

Extraordinary Situations

This section is intended to present you with an overview of some of the extraordinary situations that you may encounter in the conduct of civil enforcement. You will notice that some of the procedures for these situations are governed by the Civil Enforcement Act and others are pursuant to other provincial or federal legislation. While an attempt has been made to include as many of the known extraordinary situations as possible, you will undoubtedly encounter additional ones. In every situation, you must ensure that you have the legislative authority to carry out the instructions you have received. If in doubt, contact your legal advisor.

Demand on a Third Person

A third person is a person affected by writ proceedings other than the enforcement debtor or an enforcement creditor with a related writ.

This applies to writ proceedings only and situations where there are reasonable grounds to believe that exigible personal property of the enforcement debtor is in the possession or control of a third person.

Pursuant to section 44 Civil Enforcement Act, the Agency may, and if so instructed by the instructing party must, serve a demand on the third person requiring the third person to deliver the property to the Agency or make it available for seizure within 15 days from the day the demand is served on the third person.

Upon the third person being served with the demand, the third person must forthwith deliver the property to the Agency or make arrangements with the Agency for seizure of the property. The third person may advise the Agency that he is not required to comply with the demand namely, that he has a right to retain the property or that he does not have possession of the property.

The Agency must compensate the third person for any expenses reasonably incurred by the third person in complying with the demand.

Seizures on an Indian Reserve

Section 89 of The Indian Act (federal) states that the real and personal property of an Indian or an Indian band situated on an Indian reserve is not subject to seizure or distress with the following exception:

- 89(2) A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller, may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve.

An Indian or an Indian band cannot waive section 89.

A security agreement must contain a Reservation of Title Clause in order for you to lawfully seize property on an Indian reserve. An example of a reservation of title clause is:

The title, ownership and right of property in the vehicle shall not pass to you until all monies payable by you under this contract are fully paid.

If members on a reserve form a company, the company's assets are NOT exempt from seizure.

Review instructions to ensure that the seizure on the Indian reserve is appropriate.

Ensure that the Bailiff is aware that the seizure is on an Indian reserve.

Procedure for Effecting Seizure

The Bailiff should:

- (1) Review instructions to ensure that the seizure on the Indian reserve is appropriate. If satisfied, proceed as instructed. If unclear, review the instructions with the Civil Enforcement Agency.
- (2) Upon attending on the reserve, the Bailiff should identify himself to the band office. Briefly advise one of the band members of your business on the reserve. In some instances, you may be required to attend at the administration office to obtain a permit to allow entry on the reserve. For an example of this refer to Circular #5/97 in Section 16 "Circulars".
- (3) Proceed as instructed.
- (4) Advise the band office of your departure from the reserve.
- (5) Complete the Bailiff's Report. Refer to section 6 - Writ Seizure.

Farm Debt Mediation Act

This federal legislation was designed to provide mediation between farmers and their creditors to resolve financial problems. The Act provides that a farmer who applies under Section 5(1)(a) will have a Stay of Proceedings to prevent creditors from commencing or continuing proceedings for the collection of any debt. There is also a provision that every secured creditor must provide the farmer with a Notice of Intent to Realize on Security and then wait at least 15 business days before taking any action to realize on their security.

The Farm Debt Mediation Act defines "farmer", "farming", and "secured creditor" as:

Farmer means any individual, corporation, cooperative, partnership or other association of persons that is engaged in farming for commercial purposes and that meets any prescribed criteria.

Farming means the production of field-grown crops, cultivated and uncultivated, and horticultural crops, the raising of livestock, poultry and fur-bearing animals; the production of eggs, milk, honey, maple syrup, tobacco, fibre, wood from woodlots and fodder crops; and the production or raising of any other prescribed thing or animal.

Secured creditor means any creditor holding a mortgage, hypothec, pledge, charge, lien, privilege, priority claim, or other security interest on or against the property of a farmer or any part thereof as security for a debt due or accruing due from the farmer; any individual, corporation, cooperative, partnership, or other association of persons with which the farmer has entered into an agreement for sale or hire-purchase or, in the Province of Quebec, leasing, or a conditional sales contract, relating to any property used or occupied by the farmer or to which such an agreement or contract has been assigned; and any bank to which security on the property of the farmer or any part thereof has been given under section 427 of the Bank Act.

