

SCHEDULE 1

Commencement Information

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

RSC ORDER 88 MORTGAGE CLAIMS

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—

- (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(1) or a notice registered under section 2 (8) of the Matrimonial Homes Act 1983(2) 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.

(1) 1967 c. 75.

(2) 1983 c. 19.

Status: Point in time view as at 26/04/1999. This version of this provision has been superseded.

Changes to legislation: *There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Paragraph Rule 5. (See end of Document for details)*

(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.

Status:

Point in time view as at 26/04/1999. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Paragraph Rule 5.