

**BACKGROUND**

The Civil Enforcement Act came into force January 1, 1996. The legislation allows creditors access to a central repository, by registering money judgments in the Personal Property Registry. Judicial sheriff districts were replaced by Civil Enforcement Agencies. These agencies have the authority to effect seizures previously performed by the sheriffs office. Writs of enforcement are issued by the Clerk of the Court.

A writ of execution that did not expire as of December 31, 1995 is deemed a writ of enforcement and is in effect for the duration of the judgment once it is attached to a certificate of title.(1) Writs bind land at the time of endorsement on a certificate of title.(2) A new Creditor's Statement of Debtor's Land is required each time to direct the Registrar to endorse a memorandum of a previously registered instrument against additional lands. If reference is made in the Creditor's Statement to the previous Land Titles registration number assigned to the instrument, a photocopy of the instrument must be attached in support of the Creditor's Statement. It is not necessary to compare the attached photocopy with the instrument that is on file at the Land Titles Office if a review of the photocopied instrument indicates that it is in registrable form other than the fact that it is a photocopy.

**CREDITOR'S STATEMENT**

All writs or other registrable instruments that charge generally or bind in the same manner as a writ must be accompanied by a Creditor's Statement of Debtor's Land (3) (FORM S).

**EXAMINATION PROCEDURE**

1. All of the creditor's names must be entered. If only one of the creditors is completing the Creditor's Statement that creditor should sign as agent for the others.
2. Name of debtor (only the debtor as shown on the Creditor's Statement). The debtor's name must be consistent with the instrument annexed.
3. Identify the DEBTOR's interest in land. The interest does not have to be as a registered owner or owner of an instrument. However, the interest defined must be accurate: fee simple interest - the debtor must be registered owner, joint tenant is unacceptable, as this is not an interest but rather a tenancy.

4. The Creditor's Statement must be signed by the creditor or agent for the creditor. If two Creditor's Statements are received for the same land with one copy of the registrable writ, attach both to the writ and register as one document.

If two Creditor's Statements are received for different lands with one writ, make a photocopy of the writ and register twice referencing the registration number for the original writ.

## **WRITS OF ENFORCEMENT**

### **REGISTRATION PROCEDURE**

1. Must have the original filed stamp with the original Clerk of the Court "inked signature stamp". Photocopies must be certified by the Clerk of the Court (except for Federal writs of seizure and sale, formerly writs of FiFa, which will be sealed by Revenue Canada). Fax filed writs and discharges are acceptable.
2. Must have an action number.
3. Must provide a full given name and surname of the debtor.
4. Must provide a complete address including postal code for debtor and creditor.
5. Must be attached to a Creditor's Statement.
6. A writ of enforcement may be registered against Non-Patent land.
7. A writ may be filed by an individual, corporation, partnership or trade name.
8. A writ may not be registered against an Irrigation District.(4)

### **Fees**

[Tariff item 6](#) is charged for the initial registration of the writ (based on original judgment amount shown on writ). If an affidavit for reduced fees is submitted when additional lands are encumbered, nominal fees will be assessed.

Whenever a memorandum of an instrument is endorsed on a certificate of title, a copy of the Creditor's Statement with the notice label attached must be sent by mail to:

- a) The registered owner of the land at the address on the title; and
- b) The debtor, if the debtor is not the registered owner, at the address provided in the Creditor's Statement.(5)

## **ASSIGNMENT OF WRIT**

1. A complete or partial transfer (assignment) of writ is acceptable for registration. An assignment of the judgment on which the writ is based or court certified copy of the assignment may also be registered as a transfer of writ. The registration number of the writ and a complete address including postal code must be provided for the new creditor (assignee).
2. The document must be executed by the enforcement creditor and have the usual proof of execution.
3. The assignment is done using the TFIN code.
4. [Tariff item 11\(6\)](#) is charged.

## **Postponement of a Writ of Enforcement**

A writ can be postponed to a subsequent registered instrument in the same manner as any other instrument is postponed.

## **Amendment of a Writ of Enforcement**

The Clerk of the Court may authorize the correction of an incorrect action, number or amount. The instrument is registered as an amendment (AMEW).

