

PRACTICE NOTE SC CL 6

Supreme Court Common Law Division - Possession List

Commencement

1. This Practice Note commences 17 August 2005.

Application

2. This Practice Note applies to proceedings in, or to be entered in, the Possession List.

Definitions

3. In this Practice Note:

ADR means alternative dispute resolution

List means the Possession List

SCR means the *Supreme Court Rules 1970*

UCPR means the *Uniform Civil Procedure Rules 2005*

Introduction

4. The purpose of this Practice Note is to explain the operation of the List which is provided for by Part 14B of the SCR.
5. Part 12 rule 1 and Schedule I of the SCR specify the types of matters that are entered in the List established under Part 14B of the SCR. Generally, these matters are any type of claim that include a claim for possession of land whether or not other types of claim are also included) irrespective of whether they should be entered in another list or in the Equity Division.

Removal from the list

6. Upon proceedings being removed from the List, this Practice Note shall not, subject to paragraph 7 below, apply to the proceedings from the making of the order.
7. The Court may direct that this Practice Note shall continue to apply to the proceedings to the extent stated in the direction.
8. The making of an order removing proceedings from the List shall not affect any orders made or directions given prior to such removal.

Directions hearings

9. Defended proceedings in the List will be managed by way of Directions Hearings, the first of which will be appointed upon a date approximately one month after proceedings are entered in the List.
10. Upon a defence or a cross-claim being filed, the registry will give notice to all parties with an address for service in the proceedings of the date of the first Directions Hearing.
11. Directions Hearings will be held daily before the Registrar at 9:00am.

Action prior to directions hearing

12. It is expected that, where practicable, the parties' solicitors will have discussed the case before the initial Directions Hearing and will have:
 - narrowed issues;
 - agreed on suitable interlocutory orders, directions or arrangements;
 - prepared a draft timetable for the future management of the proceedings;
 - prepared draft short minutes of any orders or directions to be sought at the Directions Hearing; and
 - discussed the possibility of settling the dispute by mediation or other ADR processes.
13. In this Practice Note ADR includes:
 - mediation;
 - arbitration; and
 - referral to a referee under Part 20 of the UCPR.

Representation

14. Each party not appearing in person must be represented at the Directions Hearing by a barrister or a solicitor familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.

Action at directions hearing

15. At a Directions Hearing the Court may give directions and make orders as it considers appropriate with a view to the just, quick, cheap and effective management and disposal of the proceedings. Orders or directions may include:

- if the List is not the most appropriate place for the proceedings, the removal of the proceedings from the List, with consequential orders and directions;
- setting a timetable for case management;
- for the whole or any part of the evidence in the proceedings to be given on affidavit;
- for adjournment of the Directions Hearing;
- the filing of other pleadings;
- the provision of any particulars;
- the making of admissions;
- the filing of lists of documents;
- the provision of copies of documents;
- the administration and answering of interrogatories;
- the service and filing of affidavits or statements of evidence;
- orders for the preservation of evidence;
- hearing of applications for summary disposal under Part 13 of the UCPR or for judgment on admissions;
- applications under Part 14 or Part 15 of the UCPR which relate to pleadings and particulars;
- matters relating to proof; and
- the provision of any further information to the Court.

Alternative dispute resolution

16. At a Directions Hearing, the Court will consider whether the proceedings are suitable for ADR. Legal practitioners should ensure that instructions have been obtained prior to a Directions Hearing so that it may be indicated to the Court whether the matter can be mediated.

17. If the matter appears to the Court to be appropriate for resolution by mediation, the Court will refer the proceedings for mediation with or without the consent of the parties.

18. The Court may give directions requiring statements from parties including a timetable to enable parties to be prepared for mediation.

Joint statement

19. When ready for trial, proceedings will be referred to the Common Law call-up for a Hearing date to be allocated. At the Directions Hearing where matters are referred to call up, a standard direction that all parties are to complete, sign and file at least 7 days prior to the hearing date a clear, concise, joint statement of matters of fact and law that are really in dispute and nominating the evidence specifically relevant to those matters, is deemed to have been made, unless the Court otherwise orders.

Applications

20. Urgent applications to stay the execution of a writ of possession should be made to the Duty Registrar who is available from 9:00am to 5:00pm each weekday. Applicants should provide sufficient documentary evidence to enable the Duty Registrar to determine the application, such as:

- where the loan is to be refinanced – proof of steps undertaken to refinance;
- where the subject property is to be sold – copies of agent sale agreements, contract for sale of property, advertisements, etc.; and
- where the proceedings are to be defended – a draft Notice of Grounds of Defence.

21. A Duty Registrar considering an application made pursuant to paragraph 20 may order that the execution of a writ of possession be stayed for a short period, direct the applicant to file and serve a

notice of motion seeking appropriate orders an affidavit in support of the applicant's motion, and may abridge time for service of any order and motion, and list the matter for a Directions Hearing.

22. Where a Duty Registrar refuses an application, the Duty Registrar may refer the proceedings to the Duty Associate Judge for consideration.
23. Applications, to which all relevant parties consent, may be dealt with at any time by arrangement with the Registrar.
24. Applications for summary disposal will be listed at a Directions Hearing for referral to the Duty Associate Judge for determination.
25. Applications to set aside default judgment will be heard by a Registrar.

Listing for hearing

26. When ready for trial, proceedings will be referred to the Common Law call-up (notwithstanding that they will remain in the List) with no priority over other proceedings unless an order for expedition is made.
27. All applications for expedition should ordinarily be made in the first instance to the Registrar.

Adjournment

28. To ensure efficient use of Court time, proceedings fixed for trial will not normally be adjourned unless special circumstances have arisen which could not have been foreseen.
29. An application for adjournment requires supporting affidavits.
30. An application for adjournment will not usually be granted unless the party on whose behalf the application is made is present at the time the application is made or has sworn an affidavit verifying that that party is aware of the reasons for the application and identifying those reasons.

Inactive proceedings

31. If a defence is not filed within 6 months of the claim being instituted, the Court may dismiss the proceedings on its own motion pursuant to UCPR 12.8.
32. The Court will give the plaintiff notice that the claim (or where appropriate, the proceedings) will be dismissed unless, within a specified period, the plaintiff notifies the Court of its desire to show cause why an order for dismissal should not be made.
33. The Court may:
 - if the plaintiff gives notice in accordance with paragraph 32, list the proceedings for further consideration by the registrar or the Possession List Judge; or
 - otherwise dismiss the claim or the proceedings.
34. Paragraph 31 does not apply to proceedings, or to a claim, that have or has been disposed of by judgment, final order, discontinuance or dismissal.

Summary disposal

35. An application for summary disposal, made after proceedings are referred to the Common Law call-up, will be heard at the same time as the substantive proceedings, unless the Court otherwise orders.

Default judgment

36. Entry in the List will not affect a party's entitlement to enter default judgment.

J J Spigelman AC
Chief Justice of New South Wales
17 August 2005

Related information

Practice Note SC CL 6 was issued and commenced on 17 August 2005.
This Practice Note replaced Former Practice Note No. 106 on 17 August 2005.

See also:

Practice Note SC CL 1 Supreme Court Common Law Division - General

Practice Note SC Gen 1 Supreme Court – Application of Practice Notes

Practice Note SC Gen 6 Supreme Court – Mediation

Supreme Court Rules 1970

Uniform Civil Procedure Rules 2005

Amendment history: