

As Sale of Land is becoming a favored option for creditor's looking to enforce their writ in Alberta, sale of land actions in the province of Alberta has increased 242% since 2007. I thought it would be a good time to discuss the commonly asked questions we receive when it comes to Sale of Land. Over the next couple of months my bulletins will focus on the most commonly asked questions with respect to Sale of Land under the Civil Enforcement Act of Alberta.

This month's question is: **What are the requirements for the service of the Notice of Intention to Sell Land (NOITSL)?**

The Civil Enforcement Regulations set out the requirements for service of this particular document. Unfortunately the current regulations provide confusing directions with respect to this particular document. The legal counsel of Consolidated Civil Enforcement had spent some time reviewing these directions and had provided our staff with detailed instructions with respect to ensuring that all NOITSL are served in a manner to which a debtor would find it very difficult to challenge the service.

1. Section 35.07 of the Regulations state that the NOITSL must be personally served on the enforcement creditor and every registered owner. The wording in this section is a clerical error. Section 46 (1)(b) of the Regulations state that the NOITSL must be served on the enforcement debtor and every registered owner and every subordinate claimant on title. This confirms that Section 35.07 is incorrect in stating that service must be made on the enforcement creditor, Section 35.07 should state that personal service must be made on the enforcement debtor.
2. Section 48.1(c) states that service can be done personally or by recorded mail. This brings us to when can you serve by recorded mail. We then refer to section 35.06 which states that recorded mail can be used when the person whom is being served has provided a recently filed document in respect of a matter under the Act or this Regulation. In most cases a NOITSL can be considered a Commencement Document and therefore, if the debtor has not filed an address for service with the courts, service by recorded mail cannot be used.

In answer to the question how should a NOITSL be served in Alberta, Consolidated's answer is personal service on the enforcement debtor and every registered owner. If your debtor has filed documents pertaining to this matter with the courts, then recorded mail is an option for consideration, keeping in mind that if the enforcement debtor or the other registered owners did not claim and sign for the registered mail, it can open a door for the debtor or the other registered owners to challenge the validity of the recorded mail service.

If a debtor wishes to challenge a sale of land action they will normally challenge the service of the originating documents, for the sale of land procedures do not allow for an objection to the action as is allowed under other writ actions.

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### Civil Enforcement Act of Alberta

#### **Personal service**

35.07 *The following documents must be served by personal service as specified:*

- (a) *a notice of intention to sell under section 70 of the Act, on the enforcement creditor and every registered owner;*

#### **Recorded mail service**

35.06 **(1)** *A document, other than a document required to be served personally, may be served on a person in Alberta **by being sent by recorded mail, addressed to the person at the address for service provided by the person in the most recently filed document in respect of a matter under the Act or this Regulation.***

#### **Notice of intention to sell**

46 **(1)** *The notice of intention to sell land required by section 70 of the Act*

- (a) *must contain*
  - (i) *all of the standard information,*
  - (ii) *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,*

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- (iii) 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,
- (iv) a statement that if the debtor's principal residence is located on the land, the land may be exempt, in whole or in part, from sale under writ proceedings, and
- (v) 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,

And

(b) must be served on

- (i) **the enforcement debtor,**
- (ii) **every registered owner, and**
- (iii) **every subordinate claimant whose claim is recorded on the certificate of title for the land.**

(2) Before land may be sold under the Act by an agency, the agency must file a caveat against the certificate of title to the land setting out the notice of intention to sell the land.

**Service**

48.1 (1) For the purposes of this Part, except in section 46(1)(b)(i) and (ii), notice may be provided by means of

- (a) personal service on the person to be served,
- (b) recorded mail addressed to the person to be served, or
- (c) leaving the document containing the notice with, or sending it by recorded mail to an address described in subsection (2) addressed to, the person to be served

(2) The address for the purposes of subsection (1)(c) is any of the following:

- (a) the address of the place where the person to be served resides;
- (b) if the person to be served carries on business at the address of the secured land that is the subject of the action, that address;
- (c) if the address of the place where the person to be served resides is not known to the person attempting service and if the person to be served does not carry on business at the address of the secured land that is the subject of the action,
  - (i) the address of the person to be served shown on the current title to the secured land, or
  - (ii) if the person to be served is named as a secured party in a current registration of a security interest in the Personal Property Registry, the address of that person as shown in the registration;
- (d) in the case of an offeror or tenderer, the address of the offeror or tenderer shown in the offer or tender for the secured property.

(3) Service is effected under subsection (1)(c)

- (a) if the document is left at the address, on the date it is left, or
- (b) if the document is sent by recorded mail, on the earlier of
  - (i) the date confirmation of receipt is signed, or
  - (ii) 7 days after the date on which the recorded mail is sent.

(4) For the purposes of section 46(1)(b)(i) and (ii), notice must be provided by means of personal service or recorded mail on the enforcement debtor and every registered owner.

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If you have any other questions with respect to good service on your sale of land file, please do not hesitate to contact me directly at 403-668-8804 or at [patricia.wilson@ccebailiff.ca](mailto:patricia.wilson@ccebailiff.ca)

Next month's question: **What kind of return can a creditor expect to receive when conducting a Sale of Land action in Alberta?**

Stay safe and warm, hopefully Mother Nature will send some Spring weather our way soon.

**Patricia Wilson**

Director, Civil Enforcement