



Supreme Court Act 1935

Supreme Court Amendment Rules 2016

Made by the judges of the Supreme Court.

1. Citation

These rules are the *Supreme Court Amendment Rules 2016*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the 7th day after that day.

3. Rules amended

These rules amend the *Rules of the Supreme Court 1971*.

4. Order 1 amended

In Order 1 rule 4(1) insert in alphabetical order:

mortgage action has the meaning given in Order 4AA rule 1(1);

5. Order 4A amended

After Order 4A rule 17(2) insert:

- (2A) If the request is to enter default judgment under Order 13 rule 6, the letter must include the details required by Form 36B.

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6. Order 4AA inserted

After Order 4 insert:

Order 4AA — Mortgage actions**1. Terms used**

(1) In this Order —

mortgage includes a legal and an equitable mortgage and a legal and an equitable charge, whether or not the mortgage or charge is registered under the *Transfer of Land Act 1893*;

mortgage action means proceedings to which this Order applies.

(2) In this Order, *mortgagee* and *mortgagor* have meanings that correspond to the meaning of *mortgage*.

2. Application

(1) This Order applies to any proceedings by a mortgagee or mortgagor, or by any person who has the right to foreclose or redeem any mortgage, if in the proceedings there is a claim for relief of any of the following kinds —

(a) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by —

(i) the mortgagor; or

(ii) any other person who is, or is alleged to be, in possession of the property;

(b) foreclosure;

(c) sale of the mortgaged property;

(d) redemption;

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- (e) reconveyance of the property or its release from the security;
 - (f) delivery of possession by the mortgagee.
- (2) Nothing in this Order extends or affects the powers of sale or foreclosure conferred by the *Transfer of Land Act 1893* Part IV Division 3.

3. Commencing mortgage actions

- (1) A mortgage action must be begun by writ unless the mortgage action is a defendant's application for an order for delivery of possession referred to in subrule (3).
- (2) If the writ is indorsed with a claim for relief of a kind referred to in rule 2(1)(a), (b) or (c), a notice in Form 4 must be attached to the front of the writ when the writ is served.
- (3) A defendant in a mortgage action for redemption may apply by motion or summons for an order for delivery to the defendant of possession of the mortgaged property if —
- (a) the plaintiff has failed to redeem; and
 - (b) foreclosure has taken place.
- (4) On an application made under subrule (3) the Court may make whatever order it thinks fit.

4. Transitional provision for former Order 62A

- (1) In this rule —
- commencement day* means the day on which the *Supreme Court Amendment Rules 2016* rule 13 comes into operation;

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former Order 62A means Order 62A as in effect immediately before it was deleted by the *Supreme Court Amendment Rules 2016* rule 13;

transitional proceedings means proceedings to which former Order 62A applied immediately before commencement day.

- (2) Former Order 62A applies to and in relation to the following as if former Order 62A had not been deleted —
- (a) transitional proceedings begun by originating summons before commencement day;
 - (b) transitional proceedings begun by writ if the writ was served before commencement day.

7. Order 9 amended

Delete Order 9 rule 1(4) and insert:

- (4) Where a writ is served on a defendant otherwise than by virtue of subrule (2) or (3), then subject to Order 10 rule 9(9), the plaintiff in the action begun by the writ is not entitled to enter judgment against the defendant in default of appearance or in default of defence unless, within 3 days after service, the person serving it indorses on the sealed copy of the writ the following particulars —
- (a) the day of the week and date on which it was served;
 - (b) where it was served;
 - (c) the person on whom it was served;
 - (d) if the person on whom it was served is not the defendant — the capacity in which the person was served;

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- (e) if under Order 4AA rule 3(2) a Form 4 must be attached to the writ when it is served — a statement that the Form 4 was attached to the front of the writ when it was served.

8. Order 13 replaced

Delete Order 13 and insert:

Order 13 — Judgment in default of appearance to writ

- 1. Plaintiff may enter judgment if defendant fails to enter appearance**
 - (1) This Order applies only to proceedings commenced by writ.
 - (2) If a defendant does not enter an appearance within the time limited for appearing, the plaintiff may enter judgment against that defendant in accordance with this Order.
 - (3) Judgment must not be entered against a defendant under this Order unless —
 - (a) an affidavit is filed by or on behalf of the plaintiff proving service of the writ on the defendant and indorsement of service in accordance with Order 9 rule 1(4); or
 - (b) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that the defendant's solicitor accepts service of the writ on the defendant's behalf.

