



STATUTORY INSTRUMENTS.

**S.I. No. 346 of 2015**



CIRCUIT COURT RULES (ACTIONS FOR POSSESSION AND WELL-  
CHARGING RELIEF) 2015

S.I. No. 346 of 2015

CIRCUIT COURT RULES (ACTIONS FOR POSSESSION AND WELL-CHARGING RELIEF) 2015

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 and Equality, make the annexed Rules of Court.

Dated this 14th day of July 2015.

(Signed): Raymond Groarke  
(Chairman of the Circuit Court Rules Committee)

Fiona Duffy Coady  
Rita Considine  
Noel Rubotham

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

Dated this 1st day of August 2015.

Signed: FRANCES FITZGERALD,  
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 4th August, 2015.*

S.I. No. 346 of 2015

CIRCUIT COURT RULES (ACTIONS FOR POSSESSION AND WELL-CHARGING RELIEF) 2015

1. (1) These Rules, which may be cited as the Circuit Court Rules (Actions for Possession and Well-Charging Relief) 2015, shall come into operation on the 17th day of August 2015.

(2) These Rules shall be construed together with the Circuit Court Rules 2001 to 2015.

(3) The Circuit Court Rules 2001 to 2015 as amended by these Rules may be cited as the Circuit Court Rules 2001 to 2015.

2. Order 5B of the Circuit Court Rules is amended:

(i) by the substitution for rule 1 of the following rule:

“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;
- (c) an order under section 100(3) of the Land and Conveyancing Law Reform Act 2009 authorising the exercise by a mortgagee of a power of sale”.

(ii) by the substitution for rule 3 of the following rule:

“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) In proceedings to which this Order applies, the Civil Bill shall include a statement immediately following the Special Indorsement of Claim as to whether:

- (a) the proceedings are commenced in the Court under the jurisdiction conferred by section 101(5) of the Land and Conveyancing Law Reform Act 2009, and in such case, whether section 2 of the Act of 2013 applies to the proceedings, or

(b) the proceedings are commenced in the Court under the jurisdiction conferred by section 3 of the Land and Conveyancing Law Reform Act 2013.

(3) 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.”;

(iii) by the substitution for rule 5 of the following rule:

“5. (1) There shall be served with the Civil Bill a copy of an affidavit which shall conform to the requirements of Form 54 in the Schedule of Forms (and copies of any exhibits to that affidavit) sworn by or on behalf of the plaintiff, verifying and supporting the claim indorsed on the Civil Bill.

(2) Where the agreement for a mortgage on foot of which proceedings to which this Order relates have been commenced is or was at the material time or times one to which a code drawn up by the Central Bank of Ireland in accordance with section 117 of the Central Bank Act 1989 applies, the affidavit shall identify the code concerned.

(3) 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 setting out the defendant’s defence and serving a copy of that affidavit (and copies of any exhibits to that affidavit) on the plaintiff not later than four days before the return date.”;

(iv) by the insertion immediately following sub-rule (2) of rule 8 of the following sub-rule:

“(3) Without prejudice to the power exercisable by the Court, of its own motion or on an application by the plaintiff, to adjourn proceedings under section 101(1)(a) of the Land and Conveyancing Law Reform Act 2009 or to grant relief in accordance with section 101(1)(b) of that Act, an application by a defendant to the Court for such an adjournment or such relief, shall, unless such evidence has previously been given on affidavit in the proceedings, be grounded on an affidavit, which shall:

(a) where the defendant is seeking time to pay any arrears, including interest, due under the mortgage—

(i) set out and verify the assets and liabilities of the defendant or verify a statement of the assets and

liabilities of the defendant which is exhibited to such affidavit and

(ii) set out detailed particulars of the defendant's proposal to make such payment, or

(b) where the defendant is seeking time to remedy any other breach of obligation arising under the mortgage, set out detailed particulars of the defendant's proposal to effect such remedy.”,

(v) by the substitution for Form 2R in the Schedule of Forms of the form bearing the like number set out in the Schedule and

(vi) by the insertion immediately following Form 53C in the Schedule of Forms of the Form No. 54 set out in the Schedule.

3. Nothing in these Rules shall affect the validity of any step taken or any other thing done in any proceedings for—

(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,

(c) an order under section 100(3) of the Land and Conveyancing Law Reform Act 2009 authorising the exercise by a mortgagee of a power of sale,

initiated before the commencement of these Rules. Any such proceedings shall be continued and completed as if these Rules had not been made.

