

**IN THE HIGH COURT OF NORTHER IRELAND
CHANCERY DIVISION
PRACTICE DIRECTION 2003 No. 9**

1. This Practice Direction replaces and revokes Practice Directions 1994 No 2 and 2002 No

3.

2. MORTGAGE ACTIONS

1. RSC Order 88 r5(2) of the Rules of the Supreme Court (NI) 1980 requires that in a mortgage action the original or a copy of the mortgage or certificate of charge and of any regulated agreement secured by the mortgage must be exhibited to the affidavit in support of the originating summons, and the original mortgage or certificate of charge and regulated agreement (if any) must be produced at the hearing.
2. Most mortgages incorporate standard mortgage conditions, and in such cases a copy of the relevant conditions must also be exhibited.
3. Some standard forms of mortgage are now so abbreviated that they give no particulars of the amount of the advance, the term of the loan, the rate of interest or the amount of the instalments but all these matters are defined in the mortgage conditions by reference to the offer letter. Where the offer letter is thus in effect incorporated into the mortgage by reference that letter also should be exhibited to the affidavit.
4. Many mortgages, although expressed in an “all monies” form, are also qualified by an offer letter or other side letter or agreement providing for repayment of the advance by instalments. In Governor and Company of the Bank of Scotland v Grimes [1985] 1 Q.B. 1179, it was held that in such cases the mortgage may be treated as an instalment mortgage for the purposes of the Administration of Justice Act 1970, s.36 and the Administration of Justice Act 1973, s.8. In these cases the affidavit in support should exhibit the relevant letter or side agreement and, in setting out the state of account between the mortgagor and the mortgagee, should show (inter alia) the current instalment payment (at the date of the affidavit) and the amount of instalments in arrear (at the date of issuing the originating summons and at date of the affidavit) as though there were no provision for earlier payment in the event of default.
5. Where it is envisaged that the application may result in an order which contains a statement of the amount of indebtedness between the parties and a reference to interest accruing on the principal (e.g. an application by a mortgagee for a declaration, possession and sale based on an equitable mortgage), the affidavit in support should (inter alia): -

(a) clarify whether the interest is fixed or variable and whether it is calculated by

reference to a lending institution's "base lending rate":

(b) if so, state (i) the name of that institution and what its base lending rate is at the date of the affidavit; and (ii) what percentage over that base rate constitutes the current interest rate charged by the plaintiff to the defendant as at the date of the affidavit.

6. Order 88 r5A details the specific requirements applying to a mortgage action for possession to enforce an order charging land by way of sale. Among the several matters required to be dealt with in the affidavit in support of these applications is that it should "verify, so far as known, the debtor's title to the property charged". Where registered land is involved, the proper way in which title is verified is by production of a recent sealed copy of the relevant folio or folios at the hearing or by exhibiting such a copy or copies to the affidavit – and by referring in the affidavit to the correct folio number or numbers. Any pending dealings not yet shown on a copy folio should be explained in the affidavit or at the hearing.

7. Where in a mortgage action the mortgaged property has a postal address such an address should be included in the statement (required by Order 88 r3) in the originating summons or writ showing where the property is situated. Where it might help resolve doubts as to the correct description of the security, a certificate of street numbering should be obtained from the appropriate authority.

8. **Particulars of inquiries as to occupation – Order 88 rule 5(4) of the Rules of the Supreme Court (Northern Ireland) 1980**

(a) Where the plaintiff claims delivery of possession of property which consists entirely of a dwelling house (for the purpose of this Direction to include, where applicable, its own domestic garden, access and/or yard) and the plaintiff does not have any information tending to suggest that it is or may be unoccupied or occupied by a person other than the mortgagor, his or her spouse and/or children, the affidavit should so state (identifying to the best of the plaintiff's knowledge, information and belief who is thought to be in occupation) and unless the Court otherwise directs in a particular case no inquiry about occupation shall be necessary for the purpose of the proceedings.

(b) Where the property consists entirely of a dwelling house and the plaintiff has information tending to suggest that it is or may be unoccupied or occupied by a person other than the mortgagor, his or her spouse and/or children, reasonable inquiries as to whether the dwelling is occupied and as to the identity of the persons (if any) in

occupation should be made and the affidavit grounding the application should set out details of the information which led the plaintiff to inquire and details of the inquiry and the information obtained in consequence.

- (c) Where the property is not, or is not exclusively, a dwelling house, reasonable inquiries as to the identity of the person (if any) in occupation should be made and the affidavit should set out details of the inquiries and the information obtained in consequence.
- (d) Reasonable inquiries may consist of a visit to the property or be by way of correspondence or a telephone call to the mortgagor. If no meaningful response to correspondence or phone contact is received a visit to the property may be necessary. Where within the period of one year before the swearing of the relevant affidavit there has been a visit to the mortgaged property by or on behalf of the mortgagee or within that period there has been a specific representation to the effect the property is unoccupied or as to who is occupying the property (the accuracy or sufficiency of which representation the plaintiff has no reason to doubt) from a mortgagor, neighbour or other person who the plaintiff has reasonable grounds to believe has relevant information, a visit or further visit should not be necessary provided sufficient particulars of the visit and/or representation are set out in the affidavit.

3. APPLICATION BY MORTGAGEE FOR LEAVE TO ENFORCE SUSPENDED

POSSESSION ORDER

- (a) Application under Order 46 r1 for leave to enforce a suspended order for possession of mortgaged property must be made by summons, supported by an affidavit showing service of the order on the defendant and default in complying with the terms of the suspension.
- (b) Where a defendant has appeared the summons and affidavit and where the mortgaged property comprises or includes a dwelling house the notice as

required by Order 88 r4A should be serviced in accordance with Order 65 r5.

- (c) To ensure that a defendant who is in default of appearance has an opportunity of being heard the plaintiff must send to him by post to his last known address a copy of the summons, the affidavit in support and any notice required by Order 88 r4A so as to reach him not less than 2 clear days before the hearing.
- (d) A single certificate of service should be lodged showing service of the summons, affidavit in support and, where the mortgaged property comprises or includes a dwelling house, the notice required by Order 88 r4A to be served on the defendant and the notice required by Order 88 r4B to be served (at least 4 clear days before the hearing date) on the occupier. The certificate of service should be prepared and signed as described in Order 88 r4(4) and a copy of the occupier notice must be attached to the certificate pursuant to Order 88 r4B(2).

By The direction of the Honourable Mr Justice Girvan

Dated this

2003

Master (Chancery)