Sections 12 and 21 of the Farm Debt Mediation Act state:

12 *Notwithstanding any other law, during any period in which a stay of proceedings is in effect, no creditor of the farmer*

(a) *shall enforce any remedy against the property of the farmer; or*

(b) *shall commence or continue any proceedings or any action, execution or other proceedings, judicial or extra-judicial, for the recovery of a debt, the realization of any security or the taking of any property of the farmer.*

*

21(1) *Every secured creditor who intends to*

(a) *enforce any remedy against the property of a farmer; or*

(b) *commence any proceedings or any action, execution or other proceedings, judicial or extra-judicial, for the recovery of a debt, the realization of any security or the taking of any property of the farmer shall give the farmer written notice of the creditor's intention to do so, and in the notice shall advise the farmer of the right to make an application under section 5.*

*

21(2) *The notice referred to in subsection (1) must be given to the farmer in the prescribed manner at least fifteen business days before the doing of any act described in paragraph (1)(a) or (b).*

Seizure Request Under Security Agreement

When you receive instructions to seize under a security agreement, and the debtor is believed to be a farmer or in a farming operation, the Agency should ensure that the provisions of section 21 of the Farm Debt Mediation Act have been followed. This can be confirmed by the instructing party in the letter of instructions. The Agency may also wish to confirm that the debtor is not protected under a stay of proceedings pursuant to an application made under section 5(1)(a) of the Farm Debt Mediation Act. This can be confirmed by calling the Farm Debt Mediation Service office at 1-800-642-3890.

Seizure Request No Security Agreement

When you receive instructions to seize under a writ or for rent arrears, the farmer does not have to be served in accordance with section 21 of the Farm Debt Mediation Act. However, the Agency may also wish to confirm that the debtor is not protected under a stay of proceedings pursuant to an application made under section 5(1)(a) of the Farm Debt Mediation Act. This can be confirmed by calling the Farm Debt Mediation Service office at 1-800-642-3890.

Effecting Seizure

If there is a stay of proceedings you are not entitled to seize the assets of the farmer. If at the time of seizure the farmer indicates that he is registered on the program, or there is a stay of proceedings under the Farm Debt Mediation Act (federal), have your Civil Enforcement Agency contact the Farm Debt Mediation Service at (780) 495-4764 in Edmonton or toll free 1-800-642-3890 to confirm. If a stay is in place, withdraw and complete your Bailiff's Report. If there is not a stay, proceed with seizure.

Seizure of Firearms

Seizure of firearms may present unusual problems which should be considered by the agency and Bailiff. (For more information see Circular #1/2004 in Section 16 - Circulars.)

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Seizure of Livestock

Seizure and/or removal of livestock may present unusual problems which should be considered by the agency and Bailiff.

As extra costs will be involved in feeding and caring for livestock, explicit instructions should be obtained from the instructing party specifying whether removal is necessary.

Procedure for Effecting Seizure:

The Bailiff should:

- (1) Take a brand inspector along with you to assist in the identification of the brands. (For more information see Circulars #7/2000 and #3/2002 in Section 16 "Circulars").

All brands should be registered with Livestock Identification Services Ltd.

Telephone: (403) 255-2459

FAX: (403) 253-2406

- (2) Effect seizure of the livestock. To effect seizure, you must physically see and count the number of animals being seized. In some cases, that may mean rounding up the animals using specialized resource persons.

- (3) If leaving the seized property with the debtor or other individual, complete a Bailee's Undertaking and have it signed by the responsible person. Refer to section 6 - Writ Seizure.

If removing, ensure that a veterinarian inspects the animals prior to loading. Ensure that proper arrangements for the boarding and care of the animals are made.

If removing seized cattle that do not have a Canadian Cattle Identification Agency approved ear tag, you should contact your agency for further instructions. (For more information see Circulars #5/2001 and #2/2002 Circulars section.)