SCHEDULE

Form 2R

AN CHÚIRT CHUARDA  
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

BETWEEN

.....Plaintiff

AND

.....Defendant

CIVIL BILL FOR \*[POSSESSION] \*[ORDER AUTHORISING SALE  
UNDER SECTION 100(3) OF THE LAND AND CONVEYANCING LAW  
REFORM ACT 2009] \*[WELL-CHARGING RELIEF]

To.....of..... in the County of..... the Defendant

This Civil Bill is to require you to attend before the County Registrar at Court  
no..... on..... 20.... at...am/pm. for the hearing of this Civil Bill issued  
on..... 20.... by/on behalf of..... of....., the Plaintiff.

The Plaintiff’s claim against you is set out in the section of this Civil Bill headed  
“Special Indorsement of Claim”.

If you wish to attend and to be heard, you should, within ten days after the  
service of this Civil Bill on you—

1. detach and complete the two forms (headed “Entry of Appearance”) attached  
to this Summons,
2. give or send by post one of those forms to the Circuit Court Office  
at.....

and

3. give or send by post the other form to the Plaintiff or to the Solicitor for the  
Plaintiff at the address set out in the Entry of Appearance.

If you intend to defend the proceeding on any grounds, as well as entering an  
appearance as indicated above you must, not later than four days before the  
date mentioned above for the hearing of this Civil Bill—

1. set out in a sworn statement (a “replying affidavit”) the nature and grounds  
of your defence to the claim,

2. file the replying affidavit in the Circuit Court Office above mentioned and
3. give or send by post a copy of the replying affidavit to the \*[Plaintiff]\*[Plaintiff's Solicitor].

PLEASE NOTE that unless you file an Appearance with the County Registrar and file the replying affidavit as set out above, you will be held to have admitted the said claim, and the Plaintiff may proceed with the claim against you and judgment may be given against you in your absence without further notice.

#### 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, including a statement of the rateable valuation of the mortgaged property, where applicable, and a statement that the property is located within the Circuit.]

\*These proceedings are commenced in the Circuit Court pursuant to section 101(5) of the Land and Conveyancing Law Reform Act 2009 as they include an application under section 97(2) or section 100(3) of the Land and Conveyancing Law Reform Act 2009 concerning property which is subject to a housing loan mortgage created on or after 1 December 2009 \*and section 2 of the Land and Conveyancing Law Reform Act 2013 applies to the proceedings as they are proceedings brought by a mortgagee seeking an order for possession of land to which the mortgage relates and which land is the principal private residence of—

- (a) the mortgagor of the land concerned, or
- (b) a person without whose consent a conveyance of that land would be void by reason of—
  - (i) the Family Home Protection Act 1976, or
  - (ii) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

\*These proceedings are commenced in the Circuit Court pursuant to section 3 of the Land and Conveyancing Law Reform Act 2013 as they are proceedings brought by a mortgagee seeking an order for possession of land which is the principal private residence of—

- (a) the mortgagor of the land concerned, or
- (b) a person without whose consent a conveyance of that land would be void by reason of—
  - (i) the Family Home Protection Act 1976, or
  - (ii) the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,

and the mortgage concerned was created prior to 1 December 2009.

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:.....20....

Signed:.....  
Plaintiff/Solicitor for the Plaintiff

To:.....  
Defendant/ Solicitor for the Defendant

And To: The County Registrar

\*delete where inapplicable



AN CHÚIRT CHUARDA  
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

ENTRY OF APPEARANCE

BETWEEN

.....Plaintiff

AND

.....Defendant

1. To the County Registrar..... at..... I request you will enter an Appearance herein on behalf of the Defendant to the Civil Bill served upon \*him \*her on.....

Dated this ... day of.....

Signed: .....  
Defendant/Solicitors for the Defendant

2. To the Plaintiff/Solicitor for the Plaintiff..... The Appearance mentioned above was this day lodged by hand (sent by post) and the said Defendant intends to defend this proceeding.

Dated this... day of.....

Signed: .....  
Defendant/Solicitors for the Defendant

AN CHÚIRT CHUARDA  
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

ENTRY OF APPEARANCE

BETWEEN

.....Plaintiff

AND

.....Defendant

1. To the County Registrar..... at..... I request you will enter an Appearance herein on behalf of the Defendant to the Civil Bill served upon \*him \*her on.....

Dated this... day of.....

Signed: .....  
Defendant/Solicitors for the Defendant

2. To the Plaintiff/Solicitor for the Plaintiff..... The Appearance mentioned above was this day lodged by hand (sent by post) and the said Defendant intends to defend this proceeding.

Dated this... day of.....

Signed: .....  
Defendant/Solicitors for the Defendant

Form 54

AN CHÚIRT CHUARDA  
THE CIRCUIT COURT

CIRCUIT

COUNTY OF

BETWEEN

.....Plaintiff

AND

.....Defendant

AFFIDAVIT IN SUPPORT OF CIVIL BILL FOR \*[POSSESSION]  
\*[WELL-CHARGING RELIEF]

I, [Insert name of Deponent], ..... [Insert occupation of Deponent], ..... of [Insert address of Deponent] ..... being aged 18 years and upwards MAKE OATH and say as follows:

1. I am \*[the (*state capacity*) of the plaintiff] \*[the plaintiff] in the above entitled proceedings. I make this Affidavit from facts within my own knowledge save where otherwise appears and where so appearing I believe the same to be true.

