

# **S.I. No. 149/2010 — Rules of the Superior Courts (Land and Conveyancing Law Reform Act 2009) 2010.**

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*Notice of the making of this Statutory Instrument was published in*

*“Iris Oifigiúil” of 20th April, 2010.*

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936 , section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953 , section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924 , section 36, and the Courts of Justice Act, 1936 , section 68 (as applied by the Courts (Supplemental Provisions) Act 1961 , section 48), and the Courts (Supplemental Provisions) Act 1961 , section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 3rd day of December, 2009.

John L. Murray

Nicholas Kearns

William McKechnie

Elizabeth Dunne

Patrick O’Connor

Paul McGarry

Noel Rubotham

Maeve Kane

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

Dated this 12th day of April, 2010.

DERMOT AHERN,

Minister for Justice, Equality and Law Reform.

S.I. No. 149 of 2010

RULES OF THE SUPERIOR COURTS (LAND AND CONVEYANCING LAW REFORM ACT 2009) 2010

1. Subject to paragraph 2, these Rules shall come into operation on the 10th day of May 2010.

2. Any application for registration of a lis pendens containing the particulars required by law before 1 December 2009 for such registration which is received after 1 December 2009 and prior to the date mentioned in paragraph 1 shall be deemed to comply with the requirements for registration of a lis pendens in accordance with section 121 of the Land and Conveyancing Law Reform Act 2009 .

3. These Rules shall be construed together with the Rules of the Superior Courts 1986 to 2010 and may be cited as the Rules of the Superior Courts (Land and Conveyancing Law Reform Act 2009) 2010.

4. The Rules of the Superior Courts are amended:

(i) by the substitution for paragraph (3) of Order 3 of the following paragraph:

“(3) The payment into Court of any money in the hands of executors, administrators or trustees, or the payment into Court in respect of prior incumbrances by a mortgagee in accordance with the Land and Conveyancing Law Reform Act 2009 , section 107(1)(a).”;

(ii) by the insertion immediately following paragraph (9) of Order 3 of the following paragraph:

“(9A) An order under the Land and Conveyancing Law Reform Act 2009 , section 31, section 49(5), section 50(1), section 68, section 97(2), section 100(3) or both section 97(2) and section 100(3).”;

(iii) by the substitution for paragraphs (11) and (12) of Order 3 of the following paragraphs:

“(11) The appointment of a trustee (including a trustee mentioned in the Land and Conveyancing Law Reform Act 2009 , section 19) or a new trustee with or without a vesting or other consequential order; or a vesting order or other order consequential on the appointment of a new trustee, whether the appointment is made by the Court or out of Court; or a vesting or other consequential order in any case where a judgement or order has been given or made for the sale, conveyance or transfer of any land or stock; or a vesting order under the Trustee Act 1893, section 39; or an order directing a person to convey.

(11A) An order to resolve a dispute mentioned in the Land and Conveyancing

Law Reform Act 2009 , section 22.

(11B) An order to approve an arrangement specified in an application under the Land and Conveyancing Law Reform Act 2009 , section 24.

(12) The determination of any question under the Land and Conveyancing Law Reform Act 2009 , section 55.”;

(iv) by the substitution for paragraph (15) of Order 3 of the following paragraphs:

“(15) Sale, delivery of possession by a mortgagor, or redemption; reconveyance, or delivery of possession by a mortgagee, otherwise than under the Land and Conveyancing Law Reform Act 2009 .

(15A) An action by a mortgagor to which the Land and Conveyancing Law Reform Act 2009 , section 94, applies.

(15B) An order on an application by a judgment mortgagee under the Land and Conveyancing Law Reform Act 2009 , section 117.”;

(v) by the substitution for paragraph (c) of sub-rule (2) of rule 4 of Order 5 of the following paragraph:

“(c) the redemption of mortgages;”;

(vi) by the substitution for rule 31 of Order 15 of the following rule:

“31. Wherever—

(a) any order has been made under section 31 of the Land and Conveyancing Law Reform Act 2009 , or

(b) in any action for the administration of the estate of a deceased person, or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or order has been pronounced or made—

