

**Training Workshop
For
Bailiffs of Anguilla, B.V.I., Montserrat & St. Kitts and Nevis**

“Seizure and Sale of Property”

Introduction

I wish to congratulate the Judicial Education Institute on arranging this training workshop for bailiffs in several OECS territories. The work that bailiffs do is very important. Although the work can sometimes be unpleasant and challenging, it is important that it be performed efficiently since it affects the economic environment. If laws are not effectively enforced, this will adversely affect investment, jobs and the availability of credit.

This presentation deals with the seizure and sale of real property (that is, land alone or land together with any buildings affixed to such land) by the Bailiff, as the seizure and sale of chattels would have already been covered at this workshop under the heading “Levying and Writs of Execution.”

The Bailiff’s role in respect of the seizure and sale of real property is prescribed by statute in St. Kitts and Nevis, specifically by the Title by Registration Act, Chapter 279 of the Revised Laws of St. Kitts and Nevis. The seizure and sale of mortgaged or otherwise encumbered registered land is governed by the said Act. Land held by Deed or Indenture of Conveyance in St. Kitts-Nevis, rather than by Certificate of Title, may be seized and sold by a different process and is not governed by the Title By Registration Act.

Seizure & Sale of Land held by Certificate of Title in St. Kitts & Nevis

The most common scenario for such a seizure and sale in St. Kitts and Nevis is as follows. In the event of the failure to pay a debt which is secured by a mortgage, the mortgagee creditor is required *[by Section 71 of the Title By Registration Act]* to serve or cause to be served upon the registered owner of the land a formal Notice to Pay Off in the prescribed statutory format, requiring payment within 60 days of the date of service. This requirement to give formal Notice to Pay Off applies even if the debtor has already been written letters demanding payment of the mortgage debt. This formal 60-day Notice is no doubt intended:

- (a) to bring home to the debtor the seriousness of the matter;
- (b) to inform the debtor of the specific sum which is required to be paid; and
- (c) to give the debtor a 60-day opportunity to make payment of the sum due.

It is important to note that this Notice to Pay Off procedure only applies to land held by Certificate of Title but has no application to land held by Deed or Indenture of

Conveyance, what is commonly called “unregistered” land even though the Deed or Conveyance is usually in fact publicly recorded in the Register of Deeds although not in the Register of Titles. Land held by Deed or Indenture may be seized and sold by a different process which under St. Kitts-Nevis law need not involve the Bailiff in any way. This will be briefly mentioned later on in this presentation.

Anguilla, the British Virgin Islands and Montserrat (whose Bailiffs are attending this Workshop) all have only registered land regimes and therefore the Deed/Indenture of Conveyance documentation and process are non-existent in those jurisdictions. Also, this presentation does not purport to set out the law in respect of those territories as the legislation there [principally the Registered Land Acts in those jurisdictions] is likely to differ from the Title By Registration Act of St. Kitts & Nevis. My information is that those Registered Land Acts do not expressly ascribe any specific role to the Bailiff as regards the sale of mortgaged land, but as I have neither sought nor obtained any formal legal opinion in that regard I would ask you my listeners not to rely on this statement as constituting legal advice on the matter!

The Section 71 Notice to Pay Off under St. Kitts-Nevis law is not required to be served by a Bailiff. It may be served by a private citizen. Where the registered owner of the land is resident abroad and there is no one in St. Kitts-Nevis holding his power of attorney, the registered owner shall be served in the manner in which a defendant out of the jurisdiction of the High Court may be served. Where the address of the registered owner is unknown or where he/she is dead and his/her estate is unrepresented the Court may order that the Notice to Pay Off be served by posting it up in a conspicuous place on the in cumbered land and also by publishing it in a newspaper circulating in St. Kitts-Nevis.

If after service of the Notice to Pay Off the registered landowner does not, within the 60 days specified, pay off the mortgage debt, the mortgagee may seize the land contained in the Certificate of Title on which the mortgage is noted.

