



SUPREME COURT PRACTICE NOTE SC EQ 12

Supreme Court Equity Division – Real Property List

Commencement

1. This Practice Note was issued on 17 August 2023 and commences on 18 August 2023.

Introduction

2. The objective of the Real Property List in the Equity Division (the List) and this Practice Note is to facilitate the prompt and efficient resolution of the real issues in dispute in Real Property Matters.
3. Real Property Matters are proceedings involving claims in respect of land or interests in land, including claims:
 - (a) in respect of contracts for the sale of land;
 - (b) in respect of leases of land;
 - (c) in respect of easements or covenants over land; and
 - (d) pursuant to or in relation to the provisions of statutes relating to real property including the *Real Property Act 1900* (NSW), the *Conveyancing Act 1919* (NSW), the *Crown Lands Act 1989* (NSW) and the legislation governing the creation and management of strata schemes and community schemes.
4. Real Property Matters do not include proceedings in, or to be commenced in, the Possession List in the Common Law Division.
5. All proceedings in the List will be case managed by the Real Property List Judge (the List Judge) on a Friday.

Application

6. This Practice Note applies to new and existing Real Property Matters that are entered in the List.

7. The Court may, if it is satisfied that it is appropriate to do so, order that proceedings be entered in or removed from the List. The making of an order removing proceedings from the Lists shall not affect any orders made or directions given prior to such removal.
8. Practice Note SC Eq 1 (Case Management) does not apply to proceedings in the List.
9. A party who considers that compliance with this Practice Note will not be possible, or will not be conducive to the just, quick and cheap disposal of the proceedings, may apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such disposal.

Commencing proceedings and alternative dispute resolution

10. The parties should be aware of Practice Note SC Gen 6 (Mediation), and the provisions in Part 4 of the *Civil Procedure Act 2005* (NSW) (Mediation of proceedings) and the relevant provisions of the *Uniform Civil Procedure Rules 2005* (NSW) including but not limited to Part 20, Division 1.
11. It is expected that prior to the commencement of proceedings in the List, the parties will have considered referral of their dispute to mediation or another alternative dispute resolution process. It is also expected that the lawyers, or the litigant, if not legally represented, will be in a position to advise the Court on the first return date of the Summons whether:
 - (a) the parties have attempted some alternative dispute resolution; and
 - (b) their respective clients are willing to proceed to some alternative dispute resolution at an appropriate time.
12. If a matter is referred to mediation by consent and/or by an order pursuant to the section 26 of the *Civil Procedure Act 2005*, the parties are to ensure that the person(s) who is (are) able to make a decision as to whether the matter settles is present personally or by authorised nominee(s) at the mediation.
13. Any Summons or Statement of Claim must record on the front sheet that it is in the Real Property List. The Court encourages electronic filing of all pleadings and affidavits.
14. When proceedings are commenced they will be allocated a first return date before the List Judge in a Friday List.

Orders in Chambers/Consent orders

15. Parties must confer in advance of the listing date and make every effort to agree upon suitable consent orders. To facilitate the just, quick and cheap resolution of matters, appropriate consent orders will be made by the List Judge in Chambers where they have been provided to the List Judge's Associate on any day before 12 noon on the Thursday before the relevant Friday List. Executed consent orders should be sent to Chambers in both Microsoft Word (.docx) and

- Adobe Acrobat formats (.pdf). If appropriate, orders will be made in Chambers and the parties notified.
16. When consent orders are to be made either in Chambers or in Court varying a timetable, those orders must include the vacation of any date for directions hearings or the hearing of Motions that the parties no longer wish to maintain, and the allocation of a future listing date.
 17. If agreement cannot be reached or parties have not been notified that orders have been made in Chambers, the matter will remain listed for directions and parties are required to attend in person.
 18. Any application for leave to appear in the List via video link or conference telephone must be made to Chambers in writing, with reasons and evidence where appropriate, before 12 noon on the Thursday before the Friday List. Unless parties are notified that leave has been granted by the List Judge, parties are required to appear in person. To facilitate the efficient running of the List, matters where video link or conference telephone appearance has been granted may be placed at the end of the List.
 19. If proceedings settle prior to any listing, orders disposing of the proceedings will be made by the List Judge (including in Chambers). Any Terms of Settlement and/or Notices of Discontinuance should be emailed to the List Judge's Associate.