(i) for an account; or

(ii) under Order 33; or

(iii) affecting the rights or interests of persons not parties to the action;

the Court may direct that any person affected by the order under section 31 of the said Act or interested in the estate or under the trust or in the hereditaments shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings in the same manner as if they had originally been made parties and shall be at liberty to attend the proceedings under the judgement or order. Any person so served may, within one month after such service, apply to the Court to

discharge, vary or add to the judgment or order.”;

(vii) by the insertion immediately following rule 11 of Order 33 of the following rule:

“12. References in this Order to incumbrances include references to judgment mortgages, and cognate words shall be construed accordingly.”;

(viii) by the insertion in rule 3 of Order 51 immediately following the words “In all cases where a sale” of the words “(including a sale directed under section 94(2) of the Land and Conveyancing Law Reform Act 2009 )”;

(ix) by the substitution for rule 3 of Order 54 of the following rule:

“3. Any mortgagee or mortgagor, whether legal or equitable, any person entitled to or having property subject to a legal or equitable charge, or person having the right to redeem any mortgage, whether legal or equitable, may take out a special summons for relief of the nature or kind specified in Order 3 (15), (15A) or (15B).”;

(x) by the substitution for paragraph (29) of rule 1 of Order 63 of the following paragraph:

“(29) An order to vacate a lis pendens on an application under section 123 of the Land and Conveyancing Law Reform Act 2009 .”;

(xi) by the insertion immediately following Order 72 of the following Order:

“Order 72A

Land and Conveyancing Law Reform Act 2009

1. In this Order:

“the Act” means the Land and Conveyancing Law Reform Act 2009 and any reference in this Order to a section shall, unless the context otherwise requires, be deemed to be a reference to a section of the Act;

2. (1) Proceedings for the following reliefs under the Act shall be commenced by special summons in accordance with Order 3:

(a) an order to resolve a dispute mentioned in section 22;

(b) an order to approve an arrangement specified in an application under section 24;

(c) an order under section 31;

(d) an order under section 49(5);

(e) an order under section 50(1);

(f) an order under section 68.

(2) The following proceedings under the Act may be commenced by plenary summons in accordance with Order 1, rule 2:

(a) an action for damages in accordance with section 18(6);

(b) an action in which an order is sought under section 35(2);

(c) an application for damages in accordance with section 84(8).

(3) Applications for the following reliefs under the Act shall be brought by motion on notice in the proceedings before the Court to which the application relates, grounded upon an affidavit sworn by or on behalf of the moving party:

(a) an order under section 98, where the Court is already seised of an application or proceedings relating to the mortgaged property;

(b) an order under section 112(3)(d) in an action relating to the mortgaged land.

3. (1) The register of lis pendens referred to in section 121 (in this rule, the “register”) shall be maintained in a book to be kept for that purpose in the Central Office. The register shall be arranged, in alphabetical order, according to the surname of the person whose estate is intended to be affected by each lis pendens. The book kept for that purpose in accordance with section 10 of the Judgments (Ireland) Act 1840 immediately before 1 December 2009 shall, until replaced, and with such modifications as may be necessitated by this rule, continue to be the register.

(2) To register a lis pendens in the register, the plaintiff or his solicitor shall provide to the proper officer, in respect of each person whose estate is intended to be affected by the lis pendens:

(a) a memorandum in duplicate in the Form No. 31 in Appendix C containing the particulars specified in sub-rule (3) of the action or proceedings mentioned in section 122, and

(b) a copy of the originating document,

and shall on request produce to the proper officer the sealed originating document.

(3) The particulars to be entered in the register are:

(a) the name and the usual or last known place of residence (or in the case of a company, the registered office) and description of the person applying for registration, and the name and place of business of his solicitor, if any;

(b) the name and the usual or last known place of residence (or in the case of a company, the registered office) and description of the person whose estate is intended to be affected by the registration;

(c) the Court in which, and date on which the action was, or the proceedings were, commenced, and the title and record number of the action or proceedings.

4. (1) The consent referred to in paragraph (a) of section 122 shall be in the Form No. 32 in Appendix C.

(2) The requirement in paragraph (b) of section 122 for lodgement in the Central Office of a notice of an order under section 123 shall be satisfied by lodging an attested copy of the order of the Court or, as the case may be, of the Circuit Court, in the Central Office.