## **DISCHARGE**

A writ may be discharged against all or some of the land bound by the writ upon production of:

- a) A judge's order (requires section 191, Land Titles Act compliance); or
- b) Evidence from the clerk of the court showing the expiration, satisfaction or withdrawal of the writ; or
- c) A discharge executed by the enforcement creditor (attestation requirements apply); [\(Form 21.1\)](#) or
- d) If the creditor is a partnership the affidavit should be amended to reflect that the signatory is, in fact, one of the partners. [\(Form 21.1\)](#)

## **Lapse of a Writ**

A writ may be lapsed on application made after the expiration of 60 days after a notice to take proceedings in the prescribed form [\(Form 1.1\)](#) has been served on the enforcement creditor at the creditor's address shown on the writ or to the most recent address provided by either the creditor or their solicitor in a registered change of address document. A notice sent via facsimile is not an acceptable method for service. Follow the procedure outlined in [CAV-2](#), item B. - LAPSE OF CAVEAT.

## Expiration of a Writ

Writs that expired from the General Register prior to January 1, 1996 can be expired from titles that they are endorsed against. Writs subsequent to January 1, 1996 cannot be expired as they remain in force for the duration of the judgment.

## ATTACHMENT ORDERS

Section 22(b) of the Civil Enforcement Act provides for the registration of an attachment order prior to receiving a money judgment. These are certified court orders and can actually restrict the registered owner(s) ability to deal with the land. These orders must be reviewed carefully to ensure that if they do suspend the owner(s) rights to deal with the property they are endorsed on the title appropriately. Use PF16 to include the following particulars:

- (a) Attachment Order (does NOT restrict dealings)  
"ATTACHMENT ORDER"
- (b) Attachment Order (restricts dealings)  
"ATTACHMENT ORDER RESTRICTING DEALINGS".

Although Attachment Orders usually contain a legal description, the Court may direct that an Attachment Order applies to all or specific exigible property of the defendant, which would include real property. It is acceptable in this case for the lands to be identified either in a Creditor's Statement of Debtor's Land or in the Customer's Special Instruction area of an Electronic Document Registration Request Form (E.D.R.R.) (6) (7)

There are also Attachment Orders that extend the expiry date of an Attachment Order that has been previously registered against the Certificate of Title. Enter the registration number of the attachment order in the effected instrument number field and use PF16 to include the following particulars:

"EXTENDING ATTACHMENT ORDER TO (DATE)"

As an attachment order does not terminate an interest, the order does not require compliance with section 191 of the Land Titles Act.

## Registration Procedure

A writ of enforcement issued in respect of the same proceedings in which the attachment order was granted, when registered in the Land Titles Office, has the same priority as the original order.(8)

When the registrant advises that section 23 of the Civil Enforcement Act applies to a writ being registered:

- a) The writ must be from the same action as the attachment order,
- b) The writ must be in registrable form (including a Creditor's Statement), and

c) Require an Affidavit from the creditor / claimant or their solicitor that the attachment order has not expired.(9)

This is a two-part registration:

- a) When the writ is endorsed it must include particulars indicating that the writ maintains the same priority as the attachment order,
- b) The attachment order is then discharged.

### **Discharge of Attachment Order**

Although the Civil Enforcement Act provides for the termination of an Attachment Order (10), it can be removed from the title when:

- a) a Certificate of Dismissal or Discontinuance issued by the Clerk of the Court, or
  - b) a Court Order directing the Registrar to discharge the order
- is submitted for registration. The Certificate of Dismissal or Discontinuance is registered as a discharge. Compliance with section 191 of the Land Titles Act is not required for the Court Order.

### **WRITS OF ENFORCEMENT IN RESPECT OF A FIXTURE/CROP**

The Civil Enforcement Act provides for fixtures/crops to be bound by a writ of enforcement. (11) The notice of the writ may be registered at Land Titles against the certificate of title, if:

- a) The notice re fixtures is registered against the title in question, and
- b) The information on the writ is consistent with the notice and the usual registration requirements for a writ are met. Use NOTW for the system code, in favor of, enforcement creditor's name and address, compliance with Section 27 of the Land Titles Act is not required. [Tariff item 11\(6\)](#) is charged for the notice.

