

## SCHEDULE 1

### Commencement Information

**II** Sch. 1 in force at 26.4.1999, see [Signature](#)

## RSC ORDER 88 MORTGAGE CLAIMS

### Application and Interpretation

**Rule 1.**—(1) This Order applies to any claim by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being a claim in which there is a claim for any of the following remedies, namely—

- (a) payment of moneys secured by the mortgage,
- (b) sale of the mortgaged property,
- (c) foreclosure,
- (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property,
- (e) redemption,
- (f) reconveyance of the property or its release from the security,
- (g) delivery of possession by the mortgagee.

(2) In this Order “mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) A claim to which this Order applies is referred to in this Order as a mortgage claim.

(4) These rules apply to mortgage claims subject to the following provisions of this Order.

### Assignment of certain actions to Chancery Division

**Rule 2** Without prejudice to section 61 (1) of the Act (which provides for the assignment to the Chancery Division of proceedings for the purposes, among others, of the redemption or foreclosure of mortgages and the sale and distribution of the proceeds of property subject to any lien or charge) any claim in which there is a claim for—

- (a) payment of moneys secured by a mortgage of any real or leasehold property, or
- (b) delivery of possession (whether before or after foreclosure) to the mortgagee of any such property by the mortgagor or by any other person who is or is alleged to be in possession of the property,

shall be assigned to the Chancery Division.

### Commencement of claim

**Rule 3.**—(1) A claim form by which a mortgage claim is begun may not be issued out of a district registry, which is not a Chancery district registry, unless the mortgaged property is situated in the district of the registry.

*Status: Point in time view as at 26/04/1999.*

*Changes to legislation: There are currently no known outstanding effects for the  
The Civil Procedure Rules 1998, RSC ORDER 88. (See end of Document for details)*

(3) The claim form by which a mortgage claim is begun shall be indorsed with or contain a statement showing—

- (a) where the mortgaged property is situated, and
- (b) if the claimant claims possession of the mortgaged property and it is situated outside Greater London, whether the property consists of or includes a dwelling house,

and a certificate that the claim is not one to which section 141 of the Consumer Credit Act 1974(1) applies.

#### **Claim for possession: failure by a defendant to acknowledge service**

**Rule 4.**—(1) Where in a mortgage claim in the Chancery Division being a claim in which the claimant is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to acknowledge service of the claim form, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.

(2) Not less than 4 clear days before the day fixed for the first hearing of the claim the claimant must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the witness statement or affidavit in support of the claim.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the claimant must serve notice of the appointment for the adjourned hearing, together with a copy of any further witness statement or affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

(5) Service under paragraph (2) or (4) and the manner in which it was effected, may be proved by a certificate signed by the claimant, if he sues in person, and otherwise by his solicitor.

The certificate may be indorsed on the witness statement or affidavit in support of the claim or, as the case may be, on any further witness statement or affidavit intended to be used at an adjourned hearing.

(6) A copy of any exhibit to a witness statement or affidavit need not accompany the copy of the witness statement or affidavit served under paragraph (2) or (4).

#### **Claim in Chancery Division for possession or payment: evidence**

**Rule 5.**—(1) The witness statement or affidavit in support of the claim (other than a claim to which rule 5A applies) to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a mortgage claim in the Chancery Division in which the claimant is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The witness statement or affidavit must exhibit a true copy of the mortgage and the original mortgage or, in the case of a registered charge, the charge certificate must be produced at the hearing of the claim.

(2A) Unless the Court otherwise directs the witness statement or affidavit may contain statements of information or belief with the sources and grounds thereof.

(3) Where the claimant claims delivery of possession the witness statement or affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class of case otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of—

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(1) 1974 c. 39.

- (a) the amount of the advance,
  - (b) the amount of the periodic payments required to be made,
  - (c) the amount of any interest or instalments in arrear at the date of issue of the claim form and at the date of the witness statement or affidavit, and
  - (d) the amount remaining due under the mortgage.
- (4) Where the claimant claims delivery of possession the witness statement or affidavit must—
- (a) give particulars of every person who to the best of the claimant’s knowledge is in possession of the mortgaged property; and
  - (b) state, in the case of a dwelling house, whether—
    - (i) a land charge of Class F has been registered, or a notice or caution registered under s.2 (7) of the Matrimonial Homes Act 1967<sup>(2)</sup> or a notice registered under section 2 (8) of the Matrimonial Homes Act 1983<sup>(3)</sup> has been entered, and, if so, on whose behalf; and
    - (ii) he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.
- (5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and mortgagee, the witness statement or affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.
- (6) Where the claimant claims payment of money secured by the mortgage the witness statement or affidavit must show how the claim is calculated including—
- (a) the amount of the advance and the amount and dates of any periodic repayments and any interest claimed;
  - (b) the amount which would have to be paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at the date of commencement of the proceedings and at a stated date not more than 14 days after the date of commencement of the proceedings, specifying the amount of the solicitor’s costs and administrative charges which would be payable;
  - (c) the dates between which a particular rate of interest applied, the number of days in that period, and the capital on which the interest was calculated.
- (7) Where the claimant’s claim includes a claim for interest to judgment, the witness statement or affidavit must state the amount of a day’s interest.

### **Claim for the enforcement of charging order by sale**

**Rule 5A.**—(1) This rule applies to a mortgage claim in the Chancery Division to enforce a charging order by sale of the property charged.

- (2) The witness statement or affidavit in support of the claim must—
- (a) identify the charging order sought to be enforced and the subject matter of the charge;
  - (b) specify the amount in respect of which the charge was imposed and the balance outstanding at the date of the witness statement or affidavit;
  - (c) verify, so far as known, the debtor’s title to the property charged;
  - (d) identify any prior incumbrancer on the property charged stating, so far as is known, the names and addresses of the incumbrancers and the amounts owing to them;

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(2) 1967 c. 75.

(3) 1983 c. 19.

**Status:** Point in time view as at 26/04/1999.

**Changes to legislation:** There are currently no known outstanding effects for the  
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- (e) set out the claimant's proposals as to the manner of sale of the property charged together with estimates of the gross price which would be obtained on a sale in that manner and of the costs of such a sale; and
- (f) where the property charged consists of land in respect of which the claimant claims delivery of possession—
  - (i) give particulars of every person who to the best of the claimant's knowledge is in possession of the property charged or any part of it; and
  - (ii) state, in the case of a dwelling house, whether a land charge of Class F has been registered, or a notice or caution pursuant to section 2 (7) of the Matrimonial Homes Act 1967, or a notice pursuant to section 2 (8) of the Matrimonial Homes Act 1983 has been entered and, if so, on whose behalf, and whether he has served notice of the proceedings on the person on whose behalf the land charge is registered or the notice or caution entered.

#### **Foreclosure in redemption claim**

**Rule 7** Where foreclosure has taken place by reason of the failure of the claimant in a mortgage claim for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply in accordance with CPR Part 23 for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

**Status:**

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**Changes to legislation:**

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