

Mortgage Suits and the Examiner's Office



COURTS SERVICE
An tSeirbhís Chúirteanna

High Court



This is an information leaflet about the work of the Examiner's Office of the High Court. It focuses on the role of the Examiners Office in mortgage suits and is aimed primarily at legal professionals.

This is an information leaflet. This leaflet does not provide legal advice. If you need legal advice please consult a solicitor.

General Information:

Examiner's Office of the High Court

Address: 2nd Floor
15/24 Phoenix Street North
Smithfield
Dublin 7

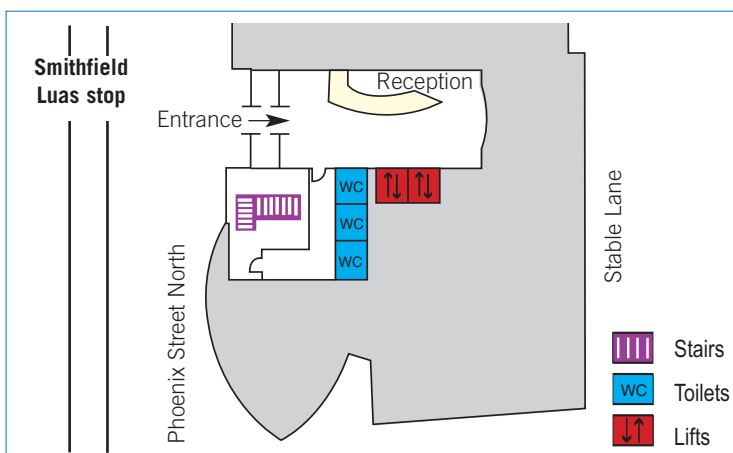
Phone: +353 (0) 1 888 6223 / 6269 / 6219+353
Fax: (0) 1 873 5260
Email: Examinersmail@courts.ie
Web: www.courts.ie

Opening hours

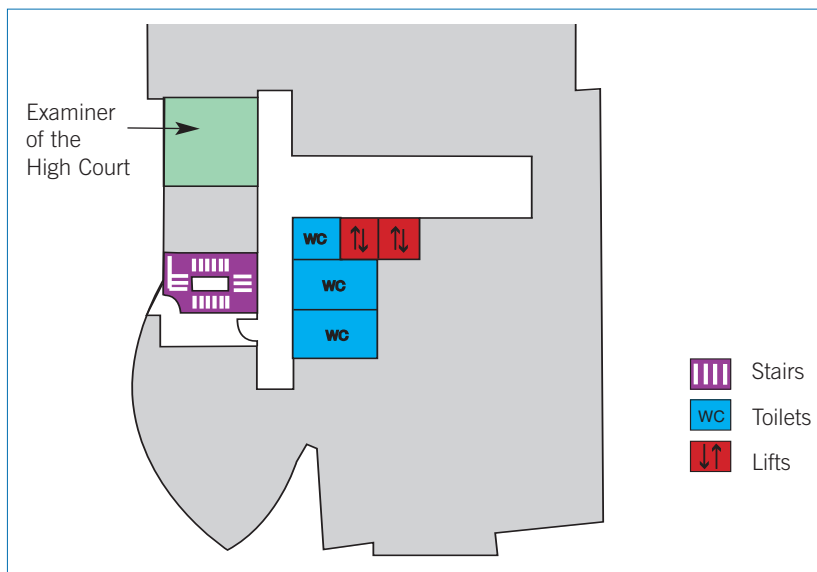
Public Office: Monday to Friday 10.00 am to 4.30 pm
with the following exceptions:

- (a) Christmas Day and the next seven days
- (b) St. Patrick's Day
- (c) Good Friday
- (d) Monday and Tuesday in Easter Week
- (e) Public holidays.

Phoenix House - ground floor Access to 2nd floor



Phoenix House - 2nd floor



Business of the office:

- ▶ Company Law
- ▶ Bankruptcy
- ▶ Administration Suits
- ▶ Mortgage Suits

Common Questions:

What is a Mortgage Suit?

A mortgage suit is a type of proceeding, taken by the holder of a security on property (usually a judgment mortgage or equitable mortgage) to recover a debt by forcing a sale of that property. A mortgage suit can result in a court making a *Well Charging Order*.

What is a Well Charging Order?

The details of a *Well Charging Order* vary from case to case, but most contain 3 elements:

1. A declaration that the debt owing to the plaintiff, plus interest, plus the plaintiff's costs are "well charged" on the defendant's interest in the property.
2. A direction that the property be sold (usually the court gives the defendant time to pay the amount due to the plaintiff before the order for sale becomes effective).
3. A direction that the Examiner take an account of all incumbrances and make an inquiry into their respective priorities. An incumbrance is a charge, mortgage, lien or other debt that is secured on a property.

When the High Court makes a well charging order and if the defendant does not pay the full amount due within the time allowed, the plaintiff must refer the matter to the Examiner's Office to proceed further.

How are proceedings in the Examiner's Office started?

The plaintiff starts proceedings by lodging certain documents, including a copy of the *Well Charging Order*. He/she then issues a document called a *Notice to Proceed* and serves it on the defendant. A sitting then takes place before the Examiner on the date set out in the *Notice to Proceed*.

The formal business of the Office is conducted in Sittings before the Examiner as set out in Order 55 of the Rules of the Superior Courts. Appendix G contains the relevant forms. See **Rules and Fees Section** on the Courts Service website www.courts.ie

You may also download precedent forms from the **Examiner's Office Section** on the Court Services website www.courts.ie

What are the main steps involved in Mortgage Suit proceedings in the Examiner's Office?

