

Removal and Sale

Pursuant to section 48 of the Civil Enforcement Act, upon receipt of instructions from the instructing party, personal property may be sold to pay the debt owed to enforcement creditors by the enforcement debtor.

Letter of Instructions

You will receive a letter of instructions from the instructing party.

Objections

Pursuant to section 46 of the Civil Enforcement Act, the debtor has 15 days from the day the seizure documents were served to object to the seizure.

On being served with a Notice of Objection to Seizure of Personal Property, the Agency shall not sell or otherwise dispose of the seized property unless permitted to do so by the Court.

s.46(2) Civil Enforcement Act

Searches

If an objection has not been filed and the 15 days have expired, proceed in accordance with instructions received. If instructed to sell:

- (1) Conduct searches: (See examples in section 4 - Searches)

distribution seizure ("DS") search at Personal Property Registry - it is extremely important to determine the existence of any prior interests, such as Workers' Compensation Board, prior security interests, etc., because firstly, the costs priority given under section 99(3) of the *Civil Enforcement Act* does not apply as against these interests; and, secondly, there is no right to sell property unless there is equity existing after these priority interests are paid out. Check also to see if a stay has been registered. If a stay has been registered, do not proceed with removal or sale until ordered by the court to do so.

Serial Number Search at Personal Property Registry - to ascertain if there are any liens which may affect the economical feasibility of proceeding to sale.

- (2) Review the searches. If the searches reveal a priority claim contact the priority creditor to determine the status (including the outstanding balance of the debt) of the claim. Since there may be no equity to be realized by the instructing creditor, discuss the search results with the instructing party and await further instructions.
- (3) Review your file to determine if removal is required, e.g. if seized personal property has previously been left on a Bailee's Undertaking.

Required Documents for Bailiff to Remove Property

If the personal property is to be removed, assign the file to a Bailiff. Include the following documents:

- (1) Letter of instructions from the instructing party
- (2) Copy of warrant that initiated the seizure, or a copy of the court order, if applicable
- (3) Copy of Notice of Seizure of Personal Property
- (4) Copy of Bailee's Undertaking, if applicable
- (5) Copy of the previous Bailiff's Report, and any notes the Bailiff made at the time of seizure
- (6) A new Bailiff's Report
- (7) A new Bailee's Undertaking, if required, i.e. for the signature of a representative of the storage / sale facility
- (8) Other documents as required (i.e. letter of instructions from Agency, letter to relieve bailee of his undertaking).

Bailiff Unable to Remove Property

The Bailiff may be unable to take possession of the property for a variety of reasons including:

- (1) Bailee no longer has the property in their possession
- (2) Bailee has disposed of the property
- (3) Bailee refuses to turn over the property
- (4) Debtor or bailee may state that a possessory lien is in effect.

Since removal will prejudice the lawful rights of the party claiming the lien, property subject to a possessory lien may not be removed except pursuant to a court order specifically addressing the possessory lien. Advise the instructing party of the lien.

Section 13(2)(k) of the Civil Enforcement Act provides that a court may hold the bailee in civil contempt if the bailee does not deliver personal property that is under seizure within a reasonable time after being required to do so by the Bailiff or the Agency. Advise the instructing party of the situation. The instructing party may take steps to initiate a court application.

Return of Bailiff's Report

- * Review the completed Bailiff's Report and accompanying documents to determine if removal was effected. Also review this Report for any errors, omissions, or irregularities.

Removal NOT Effected

- * If removal was not effected, forward a copy of the Report to the instructing party and await further instructions.

Removal Effected

- * If removal was effected and if the Report and applicable documents are in order, forward a copy of the Report to the instructing party along with a copy of the new Bailee's Undertaking, if applicable. Proceed to sale if instructed to do so.

Sale

Section 48 of the Civil Enforcement Act governs the sale of seized personal property. Sale must proceed as soon after receipt of instructions as is practicable and by a method that is commercially reasonable. You may, however, delay the sale if it is commercially reasonable to do so, e.g. a delay that would result in a significantly higher purchase price.

Notice of Sale

The Agency must prepare a Civil Enforcement Agency Sale Notice advising of the method of the sale being used and serve same on the instructing party and enforcement debtor at least 15 days before the sale date. (See example of form in this section).