Motions and Directions

20. All proceedings are case managed by the List Judge with the aim of ensuring a speedy resolution of the real issues between the parties. Even if by consent, the Court will be unlikely to accept an agreed timetable inconsistent with this aim.
21. It is expected that on the first return date the parties will be in a position to clearly identify the real issues that will be in dispute and to provide to the Court an agreed regime for preparing the matter for trial, including reference to alternative dispute resolution or a single expert at a suitable time.
22. Motions are listed at 9.15am and are called through for the purpose of ascertaining the length of the hearing and allocating a time for hearing on that or some other day. Matters for directions will be listed after Motions. The times for the commencement of the Motions and Directions hearings may change and parties should always check the daily court lists shortly before attending Court on a Friday.
23. Interlocutory applications are not encouraged. It is expected that the parties will make every effort to resolve any interlocutory issues. Motions may not be filed without leave, (except for substituted service motions that will be considered by Registrars in chambers). Leave must be obtained from the List Judge, in which case the motion will be listed in a Friday List, or before the Registrar if within the Registrar's delegation and can be heard within 2 hours. Leave can be sought

from the List Judge at a directions hearing on Friday or, where urgent, by email to the List Judge's Associate.

24. When leave is sought, parties should be prepared to provide the List Judge with a proposed timetable for the motion to be heard and whether a court book and submissions would assist the Court.
25. As a general rule, applications to strike out or for summary judgment will not be entertained. Sometimes applications are appropriate, but parties should expect strictness in declining to entertain such applications.
26. Any urgent application in a Real Property matter must be made by arrangement with the List Judge's Associate, who will advise the Judge, to whom application should be made.
27. Practice Note SC Eq 5 (Expert Evidence) and Practice Note SC Eq 11 (Disclosure in the Equity Division) apply to proceedings in the List.

Hearings

28. Hearing dates are not allocated in Chambers and parties are expected to confer regarding a realistic estimate of the hearing length and common available hearing dates before they appear before the List Judge.
29. Generally hearing dates will only be allocated after evidence is complete.
30. When proceedings are listed for final hearing, the Court will generally make the Usual Order for Hearing set out in Annexure A, with or without modification.

The Hon. A S Bell

Chief Justice of New South Wales
17 August 2023

Amendment History

17 August 2023: This Practice Note replaces the previous version of Practice Note SC Eq 12 which was issued on 21 March 2019.

21 March 2019: This Practice Note replaces the previous version of Practice Note SC Eq 12 which was issued on 20 May 2015.

1 September 2016: This Practice Note replaces the previous version of SC Eq 12 that was issued 20 May 2015 and commenced on 1 June 2015.

Annexure A

Usual Order for Hearing

1. Unless the Court otherwise orders, the Court Book need not be electronic. If the Court Book is to be electronic, Practice Note SC Gen 7 will apply. The Trial Judge may also request a hard copy in any event. The Court may order that the sections of the Court Book described below comprise of separate PDF bundles, each separately paginated and each bookmarked.
2. By no later than five (5) working days before the trial date, the parties are to provide to the Associate to the Trial Judge, two copies of a Court Book which is to contain, in separate sections:
 - (a) latest process and pleadings;
 - (b) submissions (including chronologies and lists of authorities) and any objections which are essential;
 - (c) affidavits (excluding annexures and exhibits which consist of primary documentation);
 - (d) documentary evidence – which is to be placed in chronological sequence so far as is practicable and consecutively numbered (without tabs unless the Court otherwise directs). If there are a significant number of emails, the chains should be dismembered and placed in chronological sequence; and
 - (e) expert evidence.
3. A physical Court Book must be in working ring-binder folders, none of which is to be filled beyond its reasonable working capacity, and the documents are to be accurately hole-punched.
4. The affidavits are to be annotated to the Court Book so that documents referred to, annexed or exhibited to an affidavit must be referenced to the place where the document is in the chronological section of the Court Book.
5. Not more than one index should be provided.
6. By no later than two (2) working days before the trial date, the parties must cause to be filed and served a short outline of submissions, a chronology of relevant events, any objections to evidence that are essential and a list of authorities.