The process has two elements.

1. Ascertaining the incumbrancers and their respective priorities.
 - » The plaintiff places an advertisement for incumbrancers at the Examiner's direction
 - » The incumbrancers lodge claims pursuant to the advertisement
 - » The Examiner adjudicates on the claims
 - » The plaintiff issues a motion before the Examiner to settle the *Certificate of Incumbrancers*. This is done late in the proceedings, after completion of the sale of the property.
2. Arranging the sale of the property.
 - » At the Examiner's direction, the plaintiff requests, the Court Conveyancing Counsel* to prepare conditions of sale
 - » The plaintiff issues a Motion, before the Examiner, to settle particulars and conditions of sale based on the draft conditions and opinion of counsel
 - » The plaintiff nominates an auctioneer to conduct the sale. An independent valuer is also appointed.

The sale, unless otherwise ordered by the court, is by public auction. After the auction, the Examiner signs a *Certificate of Result of Sale* - court duty on this certificate is a percentage of the sale price. (See **Rules and Fees section** www.courts.ie). The plaintiff lodges the proceeds of the sale in court.

On completion of the sale, the two elements of the proceedings come together:

- » The Examiner signs the *Certificate of Incumbrancers* - court duty on this is a percentage of the claims admitted. This certificate then forms the basis for a draft payment schedule, which is presented to the court as part of the application to pay funds out of court

*A barrister appointed by the Court for that purpose.

How are the proceedings completed?

There are generally two ways to finalise a mortgage suit:

1. Settlement of the claim between the parties, leading to a court order discharging the *Well Charging Order*. The parties may settle at any point in the proceedings. While the plaintiff and defendant may settle a claim, other incumbrancers may need to be on notice of the motion to discharge the *Well Charging Order*
2. A court order directing payment of the proceeds of sale out of court.

What are the documents required at the Notice to Proceed stage?

1. *Notice to Proceed* plus five copies - details of stamp duty required are available in our **Rules and Fees Section** of the website www.courts.ie
2. Attested copy of *Well Charging Order* bearing an endorsement of service
3. Plain copy of every document referred to in the schedule(s) to the *Well Charging Order*
4. Recent copy folio from the Property Registration Authority - website www.prai.ie or a Registry of Deeds search
5. Recent Companies Office search (if the defendant is a company)
6. Plain Copy of Special Summons
7. Plain copy of filed *Affidavit of Service of Special Summons* on defendant(s)
8. Plain copy of filed *Affidavit of Service of Well Charging Order* on defendant(s)
9. Letter addressed to the Examiner stating:
 - (a) that the defendant has not come into court and disputed the amount found due in the time specified
 - (b) whether or not any payments have been made since the date of the *Well Charging Order*. If any payments have been made, provide details of the amount(s) paid and date(s) of payment.

- (c) that no *Notification of Appeal* has been received by the solicitor for the plaintiff
- (d) whether or not an *Appearance* has been entered.
If an *Appearance* has been entered, a copy of the *Memorandum of Appearance* should be lodged
- (e) whether or not any other orders have been made in the proceedings since the date of the *Well Charging Order* and, if any other orders have been made, copies of same should be lodged
- (f) whether or not the property is a family home.

A quick guide to mortgage suit proceedings:




The High Court makes a *Well Charging Order* and if the defendant does not pay the full amount due within the time allowed the plaintiff refers the matter to the Examiner's Office.

How are proceedings in the Examiner's Office started?







1. The plaintiff lodges certain documents including a copy of the *Well Charging Order* in the Examiner's Office.
2. The plaintiff issues a '*Notice to Proceed*' (this date is given by the Examiner's Office) and serves it on the defendant.
3. A sitting then takes place before the Examiner on the date set out in the '*Notice to Proceed*'.

What are the main steps involved in mortgage suit proceedings in the Examiner's Office?

Ascertaining the incumbrancers and their respective priorities:

4.  The plaintiff places an *Advertisement for Incumbrancers* at the Examiner's direction
 -  The incumbrancers lodge claims pursuant to the advertisement
 -  The Examiner adjudicates on the claims.

Arranging the sale of the property:

5.  At the Examiner's direction, the plaintiff requests, the Court Conveyancing Counsel to prepare conditions of sale
 -  The plaintiff issues a *Motion to Settle the Particulars and Conditions of Sale*, before the Examiner, based on the draft conditions and opinion of counsel
 -  The plaintiff nominates an auctioneer to conduct the sale and an independent valuer is also appointed
 -  The Examiner *settles the particulars and conditions of sale* and fixes the date of the auction
 -  The sale, unless otherwise ordered by the Court, is by public auction. After the auction, the Examiner signs a *Certificate of Result of Sale* – court duty is payable on this certificate at a percentage of the sale price. See **Rules and Fees Section** of the Courts Service website www.courts.ie
 -  The plaintiff lodges the proceeds of the sale in court.

How are proceedings completed?

6. The Examiner signs the *Certificate of Incumbrancers* – court duty is payable on a percentage of the claims admitted. See **Rules and Fees Section** of the Courts Service website www.courts.ie This certificate then forms the basis for a draft payment schedule, presented to the court as part of the *Application to Pay out Funds out of Court*.
7. A court order is made directing payment of the proceeds of sale out of court.

Note: At any point in proceedings the parties may settle their claim and may apply to the court for an order discharging the *Well Charging Order*. While the plaintiff and defendant may settle the claim, other incumbrancers may need to be put on Notice of Motion to Discharge the *Well Charging Order*.

Produced by the Courts Service,
Information Office
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Smithfield, Dublin 7
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