- * (4) Advise the instructing party of the veterinarian's attendance and the anticipated cost.
- (5) Obtain a report from the veterinarian outlining the specific condition of the animals and any proposed "action" required. Attach to your Bailiff's Report.
- (6) Complete the Bailiff's Report and return the completed documents to the agency. Refer to section 6 - Writ Seizure.

Seizure of Grain

The authority for seizure of grain is derived from the Civil Enforcement Act. A Bailiff may be instructed to seize the following:

- (a) growing crops, or
- (b) grain stored in bins.

Procedure For Effecting Seizure

Growing Crops

The Bailiff should:

- (1) Review instructions, including any land descriptions that have been provided so that you are familiar with both.
- (2) Proceed as instructed.
- * (3) Post a completed Notice of Seizure of Personal Property on each quarter section of land where crops were seized.
- (4) Serve a Notice to Grain Elevator Agents on all grain elevator operators in the area. (See example of form in this section).
- (5) Every effort should be made to obtain the Grain Delivery Permit Book from the debtor voluntarily even though it cannot be seized or replevied. It should be explained to the debtor that the Grain Delivery Permit Book will enhance the return from the sale of the seized grain; otherwise the seized grain may have to be sold as feed and not provide the best return for the creditor or the debtor. Upon receipt of the Grain Delivery Permit Book, place it in the care of the Civil Enforcement Agency.
- (6) A Bailee's Undertaking should be completed and signed by a responsible person. (Refer to section 6 - Writ Seizure).
- (7) Complete the Bailiff's Report and return the completed documents to the agency. (Refer to section 6 - Writ Seizure).

Grain in Bin

The Bailiff should:

- (1) Review instructions, including any land descriptions that have been provided so that you are familiar with both.
- (2) Proceed as instructed.
- * (3) Post a completed copy of the Notice of Seizure of Personal Property on each bin where the grain has been seized.
- (4) The following formula may be used to determine the approximate amount of grain in a bin.

Square or Rectangular Bin:

Width X Length X Depth = Cubic Feet X .8 = Number of Bushels.

Round Bin:

Diameter X Diameter X Depth X .785 = Cubic Feet X .8 = Number of Bushels.

Always state approximate number of bushels in your Bailiff's Report.

- (5) Serve a Notice to Grain Elevator Agents on all grain elevator operators in the area. (See example of form in this section).
- (6) Every effort should be made to obtain the Grain Delivery Permit Book from the debtor voluntarily even though it cannot be seized or replevied. It should be explained to the debtor that the Grain Delivery Permit Book will enhance the return from the sale of the seized grain; otherwise the seized grain may have to be sold as feed and not provide the best return for the creditor or the debtor. Upon receipt of the Grain Delivery Permit Book, place it in the care of the Civil Enforcement Agency.
- (7) A Bailee's Undertaking should be completed and signed by a responsible person. (Refer to section 6 - Writ Seizure).
- (8) Complete the Bailiff's Report and return the completed documents to the agency. (Refer to section 6 - Writ Seizure).

Seizure Where Media Present

The Bailiff may encounter a situation where the media is present or shows up while he is in the process of effecting seizure.

The Bailiff should:

- (1) Avoid a confrontation. It may be necessary for you to withdraw temporarily to re-evaluate.
- (2) Solicit advice/direction from the Civil Enforcement Agency and/or instructing party.
- (3) Avoid making comments or providing opinions to the media unless requested to do so by the instructing party.
- (4) When possible, using common sense and communication skills, proceed to effect seizure.

Seizure of Motor Vehicles

Serial Number Discrepancies

When seizing a vehicle, it is important that the Bailiff compare and verify the serial number on the vehicle as shown in the warrant provided by the instructing party.

The Bailiff may encounter a situation where the serial number does not match exactly but the discrepancy seems minor in nature.

Example - **5** is actually **S**

The two digits are so close that they often are confused. In these types of situations, seizure may be effected. However, consideration should be given to entering into a Bailee's Undertaking rather than removing or surrendering. That way, seizure has been effected but the debtor has not been deprived use of the vehicle.