Private Sale

A private sale may be used when commercially reasonable. A private sale to an enforcement creditor may only be conducted:

- if a notice of the terms of sale is given at least 15 days before the day of sale to the enforcement debtor and all other enforcement creditors having related writs at the time that notice was given,
- if, within 15 days of service of the notice, neither the enforcement debtor nor any of the enforcement creditors having related writs, serve on the Agency a Notice of Objection to the sale.

If an objection to the proposed private sale is served on an Agency, a court order must be obtained before the private sale can proceed.

Sale of Perishable Property, Dated Property and Property Rapidly Deteriorating in Value

On the basis of commercial reasonableness, this type of seized personal property can be sold without a court order, without notice to any party and within the 15 day objection period.

Sale of Liquor

The Gaming and Liquor Act states that the Alberta Gaming and Liquor Commission Board may authorize a Civil Enforcement Agency to sell liquor that has been seized.

Sale of Mobile Homes

The instructing party must ensure vacant possession is obtained prior to removal or sale of a mobile home that is under seizure.

s. 55 Civil Enforcement Act

Sale of Agricultural Products

Growing crops cannot be sold until they have been harvested. Check to see if you received the Grain Delivery Permit Book from the debtor as the book may enhance the return from the sale of the seized grain; otherwise, seized grain may have to be sold as feed.

Section 52(c) of the Civil Enforcement Act imposes rights and duties regarding sale of seized agricultural products.

Sale of Secured Interest

If the Agency is instructed to sell property that has been seized pursuant to the Personal Property Security Act then subject to the provisions of Part 2 of the Civil Enforcement Act, the Agency must conduct the sale in accordance with the provisions set out in the Personal Property Security Act.

Finalizing Sale

The person who buys the property obtains only the interest of the enforcement debtor in the property and of any other person with an interest in the property who has consented, and the sale does not adversely affect the rights or interest of any other person in the property.

If requested, you may provide the purchaser with a Bill of Sale. (See example of form in this section).

The Agency must register a report of sale at Personal Property Registry within 10 days from the date of sale.

The funds realized from sale must be distributed in accordance with the Civil Enforcement Act. Refer to section 11- Distribution.

Sale of Land

Pursuant to Part 7 of the Civil Enforcement Act (sections 67-76), and Part 3 of the Civil Enforcement Regulation, an enforcement creditor may sell land owned by the debtor. There is no need to take any step to seize the land first; however, under s. 26(b) of the Civil Enforcement Act, it is necessary for the instructing creditor's Writ of Enforcement to be filed both at the Personal Property Registry and against the particular property owned by the debtor at the Land Titles Office.

Please note that the sale of land is a complicated matter and this Agency Manual does not purport to contain all applicable information. Prior to proceeding, it would be advisable to carefully review the pertinent statutory and regulatory provisions, and consult legal counsel.

Letter of Instructions

Instructions must be in writing to sell land owned by the debtor. Before proceeding, the Agency may demand from the creditor any relevant documents or information it feels it needs to proceed with the sale of land.

s.68 Civil Enforcement Act

Searches

Conduct searches at the Personal Property Registry and Land Titles Office to ensure that the Writ of Enforcement is properly registered and to see if another agency has given notice of intention to sell the same land. If another agency's notice of intention to sell is still in effect then, under section 70(2), you cannot proceed.

Notice of Intention to Sell Land

Prepare a notice of intention to sell the land.

s. 70 Civil Enforcement Act

The Notice of Intention must contain:

- (1) The name of the enforcement debtor whose land is the subject of sale proceedings;
- (2) The name and address for service, including the telecopier number of the Agency that is carrying out the sale proceedings;
- (3) The name and address for service of the instructing creditor;
- (4) The Judicial District and action number in which the instructing creditor's writ was issued;
- (5) The legal description of the land that is the subject of sale proceedings;
- (6) The nature of the enforcement debtor's interest in the land, insofar as it is known to the instructing creditor;
- (7) A statement that the Agency has been instructed by the instructing creditor to sell the enforcement debtor's interest in the land described in the notice;
- (8) A statement that, unless the court otherwise orders, the Agency cannot offer the land for sale until the expiration of a 180 day waiting period after the notice has been served on the persons who are required to be served with the notice;
- (9) A statement that if the debtor's principal residence is located on the land, the land is likely to be exempt, in whole or in part, from sale under writ proceedings;
- (10) A statement that if the enforcement debtor claims that the land is exempt in whole or in part from sale under writ proceedings, the enforcement debtor must serve a written claim on the Agency before the expiration of the waiting period.

