
STATUTORY RULES OF NORTHERN IRELAND

2001 No. 254

The Rules of the Supreme Court
(Northern Ireland) (Amendment) 2001

Mortgage actions

10. Order 88 shall be amended as follows—

(a) after rule 1(1)(g) there shall be added the following new sub-paragraph—

“(h) an enforcement order or a time order where a regulated agreement is secured by a mortgage.”;

(b) for paragraph (2) of rule 1 there shall be substituted the following new paragraph—

“(2) In this Order—

“the Act of 1974” means the Consumer Credit Act 1974(1);

“enforcement order”, “time order” and “regulated agreement” have the same meaning as in section 189(1) of the Act of 1974; and

“mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.”;

(c) in rule 2—

(i) in sub-paragraph (a) the word “or” where it appears for the second time shall be omitted;

(ii) in sub-paragraph (b) there shall be added at the end the word “or”; and

(iii) after sub-paragraph (b) there shall be added the following new sub-paragraph—

“(c) an enforcement order or a time order where a regulated agreement is secured by a mortgage of any such property”;

(d) paragraph (5) of rule 4 shall be omitted and the principal Rules shall be renumbered accordingly;

(e) for rule 4A there shall be substituted the following new rule—

“Claim for possession: notice to be sent to defendant in default of payment

4A.—(1) Where the plaintiff—

(a) claims in a mortgage action delivery of possession of land because of failure to pay monies secured by the mortgage, or

(b) applies for the removal or variation of a stay or suspension contained in an order for delivery of possession made as a result of such a claim in a mortgage action,

he shall, when serving a copy of the notice of appointment or when serving any summons (not being an originating summons) for such a claim or application, also serve on the defendant—

- (i) where the mortgaged property comprises or includes a dwelling house and the secured monies comprise or include indebtedness other than as described in (ii), a notice in Form No.10A in Appendix A;
- (ii) where the secured monies comprise or include a debt under either a regulated agreement or a security provided for such an agreement, a notice in Form No.10B in Appendix A.

(2) Paragraph (4) of rule 4 shall apply to service of a notice under this rule as it applies to service under paragraph (2) or (3) of that rule save that a copy of the notice in Form 10A or 10B, as the case may be, shall be attached to the certificate proving service.”;

(f) After rule 4A there shall be inserted the following new rule—

“Claim for possession of land: notice to occupiers

4B.—(1) This rule applies where the plaintiff –

- (a) claims in a mortgage action delivery of possession of land, or
- (b) applies for the removal or variation of a stay or suspension contained in an order for delivery of possession as a result of such a claim made in a mortgage action.

(2) Where the plaintiff believes that someone other than the defendant is in occupation of the property he shall not less than four clear days before the day fixed for the first hearing of the summons or application serve on the person believed to be in occupation of the property a notice in Form No.10C in Appendix A.

(3) Where the plaintiff is not aware that any person other than the defendant is in occupation of the property, he shall, not less than four clear days before the date fixed for the first hearing of the summons or application and unless the Court otherwise directs, affix to the main door or other conspicuous part of the property a notice in Form No.10C or (if practicable) post to, or insert through the letter-box at, the property a sealed envelope containing such a notice addressed to the occupiers (not being the defendant) of the property without naming them.

(4) Paragraph (4) of rule 4 shall apply to service of a notice under this rule as it applies to service under paragraph (2) or (3) of that rule save that a copy of the notice in Form No.10C shall be attached to the certificate proving service.”;

(g) for paragraph (2) of rule 5 there shall be substituted the following new paragraph—

“(2) The affidavit must exhibit—

- (a) the original mortgage or a true copy thereof, and
- (b) where the mortgage secures a regulated agreement, the original agreement or a true copy thereof

and the original mortgage (or, in the case of a registered charge, the certificate of charge) and the original agreement must be produced at the hearing of the summons.”;

(h) for paragraph (2A) of rule 5 there shall be substituted the following new paragraph—

“(2A) The affidavit must state whether the debt which is secured by the mortgage arose under a regulated agreement and, if so, specify—

- (a) the date on which any notice required by section 76 or section 87 of the Act of 1974 was given,

- (b) where the plaintiff has obtained or is now applying for an enforcement order, particulars of any enforcement order obtained or, as the case may be, the circumstances which render such an order necessary, and
- (c) the amount of a day's interest.”;
- (i) for sub-paragraph (b) of rule 5(3) there shall be substituted the following—
 - “(b) the amount of the periodic repayments and payments of interest required to be made;
 - (bb) the rate of interest payable—
 - (i) at the commencement of the mortgage;
 - (ii) at the commencement of the proceedings; and
 - (iii) at the date of the affidavit,”;
- (j) for sub-paragraph (a) of rule 5(4) there shall be substituted the following new sub-paragraph—
 - “(a) give particulars of the inquiries made as to the occupation of the mortgaged property and of the plaintiff's knowledge, information and belief as to—
 - (i) whether or not the property is occupied; and
 - (ii) if it is believed to be occupied, the identity of every person believed to be in occupation.”.
- (k) in rules 5(4)(b) and 5A(2)(f)(ii) after the words “Order 1984” there shall be inserted the words “or Article 6 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998(2)”.