If the serial number discrepancy is significant, contact the Civil Enforcement Agency. The Agency will likely request an amended warrant or an order from the Court directing seizure be effected.

Seizure of Cash

The Bailiff may be instructed to seize a business or the Bailiff while attending at a business may decide to seize cash. When seizing cash, it is important to remember the following:

- (1) Cash from a cash register drawer or other storage location may be seized by physically taking possession of it. If the employees store the day's proceeds in a money belt, that cash may only be seized once the funds have been physically handed to the person responsible. (Example: manager or hostess.)
- (2) Tips are the personal property of individuals and therefore not subject to seizure.
- (3) Once cash has been seized, immediately issue a receipt. Clearly outline the details of the seizure in the Notice of Seizure of Personal Property. (Refer to section 6 - Writ Seizure).
- (4) The Bailiff is responsible for the cash until it is turned over to the Civil Enforcement Agency. The Bailiff should obtain a receipt from the Civil Enforcement Agency to attach to his receipt book.

Perishable Goods

Before seizing perishable property the Bailiff should check with the Civil Enforcement Agency as to where the items should be removed to and/or stored at, and whether they should be disposed of (by sale) immediately.

As a precaution, a Health Board Inspector's attendance may be requested whenever perishable food is placed under seizure.

EDMONTON - EAST
Environmental Health
7919 - 118 Avenue
Edmonton, Alberta T5B 0R5
Telephone: 474-4424

CALGARY
Norm Carlson
320 - 17 Avenue S.W.
Box 4016 Stn. C
Calgary, Alberta T2T 5T1
Telephone: 228-7589

EDMONTON - WEST
15626 - 100 A Avenue
Edmonton, Alberta T5P 0L6
Telephone: 487-9494

RURAL
James Steele or Kevin McLeod
Box 1360
10025 Jasper Avenue
Edmonton, Alberta T5J 2N3
Telephone: 427-2643

Liquor Seizure

Section 82 of the Gaming and Liquor Act reads as follows:

A civil enforcement agency may seize liquor in accordance with the Civil Enforcement Act, and the board may, subject to any conditions it considers advisable, authorize the civil enforcement agency to sell the liquor.

If seizure of liquor is instructed it is important that the Bailiff provide an itemized inventory with sufficient description of the stock. Seizure may be effected on sealed bottles only. If removal is necessary, ensure the seized liquor is secured in a safe location. In particular, pay attention to the temperature of the storage facilities.

Seizure at a Pharmacy

To seize restricted drugs from a pharmacy the Bailiff needs to have two pharmacists on site to accurately list the names and quantities of the seized drugs, and verify that the drugs are being surrendered to an appropriate pharmaceutical party who can legally have possession of the substances.

Once the seizure is completed, the list of all the seized drugs must be mailed to
Compliance Monitoring and Liason Division
Office of Controlled Substances
Health Canada
3502 B
Ottawa ON K1A 1B9

All activity should be clearly indicated in the Bailiff's Report.

Seizure at a Veterinary Clinic

When seizing at a veterinary clinic, the Bailiff should ensure that an independent, certified veterinarian is in attendance for advice, assistance and/or equipment.

Seizure and/or Removal of Property at Oil and Gas Production Facilities

The Alberta Energy and Utilities Board enforces the Oil and Gas Conservation Act and Regulations. The Board has authority to take over oil and gas wells and associated facilities to enforce the provisions of the Act including the sale or disposal of any equipment to recover costs. It is possible that debt recovery by other parties could occur simultaneously with the Board's enforcement action resulting in coincidental seizures of the same equipment.

The Board is concerned with the removal of seized equipment from oil or gas facilities by other parties. In particular, one concern is the removal of wellhead equipment and the potential this action might have in putting the public or the environment at risk. This work must be completed by trained and knowledgeable people and conducted according to applicable provincial statutes and regulations.

