

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 40—Report on Execution Against Land

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The *Execution Act* set out a scheme whereby an unsecured judgment creditor may proceed against an interest in land belonging to his judgment debtor to obtain satisfaction of his claim. The Act provided that once a judgment had been obtained, a judgment creditor could register it in one of the Land Registry Offices (as they were called at the time of the report) and the name of the debtor would be entered in an index known as a register of judgments. Entry in the register of judgments would result in a lien and charge on all of the lands of the judgment debtor. There was, however, no provision to register a judgment directly against the title of a property owned by the debtor. The scheme worked in a reasonably satisfactory manner but there were circumstances in which the Act could operate unfairly or in which rights arising under it could usefully be clarified. This led the Law Reform Commission of British Columbia to prepare a Working Paper on the topic. At the same time, some of the issues raised in the Working Paper were also being considered independently by the Attorney General's Department in the context of other reforms relating to land registration, real property and conveyancing. The government initiatives eventually crystallized in the *Execution Amendment Act*, which altered the existing execution scheme in several ways. At the time of publication of this report, the *Execution Amendment Act* had received royal assent but had not come into force.

The broad aim of this project was to review the *Execution Act* and the changes proposed by the *Execution Amendment Act*. Chapter one provides a general outline of the existing statutory scheme governing execution against land in the *Execution Act*. Chapter two sets out the main changes to the existing execution scheme contemplated by the *Execution Amendment Act*. The major innovation in the new Act is to provide for the registration of a judgment directly against the title of property owned by the judgment debtor in the same manner as any other charge. At a practical level the legislation would compel judgment creditors to identify the specific property in which the judgment debtor has an interest before registration can take place.

In chapter four, the scope of the Execution Act is examined in greater detail. In particular, the report looks at pre-emption claims, the application of the Act to the *Homestead Act*, unregistered interests in land and the definition of "land." The treatment of these issues under

the *Execution Amendment Act* is also compared and a number of recommendations are made.

Chapter five looks at the similarity in proceedings between an execution against land and a mortgage that is in default. Consideration is given to the possibility of uniform rights in relation to certain aspects of redemption.

The rights of third parties in relation to the *Execution Act* are discussed in chapter six. In particular, the chapter focuses on issues affecting joint tenants, execution against security interests, and proceedings on prior charges. Chapter seven looks at the possibility of introducing some form of prejudgment process to preserve assets and prevent them from being dissipated by the debtor.

The final chapter repeats the recommendations as they are set out in the body of the report.

Further Developments

The report's recommendations have been implemented in part. See *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78.