**A — Verification of factual matter in Civil Bill**

2. I beg to refer to the Civil Bill issued herein on [date]. I say that such of the statements therein as relate to the acts and deeds of the plaintiff are true and correct and such of the statements therein as relate to the acts and deeds of any other person or persons I believe to be true.

**B — Details of property**

[Set out precise particulars of the property to which the proceedings relate, including any premises on the land, and the full address of the property. In the case of registered land, the county and folio number should be specified. Exhibit any relevant document, including where relevant any document or copy certified by a member of the staff of the Property Registration Authority (e.g. certified copy folio); evidence of rateable valuation from the appropriate authority where the jurisdiction is based on the rateable valuation, and as to whether or not the property is a family home within the meaning of section 2 of the Family Home Protection Act 1976 or a shared home within the meaning of section 27 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010].

**C — Details of occupancy/possession**

[Set out particulars of the occupancy of the property to which the proceedings relate, including the names of the known occupants; whether the property is occupied by the defendant borrower and/or other persons as a principal dwelling or otherwise. Where the property is occupied by the borrower or a person(s)

other than the borrower on a leasehold or tenancy basis, set out the identity of the tenant(s) where known, whether the tenancy is for commercial purposes or is residential, the terms where known of any tenancy. In the case of a leasehold or tenancy consent by the plaintiff to which would have been required by law, specify whether such consent had been given by the plaintiff. Where the applicant has recovered possession of the property, please confirm the circumstances in which possession was obtained (e.g. under order of court or by consent). Exhibit any relevant document.]

#### **D — Details of security**

[Set out precise particulars of the security on which the plaintiff relies, including the date on which the security was provided, amount secured and any relevant registration of the security, specifying in particular whether the security is by way of registered charge; mortgage by deed or other unregistered security; security by way of equitable deposit; enforceable agreement to create a mortgage, etc and the nature and extent of the legal or equitable estate or interest of the defendant secured. Where relevant (see B above) specify whether any consent for the purposes of section 3 of the Family Home Protection Act 1976 or section 28 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 had been obtained to the giving of the security. Exhibit any relevant document (e.g. deed of mortgage).]

#### **E — Details of loan agreement or other advance relied upon**

[Set out precise particulars of the loan agreement (e.g. facility letter) on which the plaintiff relies, exhibiting same if in writing and not previously exhibited; and if not in writing, set out particulars of the agreement.]

#### **F — Details of arrears or default or other matter on which plaintiff relies as entitling the plaintiff to the relief sought**

[Set out precise particulars of arrears alleged to be owed or other default alleged by the defendant, or other matter on which the plaintiff relies as entitling the plaintiff to the relief sought, explaining by reference to any written agreement or otherwise precisely how it is alleged the act or default of the defendant or other matter relied upon entitles the plaintiff to the relief claimed. Set out and if in writing exhibit all relevant communications passing between the plaintiff (and/or its agents) and the defendant (and/or his or her agents) in relation to same, including letters of demand relied upon and up to date statement of mortgage arrears.]

#### **G — Application of regulatory code**

[Where the agreement for security on foot of which the proceedings have been commenced, or any loan agreement to which it applies, is or was at the material time or times one to which a code drawn up by the Central Bank of Ireland in accordance with section 117 of the Central Bank Act 1989 applies:

- (a) identify the code concerned, and

(b) provide (whether in this affidavit or in a supplemental affidavit) such information as would enable the Court to evaluate the extent to which the plaintiff has, in relation to any relevant provision of the code, been in compliance.]

**H — Other relevant information**

[Set out all other evidence on which the plaintiff relies in support of its application for relief and all other information relevant to the application and where same is contained in any document, exhibit such document.]

[insert appropriate paragraph number] I accordingly pray for the relief set out in the Civil Bill herein.

SWORN etc.

\*delete where inapplicable

EXPLANATORY NOTE

*(This does not form part of the instrument and does not purport to be a legal interpretation.)*

These Rules amend Order 5B of the Circuit Court Rules to (a) prescribe the information to be included in a revised form of civil bill, Form 2R, and expanded form of grounding affidavit, Form 54, in proceedings for possession or well-charging relief, (b) provide for applications under the Land and Conveyancing Law Reform Act 2009 for an order authorising sale under section 100(3), and (c) provide for the information to be furnished by a defendant on an application for an adjournment or other relief under section 101(1).

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)  
nó trí aon díoltóir leabhar.

---

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

---

€3.81

