
STATUTORY RULES OF NORTHERN IRELAND

1991 No. 364

The Insolvency Rules (Northern Ireland) 1991

PARTS 5 AND 6 INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

PART 6

BANKRUPTCY

CHAPTER 14

DISCLAIMER

Trustee's notice of disclaimer

6.175.—(1) Where the trustee disclaims property under Article 288, the notice of disclaimer shall contain such particulars of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the trustee and filed in court, with a copy. The court shall secure that both the notice and the copy are sealed and endorsed with the date of filing.

(3) The copy notice, so sealed and endorsed, shall be returned by the court to the trustee as follows—

- (a) if the notice has been delivered at the office of the court by the trustee in person, it shall be handed to him,
- (b) if it has been delivered by some person acting on the trustee's behalf, it shall be handed to that person, for immediate transmission to the trustee, and
- (c) otherwise, it shall be sent to the trustee by first class post.

(4) The court shall cause to be endorsed on the original notice, or otherwise recorded on the file, the manner in which the copy notice was returned to the trustee.

(5) For the purposes of Article 288, the date of the prescribed notice is that which is endorsed on it, and on the copy, in accordance with this Rule.

[E.R.6.178]

Communication of disclaimer to persons interested

6.176.—(1) Within 7 days after the day on which a copy of the notice of disclaimer is returned to him, the trustee shall send or give copies of the notice (showing the date endorsed as required by Rule 6.175) to the persons mentioned in paragraphs (2) to (8).

(2) Where the property disclaimed is of a leasehold nature, he shall send or give a copy to every person who (to his knowledge) claims under the bankrupt as underlessee or mortgagee.

(3) Where the disclaimer is of property in a dwelling-house, he shall send or give a copy to every person who (to his knowledge) is in occupation of, or claims a right to occupy, the house.

(4) He shall in any case send or give a copy of the notice to every person who (to his knowledge)—

- (a) claims an interest in the disclaimed property, or

(b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.

(5) If the disclaimer is of an unprofitable contract, he shall send or give copies of the notice to all such persons as, to his knowledge, are parties to the contract or have interests under it.

(6) If subsequently it comes to the trustee's knowledge, in the case of any person, that he has such an interest in the disclaimed property as would have entitled him to receive a copy of the notice of disclaimer in pursuance of paragraphs (2) to (5), the trustee shall then forthwith send or give to that person a copy of the notice.

(7) Compliance with paragraph (6) is not required if—

- (a) the trustee is satisfied that the person has already been made aware of the disclaimer and its date, or
- (b) the court, on the trustee's application, orders that compliance is not required in that particular case.

(8) A notice or copy notice to be served on any person under the age of 18 in relation to the disclaimer of property in a dwelling-house is sufficiently served if sent or given to the parent or guardian of that person.

[E.R.6.179]

Additional notices

6.177. The trustee disclaiming property may, without prejudice to his obligations under Articles 288 to 292 and Rules 6.175 and 6.176, at any time give notice of the disclaimer to any persons who in his opinion ought, in the public interest or otherwise, to be informed of it.

[E.R.6.180]

Duty to keep court informed

6.178. The trustee shall notify the court from time to time as to the persons to whom he has sent or given copies of the notice of disclaimer under Rules 6.176 and 6.177, giving their names and addresses, and the nature of their respective interests.

[E.R.6.181]

Application for leave to disclaim

6.179.—(1) Where under Article 288(4) the trustee requires the leave of the court to disclaim property claimed for the bankrupt's estate under Article 280 or 281, he may apply for that leave *ex parte*.

(2) The application must be accompanied by a report—

- (a) giving such particulars of the property proposed to be disclaimed as enable it to be easily identified,
- (b) setting out the reasons why, the property having been claimed for the estate, the court's leave to disclaim is now applied for, and
- (c) specifying the persons (if any) who have been informed of the trustee's intention to make the application.

(3) If it is stated in the report that any person's consent to the disclaimer has been signified, a copy of that consent must be annexed to the report.

(4) The court may, on consideration of the application, grant the leave applied for; and it may, before granting leave—

- (a) order that notice of the application be given to all such persons who, if the property is disclaimed, will be entitled to apply for a vesting or other order under Article 293, and
- (b) fix a venue for the hearing of the application under Article 288(4).

[E.R.6.182]

Application by interested party under Article 289

6.180.—(1) Paragraphs (2) to (4) apply where, in the case of any property, application is made to the trustee by an interested party under Article 289 (request for decision whether the property is to be disclaimed or not).

(2) The application—

- (a) shall be delivered to the trustee personally or by registered post, and
- (b) shall be made in the form known as “notice to elect”, or a substantially similar form.

(3) Paragraph (4) applies in a case where the property concerned cannot be disclaimed by the trustee without the leave of the court.

(4) If within the period of 28 days mentioned in Article 289(1) the trustee applies to the court for leave to disclaim, the court shall extend the time allowed by that Article for giving notice of disclaimer to a date not earlier than the date fixed for the hearing of the application.

[E.R.6.183]

Interest in property to be declared on request

6.181.—(1) If, in the case of property which the trustee has the right to disclaim, it appears to him that there is some person who claims, or may claim, to have an interest in the property, he may give notice to that person calling on him to declare within 14 days whether he claims any such interest and, if so, the nature and extent of it.

(2) Failing compliance with the notice, the trustee is entitled to assume that the person concerned has no such interest in the property as will prevent or impede its disclaimer.

[E.R.6.184]

Disclaimer presumed valid and effective

6.182. Any disclaimer of property by the trustee is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer, or otherwise under Articles 288 to 292, or under this Chapter.

[E.R.6.185]

Application for exercise of court's powers under Article 293

6.183.—(1) This Rule applies with respect to an application by any person under Article 293 for an order of the court to vest or deliver disclaimed property.

(2) The application must be made within 3 months of the applicant becoming aware of the disclaimer, or of his receiving a copy of the trustee's notice of disclaimer sent under Rule 6.176, whichever is the earlier.

(3) The applicant shall with his application file an affidavit—

- (a) stating whether he applies under sub-paragraph (a) of Article 293(2) (claim of interest in the property), under sub-paragraph (b) (liability not discharged) or under sub-paragraph (c) (occupation of dwelling-house);

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- (b) specifying the date on which he received a copy of the trustee's notice of disclaimer, or otherwise became aware of the disclaimer; and
 - (c) specifying the grounds of his application and the order which he desires the court to make under Article 293.
- (4) The court shall fix a venue for the hearing of the application; and the applicant shall, not later than 7 days before the hearing date, give to the trustee notice of the venue, accompanied by copies of the application and the affidavit under paragraph (3).
- (5) On the hearing of the application, the court may give directions as to other persons (if any) who should be sent or given notice of the application and the grounds on which it is made.
- (6) Sealed copies of any order made on the application shall be sent by the court to the applicant and the trustee.
- (7) In a case where the property disclaimed is of a leasehold nature, or is property in a dwelling-house, and Article 290 or (as the case may be) Article 291 applies to suspend the effect of the disclaimer, there shall be included in the court's order a direction giving effect to the disclaimer.
- (8) Paragraph (7) does not apply if, at the time when the order is issued, other applications under Article 293 are pending in respect of the same property.

[E.R.6.186]