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- (4) The Court may require to be satisfied in whatever manner it thinks fit that the defendant has failed to enter an appearance.

2. Claim for liquidated demand

- (1) If the writ is indorsed with a claim for a liquidated demand only, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may —
- (a) enter judgment against the defendant for a sum not exceeding that claimed by the writ in respect of the demand and costs; and
 - (b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.
- (2) On a judgment under this rule, the plaintiff may issue execution on the judgment.
- (3) A claim is not excluded from this rule just because part of it is for interest under section 32 of the Act at a rate that is not higher than that payable on judgment debts at the date of the writ.

3. Claims for unliquidated damages

- (1) If the writ is indorsed with a claim for unliquidated damages only, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may —
- (a) enter judgment against the defendant and obtain an order for directions for the assessment of damages; and
 - (b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.

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- (2) On a judgment under this rule —
- (a) damages are to be assessed by a master unless the Court orders otherwise; and
 - (b) judgment after the assessment of damages is to be entered as a default judgment under this rule; and
 - (c) the plaintiff may issue execution on the judgment.

4. Claim relating to detention of goods (excluding mortgage actions)

- (1) If the writ is indorsed with a claim relating to the detention of goods only and is not a mortgage action, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may —
- (a) at the plaintiff's option, enter judgment against the defendant either —
 - (i) for the delivery of the goods or their value to be assessed and costs; or
 - (ii) for the value of the goods to be assessed and costs;
- and
- (b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.
- (2) On a judgment under this rule —
- (a) the value of the goods is to be assessed by a master unless the Court orders otherwise; and
 - (b) judgment after the assessment of the value of the goods is to be entered as a default judgment under this rule; and

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- (c) the plaintiff may issue execution on the judgment, except as provided in subrule (3).
 - (3) If the judgment is for the delivery of goods it cannot be enforced against any defendant unless judgment has been entered or obtained against all other defendants, if any.
- 5. Claim for possession of land (excluding mortgage actions)**
- (1) If the writ is indorsed with a claim for possession of land only, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may, on complying with subrule (2) —
 - (a) enter judgment for possession of the land against the defendant and costs; and
 - (b) proceed with the action against the other defendants, if any.
 - (2) In order to enter judgment under this rule, the plaintiff must file a certificate from the plaintiff's solicitor or, if suing in person, an affidavit stating that the plaintiff is not claiming relief of any of the kinds referred to in Order 4AA rule 2(1).
 - (3) On a judgment under this rule, the plaintiff may issue execution of the judgment, except as provided in subrule (4).
 - (4) If there is more than one defendant, judgment entered under this rule cannot be enforced against any defendant unless judgment has been entered or obtained against all the defendants.
- 6. Mortgage actions**
- (1) If an action begun by writ is a mortgage action, then, if a defendant fails to enter an appearance within the time

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limited for appearing, the plaintiff may, subject to subrules (2) and (3) —

- (a) enter judgment against the defendant for the relief sought and costs; and
 - (b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.
- (2) If the writ is indorsed with a claim for relief of a kind referred to in Order 4AA rule 2(1)(a), (b) or (c), in order to enter judgment under this rule, the plaintiff must, after the time limited for appearing has expired —
- (a) serve on the defendant a notice in Form 36A with a copy of the writ and Form 4 attached to it; and
 - (b) not less than 11 days after serving the notice, file but need not serve —
 - (i) a request to enter default judgment in Form 36B; and
 - (ii) an affidavit in support that complies with rule 7.
- (3) If, in addition to a claim for relief of a kind referred to in Order 4AA rule 2(1)(a), (b) or (c), the writ is also indorsed with a claim for payment of money secured by the mortgage, the Form 36B request to enter default judgment must certify —
- (a) the amount owing to the plaintiff under the mortgage as at the date of the filing of the request; and
 - (b) if the claims include a claim for interest after judgment, the amount of a day's interest.