### **SEIZURES BY A CIVIL ENFORCEMENT AGENCY**

#### **Seizure of Mortgage**

The writ must be registered against the land to which the mortgage is registered. The civil enforcement agency must register the notice of seizure. The agency serves notice to the person liable to pay the obligation and after being served the registered owner would make payment to the agency.(12)

#### **Seizure of Fixtures**

The certificate of title to which the fixture is affixed must be endorsed with a notice of writ, re crop/fixture. The agency must serve notice to all registered interest holders on the certificate of title. The notice should contain the amount owing under the writ and a description of the seized fixture and of the land to which it is affixed.(13)

However, once a writ is registered against title, there is a provision for a caveat to be filed re the currently registered writ; pursuant to sec. 70 of the Civil Enforcement Act a notice of intention to sell must be given prior to the sale. This is a caveatable interest.

## **Transfer of Land**

A certificate of title subject to seizure must have the writ and a caveat re notice of intention to sell under the Civil Enforcement Act (14) registered against it. The civil enforcement agency must submit the transfer of land with a certificate certifying that the agency has complied with Part 7 of the Civil Enforcement Act. The certificate must state that:

- (i) A notice of objection to the sale was not served on the agency within the period prescribed under section 74; or
  - (ii) A notice of objection to the sale was served on the agency within the period of time prescribed under section 74 and that the court has authorized the sale of land.
- a) Usual attestation requirements must be met, i.e., corporate seal, power of attorney. See procedure under [POA-1](#) for the requirements with respect to use of a power of attorney.
  - b) Dower compliance is not required.
  - c) Compliance with section 120 of the Land Titles Act is not required in the case of an estate transfer.

A transfer executed by the civil enforcement agency would issue free of all writs against the debtor's interest. All other instruments would carry forward unless specifically addressed by a court order.

A court order to transfer title pursuant to sections 74(3)(b), 74(4)(c) or 75(1)(b), when submitted with a transfer, requires compliance with section 191 of the Land Titles Act.

## **NAME SEARCHES**

1. The primary purpose of the name search facility is to enable creditors and other parties, who previously would have been able to register an instrument in the General Register, to determine what interests in land are owned by the person affected by the instrument. The instrument can then be registered directly against the appropriate certificate(s) of title. The types of instruments, which can be accepted in support of an application, are:

- Writs of enforcement, extent and federal writs of seizure and sale,
- Transfers of writs and assignments of judgments,
- Workers' Compensation Board certified statements, judgments and orders for maintenance or alimony pursuant to the Domestic Relations Act, the Divorce Act or the Parentage and Maintenance Act,
- Orders and agreements pursuant to the Maintenance Enforcement Act, Maintenance and Recovery Act or the Income Support Recovery Act;

- Orders pursuant to the Employment Standards Code,
- Orders pursuant to the Public Utilities Board Act,
- Certificates of lis pendens pursuant to the Matrimonial Property Act,
- Certificates of mental incompetency by the Public Trustee,
- Trusteeship orders pursuant to the Dependent Adults Act.

2. A person requesting a name search must fulfil at least one of the following criteria before the Registrar may conduct the name search:

- a) The person requesting the name search is the person whose name is to be searched,
- b) The person requesting the name search has been given a written consent for the name search by the person whose name is to be searched,
- c) The person requesting the name search has a registrable or registered instrument and is searching the name of the person
  - (i) Who is specified in the instrument; and
  - (ii) Whose interests in land the instrument is intended to be registered or is registered against or whose interests in land are entitled to be dealt with,
- d) The person requesting the name search is a police officer carrying out duties as a police officer,
- e) The person requesting the name search is authorized or otherwise entitled pursuant to an order of a court to have the name search conducted;
- f) The person requesting the name search is doing so on behalf of the Crown or with respect to carrying out duties or functions on behalf of the Crown,
- g) The person requesting the name search is doing so as the agent for a representative of a person who meets the criteria for requesting a name search under items (b) or (c).
- h) The person requesting the name search is doing so on behalf of the Real Estate Council of Alberta for the purposes of an investigation under Section 38 of the Real Estate Act. (15)

3. An Application for Name Search form (16) (FORM A) must be completed and submitted with a Service Request form. The service code will be ANAM (ALTA Name Search). Where a person is searching their own name, the person must sign the application and submit proof of identity. Where the application is in respect of a registrable or registered instrument, the application may be signed by an agent acting on behalf of the applicant. A photocopy of the registrable instrument which has either been certified or stamped fax filed by the clerk of the court will be acceptable to be attached in support of the Name Search Application. The given names being searched must be consistent with the names in the instrument but need not be identical. An application may be submitted by FAX.