5. The proper officer shall, on request, issue a certificate of the registration of a lis pendens in the form included in Form No. 31 or, as the case may be, of the cancellation of an entry on the register in Form No.33.”;

(xii) by the substitution for rule 14 of Order 96 of the following rule:

“14. Procedure by special summons shall be adopted in the case of an application to the Court, under the Registration of Title Act 1964 , section 62(7), by an owner of a charge created before 1 December 2009 for possession of registered land, and the foregoing rules of this Order shall not apply to such proceedings.”; and

(xiii) by the insertion of the forms in the Schedule in Appendix C, immediately following Form No. 30 in that Appendix.

O. 72A rule 3(2)

#### SCHEDULE No. 31.

#### HIGH COURT

#### APPLICATION FOR THE REGISTRATION OF A LIS PENDENS

I request that you enter the following particulars in the register of lis pendens in accordance with section 121 of the Land and Conveyancing Law Reform Act 2009 .

Name and address of applicant for registration:

Name:

Address:

Solicitor for applicant:

Name:

Address:

Court in which the action was, or the proceedings were, commenced:

High Court/Circuit Court, .....Circuit, County of

Date on which the action was, or the proceedings were, commenced: 20.....

Title and record number of the action or proceedings:

High Court (or, Circuit Court)

Between Plaintiff

And Defendant

Record No.

Name and the usual or last known place of residence (or in the case of a company, the registered office) and description of the person whose estate is intended to be affected by the registration

Name:

Address:

Description

(for office use only)

CERTIFICATE OF REGISTRATION OF A LIS PENDENS

I CERTIFY that the lis pendens particulars of which are set out in the above memorandum was duly registered in the Central Office on ..... 20..... (in Book ....., Page .....).

Dated: ..... 20.....

Registrar

O. 72A rule 4(1)

No. 32.HIGH COURT

CONSENT TO CANCELLATION OF AN ENTRY OF A LIS PENDENS

I ....., applicant for registration of the lis pendens particulars of which are set out below, hereby consent to cancellation of the entry in respect of it on the register of lis pendens in accordance with paragraph (a) of section 122 of the Land and Conveyancing Law Reform Act 2009 .

Name and address of applicant for registration:

Name:

Address:

Solicitor for applicant:

Name:

Address:

Particulars of lis pendens to be cancelled

Date of entry in the register of lis pendens:

Court in which the action was, or the proceedings were, commenced:

High Court/Circuit Court, ..... Circuit, County of

Title and record number of the action or proceedings:

High Court (or, Circuit Court)

Between Plaintiff

And Defendant

Record No.

Name and the usual or last known place of residence (or in the case of a company, the registered office) and description of the person whose estate was intended to be affected by the registration

Name:

Address:

Description

O. 72A rule 5

No. 33.HIGH COURT

CERTIFICATE OF CANCELLATION OF ENTRY OF A LIS PENDENS

I CERTIFY that the entry of a lis pendens, particulars of which are set out below, was cancelled on the register of lis pendens in accordance with section 122 of the Land and Conveyancing Law Reform Act 2009

\*[with the consent, given in the prescribed manner, of [XY] on whose application it was registered]

\*[upon the lodgement in the Central Office of a notice, given in the prescribed manner, of an order of the ..... Court dated the ..... day of ..... 20..... under section 123 of the Land and Conveyancing Law Reform Act 2009 vacating the lis pendens]

Particulars of entry of lis pendens cancelled

Date of entry in the register of lis pendens:

Court in which the action was, or the proceedings were, commenced:

High Court/Circuit Court, ..... Circuit, County of

Title and record number of the action or proceedings:

High Court (or, Circuit Court)

Between Plaintiff

And Defendant

Record No.

Name and the usual or last known place of residence (or in the case of a company, the registered office) and description of the person whose estate was intended to be affected by the registration

Name:

Address:

Description

\* delete as appropriate

#### EXPLANATORY NOTE

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

These rules effect various amendments to the Rules of the Superior Courts, including the insertion of a new Order 72A, to facilitate the operation of the Land and Conveyancing Law Reform Act 2009 .