

REFERENCE TO THE REGISTRAR FOR SALE OF LAND

What is it? Under sections 92 to 97 of the *Court Order Enforcement Act*, a judgment creditor may make an application calling upon a judgment debtor to show cause why any land that he/she may have an interest in should not be sold to satisfy the judgment. This is a three step process.

The first step is an application to the court in chambers for an order that the debtor show cause why the land should not be sold. This application is heard in chambers, usually before a master. The resulting order, if granted, is a reference to the registrar to:

- find out what land is liable to be sold under the judgment
- find what is the interest of the judgment debtor in the land and of his or her title to it (whether is owned solely by the debtor, a joint tenancy or tenancy in common situation)
- find what judgments form a lien and charge against the land and the priorities between the judgments
- determine how the proceeds of the sale are to be distributed and
- report all the findings to the court.

The second step is the hearing before the registrar. The registrar will sign a report prepared by the creditor confirming what land is liable to be sold, the interest the debtor has in it, the judgments against the land and the method of distribution of sale proceeds.

The third step is an application made by the creditor before the court in chambers to confirm the registrar's report and to obtain an order for the sheriff (or, more commonly, for a party with the aid of a realtor) to sell the debtor's land.

What happens before the hearing?

Once the creditor has obtained the order for the reference to the registrar, they contact Supreme Court Scheduling for a date for the reference. An appointment with a copy of the entered order is filed (**no filing fee is payable**) and served to the debtor and any other interested party by the method of notice set out in the order. There is no prescribed notice period.

The party who filed the appointment must, no later than 4 p.m. on the business day that is one full business day before the date set for the hearing, provide to the registry where the hearing is to take place, a hearing record. The hearing record

- a) must be in a ring binder or in some other form of secure binding;
- b) must contain, in consecutively numbered pages, or separated by tabs, the following documents in the following order:
 - i. a title page bearing the style of proceeding and the names of the lawyers, if any, for the applicant and the persons served with the appointment;
 - ii. an index;
 - iii. a copy of the filed appointment and of every document that is required to be filed with that appointment (copy of order directing the reference);
 - iv. a copy of the affidavit of service of the appointment, which copy must not include the exhibits to the affidavit;
 - v. a copy of every filed affidavit and pleading, and of every other document, that is to be relied on at the hearing;
- c) may contain
 - i. a draft of the proposed report, and
 - ii. a list of authorities;
- d) must not contain
 - i. written argument,
 - ii. copies of authorities, including case law, legislation, legal articles or excerpts from text books, or
 - iii. any other document unless they are included with the consent of the applicant and the respondents.

What happens at the hearing?

The reference is usually uncontentious. Issues of priorities or beneficial ownership may arise. The creditor (usually by counsel) appears; the debtor often does not attend.

The creditor (or counsel) will take the registrar through the background and will then provide an original state of title certificate for the registrar to review.

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If the matter is straightforward, a standard report is usually prepared for the registrar to sign at the hearing.

What happens after the hearing? The third step is the application in chambers to confirm the registrar's report and for an order to sell the property. This is made by notice of application. At this hearing, the debtor has the opportunity to oppose the sale of the property. If the issues cannot be dealt with in chambers, an order may be made for the trial of an issue.

Documents required:

- Appointment [Form 49] with copy of entered order attached (no filing fee)
- State of title certificate (original)
- Proof of service of the appointment if the other party does not appear
- Draft report

Further reading: Continuing Legal Education Manual – Practice Before the Registrar; Robinson, L: British Columbia Debtor-Creditor Law and Precedents, c. 7

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