

SUPREME COURT OF TASMANIA

CIRCULAR TO PRACTITIONERS

No. 4 of 2005

1 February 2005

This Circular to Practitioners replaces 4/2001.

MORTGAGEE APPLICATIONS FOR POSSESSION — *LAND TITLES ACT 1980, s146*

Attached is a sample application for possession of land pursuant to the *Land Titles Act 1980, s146*. In preparing applications practitioners are asked to note:

- 1 Where the respondent is a natural person resident in Tasmania, the summons to show cause, 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, but inclusion in the summons of a reference to the appearance being by video link carries with it the potential for confusion. No reference to the video link is to be included in the summons.
- 2 Where the respondent is a corporation, the summons 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.
- 3 A company cannot appear other than by a legal practitioner and so a summons directed to a company must not indicate otherwise.
- 4 A summons served in Tasmania is to be served not less than ten days prior to its return date. A summons served in another State or Territory is to be served not less than 21 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.
- 5 The Act, s146(1), provides that upon an application for an order for possession the Court may issue a summons. It necessarily follows from the form of the summons that what is being applied for is possession of land so there is no

need to include in the originating application (which is not served on the respondent anyway) a recital of the possession order to be sought.

- 6 The supporting affidavit must contain the information prescribed by r601(2). As an order for possession of land is not interlocutory the supporting affidavit to be served with the summons should not contain hearsay.

RESCINDED. SEE NOW PRACTICE DIRECTION 2/2018

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 NOT INTENDED TO BE SERVED

A B of applies for the following orders:

- 1 The issue of a summons to show cause in the form annexed.
- *2 The summons and copies of the affidavits to be relied upon by the applicant be served at least ten days prior to the return date of the summons.
- *2 The summons, a notice complying with the *Service and Execution of Process Act 1992 (Cth)*, s16, and copies of the affidavits to be relied upon by the applicant to be served at least 21 days prior to the return date of the summons.

(* delete where inapplicable)

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 the Master in Chambers at the Supreme Court, Salamanca Place, Hobart in Tasmania on 20 at am/pm.

Filed

Registrar

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

SUMMONS TO SHOW CAUSE

Let A B of in Tasmania attend before the Master at the Supreme Court, Cameron Street, Launceston at 9.15 am on Thursday 20 to show cause why the Court should not order possession of the premises referred to in the schedule be given by you 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

- 1 Address of the relevant land:
- 2 The title reference of that land:
- 3 The date of, parties to, and registered number of the mortgage:
- 4 The amount claimed to be due under the mortgage and particulars of how that amount is calculated:
- 5 The daily amount of interest accruing under the mortgage:
- 6 The costs of the summons as set out in Pt5 of Sch1:

TAKE NOTICE:

- 1 If you pay the money due under your mortgage and the costs of this summons as set out in the schedule before the return day of the summons as specified above the summons shall be discharged and 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 summons as set out in the schedule, and do not appear before the Court on the day and at the time and place shown in this summons, 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, 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 solicitor for the mortgagee (whose name appears at the foot of the first page of this document). Finally *you or your solicitor must attend at the Court on the day and at the time shown on this summons.

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

DATED

Registrar

RESCINDED. SEE NOW PRACTICE DIRECTION 2/2018