



STATUTORY INSTRUMENTS.

S.I. No. 171 of 2016



CIRCUIT COURT RULES (ACTIONS FOR POSSESSION, SALE AND
WELL-CHARGING RELIEF) 2016

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CIRCUIT COURT RULES (ACTIONS FOR POSSESSION, SALE AND
WELL-CHARGING RELIEF) 2016

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 8th day of March 2016.

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

Alison Lindsay
Sarah Berkeley
Fiona Duffy Coady
Keith Walsh
Mairead Ahern
Rita Considine
Noel Rubotham

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

Dated this 20th day of April 2016.

Signed: FRANCES FITZGERALD,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 22nd April, 2016.*

S.I. No. 171 of 2016

CIRCUIT COURT RULES (ACTIONS FOR POSSESSION, SALE AND
WELL-CHARGING RELIEF) 2016

1. (1) These Rules, which may be cited as the Circuit Court Rules (Actions for Possession, Sale and Well-Charging Relief) 2016, shall come into operation on the 19th day of May 2016.

(2) These Rules shall be construed together with the Circuit Court Rules 2001 to 2016.

(3) The Circuit Court Rules 2001 to 2015 as amended by these Rules may be cited as the Circuit Court Rules 2001 to 2016.

2. The Circuit Court Rules are amended by the substitution therein for the title of Order 5B of the following title:

“Order 5B

PROCEDURE IN CERTAIN ACTIONS FOR POSSESSION
OR SALE OF LAND AND ACTIONS FOR WELL-
CHARGING RELIEF”.

3. The Forms 2R and 54 in the Schedule shall be substituted for the forms bearing the like numbers respectively set out in the Schedule to the Circuit Court Rules.

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.....
- 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.....

6 [171]

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..... of [*insert address*].....
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..... of [*insert address*].....
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] *
[ORDER AUTHORISING SALE UNDER SECTION 100(3) OF THE
LAND AND CONVEYANCING LAW REFORM ACT 2009] *[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 herein. 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 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 note is not part of the Instrument and does not purport to be a legal interpretation.)

These rules amend the Circuit Court Rules by revising the forms of Civil Bill (Form 2R) and the verifying affidavit (Form 54) in the Schedule to the Circuit Court Rules. The Title to Order 5B has also been revised.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
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nó trí aon díoltóir leabhar.

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