

Subject: **RECEIVERSHIP ORDERS**

BACKGROUND

A receiver or receiver-manager (for convenience referred to collectively as "receiver") can be appointed either:

- a) by the court pursuant to the provisions of the Judicature Act, (1) the Law of Property Act (2) and certain other statutes, or
- b) by a person pursuant to the terms of an agreement such as a debenture.

Although the appointment of a receiver usually occurs in circumstances where a debtor is in financial difficulty, it is not related to bankruptcy proceedings except where an interim receiver is appointed pursuant to the Bankruptcy and Insolvency Act. Interim receiver appointments would not usually be registered at the Land Titles Office, as the purpose of the appointment is primarily to dispose of perishable or rapidly depreciating property.(3)

The two most common situations in which receiver appointments affect the Land Titles Office are:

- (a) where a receiver wishes to register the order against titles to land because the effect of the order is to place a restriction on the debtor's ability to deal with the property or to give the receiver power to deal with the debtor's property (4) and
- (b) where a receiver wishes to register an instrument, usually a transfer, which has been signed by the receiver rather than the owner pursuant to express authority in a court order.

Under the Federal and Provincial Business Corporations Acts, a receiver may receive the income from the property and realize the security interest of those on behalf of whom he is appointed. However, he may only carry on the business of the corporation to the extent authorized by the court.(5) A receiver, if he is also appointed receiver-manager, may carry on the business of the corporation to protect the security interest of those on behalf of whom he is appointed.(6) The powers and liabilities vary depending on the terms of the court order or agreement by which the receiver is appointed.(7) An appointment in itself does not create an estate in, or charge in favour of, the receiver (8) but the terms of the appointment may authorize the receiver to deal with the property, either for the purpose of carrying on the business of the debtor (e.g., where land-holdings of a development company need to be disposed of in the ordinary course of business to purchasers) or for the purpose of realizing a specific security (e.g., sale of commercial property to pay a mortgage debt). (9)

A private appointment of a receiver as agent of the debtor with power to sell pursuant to the terms of a debenture is not accepted for registration as, in the absence of any specific statutory authorization to register such a document, it would require the

Registrar to rule on the factual situation, which triggers the right to appoint the receiver. In addition, there is no statutory authority for the Registrar to recognize acts performed by a receiver pursuant to a private appointment.(10)

REGISTRATION PROCEDURE

A. Court Order Appointing Receiver

1. A court certified copy of an Alberta court order appointing a receiver can be accepted for registration where the effect of the order is to restrict the right of the debtor to deal with his land or to give the receiver the power to deal with the land of the debtor. If the order only gives limited powers, such as the right to collect rents, it should not be registered.
2. The receiver will usually be either a corporation or an individual. If the receiver is a partnership, specific directions concerning execution requirements on behalf of the partnership must be obtained from the court.
3. Legal descriptions of property affected by the order may be provided by the registrant. The registration particulars should be recorded in the reference index.
4. The registration particulars of the order may be subsequently endorsed against additional certificates of title at the request of the receiver.
5. The debtor, whether a corporation or an individual, must be shown as having an interest in the land against which the order is being registered; in most cases, it will be the registered owner.
6. The terms of the order must be examined to determine whether compliance with section 191 is required. When the immediate effect of the order is not to cancel a certificate of title or terminate an interest in land, but the order may ultimately result in these circumstances, appropriate evidence under section 191 is required.
7. If any document executed by the debtor is submitted for registration after registration of an order appointing a receiver, the terms of the order must be reviewed to determine whether registration of the document would conflict with the order even if the consent of the receiver is endorsed on the document.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Order – Endorsement

The code used for registration at Land Titles is: ORDE

8. **Discharge** - A further court order is required to discharge an order appointing a receiver unless the receiver disposes of the property pursuant to the authority granted to him.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Discharge by Order

The code used for registration at Land Titles is: DISO

B. Transfer Executed by Receiver

1. A transfer executed by a receiver will only be accepted for registration if the court has expressly given the receiver the authority to deal with the land.[\(10\)](#)
2. If the order is submitted with the transfer, it is given a separate registration number and a notation of the number should be made in the margin of the transfer near the receiver's signature.
3. If the order is already registered against the title, the endorsement should not be carried forward to the new title.
4. All usual requirements for registration of a transfer must be complied with.
5. If the court order includes directions on the interests to be carried forward to the new certificate of title, the directions must be strictly interpreted since there is no statutory provision stating the effect of such a transaction as there is for foreclosure proceedings. For example, if title is to issue "free and clear of all encumbrances", only those instruments, which fit within the definition of encumbrance, are to be discharged. Section 1(e) of the Land Titles Act defines encumbrance to mean any charge inclusive of mortgages, builders' liens and writs of enforcement; it does not include other documents such as caveats, leases, easements, etc.

STATUTE AND CASE REFERENCES

Statute references are to the Business Corporations Act, S.A. 2000, c. B-9, unless otherwise indicated.