If growing crops are to be sold as part of the sale of land, the notice of intention must state that the crops are to be sold along with the land.

s. 71 Civil Enforcement Act

Notice of Intention to Sell Land

Serve the Notice of Intention on:

- (1) The enforcement debtor;
- (2) Every registered owner of the property; and
- (3) Every subordinate claimant whose claim is recorded on the certificate of title for the land.

If you have any doubts as to whether a claim is subordinate, you should consult legal counsel.

The Agency must file a caveat against the certificate of title to the land setting out the notice of intention to sell the land.

Diarize the file for 150 days. Within this period, and the 30 days following it the debtor may serve a written claim on the Agency claiming an exemption.

s.72 Civil Enforcement Act

Once the waiting period of 180 days has expired, and no written claim of exemption has been received by the Agency then proceed to register a report of seizure on PERPIS. In the particulars section indicate that the registration relates to a sale of land. This will enable the agency to register the sale details and distribution of the funds on PERPIS.

Notice of Method of Sale

Prepare a notice of the method of sale.

s. 74 Civil Enforcement Act

The notice of the method of sale must contain:

- (1) The name of the enforcement debtor whose land is the subject of sale proceedings;
- (2) The name and address for service, including the telecopier number, of the Agency that is carrying out the sale proceedings;
- (3) The name and address for service of the instructing creditor;
- (4) The Judicial District and action number in which the instructing creditor's writ was issued;
- (5) The legal description of the land that is the subject of sale proceedings;
- (6) The nature of the enforcement debtor's interest in the land, insofar as it is known to the instructing creditor;
- (7) The proposed method of sale;
- (8) If the proposed method of sale is by listing with a real estate agent,
 - (a) the name and affiliation of the listing agent;
 - (b) the price at which the land is to be listed;
 - (c) whether the listing is to be exclusive or multiple;
 - (d) the duration of the listing; and
 - (e) the amount of or method of calculating the real estate agent's commission;
- (9) If the proposed method of sale is by tender,
 - (a) the method of publicizing the invitation for tenders; and
 - (b) the terms of the invitation for tenders;

- (10) If the proposed method of sale is by auction,
- (a) the name of the auction agency;
 - (b) the terms upon which it is proposed to offer the land for auction;
and
 - (c) the amount of or method of calculating the auction agency's commission.

This notice of method of sale may set out a minimum price. If it does, the notice must state that any person who objects to the land being sold for the proposed minimum price must serve a Notice of Objection within 30 days of being served with the notice of method of sale.

s. 74(2), s.74(3)(a) Civil Enforcement Act

Serve the notice of the method of sale on:

- (1) The enforcement debtor;
- (2) Every registered owner; and
- (3) Every subordinate claimant whose claim is recorded on the certificate of title for the land.

If a notice of method of sale does not set out a minimum price, upon entering into an agreement to sell the land, the Agency must serve notice of the terms of sale on all persons who have been served with a notice of the method of sale and, if the instructing creditor is the buyer, every other related writ holder.

s. 74(4)(a) Civil Enforcement Act

The notice of the terms of sale must include a provision that anyone who objects to the proposed sale must serve a notice of objection on the Agency within 15 days from the day of being served with the notice of the terms of sale.

s. 74(4)(b) Civil Enforcement Act

If an objection is served on the Agency, the Agency shall not complete the sale unless authorized to do so by the Court.

s. 74(4)(c) Civil Enforcement Act

If no notice of objection is served, the Agency may proceed to complete the sale, and register the sale details and distribution of funds on PERPIS.

s. 74(4)(d) Civil Enforcement Act

Notice of Objection

If a notice of objection is served during the 180 day waiting period, the Agency may not sell the land without a court order.

s. 74(3)(b) Civil Enforcement Act

If no notice of objection is served, the Agency may, without a court order, complete the sale of land for a price that equals or exceeds the proposed minimum price.

s. 74(3)(c) Civil Enforcement Act

Transfer of Land

Complete a standard Land Titles Office Transfer of Land form, along with a certificate confirming that the Agency has complied with the requirements of the Civil Enforcement Act and Regulations, and that no Notice of Objection was served or that a notice of objection was served on the Agency and the court has authorized the sale of the land.

s. 75(1) Civil Enforcement Act

The land will be registered by the Registrar of Land Titles free and clear of all Writs of Execution, but subject to any other encumbrances or interests that were registered against the debtor's land unless there is a court order to the contrary.

s. 75(1) Civil Enforcement Act

Register Sale of Land

Under the provisions of the Civil Enforcement Regulation, the Agency must register the details of the sale at Personal Property Registry within 10 days of the sale.