It is at this stage that the Bailiff comes into the process. Under Section 73 of the Title By Registration Act the seizure shall be complete as regards the registered owner by the Bailiff appearing on the premises with orders to seize, but, in evidence of his act, he shall place in the hands of the registered owner, or leave at his dwelling place, or, if resident abroad, in the hands of his attorney acting under his power of attorney, or if he has no such attorney, then the mortgagee, in the manner in which a defendant out of the jurisdiction of the High Court may be served, shall serve the registered landowner with an Act of Seizure in Form 15 of Cap. 279 in which shall be set forth, not only the land seized, but an inventory of the things accessory to the land over which the mortgage or in cumbrance extends, if any. The Title By Registration Act states that where the registered owner resides abroad, it shall not be necessary to delay proceedings because of such service.

Where the address of the registered owner is unknown or where the registered owner is dead and his estate is unrepresented the Court may order that the act of seizure be

served by posting it up in a conspicuous place on the incumbered land and also by publishing it in a newspaper circulating in St. Kitts-Nevis.

Forthwith after the seizure by the Bailiff, the mortgagee shall present to the Registrar of Titles a Caveat of Seizure in the form prescribed by Form 16 of Cap. 279 which the Registrar of Titles shall note upon the Certificate of Title to prohibit all dealings with the land seized until the Caveat be removed or withdrawn.

The registered owner, or his attorney or manager on the spot, shall, as a general rule, be named by the Bailiff to take charge of the property seized, and, during the necessary delay and until the land be sold, shall carry on the cultivation of the land, and the preparing and reaping of the crops, as before the seizure, but where, from the necessity of obtaining advances for the pay of labourers or otherwise, and the stoppage of his credit, the registered owner shall not be in position to do so, then the mortgagee or encumbrance who has made the seizure shall apply to the Court to appoint a receiver to manage and carry on the land or estate until a sale be effected, or the seizure paid off.

If the debt is not paid off and no new arrangements are made within 30 days from the date of seizure by the Bailiff, the mortgagee may apply to the High Court to settle the Articles of Sale of the property.

If an Order for the sale of the mortgaged property is made by the High Court, a further application must then be made to the Registrar of the High Court to fix the date of sale. A Notice of Sale must then be advertized in the local newspapers.

The sale is by public auction at the High Court and is conducted by the Registrar of the High Court. The Title By Registration Act specifies that a deposit of one quarter of the accepted bid must be paid into Court on the day of sale and the balance of the purchase price must be paid within no more than 3 months (or such shorter period as the Registrar may require) from the day of sale.

When the purchase price has been paid in full into the Court, the full purchase price is then paid by the Registrar into the Government Treasury. A further application must then be made to the Court to settle the Scheme of Division of the sale price and to direct the Registrar to pay out the proceeds of sale to the mortgagee. When the Scheme of Division has been settled by Order of the Court, the Registrar will authorize the Accountant General to pay out the proceeds of sale to the mortgagee's Solicitors.

The registered owner may, at any time up to 12 o'clock of the day proceeding the day of sale fixed by the Court or the Registrar, pay off the seizure, by depositing in Court the amount of the sum due under the mortgage or in cumbrance, and the costs.

You will have noticed from the foregoing description of the seizure and sale of mortgaged land (the most common scenario involving the seizure and sale of real estate) that the Bailiff is really only given a very limited role indeed. Notwithstanding

this, I thought that you should be given the full picture so that you can see where you fit in the process under the law.

Deed Property

Where the property over which the mortgagee holds a mortgage is held by way of Deed or Indenture of Conveyance the mortgagor actually conveys title to the mortgagee which usually has an express and direct power of sale without having to obtain an Order of sale from the High Court. The mortgagee in such a case may sell by public auction, by sealed tender or by private treaty. The mortgagee should obtain a current valuation of the property before proceeding to offer the property for sale at a fair market price.

However, as explained earlier in this presentation, where the mortgaged property is held by virtue of a Certificate of Title, a forced sale can only take place through the High Court via public auction by the Registrar and after the aforementioned preliminary steps required by the Title By Registration Act are taken.

Specific Court Orders

It is possible for the Court to order that the Bailiff shall have a particular role to play in carrying out any legal process ordered by the Court. Where such a Court Order is made obviously any such Order must be obeyed by the Bailiff in accordance with the terms of the Order. In addition, any person who disturbs, hinders or assaults any Bailiff in the execution of his duty, or aids, abets or assists therein will be guilty of a criminal offence and shall be liable to a fine.

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