



# Supreme Court of Victoria

## Practice Note SC CL 13

### Property List

#### 1 INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to provide guidance on the operation of the Property List, a case management list within the Common Law Division of the Court.

#### 2 DEFINITIONS

- 2.1 In this Practice Note:  
*Rules* means the *Supreme Court (General Civil Procedure) Rules 2015*.

#### 3 COMMENCEMENT

- 3.1 This Practice Note was issued and commences on 30 January 2017 and will apply to all proceedings in the List whenever commenced.

#### 4 PROCEEDINGS SUITABLE FOR INCLUSION IN THE LIST

- 4.1 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 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).
- 4.2 Notwithstanding the above, commercial proceedings involving property transactions should be initiated in the Commercial Court.

#### *Mortgage Default Proceedings*

- 4.3 For the avoidance of doubt, 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).

## **5 PROCEDURE FOR ENTRY INTO THE LIST**

- 5.1 Proceedings should be initiated in the List by endorsing the heading of the originating process "Property List". The heading of all subsequent documents filed in the proceeding should also be endorsed "Property List".
- 5.2 If at any time after the initiation of a proceeding it appears to the Court that it is appropriate to have the proceeding managed in the List, the Court may transfer the proceeding into the List.
- 5.3 Conversely, a proceeding initiated in the List may be transferred out of the List if it appears to the Court that it is appropriate to have the proceeding managed in a different list.
- 5.4 No additional fees will be payable for the inclusion of a proceeding in the List.

## **6 MANAGEMENT OF PROCEEDINGS**

- 6.1 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*

- 6.2 Applications for the removal of caveats against dealings will continue to be listed by the Practice Court Coordinator in accordance with Practice Note SC CL 10 "Practice Court (Common Law)" or, in the case of non-urgent applications, will be referred to the Associate Judge in Charge of Listings for directions and the fixing of a hearing date.

#### *Proceedings Generally*

- 6.3 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.

- 6.4 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.<sup>1</sup>
- 6.5 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 or by mentioning the proposed application at a directions hearing before the Associate Judge managing the proceeding. The Registry Applications Coordinator should be contacted via [court2applications@supremecourt.vic.gov.au](mailto:court2applications@supremecourt.vic.gov.au).
- 6.6 Parties should refer to the [instructions for obtaining a hearing date in the Associate Judges' Practice Court](#) whenever seeking a return date for a summons before an Associate Judge.
- 6.7 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](mailto: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.

## 7 FINAL DIRECTIONS HEARING

- 7.1 Where warranted by subject matter or complexity, the proceeding will be referred to a final directions hearing before the Judge in Charge of the List prior to the trial date. The solicitor with conduct of the proceeding (or counsel, if briefed) should appear at the final directions hearing.
- 7.2 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;
  - d) confirm payment of the trial fee;

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

- e) identify any outstanding interlocutory issues or proposed amendments to pleadings; and
- f) identify the main issue(s) in dispute.

## **8 USE OF TECHNOLOGY**

- 8.1 The provisions of Practice Note SC Gen 5 “Guidelines for the Use of Technology” apply to proceedings in the List.
- 8.2 For the purposes of paragraph 9.11 of that Practice Note, documentary evidence in excess of 1500 pages is to be considered a large amount of documentary evidence.

## **9 COMMUNICATIONS WITH THE COURT**

- 9.1 At all stages of the proceeding, communications with the Court in relation to matters in the List should be by email with a copy to all other parties in the proceeding, and should be confined to uncontroversial matters. Contact details for all associates and for the Practice Court Coordinator are on the Court website.
- 9.2 Parties are reminded that pursuant to rule 27.03(11)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*, all court documents must include the name and email address of an individual to whom reference can be made in respect of the proceeding.

## **10 FURTHER INFORMATION**

- 10.1 The Court’s website ([www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au)) includes a [page dedicated to the List](#) with up to date information about the operation of the List including:
  - a) Judicial officers managing the List;
  - b) links to this Practice Note in Word and PDF formats;
  - c) guidelines in relation to applications for the modification or discharge of restrictive covenants.

## **AMENDMENT HISTORY**

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 5 of 2016.

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30 January 2017