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Civil Enforcement Fundamentals

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Pre-Judgment Enforcement Remedies

Civil Enforcement Fundamentals

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INTRODUCTION

This paper addresses possible remedies available to creditors prior to obtaining a judgment against a debtor. It is divided into three main topic areas:

1. Attachment Orders
2. Distress Seizures:
 - (a) The Landlord's Right of Distress
 - (b) Seizure Under Security Agreements
 - (c) Statutory Distress Seizure
3. Distribution of Proceeds

ATTACHMENT ORDERS

If your client wishes to sue a debtor to recover a debt but is worried that the debtor may try dissipate their assets prior to judgment, you can apply to the Court for an attachment order. An attachment order will prevent the debtor from dealing with its exigible assets until the creditor has obtained judgment against the debtor, thereby allowing the creditor to enforce against those assets once judgment is obtained. Exigible assets are those assets that have not been deemed exempt from writ or distress proceedings.¹

APPLYING FOR AN ATTACHMENT ORDER

If the debtor has exigible assets in Alberta, a creditor may apply to the Court for an attachment order if the creditor has commenced or will commence an action in Alberta to seek judgment against the debtor, or if the creditor has commenced an action in a foreign jurisdiction that is enforceable in Alberta under the *Reciprocal Enforcement of Judgments Act*, RSA 2000, c R-6.²

In addition, if a creditor believes a debtor will dissipate their assets after receiving notice of an application for an attachment order, then a creditor may apply for the order *ex parte*.³ An attachment order granted *ex parte* will expire within 21 days from the date the order is granted unless the order

¹ *Civil Enforcement Act*, RSA 2000 c C-15 ss 1(1)(u), 88-93 [CEA].

² *Ibid* at s 17(1).

³ *Ibid* at s 18(1).