MCMA – POA Collections Committee Best Practices – Writ of Seizure and Sale - SCC

BACKGROUND:

Writ of Seizure & Sale, commonly referred to as a lien, is an effective remedy for the recovery of an outstanding account where a Debtor has real property or assets that can be seized and sold, and the proceeds applied to a court judgment or order. In addition, filing a Writ against a Debtor potentially can block them from obtaining a loan and/or credit from a financial institution.

Please be aware, that a Writ of Seizure & Sale does not trigger an immediate payment of a court ordered account. It could be years before the Writ triggers a positive response from the Defendant, if ever. Some creditors may be happy to issue and file the Writ and let it sit until the defendant remortgages or sells their property. Others consider 'Enforcing' the Writ in an attempt to clear the outstanding account sooner. Neither is wrong, and both have their place.

Writs although customarily associated with property can also be used against other assets such as automobiles and recreation vehicles and even original art works, any asset with value. Documentation from the Superior Court of Justice, Small Claims Court (SCC), have slightly different forms specific to either Land or Personal Property.

DEFINITIONS & ACRONYMS:

Provincial Offences Act - POA
Certificate of Default - C of D
Civil Enforcement - CE
Small Claims Court - SCC

PROCEDURE:

Pursuant to section 68 of the POA, municipalities may enforce outstanding POA fines through Civil Remedies provided under the Rules of the Court, (Small Claims Court), such as Writ of Seizure & Sale, Garnishment, or Examination in Aide of Execution, by a court of competent jurisdiction.

Issue C of D: *(See Procedure Certificate of Default)*

Superior Court process, Rule 60, Rules of Civil Procedure, will be discussed separately.

A creditor may file a Writ of Seizure and Sale of Land against a Debtor in any County or District where the Debtor may own land or resides at. The Writ would encumber any land presently owed or land which may be purchased in the future by the Debtor.

To file a Writ in more than one County or District, you must issue a separate Writ for each location and file it in that court jurisdiction if the Debtor has an address in that jurisdiction.

Draft the **Affidavit** for Enforcement of Writ of Seizure and Sale of (Land or Personal Property). Ensure court file numbers from C of D are inserted on document.

Draft the **Writ** of Seizure and Sale of ((Land or Personal Property), ensure court file number from C of D is inserted on document.

To issue a Writ prepare document(s), (Enforcement Affidavit and Writ), (3 copies of Writ and 2 copies of enforcement Affidavit), forward with cheque payable to Minister of Finance, and send to your local Superior Court of Justice, Small Claims Court, (some Courts require a postage paid envelope be included in your package):

Fee required to Issue SCC Writ, see link below: https://www.ontario.ca/laws/regulation/r16333

If filing the Writ in the same court office as issued in, include a separate cheque payable to Ministry of Finance. Fee required to file SCC Writ, see above link.

The Enforcement office of that Court will return the original copy of the Writ to you with the Writ number and date filed to keep track of renewal date.

If you are planning on filing the writ in another court jurisdiction, take the issued Writ send it by first class regular mail, or courier, to the court office where you know the defendant has property or assets. Include the filing fee and a stamped addressed return envelope for the return of the Writ to you.

The Court office that files the Writ will return the original copy to you, in the stamped envelope provided with the Writ number from that enforcement office.

Renewal of Writ: Writs expire **6 years** from date of issue.

To renew a Writ you must file a renewal form plus the required renewal fee as per above link.

Once the Writ has been paid in full, you must release the Writ by way of letter to the Sheriff's office where you originally filed it.

If there is more than 1 (one) creditor who has a writ filed an Execution (Writ) in the same enforcement office, against the same Debtor, everyone shall **share** on a **pro rata basis** any money paid into the enforcement office unless there is a preferred creditor, ie: Ministry of Finance.

Certificate of Payment: (*See Procedure Certificate of Payment)*

ASSOCIATED DOCUMENTS/FILES:

Document/File Name	Location	Description
Affidavit of Enforcement	Affidavit of Enforcement.pdf	
Writ of Seizure and Sale, Land	Writ of Seizure & Sale, Land.pdf	
Writ of Seizure and Sale, Property	Writ of Seizure & Sale, Property.pdf	
Direction to Enforce Writ of Seizure and Sale of Personal Property	Direction to Enforce WofS&S of	
Writ Renewal	Request to Renew Writ.pdf	
Letter to Court office	Sample Letter to Court Office.pdf	
Release of Writ Letter	Sample Letter to Court Office-Paid in	
Additional Debtors Form	Additional Debtors Form.pdf	
Certificate of Payment	Sample-Certificate of Payment.pdf	

DISCLAIMER:

"The views expressed are the views of the members of the POA Collections Committee and do not necessarily reflect the views of MCMA. Any person relying on the information contained herein is doing so at his/her own risk and is advised to seek direction from his/her Municipality.

The MCMA does not endorse the use of any product or service. The information contained in the Best Practices procedures is provided as a reference tool to aid in the development of procedures in compliance with all applicable legislation. While every reasonable effort is made to ensure the information provided herein is accurate, there are no representations made with respect to the currency, accuracy or legality of the information. Due diligence should be performed when developing procedures".

Log of Changes

Date	**Specific Change**	**Editor**	**Reason**
May 10, 2019		Linda Beaver	Add to MCMA Template
Aug 1, 2019	Added Sample Attachments	Linda Beaver	