



STATUTORY INSTRUMENTS

S.I. No. 264 of 2009



CIRCUIT COURT RULES (ACTIONS FOR POSSESSION AND WELL-
CHARGING RELIEF) 2009

(Prn. A9/0983)

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CIRCUIT COURT RULES (ACTIONS FOR POSSESSION AND WELL-
CHARGING RELIEF) 2009

We, the Circuit Court Rules Committee, constituted pursuant to the provisions of section 69 of the Courts of Justice Act 1936, by virtue of the powers conferred on us by section 66 of the Courts of Justice Act 1924 and section 70 of the Courts of Justice Act 1936, (as applied by section 48 of the Courts (Supplemental Provisions) Act 1961) and section 27 of the Courts (Supplemental Provisions) Act 1961, and of all other powers enabling us in this behalf, do hereby, with the concurrence of the Minister for Justice, Equality and Law Reform, make the annexed Rules of Court.

Dated this 26th day of May 2009.

(Signed): Matthew Deery
(Chairman of the Circuit Court Rules Committee)

Alison Lindsay

Gerard J. Doherty

Joe Deane

Noel Rubotham

Patricia Casey

I concur in the making of the above Rules of Court.

Dated this 8th day of July 2009.

Signed: DERMOT AHERN.
MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 17th July, 2009.*

S.I. No. 264 of 2009

CIRCUIT COURT RULES (ACTIONS FOR POSSESSION AND WELL-CHARGING RELIEF) 2009

1. These Rules, which may be cited as the Circuit Court Rules (Actions for Possession and Well-Charging Relief) 2009, shall come into operation on the 8th day of July 2009.
2. These Rules shall be construed together with the Circuit Court Rules 2001 to 2009.
3. The Circuit Court Rules are amended by the insertion immediately following Order 5A of the following:

“Order 5B

PROCEDURE IN CERTAIN ACTIONS FOR POSSESSION OF LAND AND ACTIONS FOR WELL-CHARGING RELIEF

1. This Order applies to any proceedings in which the plaintiff claims any of the following reliefs:
 - (a) recovery of possession of any land on foot of a legal mortgage or charge;
 - (b) an order declaring the amount due on foot of a mortgage to be well charged on land.
2. Save where otherwise expressly provided by this Order, in the event that any conflict shall arise between the provision of any rule of this Order and any other provision of these Rules, the provision of the rule of this Order shall, in respect of any proceedings to which this Order applies, prevail.
3. (1) Proceedings to which this Order applies shall be commenced by a Civil Bill in Form 2R of the Schedule of Forms. The special indorsement of claim in such Civil Bill shall state specifically and with all necessary particulars the relief claimed and the grounds thereof.
 - (2) A Civil Bill to which this Order applies shall be served, together with a copy of the affidavit mentioned in rule 5, on each defendant not later than 21 days before the return date mentioned in rule 4.
4. Every Civil Bill to which this Order applies shall, upon being issued, be assigned a return date before the County Registrar, which date shall be entered in the Civil Bill.
5. (1) There shall be served with the Civil Bill a copy of an affidavit (and copies of any exhibits to that affidavit) sworn by or on behalf of the plaintiff, verifying the claim indorsed on the Civil Bill.

(2) A defendant intending to defend proceedings to which this Order applies shall enter an Appearance in the Office in Form 5 in the Schedule of Forms within ten days of the service upon him of the Civil Bill and shall defend the plaintiff's claim by filing a replying affidavit to the plaintiff's affidavit and serving a copy of that replying affidavit (and copies of any exhibits to that affidavit) on the plaintiff not later than four days before the return date.

6. (1) No party shall have the right in proceedings to which this Order applies to adduce any evidence otherwise than by affidavit, except—

- (a) by leave of the Judge,
- (b) where permitted in accordance with rule 7(4) or rule 8(1), or
- (c) where the proceedings have been adjourned for plenary hearing in accordance with rule 8(2).

(2) Any party desiring to cross-examine a deponent who has sworn an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing requiring the production of the deponent for cross-examination, and unless such deponent is produced accordingly his affidavit shall not be used as evidence unless by the special leave of the Court.

7. (1) On the return date of the Civil Bill (or on any adjournment from such date), the County Registrar may, in addition to any other order which the County Registrar has power to make:

- (a) order service of the Civil Bill on any other person;
- (b) make an order enlarging the time for entry of an appearance;
- (c) give directions and fix time limits for the filing and delivery of any further affidavits by any party or parties;
- (d) give any other directions for the preparation of the proceedings for trial;
- (e) where an appearance has not been entered or a replying affidavit in accordance with rule 5(2) which discloses a prima facie defence has not been filed and delivered, make an order for possession in accordance with paragraph (xxxiii) or (xxxiv) of the Second Schedule to the Courts and Courts Officers Act 1995;
- (f) where the parties are sui juris, make an order to receive a consent and make the same a rule of court.