Liquidating Securities

The seizure and sale of securities is a complicated matter and this manual does not purport to contain all applicable information. Prior to proceeding, it would be advisable to carefully review the pertinent statutory and regulatory provisions, and consult legal counsel.

Section 61(1) of the Civil Enforcement Act authorizes an Agency to liquidate a seized security by any means that the nature of the security permits.

Market Securities

Normally, the most appropriate method of sale of market securities will be to sell them through a securities market. However, where the security is a unit in a mutual fund, the most appropriate method of liquidation will be to require the issuer to redeem it. Further, under section 48 of the Civil Enforcement Act, the Agency has the right to effect an expeditious sale of a market security, without order of the court, and without waiting the usual 15 days for a Notice of Objection to be filed; the proceeds of such sale then stand in the place of the market security. As with all sales of seized personal property, there is a requirement on the Agency to act in a commercially reasonable manner.

Restricted Transfer Shares

Where a company's incorporating documents restrict or prohibit the transfer of its shares, with certain exceptions, such restrictions do not apply to an Agency. Upon presentation of a transfer document duly executed by the Agency, the issuer must register the transfer.

Shares Which Are Not Market Securities

- (1) Serve a notice of intended sale, setting out the proposed method of sale, on the issuer, all registered shareholders of the issuer (if there are not more than 15), and any other persons who, to the knowledge of the Agency, would have a preferential right to acquire the seized shares on a voluntary sale by the enforcement debtor.
- (2) Follow as closely as possible any procedure that the enforcement debtor would follow to sell the seized shares, and, in particular, provide the issuer and other shareholders a reasonable opportunity to redeem or buy the shares before offering them for sale to anyone else, unless this would prevent the shares from being sold at all or from being sold within a reasonable time or for a reasonable price.
- (3) Wait 15 days for service of the notice of intended sale, during which time anyone who is unhappy with the method of sale proposed by the Agency may apply to court.

CIVIL ENFORCEMENT AGENCY SALE

TAKE NOTICE that by virtue of a seizure made against

Joe Debtor in accordance with the Civil Enforcement Act, the
Name of Debtor following personal property

1	1979 Camaro. Red. S/N 1GM54C761M0G59
1	Kenwood Stereo Receiver. S/N 11897
List personal property to be sold	

shall be sold by:

Method Public Auction

Date March 15, 1996

Time 7:00 p.m.

Location Acme Auction, 23 Sale Road, Edmonton

Dated at Edmonton Alberta, on February 20, 1996

<i>J.B. Owner</i>	I.B. Owner
Authorized Signature We Seize Ltd.	Print Name 00-00000
Name of Civil Enforcement Agency 406 Replevin Road	Civil Enforcement Agency File No. Edmonton
Address of Civil Enforcement Agency Alberta T5J 2N5	City 422-2696
Province	Postal Code
	Telephone No. 422-7777
	Fax No.

Oct 1/95

00-0000
Civil Enforcement Agency File Number

Bill of Sale

Bill of Sale

THIS IS TO CERTIFY THAT I have this day sold to I Bought It

3333 - 71 Avenue, Edmonton 477-3344
Address of Purchaser Telephone Number

the following: 1979 Camaro, Red, S/N 1GM54C761M0G59
Clearly identify personal property, including serial numbers

without warranty of title, for the sum of \$ 675.00

The purchaser has acquired only the interest of Joe Debtor
Name of Debtor
the Enforcment Debtor, pursuant to the Civil Enforcement Act.

Dated at Edmonton Alberta on March 15, 1996

Acme Auctioneer Acme Auctioneer
Signature of Selling Agent Print Name

We Seize Ltd.
Name of Civil Enforcment Agency

406 Replevin Road, Edmonton
Address of Civil Enforcement Agency City

Alberta T5J 2N5 422-2696 422-7777
Province Postal Code Telephone Number Fax Number

Oct 1/95

Sale of Land

Confirm Registration

- Personal Property Registry
- Land Titles Office

Confirm that no other agency has given notice of intention to sell and which is still in effect

Notice of Intention to Sell

- File caveat against certificate of title

Wait 180 days (or such lesser time as the Court may order)

- Debtor must claim exemption