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- (4) On a judgment under this rule, the plaintiff may issue execution on the judgment, except as provided in subrule (5).
- (5) If there is more than one defendant, judgment entered under this rule cannot be enforced against any defendant unless judgment has been entered or obtained against all the defendants.
- (6) Unless the Court orders otherwise, if judgment against a defendant under this rule is for the kind of relief referred to in Order 4AA rule 2(1)(a), within 28 days after service of the judgment the defendant must give the plaintiff possession of the mortgaged property.

7. Content of affidavit required by r. 6(2)(b)(ii)

- (1) In this rule —
mortgage, *mortgagee* and *mortgagor* have the meanings given in Order 4AA rule 1.
- (2) An affidavit in support filed under rule 6(2)(b)(ii) must —
 - (a) specify the property that is mortgaged; and
 - (b) specify the person who is the proprietor of the mortgaged property; and
 - (c) have attached to it a copy of —
 - (i) the certificate of title or other document that is evidence of title to the mortgaged property; and
 - (ii) the mortgage;and

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- (d) give particulars of the default or other circumstances that are put forward as entitling the plaintiff to the relief sought, including —
 - (i) a reference to the provision of the mortgage that the defendant is alleged to have breached; and
 - (ii) a reference to the provision of the mortgage that entitles the plaintiff to the relief sought; and
 - (iii) if the writ is indorsed with a claim for payment of money secured by the mortgage, a reference to any non-merger provision of the mortgage that allows the recovery of interest at mortgage rates after judgment; and
 - (iv) a statement as to whether or not notice of that default or those circumstances is required to be given to the defendant under the mortgage or a written law; and
 - (v) if notice is required, details of compliance with that requirement;and
- (e) if the claim against the defendant is for sale or possession of mortgaged property —
 - (i) state that Order 4AA rule 3(2) and Order 13 rule 6(2)(a) have been complied with; and
 - (ii) give details of every person who, to the best of the plaintiff's knowledge, is in possession of the property and the grounds for concluding that the person is in possession; and

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- (iii) if one or more of the people who are in possession of the property are tenants of the property, give details of the steps taken by the plaintiff to comply with any applicable requirements of the *Residential Tenancies Act 1987*;

and

- (f) specify the following as at the date of the affidavit —
 - (i) the amount owing to the plaintiff under the mortgage;
 - (ii) the interest rate (as a percentage) under the mortgage;
 - (iii) if the claim includes a claim for interest to judgment, the amount of a day's interest;

and

- (g) if the plaintiff is claiming costs (other than an order that the defendant pay the plaintiff's costs to be taxed if not agreed), state the basis on which the plaintiff claims those costs.

Example for this subrule:

A claim for indemnity costs must refer to the provision in the mortgage that entitles the plaintiff to those costs.

- (3) More than one affidavit may be used to comply with rule 6(2)(b)(ii) and this rule.

8. Writs for 2 or more claims to which r. 2 to 6 apply

If the writ is indorsed with 2 or more claims to which rules 2 to 6 apply, and no other claim, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may —

- (a) enter against the defendant, in respect of any claim with which the writ is indorsed, whatever

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judgment the plaintiff would be entitled to enter under those rules as if that were the only claim made by the plaintiff against the defendant; and

- (b) proceed with the action against the other defendants, if any, unless those rules otherwise provide.

9. Writs for other claims

- (1) If the writ is indorsed with a claim to which none of rules 2 to 6 apply, then, if a defendant fails to enter an appearance within the time limited for appearing, the plaintiff may, on complying with subrule (2) —
 - (a) apply to the Court on motion for judgment against the defendant for the relief sought and costs; and
 - (b) proceed with the action against the other defendants, if any, unless the defendants are sued in the alternative.
- (2) In order to enter judgment under this rule —
 - (a) if the statement of claim was not indorsed on or served with the writ, the plaintiff must serve the statement of claim on the defendant; and
 - (b) the plaintiff must produce a certificate issued by the proper officer on the day of the hearing stating that no appearance has been entered by the defendant against whom it is sought to enter judgment.
- (3) On a judgment under this rule, the plaintiff may issue execution on the judgment, except as provided in subrule (4).
- (4) If there is more than one defendant, judgment entered under this rule cannot be enforced against any defendant without leave of the Court.