Before carrying out instructions to seize and/or remove property at oil and gas production facilities, you should contact the Corporate Compliance Group of the Alberta Energy and Utilities Board at the following address;

640 - 5th Avenue, S.W.
Calgary, Alberta
T2G 3G4
Telephone: (403) 297-8311
FAX: (403) 297-7336

Woodmen's Lien

The Woodmen's Lien Act authorizes an employee or sub-contractor to seize for labour or services rendered while working for a logging company or a sub-contractor of the logging company.

The Civil Enforcement Agency may be instructed to seize:

- (1) Any logs or timber in respect of which the labour or services were rendered;
- (2) Any other logs that belong to the same owner and that have been mixed with any of the logs or timber in respect of which the labour or services were rendered; or
- (3) Any lumber made out of any of those logs or timber, so long as the lumber has not been sold and fully paid for by a bona fide purchaser without the purchaser having notice of the lien; or
- (4) Any part thereof.

The logs/timber/lumber shall not be seized when in transit by water from the place they were cut to the place of destination.

Writ of Attachment

A Writ of Attachment is issued by the Clerk of the Court and it is the document which provides the direction and authority to commence seizure proceedings. Sufficient copies are required to allow for service on each defendant, the owner of the logs if different from the defendant, and return of original to the agency.

Letter of Instructions

In addition to the Writ of Attachment, a letter of instructions should also be received. The letter of instructions could provide additional information such as:

- (1) Any urgency associated with the file
- (2) Any unusual circumstances which might be anticipated
- (3) Whether removal is required
- (4) If the logs or timber are in the possession of another party
- (5) Form of indemnification as requested by the Agency.

You may wish to consider and discuss with the instructing party the following issues with regard to the seizure and possible removal of the logs or timber:

- (1) How to determine which logs or timber are referred to in the Writ of Attachment
- (2) If the logs or timber are in the hands of a third party, how to identify which logs or timber belong to the defendant
- (3) Location of the logs or timber and the required equipment and estimated costs of removal, as removal may be costly
- (4) The condition or value of the property to be seized, as the cost of seizure may outweigh the money which may be realized from a sale of the property or the money realized may not significantly reduce the debt.

If removal may put the defendant out of business or cause severe hardship and there is a responsible person available, you may wish to consider leaving the property with that person (often the defendant) under a Bailee's Undertaking.

Required Documents for Bailiff

In order to effect seizure, the Bailiff must be provided with a copy of the Writ of Attachment, a copy of the Letter of Instruction and the following documents:

- (1) Notice of Seizure of Personal Property, sufficient copies to allow service of one on each defendant, if applicable, the owner or person in possession or control of the seized property, one for each Bailee and return of the original to the Agency.
- (2) Bailee's Undertaking, sufficient copies to provide a copy to each Bailee and return original to the Agency.
- (3) Bailiff's Report
- (4) Other documents as required.

Notice of Seizure of Personal Property

This form is used to describe in detail the items seized and to notify all affected parties of the seizure of personal property. Sufficient copies are required to allow service of one on each defendant, if applicable, the owner or person in possession or control of the seized property, one for each Bailee and return of the original to the Agency. (See example of form in section 6 - Writ Seizure).

The following must be completed by the Agency:

- (1) Agency file number
- (2) Name and address of defendant
- (3) Amount owing as shown on the Writ of Attachment
- (4) Name and address of plaintiff
- (5) "NO" box completed for Notice of Objection to Seizure of Personal Property applicable to this seizure. Strike out applicable section on the form. There are no provisions for an objection under the Woodmen's Lien Act.
- (6) Agency's name, address, telephone number and fax number.

Bailee's Undertaking

This form is used when the Bailiff leaves the seized logs/timber with a responsible person who agrees to keep the logs/timber and is responsible for its safekeeping and delivery to the Civil Enforcement Agency when requested. Sufficient copies are required: one for each bailee, and return of the original to the Agency. (See example of form in section 6 - Writ Seizure). *

The following must be completed by the Agency:

- (1) Agency file number
- (2) Agency's name, address, telephone number and fax number.

The Bailee's Undertaking must be witnessed and is usually witnessed by the Civil Enforcement Bailiff.

