

I often am asked if it is necessary to give a debtor notice that we are preparing to conduct a seizure against them. The answer in most cases is No, notice is not required prior to conducting the seizure. Now as with most rules - there are a couple of exemptions:

### Personal Property Security Act – Seizing against a Business or Corporation

Section 244 of the Bankruptcy and Insolvency Act states that a secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of a person goods that were acquired for, or are used in relation to, a business carried on by the person, they must provide written notice to that person of their intent with respect to the goods.

A creditor wishes to seize in the above situation, must send a **Notice of Intent to Realize on Security** to the debtor **a minimum of 10 days prior to seizure**.

A debtor has the right to **consent** to an earlier enforcement of the security if they so choose. Consent to an earlier enforcement of a security **may not** be obtained by a secured creditor **prior** to the sending of the notice of Intent to Realize on Security.

Consolidated's Civil Enforcement staff would be pleased to provide you with a sample of this notice upon request.

### Farm Debtors – Seizing against a debtor whose primary occupation is farming

The Farm Debt Mediation Act has specific rules relating to conducting a seizure against an individual whose primary occupation is farming. Section 21 of this act states that 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 a 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. The notice must be given to the farmer **at least fifteen business days** before commencing any action against the farmer.

This notice can be given to the farmer in a variety of different forms as noted below:

- (a) in the case of a farmer who is an individual
  - (i) by leaving a copy of the notice with them,
  - (ii) by leaving a copy of the notice in a sealed envelope addressed to the farmer with anyone who appears to be an adult and who resides at the farmer's place of residence, and on the same day or the following day mailing another copy of the notice to the farmer at that place of residence, or
  - (iii) by sending a copy of the notice by priority post, courier or registered mail addressed to the farmer; and

(b) in the case of a farmer who is a corporation, cooperative, partnership or other association

(i) by leaving a copy of the notice with an officer, director, partner or agent of the corporation, cooperative, partnership or other association,

(ii) by leaving a copy of the notice with a person at any place of business of the farmer who appears to be in control or management of the place of business, or

(iii) by sending a copy of the notice by priority post, courier or registered mail addressed to the last known address of the head office or principal place of business of the farmer.

(2) The giving of the notice in the manner described in subparagraph (1)(a)(ii) or (iii) or (b)(iii) is deemed to be effected seven business days after the day on which the notice is sent.

(3) A person who gives the notice to a farmer need not produce an original document or have it in their possession.

It is important to remember that if you fail to provide this notice – Section 22 of the Farm Debt Mediation Act states that: any act done by a creditor in contravention of section 21 is **null and void**, and a farmer affected by such an act may seek appropriate remedies against the creditor in a court of competent jurisdiction.

Though this notice was originally intended for use by Secured Creditors only, it is important for all creditors to be aware that Section 21 (1)(b) of the act states: that creditors who wish to 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 a farmer must allow the farmer notice and provide for the farmer to apply for a stay of proceedings or mediation between the farmer and the creditor as outlined in Section 5 of the Farm Debt Mediation Act

In the recent past we have seen situations where Farmers have filed for protection under the Farm Debt Mediation Act for claims under other acts – including the Garage Keepers Lien Act. Therefore it is imperative that all creditors are aware of this act and the requirements of the same.

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I hope this short bulletin provides you some insight into the exceptions to the no notice required rule. If you have any questions relating to the information provided above, or if I can assist you with any other civil enforcement questions/needs, please do not hesitate to drop me an email at [patricia.wilson@ccebailiff.ca](mailto:patricia.wilson@ccebailiff.ca) or contact me by phone at (403) 668-8804 or (780) 448-5833 ext. 8804.

**Patricia Wilson**

Director, Civil Enforcement