(2) Where a replying affidavit has been filed in accordance with rule 5(2) which discloses a prima facie defence, the County Registrar shall transfer the Civil Bill, when in order for hearing, to the Judge's list on the first opportunity.

(3) For the purposes of this rule, or for the purpose of any hearing before himself, the County Registrar may extend the time for filing affidavits and give such directions and adjourn the case before himself as he thinks fit.

(4) Evidence as to failure to enter an appearance within the time permitted by these Rules may be given by production of a certificate of non-appearance issuing from the Office or otherwise as where the County Registrar permits.

8. (1) If at any stage during the course of proceedings instituted by Civil Bill in accordance with this Order it appears to the Judge or the County Registrar that the determination of any issue is necessary for the proper decision or ruling as to the relief to be granted in such proceedings or as to any matter arising therein, the Judge may, or the County Registrar may on consent, settle such issue to be tried, and evidence as to any issue of fact may be given either orally or by affidavit or partly orally and partly by affidavit as the Judge in the circumstances thinks proper.

(2) The Judge may, where he considers it appropriate, adjourn a Civil Bill listed before him under this Order for plenary hearing as if the proceedings had been originated otherwise than in accordance with this Order, with such directions as to pleadings or discovery as may be appropriate.

9. On the hearing of any Civil Bill to which this Order applies, the Judge may give judgment for the relief to which the plaintiff appears to be entitled.

10. (1) The Judge may give any special directions touching the carriage or execution of any judgment or order, or the service thereof upon persons not parties, as he thinks just.

(2) The Judge or the County Registrar may make such order as to costs as he considers just, including an order measuring any costs awarded."

4. The Form 2R annexed hereto shall be added to the Schedule of Forms annexed to the Circuit Court Rules immediately following Form 2Q.

Form 2R

AN CHÚIRT CHUARDA
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

BETWEEN

Plaintiff

AND

Defendant

CIVIL BILL FOR *[POSSESSION]*[WELL-CHARGING RELIEF]

Toof..... in the County ofthe defendant

This Civil Bill is to require you to attend before the County Registrar at on 20.... ato'clock in the forenoon at the hearing of this Civil Bill issued on 20.... by/on behalf of of....., the Plaintiff.

AND TAKE NOTICE that if you wish to attend and to be heard, you should within ten days after the service of this Civil Bill upon you enter or cause to be entered with the County Registrar at his Office at an Appearance to answer the claim of the Plaintiff.

AND TAKE NOTICE that if you intend to defend the proceeding on any grounds, you must not only enter an Appearance, but also file with the County Registrar and deliver to the *[Plaintiff]*[Plaintiff's Solicitor] a replying affidavit setting out the nature and grounds of your defence not later than four days before the return day mentioned above.

AND TAKE NOTICE that unless you enter an Appearance and file a replying affidavit, you will be held to have admitted the said claim, and the Plaintiff may proceed therein and judgment may be given against you in your absence without further notice.

The Appearance may be entered and replying affidavit filed by posting same to the County Registrar's Office, and by giving copies thereof to the Plaintiff or his solicitor by post.

SPECIAL INDORSEMENT OF CLAIM

[Insert the relief claimed specifically and with all necessary particulars, the grounds thereof and the basis upon which jurisdiction is claimed]

The plaintiff will rely at the hearing of this Civil Bill on the following affidavit(s):

1. Affidavit of sworn on 20....

2. etc

Copies of the above affidavit(s) and exhibit(s) are served herewith.

N.B. This Civil Bill is to be served not less than 21 days before the return day mentioned above (exclusive of the day of service).

Dated the20.....

Signed:
Plaintiff/Solicitor for the Plaintiff

To:
Defendant/ Solicitor for the Defendant

And

To: The County Registrar

*delete where inapplicable

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These rules amend the Circuit Court Rules to introduce a new procedure in respect of the preparation for trial of proceedings for recovery of possession of land on foot of a legal mortgage or charge and proceedings to declare a mortgage well charged on land. Such proceedings will be initiated by a new form of Civil Bill supported by affidavit and defended by a replying affidavit, and will be returnable initially to a hearing before the country registrar, at which the County Registrar may make or give various orders or directions.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
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nó trí aon díoltóir leabhar.

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