1. s. 13(2), Judicature Act, R.S.A. 2000, c. J-2
2. s. 49, Law of Property Act, R.S.A. 2000, c. L-7
3. see procedure on Bankruptcy [BAN-1](#)
4. s. 95; Raymond Walton, *Kerr on the Law and Practice as to Receivers*, 16th ed., p. 153 refers to *Moss Steamship Co. Ltd. v. Whinney*, [1912] A.C. 254 (H.L.) which states at p. 263 that the "appointment of a receiver and manager over the assets and business of a company does not dissolve or annihilate the company, any more than the taking possession by the mortgagee of the fee of land let to tenants annihilates the mortgagor. Both continue to exist; but it entirely supersedes the company in the conduct of its business, deprives it of all power to enter into contracts in relation to that business, or to sell, pledge, or otherwise dispose of the property put into the possession, or under the control of the receiver and manager. Its powers in these respects are entirely in abeyance."
5. s. 94, Canada Business Corporations Act, R.S.C. 1985, c. C-44

6. s. 95, Canada Business Corporations Act
7. s. 97, Canada Business Corporations Act
8. Raymond Walton, *Kerr on The Law and Practice as to Receivers*, 16th ed., p. 121
9. See: *Alberta Treasury Branches and Coopers & Lybrand Limited v. Ryan Construction Ltd. et al.* [1982] 6 W.W.R. 652 (Master) reversed in [1983] 3 W.W.R. 137 (Alta. Q.B.), for a discussion of the role of the Receiver.
10. In *Femco Financial Corporation Ltd., Thorne Riddell Inc., and W-32 Corporation Ltd. v. Femco Ventures Ltd. et al.*, (1983), 24 Alta. L.R. (2d) 374 (Q.B.) an order was sought directing the Registrar to register a transfer of certain lands executed by the receiver as "agent of" the corporation free and clear of all subsequent encumbrances with the exception of an easement or in the alternative an order directing the Registrar to cancel the existing certificate of title and issue a new certificate of title to the intended transferee free and clear of all encumbrances other than the easement. Veit, J. dismissed the application, as the Land Titles Act did not authorize the procedure. By virtue of the Act, a debenture operates as a mortgage, which is security only, and not a transfer and as such the foreclosure procedure should have been followed.

In *Alberta Treasury Branches and Coopers & Lybrand Limited v. Ryan Construction Ltd. et al.*, [1983] 3 W.W.R. 137 (Alta. Q.B.) the debenture designated the receiver as agent for the corporation and granted him the power to sell the property. Hope, J. held that granting the power to sell, in the absence of some written restriction placed upon it being completed, such as the approval of the corporation, carried with it by necessary implication the power to take such steps as may be necessary to effect a conveyance or in other words to perfect the already authorized sale. Since the debenture did not make the receiver the company's attorney to execute a transfer of land, a court order was required and under the circumstances that the amount owing under the debenture exceeded the value of the property, the court sanctioned the conveyance free and clear of subsequent encumbrances. Hope, J. stated at p. 139 "while I am of the opinion that it is not the duty of the court to determine the price at which such a sale should take place, it is the duty of the court (although not approving the sale) to be satisfied that the price is fair and equitable, having regard to the interests of all parties who may have an interest in the subject property".

In *Clarkson Co. Ltd. et al. V. Wiebe Holdings Ltd. et al.* (1983) 28 R.P.R. 279 (Alta. Q.B.) the applicant company was the receiver appointed pursuant to a debenture granted by the respondents to the applicant bank. The debenture created a fixed charge on the land and granted a power of sale to the receiver. However, it did not contain a power of attorney authorizing the receiver to execute a transfer of the lands. The applicants made an application for an order directing the Registrar to cancel the existing certificate of title in the name of the respondents and to issue a certificate of title to the third party purchaser.

Foisy, J. held after considering both the *Femco and Ryan* cases, that the court had the power to grant the order subject to Hope, J.'s comment in *Ryan* that it

was the duty of the court to be satisfied that a fair price had been obtained. Because the parties agreed to file a new appraisal, which would satisfy this requirement, the application was granted.

In *First Canadian Land Corporation (Receiver of) RE Land Registry No. 782216874A* (1988) 60 Alta. L.R. 251 (Alta. Q.B.) the court indicated when considering whether to register a transfer of land after a sale by a receiver appointed under a debenture, the Registrar should:

- (i) determine in each case whether the power of attorney under which the receiver purports to act is registrable within s. 115(1) and 50(1) of the Land Titles Act. A power of attorney is registrable, even if it is not in the prescribed form, where the essential features of the power of attorney are found within the document and it is as near to the prescribed form “as circumstances permit”.
- (ii) accept a notice of appointment of a receiver as proof of the validity of the appointment where a statutory declaration of an officer of the receiver exhibiting a certified copy of the notice that has been filed at Corporate Registry is presented. If a statutory declaration is filed simply deposing that default has occurred, the facts giving rise to the default should be specified. In such cases, if any question of law arises on the facts deposed to, the Registrar should refer the matter to the court.
- (iii) refuse registration of a transfer if the debenture does not specify the required seven-day’s notice to the debtor or if the means of establishing service on the debtor are not clear.