If a responsible person is not available to sign the Bailee's Undertaking, the Bailiff should consider removal and storage of the seized property to ensure its safekeeping. If this is the case, the Bailiff may want to contact the Civil Enforcement Agency for further instructions.

There are pros and cons to using a Bailee's Undertaking. A few have been listed for consideration when determining if a Bailee's Undertaking is appropriate.

Pros

A Bailee's Undertaking assigns responsibility for the care and control of seized property to a specific individual.

If the bailee is the debtor, storage costs are generally eliminated.

If it is the debtor who enters into the Bailee's Undertaking, he may continue to use the seized items. This is especially important when you are dealing with the debtor's livelihood, e.g. farmer.

Cons

There is a risk that the bailee, or other individual, will abscond with the property. Although the option of criminal or civil proceedings exists, the personal property may not be recovered.

Excerpts from the Criminal Code*Theft by Bailee of Things Under Seizure*

324. *Every one who is a bailee of anything that is under lawful seizure by a peace officer or public officer in the execution of the duties of his office, and who is obliged by law or agreement to produce and deliver it to that officer or to another person entitled thereto at a certain time and place, or on demand, steals it if he does not produce and deliver it in accordance with his obligation, but he does not steal it if his failure to produce and deliver it is not the result of a wilful act or omission by him.*

Punishment for Theft

334. *Except where otherwise provided by law, every one who commits theft*

- (a) *is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or where the value of what is stolen exceeds five thousand dollars; or*
- (b) *is guilty*
 - (i) *of an indictable offence and is liable to imprisonment for a term not exceeding two years, or*
 - (ii) *of an offence punishable on summary conviction,*

where the value of what is stolen does not exceed five thousand dollars.

Change of Bailee

If circumstances require a change of bailee, the new bailee must have the undertaking responsibilities explained. He must enter into the new Bailee's Undertaking by signing it and having it witnessed by an Agency employee or a Bailiff. Sufficient copies are required: one for the bailee, one for the plaintiff and the original for the Agency. At the discretion of the Agency, the condition of the logs and/or timber may be verified.

The following must be completed by the Agency:

- (1) Prepare a new Bailee's Undertaking. Have the undertaking signed by the new bailee and witnessed. Attach the original to the original Notice of Seizure of Personal Property and give the new bailee a copy of the new Bailee's Undertaking with a copy of the Notice of Seizure of Personal Property attached.
- (2) Advise the original bailee in writing of his release from the undertaking.

Bailiff's Report

This form is the Bailiff's certification of the action he has taken.

Other Documents

Other documents that may be required would include relevant court orders, Addendum to Notice of Seizure of Personal Property and Seizure Stickers.

The Addendum to the Notice of Seizure of Personal Property may be required by the Bailiff if he runs out of space on the Notice of Seizure of Personal Property. It is suggested that the Bailiff keep a supply of these with him at all times.

Offer of Settlement

- (1) If the defendant offers settlement, the Bailiff should contact the Civil Enforcement Agency to confirm the exact amount of the outstanding debt and costs, and whether he is authorized to accept payment.

Unless the entire debt is collected or the instructing party instructs you to stop action, seizure should be effected.

- (2) Settlement should always be in the form of cash, certified cheque, bank draft or money order unless the instructing party agrees otherwise.
- (3) If the defendant tenders cash, the Bailiff should issue a receipt to the defendant. If the Bailiff is unable to submit the cash to the Agency, at the first opportunity he should obtain a money order payable to the Civil Enforcement Agency. The Bailiff should attach a copy of the money order to his receipt book. If there is a fee for purchasing the money order, it may be charged back as an expense.
- (4) If the defendant tenders non-certified funds and the instructing party has not consented to this form of payment, seizure of personal property must still be effected.
- (5) DO NOT accept postdated cheques unless instructed to do so by the instructing party.

Negotiated Settlement

If the defendant and instructing party negotiate some other form of settlement, any directions to discontinue the seizure action must be received directly from the instructing party.

