MCMA – POA Collections Committee Best Practices – Writ of Seizure & Sale – Superior Court

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, vs. the Small Claims Court (SCC), have slightly different forms specific to jurisdiction. This document relates specifically to Superior Court filings.

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 Civil Procedure, Superior 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)*

A creditor may file a Writ of Seizure and Sale 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. If you wish to file a Writ in more than on 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 a Requisition for a Writ of Seizure and Sale. Ensure court file numbers from C of D are inserted on document.

Draft Back Page for the Writ.

Draft, **Writ** of Seizure and Sale, ensure court file number from C of D is inserted on document.

To issue a Writ prepare document(s), (Requisition and Writ), (3 copies of Writ and 2 copies of Requisition), forward with cheque payable to ***Minister of Finance*** and send to your local Superior Court of Justice, (Some courts require a postage paid envelope be included in your package):

Fee required to Issue Superior Court 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 '***Minister of Finance'*.**

Fee required to file Superior Court 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.

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 (see 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.
Certificate of Payment: *See Procedure Certificate of Payment*

ASSOCIATED DOCUMENTS/FILES:

Document/File Name	Location	Description
Requisition Writ of Seizure & Sale	Requisition-Writ.pdf	
Requisition Writ of Seizure & Sale, Back Page	Requisition-Writ-Back.pdf	

Writ of Seizure & Sale of Land	Writ of Seizure & Sale.pdf	
Writ of Seizure & Sale of Land, Back Page	Writ of Seizure & Sale-Back.pdf	
Requisition Writ of Seizure & Sale – Out of Area	Requisition-Writ-Out of Area.pdf	
Requisition Writ of Seizure & Sale – Out of Area, Back Page	Requisition-Writ-Out of Area-Back.pdf	
Writ of Seizure and Sale-Out of Area	Writ of Seizure & Sale-Out of Area.pd	
Writ of Seizure and Sale-Out of Area, Back Page	Writ of Seizure & Sale-Out of Area-Ba	
Letter to Court office	Letter to Court Office.pdf	
Writ Renewal	Writ Renewal.pdf	
Letter to Court office to Renew Writ	Letter to Court Office to Renew Wri	
Release of Writ letter	Letter to Release Writ.pdf	

DISCLAIMER:

"The information provided is the interpretation of the members of the POA Collections Committee and do not necessarily reflect the opinions 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
May 10, 2019	Added Sample Attachments	Linda Beaver	