4. For searches against individuals, the search program will retrieve names on the basis of the following rules:

- a) The surnames will be identical. Brown and Browne are not identical.
- b) At least one given name should be identical to, or a commonly used variation of, any given name in the searched name. For example, Stanley Green will be retrieved for

Stan Green and Elizabeth Schultz for Beth Schultz. Stanley Green will not be retrieved for S. John Green, as initials are not considered in meeting this requirement.

c) Where each name contains the same number of given names, and for this purpose an initial is considered to be a given name, all of the given names in one name should be identical to, or commonly used variations of, the given names in the searched name. An initial and a given name are considered to be commonly used variations of each other only where the initial is the same as the first letter of the given name. For example, Mary Louise Smith will be retrieved for Mary L. Smith but not for Mary Lynn Smith. Mary Elizabeth Smith will not be retrieved for Mary B. Smith.

d) Where a name contains fewer given names than the searched name, or vice versa, and for this purpose as well an initial is considered to be a given name, the given names in the name with the fewer given names should be identical to, or commonly used variations of, any of the given names in the other name. For example, Joseph Black or Jack Black will be retrieved for John Joseph Black, but John J. Black will not be retrieved for John William S. Black.

The search program cannot accommodate more than 3 given names, in one search. However, a separate search could be conducted using a different set of 3 given names.

5. For searches against corporations, the search program is based on compression routines that are applied to corporate names when they are entered into the database.

6. For searches against both individuals and corporations, the search results can include names that are not the same individual or corporation that is being searched. It is the applicant's responsibility to determine which search results are appropriate for the purpose of registering an instrument against specific certificate(s) of title.

7. There are four types of search options:

(i) Current registered owners - this option searches the names of parties shown on the "owners" field on active certificates of title (i.e., the registered owners of fee simple, leasehold or life estates for which a certificate of title has been issued).

(ii) Historical registered owners - this option searches the names of parties shown in the "owners" field on certificates of title which have been cancelled on the ALTA system (i.e., no earlier than October, 1988) and on active certificates of title where the name has been changed (i.e., the name previous to the name change).

(iii) Current document parties/all - this option searches the names of parties shown in the particulars for all instruments and caveats endorsed on active certificates of title.

(iv) Current document parties/document code - this option searches the names of parties shown in the particulars for a specific document type endorsed on active certificates of title.

8. When a search is conducted, the first result is a screen indicating the number of matches found in the database. The screen gives the different names found and the number of titles where each name appears.



9. If there are no matches found, a search result will be automatically generated and the fee is \$2.

10. If there are matches found, a summary list is provided which shows additional information for all the matches found (e.g., title number, estate/rights, registration date, short legal and LINC). A fee of \$12 is charged for the summary list. An extra \$1 is charged if the summary list is returned by FAX.

11. The application and attachment are retained in a file organized alphabetically by debtor surname so that authorization for the name search request can be established, if necessary, at a later date.

## **STATUTES AND CASE REFERENCES**

Statute references are to the Civil Enforcement Act, S.A. 2000, c. C-15, unless otherwise indicated.

1. s. 122(10), Land Titles Act
2. s. 33(1)(b)
3. s. 122(3), Land Titles Act
4. s. 178, Irrigation District Act
5. s. 122(6), Land Titles Act
6. s. 1(1)(u), 1(1)(II)(ii) and 16(e)
7. s. 17(3)(a)(i)
8. s. 23(3)
9. s. 23(3)
10. s. 19(1)
11. s. 52 and 53
12. s. 51
13. s. 53
14. s. 46(2), Civil Enforcement Regulation
15. Appendix III, Name Search Regulation
16. s. 17, Land Titles Act