Procedure for Effecting Seizure

The Bailiff should:

- (1) Carefully read the letter of instruction and the Writ of Attachment to determine the dollar amount required for seizure and the location of the property to be seized.
- (2) Review the file to see if there are any arrangements that should be made ahead of time (e.g. trucking for removal if requested).
- (3) Proceed to the location provided in the instructions and identify yourself to the owner or person in whose custody or control the logs/timber/lumber may be. Advise this person why you are there.
- (4) Proceed with the seizure in accordance with your instructions. Post a Notice of Seizure of Personal Property to each pile that attachment is made on. Clearly indicate on each Notice of Seizure of Personal Property the volume of logs/ timber/lumber seized ensuring that there is a sufficient amount to satisfy the claim of the applicant to the value contained in the Writ of Attachment.
- (5) Serve a copy of the Writ of Attachment along with a Notice of Seizure of Personal Property on the:
 - defendant
 - the owner or the person in possession/ custody of the logs/ timber/lumber.
- (6) Obtain a Bailee's Undertaking from a responsible person where the logs/ timber/lumber is being kept.
- (7) Complete the Bailiff's Report. Ensure that you include the names of the persons you served with the Writ of Attachment and Notice of Seizure of Personal Property, and the time and date of service.

Review of Bailiff's Report

The Agency should review the completed Bailiff's Report and accompanying documents to determine if seizure was effected. Also review the Report for any errors, omissions, or irregularities.

Seizure NOT Effected

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

Seizure Effected

- * If seizure 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 Notice of Seizure of Personal Property, and Bailee's Undertaking (if applicable).

Service of Seizure Documents

If the Writ of Attachment and the Notice of Seizure of Personal Property were not served on the defendant or an adult member of the defendant's household, the Civil Enforcement Act requires that the Agency must serve the documents on the defendant as soon after effecting seizure as is practicable.

Register Seizure

Pursuant to the provisions of the Civil Enforcement Regulation, the Agency must register details of all seized property and pertinent information such as the condition/location of the seized property at Personal Property Registry within 3 days of seizure being effected.

Third Party Claims, Received After Seizure Effected

A third party is someone, other than the defendant or the plaintiff, who claims to be the owner of the seized property or who has some other interest in the personal property that would preclude sale of the seized property.

- * Any dispute to the attachment must be filed in the form of a Statement of Defence with the Clerk of the Court in the Judicial Centre in which the action arose. If you receive a dispute, contact the instructing party.

Bankruptcy And Insolvency Act

The general provisions of the Bankruptcy and Insolvency Act state that upon an Agency receiving a copy of an assignment or a receiving order certified by the Trustee as a true copy, the Agency shall deliver all the bankrupt's property in its hands and any monies realized from the sale of property, less its fees and costs, to the Trustee.

Upon receiving a certified copy of an assignment from a Trustee, check your records to determine if you have property belonging to the bankrupt/debtor still under seizure or if you have monies in trust realized from a sale of property seized from the bankrupt/debtor.

If you have property under seizure, release it to the Trustee following the procedures in the Release of Seizure section.

If you have monies in trust, deduct any fees and expenses of the instructing party and of the Agency and forward a cheque for the balance to the Trustee.

Federal Court Act

The Federal Court Act states that the Governor in Council may appoint the Sheriff of the Federal Court for any geographical area; failing such appointment, the Sheriff or Deputy Sheriff of the county or the judicial division within that geographical area are ex officio Sheriff and Deputy Sheriff of the Federal Court.

If a situation arises where it is necessary for the Sheriff to act in this capacity (e.g. to arrest a ship), an Agency may be instructed to act on the Sheriff's behalf.

Seizure of Securities

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 applicable statutory and regulatory provisions, and consult legal counsel.

Section 57 of the Civil Enforcement Act (the "CEA") states that seizure of securities must be made in accordance with sections 47 to 51 of the Securities Transfer Act (the "STA"). The result of reading these two statutes together is that the method of seizure is specified for each of three types of securities – certificated securities, uncertificated securities, and security entitlements.

Certificated Securities

A certificated security is defined in section 1(e) of the STA as "a security that is represented by a certificate".

