

SUPREME COURT OF TASMANIA

PRACTICE DIRECTION

No 2 of 2018

24 October 2018

This practice direction is published by the direction of the Chief Justice, the Honourable Justice Alan Blow AO.

MORTGAGEE, ENCUMBRANCEE OR LESSOR POSSESSION APPLICATIONS LAND TITLES ACT 1980 s146

The *Land Titles Amendment Act 2018* commenced upon Royal Assent on 15 October 2018.

The amending Act has, amongst other things, amended s.146 of the *Land Titles Act 1980* to replace the summons to show cause procedure with a straightforward application procedure to obtain an order for possession. Applicants can now file and serve the originating process as of right.

Amendments to the *Supreme Court Rules 2000* r601(3) and Schedule I Part 5 are anticipated in the near future.

Until further notice, the procedure for applications for orders under s146 shall be as follows:

- applications for orders under s146 should now be commenced by originating application to a judge in chambers pursuant to the *Supreme Court Rules 2000* r.90(zo);
- applications are to be accompanied by a supporting affidavit. The supporting affidavit should include information required by r601(2);
- costs claimable on such applications are the amounts specified in the *Supreme Court Rules 2000* Schedule I Part 5;
- applications and accompanying affidavits should be filed and served no less than seven (7) clear days prior to its return date to allow for entry of an appearance. An application served in another State or Territory is to be served not less than 21 clear days prior to its return date. Similarly the time and any other requirements pertaining to service outside the Commonwealth of Australia must be complied with, where applicable.
- Where the respondent is a natural person resident in Tasmania, the Originating Application, regardless of whether it issues out of the principal Registry or a District Registry should be made returnable in the court building closest to the respondent's usual place of residence or business. The first appearance of a respondent in Launceston or Burnie will generally be by video link to Hobart but, to avoid confusion

amongst respondents, no reference to the video link is to be included in the application.

- Where the respondent is a corporation, the application can be made returnable in the Registry in which it issues regardless of where the registered office or principal place of business of the company is located.
- A company cannot appear other than by a legal practitioner and so an application directed to a company must not indicate otherwise.

Attached is a sample application for possession of land pursuant to the *Land Titles Act 1980*, s146.

This Practice Direction rescinds Circular to Practitioners No. 4/2005.

Jim Connolly
Registrar

IN THE SUPREME COURT OF TASMANIA
HOBART REGISTRY

No. /20

IN THE MATTER OF THE *LAND TITLES ACT* 1980, s146

and

IN THE MATTER OF MEMORANDUM OF MORTGAGE No.

A B Applicant

C D Respondent

ORIGINATING APPLICATION INTENDED TO BE SERVED

To: *[name and address of each respondent]* and any other person served with this application.

A B of applies for the following orders:

1. That following default in payment of money secured by Mortgage No. , possession of the premises referred to in the Schedule be given by the Respondent to the Applicant on or before such day, not being less than four weeks from the day of the hearing, as the Supreme Court thinks fit to specify unless within that period all the money due and costs are paid.

SCHEDULE

- a) Address of the relevant land:
- b) The title reference of that land:
- c) The date of, parties to, and registered number of the mortgage:
- d) The amount claimed to be due under the mortgage and particulars of how that amount is calculated:
- e) The daily amount of interest accruing under the mortgage:
- f) The costs of the application as set out in Part 5 of Schedule 1 of the *Supreme Court Rules 2000*:

DATED :

E F

per :

Solicitors for the applicant.

The applicant's address for service of documents is :

NOTICE OF HEARING

This application has been set down for hearing before a Judge sitting in Chambers at the Supreme Court, _____ in Tasmania on _____ 20 ____ at ____ am/pm.

Filed :

REGISTRAR

NOTICE TO PERSON SERVED

Take notice that:

1. If you pay the money due under your mortgage and the costs of this application as set out in the schedule before the hearing date specified above, that will be the end of the matter.
2. If you do not pay the money due under your mortgage and the costs of this application as set out in the schedule, and do not file an appearance and then not appear before the Court on the day and at the time and place shown in this application, an order may be made in your absence that you give up possession of the property, and pay the costs.
3. If you wish to dispute that there should be an order that you give up possession of the property, then:-
 - (a) you should, within 7 days following service of this application on you, lodge a notice of appearance at a Registry of the Supreme Court and serve a sealed copy on the applicant at the address for service.

Service may be effected by prepaid post.

Forms of notice of appearance may be obtained from any Registry of the Court. These are located at Salamanca Place, Hobart, Cameron Street, Launceston, and Alexander Street, Burnie.

- (b) also, you must file in the Court an affidavit that sets out all the facts upon which you intend to rely at the hearing. You must also serve a copy of this affidavit on the solicitors for the mortgagee (whose name appears at the foot of the first page of this document); and
- (c) also, *you or your solicitor must attend at the Court on the day and at the time shown on this application.

(delete the words "you or" where the respondent is a corporation).*