to wind up its operation, for the purpose of assuming responsibility for the operation of the corporation during its liquidation and for selling its assets. Instruments executed by a liquidator must be under corporate seal of the corporation being wound-up or else the court order appointing the liquidator must be registered and the documents must be in accordance with the terms of the court order.

A liquidator may be appointed pursuant to the provisions of the Business Corporations Act (Alberta), the Companies Act, the Societies Act or the Winding-Up Act (Canada). The relevant sections of the legislation are summarized below.

1. Business Corporations Act (Alberta)

The liquidation and dissolution of corporations are provided for in Part 17. A liquidation of a corporation may be done voluntarily (1) or by court order. (2) When the court makes an order for liquidation of a corporation, the liquidator is empowered by the statute to perform, amongst other things, the following duties:

- (i) carry on the business of the corporation as required for an orderly liquidation,
- (ii) sell the property of the corporation either publicly or privately, and
- (iii) do all acts and execute any documents in the name and on behalf of the corporation. (3)

Any proceedings to liquidate or dissolve a corporation are stayed if a corporation is at any time found to be insolvent within the meaning of the Bankruptcy and Insolvency Act (Canada). (4)

2. Societies Act

Part 17 of the Business Corporations Act applies to a society as if it were a corporation. (5) In addition, the Lieutenant Governor in Council may appoint a liquidator who may exercise all the powers of the directors or any other official of the society for the purpose of selling or otherwise disposing of the assets of the society. (6)

3. Companies Act

The procedures under this Act for winding-up a company (7) are now of limited application as most companies incorporated under the Companies Act ceased to exist after the last day of December, 1985 unless an application for a certificate of continuance under the Business Corporations Act was made. (8) Once the certificate of continuance has been granted, the winding-up of the corporation must proceed

pursuant to the provisions of the Business Corporations Act.

Under the Companies Act, which will continue to apply to "not-for-profit" companies, a court appointed liquidator has the power to perform the following duties:

- (i) sell the real and personal property of the corporation either publicly or privately and transfer it either wholly or in parcels, and
- (ii) do all acts and execute all deeds, receipts, and other documents in the name and on behalf of the company and use the company's seal when necessary.

The above actions must have court sanction unless the order appointing the liquidator specifically provides that the liquidator may exercise the powers without further sanction or intervention of the court. (9)

When a company is being wound up voluntarily, a liquidator is appointed by the company for the purpose of winding up its affairs and distributing its assets. Such a liquidator may exercise all the powers given to a court appointed liquidator without the sanction of the court. (10)

Provision is also made for a voluntary winding-up to be subject to the supervision of the court. (11) Subject to any restrictions imposed by the court, the liquidator may, without approval or intervention of the court, exercise all powers in the same manner as if the company was being wound up voluntarily without court supervision (12) and the liquidator has the same powers as if he was appointed by the company. (13)

4. Winding-up and Restructuring Act (Canada)

Companies incorporated under federal statutes must be wound up or liquidated pursuant to the provisions of the Winding-Up and Restructuring Act. (14) A liquidator may be appointed by the Court of Queen's Bench of Alberta or by the appropriate superior court in another province. A certified copy of the order issued by the clerk of the court granting the order may be accepted for registration. (15) A liquidator has the power, with the approval of the court, to perform, amongst other things, the following duties:

- (i) carry on the business of the company so far as is necessary to the beneficial winding-up of the company,
- (ii) sell the real and personal property of the company by public auction or private sale and transfer the same, and
- (iii) do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose use, when necessary, the seal of the company. (16)

The Winding-up and Restructuring Act makes provision for the appointment of a provisional liquidator once a petition for winding-up has been presented and before the first appointment of a liquidator. The court may limit and restrict his powers. A further court order is made to appoint the permanent liquidator. (17)

REGISTRATION PROCEDURE

1. **Court-Appointed Liquidator** - If a court order appointing a liquidator is presented for registration without specific legal descriptions for the land in which the corporation has an interest, it should be recorded in the reference index. If legal descriptions are provided, the order is recorded in the reference index and a memorandum of its registration is endorsed against the relevant certificate(s) of title.

The interest of the corporation is not transmitted into the name of the liquidator. (18)
The memorandum is not carried forward when the interest is transferred by the liquidator.

2. If a court order appointing a liquidator is presented for registration with a specific instrument, it is given a separate registration number and a notation of the number should be made on the instrument beside the signature of the liquidator. The registration particulars may be referred to for any future registrations by the liquidator pursuant to the court order.

3. The terms of the order must be examined to determine whether compliance with section 191 of the Land Titles Act is required. When the immediate effect of the order is not to cancel a certificate of title or terminate an interest in land, but the order may ultimately result in these circumstances, appropriate evidence under section 191 is required.

4. A registered order should be examined whenever documents are submitted by the liquidator to ensure that they are in accordance with the terms of the order.

5. Where a liquidator is executing an instrument pursuant to a court appointment, the following methods of execution are acceptable:

- a) under the seal of the corporation being wound-up with the signature of either
 - (i) the liquidator where he is an individual, or
 - (ii) an officer or director of a corporate liquidator
- b) under the signature of an individual liquidator who has his signature attested to;
- c) under the seal of the corporate liquidator with the signature of an officer or director; or
- d) under the signature of an officer or director of the corporate liquidator who has his signature attested to and completes a corporate signing authority affidavit pursuant to section 161 of the Land Titles Act. See procedures under [AFF-1](#), [AFF-2](#) and [COR-1](#) with respect to attestation requirements.

6. If a liquidator signs under the corporate seal of the corporation being wound-up without any reference to a court order, it is presumed that he is acting in circumstances which do not require court sanction and no verification of his power is required. If the liquidator is a corporation, the corporate seal of the liquidator may or may not be affixed as well. If the seal of the corporation being wound-up is not used, a certified copy of the court order appointing the liquidator must be presented with the instrument submitted for registration or the land titles registration number of the previously registered order

must be provided.

STATUTE AND CASE REFERENCES

1. s. 212, Business Corporations Act, R.S.A. 2000, c. B-9
2. s. 214 and 242(3)(n), Business Corporations Act
3. s. 223(1), Business Corporations Act
4. s. 207, Business Corporations Act
5. s. 35, Societies Act, R.S.A. 2000, c. S-14
6. s. 33, Societies Act
7. s. 240, 243, 257, 263, 277, 280 and 281, Companies Act, R.S.A. 2000, c. C-21
8. s. 273, Business Corporations Act
9. s. 243(1) and (2), Companies Act
10. s. 263(1), Companies Act
11. s. 277, Companies Act
12. s. 281(1), Companies Act
13. s. 280(2), Companies Act
14. s. 6, Winding-up and Restructuring Act, R.S. 1985, c. W-11 (Canada)
15. see s. 2, Winding-up and Restructuring Act for definition of "court", s. 127 and 128 of the Winding-up and Restructuring Act provide for enforcement of an order upon production of a certified copy of the order.
16. s. 35, Winding-up and Restructuring Act
17. s. 28, Winding-up and Restructuring Act
18. *Re The Land Titles Act, Yorkton Gas Company Limited's Case* [1918] 3 W.W.R. 15 (Sask. Master of Titles)