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10. Entry of judgment for costs only upon writs for other claims

- (1) This rule applies if —
 - (a) the writ is indorsed with a claim to which none of rules 2 to 6 apply; but
 - (b) it has become unnecessary for the plaintiff to proceed with the action —
 - (i) because the defendant has satisfied the claim or complied with the demands of the claim; or
 - (ii) for any other similar reason.
- (2) If this rule applies, then, if the defendant fails to enter an appearance within the time limited for appearing, the plaintiff may, with the leave of the Court, enter judgment against the defendant for costs.
- (3) The application for the leave must be by summons.
- (4) Unless the Court orders otherwise, and regardless of Order 72 rule 8, the summons must be served on the defendant against whom it is sought to enter judgment.

11. Reference to Court in case of doubt or difficulty

In any case in which the plaintiff claims to be entitled under this Order to enter judgment in default of the defendant's appearance, the Court may, if any doubt or difficulty arises in relation to that claim, direct that it be brought before the Court on motion or by summons.

12. Default judgment to inform defendant of certain matters

A default judgment must contain a statement informing the defendant of the defendant's right —

- (a) to apply to have the default judgment set aside or varied; and

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- (b) if applicable, to apply under the *Civil Judgments Enforcement Act 2004* section 15 for an order suspending the enforcement of all or part of the default judgment.

13. Service of default judgment

- (1) A plaintiff who obtains a default judgment must serve the judgment on the defendant as soon as practicable after the judgment is entered.
- (2) The defendant must be served personally with the default judgment.

14. Setting aside or varying default judgment

The Court may, on whatever terms it thinks just, set aside or vary any default judgment entered under this Order.

9. Order 22 deleted

Delete Order 22.

10. Order 33 amended

Delete Order 33 rule 3(2).

11. Order 34 amended

- (1) In Order 34 rule 18(1) delete “final”.
- (2) Delete Order 34 rule 18(6).

12. Order 60A amended

Delete Order 60A rule 1(1)(c).

13. Order 62A deleted

Delete Order 62A.

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14. Order 71A amended

In Order 71A rule 2(c)(ii) delete “the *Associations Incorporation Act 1987* —” and insert:

the *Associations Incorporation Act 2015* —

15. Order 73 amended

Delete Order 73 rule 17(1).

16. Schedule 2 Form 4 inserted

After Schedule 2 Form 3 insert:

4. Notice to defendant in action for possession, foreclosure or sale of mortgaged property (O. 4AA r. 3)

Supreme Court of Western Australia		Action No:
		Notice to defendant in action for possession, foreclosure or sale of mortgaged property
Parties	Plaintiff	
	Defendant	
Notice to [insert name of defendant]		
IMPORTANT NOTICE AND HOW TO RESPOND		
This is an IMPORTANT NOTICE issued to you because a claim has been made against you in the Supreme Court of Western Australia. If you do not respond you may lose ownership of the property described below and action may be taken to sell that property.		

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Attached to this notice is a writ of summons issued by the Supreme Court of Western Australia. The plaintiff, [*name of plaintiff*], seeks orders against you including orders that would allow the plaintiff to [*take possession of/foreclose on/sell*]¹ your [*description of property*] [*at location of property if relevant*] under a mortgage. **This notice contains important information about your rights. Please read it carefully.**

If you are unsure of what you should do: you should try to get legal advice without delay. Legal Aid WA has an online ‘Mortgage stress - self help guide’ available on its website at www.legalaid.wa.gov.au or you can telephone the Legal Aid WA InfoLine on 1300 650 579 for free information or a referral to other services that might be able to assist you (open Monday to Friday 8.30 am to 4.30 pm except public holidays). If you need Translating and Interpreting Services contact 131 450, or the National Relay Service (for hearing and speech impaired) contact 133 677.

If you do not agree with the claim and believe that you have a legal defence: you should, within [*number of days as required in Order 5 rule 11*] days after the writ of summons was served on you, inform the Court and [*name of plaintiff*]'s lawyers, [*name of law firm representing plaintiff*] (whose contact details appear below), that you wish to defend the action.

You do not have a legal defence just because you disagree with what the plaintiff is proposing to do or because events have been outside your control. For example, it is not a legal defence that you cannot pay your mortgage repayments because you are unemployed. Because any defence can only succeed if it is recognised at law it might assist you to get some legal advice.

