



Supreme Court of Victoria

Practice Note No 5 of 2016

Property List

1. INTRODUCTION

On 1 April 2016, the Common Law Division will establish a Property List (**List**). The Judge in Charge of the List is Justice Riordan. His Honour is assisted in the management of the List by Associate Justice Derham.

2. PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

2.1 Proceedings in relation to rights over real property are suitable for initiation in the List, including proceedings:

- (a) for the recovery of possession of land, including the summary procedure under Order 53 of the *Supreme Court (General Civil Procedure) Rules 2015* ('**Rules**'), other than those proceedings appropriate for judge management in the Commercial Court;
- (b) seeking sale of land by order of the Court (Order 55 of the Rules);
- (c) by a vendor or purchaser of land (s 49 of the *Property Law Act 1958*);
- (d) for the discharge or modification of a restrictive covenant (s 84 of the *Property Law Act 1958*);
- (e) for the removal of caveats against dealings (s 90(3) of the *Transfer of Land Act 1958*);
- (f) arising out of the payment of monies into court pursuant to a power of sale under a mortgage or charge (s 77(3) of the *Transfer of Land Act 1958* and s 69 of the *Trustee Act 1958*);
- (g) proceedings pursuant to s 89A(3)(b) of the *Transfer of Land Act 1958*;

(h) otherwise arising under or involving the interpretation of the *Property Law Act 1958*, the *Transfer of Land Act 1958* or the *Sale of Land Act 1962* (except where the Victorian Civil and Administrative Tribunal has exclusive jurisdiction).

Mortgage Default Proceedings

- 2.2 Mortgage default proceedings presently commenced in the Commercial Court will continue to be so commenced. Subject to the direction of a Commercial Court Judge, however, mortgage default proceedings will be managed by the Associate Judges in the Associate Judges' Practice Court (Court 2, 436 Lonsdale Street, Melbourne).
- 2.3 Notwithstanding the above, commercial proceedings involving property transactions should continue to be initiated in the Commercial Court.

3. PROCEDURE FOR ENTRY INTO THE LIST

Suitable proceedings should be initiated in the List by endorsing the heading of the originating process "Common Law Division - Property List". The heading of all subsequent documents filed in the proceeding should also be similarly endorsed. No additional fees will be payable for the inclusion of a proceeding in the List.

4. MANAGEMENT OF PROCEEDINGS IN THE LIST

- 4.1 Detailed guidelines and template orders for some common types of proceedings may be found on the Property List page on the Court's website.

Caveat Removal Proceedings

- 4.2 Applications for the removal of caveats against dealings will continue to be listed by the Practice Court Coordinator in accordance with the *Notice to the Profession – Updated Practice Court procedures (Common Law Division)* published on 17 February 2016.

Proceedings Generally

- 4.3 In a proceeding commenced by writ, a first directions hearing will be listed before an Associate Judge sitting in the Associate Judges' Practice Court. The Court will generally notify the parties of the date and time of the first directions hearing within 14 days of the filing of the first defence. At the first directions hearing, the Associate Judge will give directions for the future conduct of the proceeding.
- 4.3 Proceedings commenced by originating motion will be listed before an Associate Judge sitting in the Associate Judges' Practice Court. At the first hearing the Associate Judge will usually give directions for the future conduct of the proceeding. In some matters the proceeding may be dealt with at the first hearing.¹
- 4.4 Proceedings will remain with the same Associate Judge for all future hearings on their relevant docket until allocated to a trial judge. In the event that the matter is within the jurisdiction of the Associate Judge, it will usually be heard and determined by them. Interlocutory applications may be listed by following the usual process for applications in the Associate Judges' Practice Court. Once a proceeding is under management by an Associate Judge, interlocutory applications may be made via the Principal Registry of the Court by contacting the Registry Applications Coordinator court2applications@supremecourt.vic.gov.au or by mentioning the proposed application at a directions hearing before the Associate Judge managing the proceeding.
- 4.5 Where appropriate, parties are encouraged to prepare proposed consent orders in advance of the hearings, with a view to obtaining orders by consent without the need for an appearance. The parties should email minutes of consent in both Word and signed PDF format to the Associate to the Associate Judge managing the proceeding copying also orders@supremecourt.vic.gov.au, by 4.00pm at least two days prior to the hearing. Parties are required to appear at the hearing unless otherwise advised by the Court.

¹ For example, applications for the recovery of possession of land under the summary procedure: see Order 53.

5. FINAL DIRECTIONS HEARING

5.1 Where warranted by subject matter or complexity, the proceeding will be referred to a final directions hearing before the Judge in Charge prior to the trial date. Final directions hearings in the List will be heard on the second Friday of each month during the legal year. The solicitor with conduct of the proceeding (or counsel, if briefed) should appear at the final directions hearing.

5.2 At the final directions hearing, each party should be in a position to:

- (a) confirm the proceeding is ready for trial;
- (b) provide the Court with a draft trial plan with an estimate of the number of sitting days; and detailing the time allowed for:
 - (i) openings by each party;
 - (ii) examination and cross-examination of each witness (including names of each lay and expert witness);
 - (iii) closing submissions of each party;
- (c) confirm the name and contact details of the practitioner with conduct of the proceeding and counsel briefed for trial;
- (e) confirm payment of the trial fee;
- (g) identify any outstanding interlocutory issues or proposed amendments to pleadings; and
- (h) identify the main issue(s) in dispute.

Vivienne Macgillivray
Executive Associate to the Chief Justice
18 March 2016