The seizure of certificated securities must be conducted in accordance with section 48(1) of the STA, and requires actual seizure by a civil enforcement agency (just like any other item of personal property). Under section 48(2), if the certificate was surrendered to the issuer, it may be seized by notice to the issuer at the issuer's chief executive office.

Section 57(2) of the CEA states that, notwithstanding section 48 of the STA, an agency can seize the interest of an enforcement debtor and certificated securities issued by an "Alberta private company" (a closely-held company) by serving notice of seizure on the issuer at the issuer's chief executive office. In other words, when shares are issued by a closely-held corporation and are certificated, physical seizure is not the only option. Section 58 of the CEA specifies the duties of the Alberta private company when it is served under section 57(2).

Uncertificated Securities

An uncertificated security is defined in section 1(kk) of the STA as "a security that is not represented by a certificate." Such a security will be registered in the name of the investor/enforcement debtor.

Seizure of uncertificated securities must be done in accordance with section 49 of the STA. This requires seizure by a civil enforcement agency serving notice on the issuer at the issuer's chief executive office. Section 58 of the CEA again applies if the issuer is an Alberta company.

Security Entitlement

*

A security entitlement is defined in section 1(hh) of the STA as “*the rights and property interest of an entitlement holder with respect to a financial asset that are specified in Part 6 of the [STA]*”. Basically, this constitutes a security which is owned by an investor/enforcement debtor but is not specifically registered in his name.

Seizure of a security entitlement is done in accordance with section 50 of the STA, and requires that the civil enforcement agency serve notice on the securities intermediary (as defined in section 1(ee)(ii) of the STA, but usually a broker) with whom the enforcement debtor’s account is maintained.

Seizures pursuant to sections 48 to 50 of the CEA are subject to section 51 of the STA, which deals with situations where a secured party is involved.

Section 57.1 of the CEA specifies the powers of a civil enforcement agency upon seizure of both securities and security entitlements. Section 59, dealing with security entitlements only, sets out under what conditions the agency will be entitled to information, documents and dividends the enforcement debtor would have been entitled to, as well as when the agency can give directions to the intermediary regarding the seized security. This condition is that the security intermediary’s jurisdiction within the meaning of the STA is Alberta.

Section 61 of the CEA specifies, with respect to securities only, that an agency may liquidate securities by any means that the nature of the security permits, and also that restrictions on the transfer attached to the shares of an Alberta private company do not apply to transfers by an agency.

The law is not clear as to how to deal with the situation where a debtor’s securities and security entitlements are located outside Alberta. At this point, it would appear that, because uncertificated securities and security entitlements are intangible, their location is notional, and it may be that the location of uncertificated securities would be the location of the issuer’s chief executive office. Security entitlements would be located where the security’s intermediary is located (i.e. where the broker keeps his records indicating the enforcement debtor’s ownership). However, at this point, as there is no case law dealing with the new legislation, this is unknown. Therefore, until the law is more settled, it is strongly recommended that, whenever an agency is considering seizing uncertificated securities or security entitlements, it consult legal counsel before taking action.

00-00000

Civil Enforcement Agency File Number

Notice to Grain Elevator AgentsTO All Grain Elevators34 Wheat Drive, Spruce Grove, Alberta

Name and Address of Grain Elevator

TAKE NOTICE that I have seized the grain of

Joe Debtor

Name of Debtor

N.E. 1/2 of 7-3-54 -- West of the 5th Meridian

Land Description Where Grain Was Seized

Should the Debtor or his agent deliver the grain to you for sale, you are required to pay the proceeds of the sale to the Civil Enforcement Agency noted below:**P. Bailiff**P. Bailiff

Authorized Signature

Print Name

We Seize Ltd.

Name of Civil Enforcement Agency

406 Replevin RoadEdmonton

Address of Civil Enforcement Agency

City

AlbertaT5J 2N5422-2696422-7777

Province

Postal Code

Telephone Number

Fax Number

Dated at Edmonton Alberta, January 15, 1996

Oct. 01/95