To inform the Court and [*name of law firm representing plaintiff*] that you wish to defend the action you should:

1. File an original and one copy of a completed Memorandum of Appearance (*Rules of the Supreme Court 1971* Schedule 2 Form 6) at the Supreme Court registry, Level 11, David Malcolm Justice Centre, 28 Barrack Street, Perth. A Memorandum of Appearance form can be obtained from the Supreme Court website at: www.supremecourt.wa.gov.au.
2. Serve on [*name of law firm representing plaintiff*] without delay a copy of the stamped Memorandum of Appearance that is returned to you by the Court (1. above).

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If you do nothing: if you do not file a Memorandum of Appearance at the Court within [*number of days as required in Order 5 rule 11*] days after the writ of summons was served on you, then [*name of plaintiff*] may ask the Court to make orders that would allow the plaintiff to [*take possession of/foreclose on/sell*]¹ your [*description of property*] [*at location of property if relevant*].

The plaintiff's lawyers: The plaintiff is represented by [*name of law firm representing plaintiff*], whose address is [*street address*]. If you wish to contact someone at [*name of law firm representing plaintiff*] in relation to this matter then you should contact [*lawyer's name*] on [*lawyer's telephone number*] or by email at [*lawyer's email address*].

Note to Form 4:

1. Delete inapplicable.

17. Schedule 2 Forms 32 to 37 replaced

Delete Schedule 2 Forms 32 to 37 and insert:

32. Default judgment for liquidated demand (O. 13 r. 2; O. 42 r. 1)**IN THE SUPREME COURT OF WESTERN AUSTRALIA**

No: of 20

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT FOR LIQUIDATED DEMAND

Judicial officer:

Date of order:

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THE COURT ORDERS THAT:

The defendant pay the plaintiff —

- (a) \$[insert amount]; and
- (b) \$[insert amount] costs [or costs to be taxed].

The above costs have been taxed and allowed at \$[insert amount] as appears by the Taxing Officer's certificate dated [insert date].

BY THE COURT

REGISTRAR

NOTICE TO DEFENDANT

[Name of plaintiff] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [name of plaintiff] was not entitled to obtain this judgment against you or if you believe that [name of plaintiff] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [name of plaintiff] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [insert name and address].

If you want to contact the lawyer for the plaintiff, you should call [insert name] on [insert number] or email them at [insert email address].

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**33. Default judgment where demand unliquidated (O. 13 r. 3;
O. 42 r. 1)****IN THE SUPREME COURT OF WESTERN AUSTRALIA**

No: of 20

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT WHERE DEMAND UNLIQUIDATED

Judicial officer:

Date of order:

THE COURT ORDERS THAT:

The defendant pay the plaintiff the value of the goods [*or damages, or both, as the case requires*] to be assessed.

BY THE COURT

REGISTRAR

Note: Default judgment after assessment of damages is to be in Form 35.

NOTICE TO DEFENDANT

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you then you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed.

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CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: *[insert name and address]*.

If you want to contact the lawyer for the plaintiff, you should call *[insert name]* on *[insert number]* or email them at *[insert email address]*.

34. Default judgment in action relating to detention of goods other than in a mortgage action (O. 13 r. 4; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: of 20

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT IN ACTION RELATING TO DETENTION OF GOODS OTHER THAN IN A MORTGAGE ACTION

Judicial officer:

Date of order:

THE COURT ORDERS THAT:

The defendant deliver to the plaintiff the goods described in the writ of summons *[or statement of claim]* as *[insert description of goods]* or pay to the plaintiff the value of those goods to be assessed *[and also damages for their detention to be assessed]*.¹

or

The defendant pay the plaintiff the value of the goods described in the statement of claim to be assessed *[and also damages for their detention to be assessed]*.²

BY THE COURT

REGISTRAR

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Note: Default judgment after assessment of the value of the goods and damages for their detention (if applicable) is to be in Form 35.

NOTICE TO DEFENDANT¹

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you or if you believe that [*name of plaintiff*] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

or

NOTICE TO DEFENDANT²

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you then you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed.

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CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: *[insert name and address]*.

If you want to contact the lawyer for the plaintiff, you should call *[insert name]* on *[insert number]* or email them at *[insert email address]*.

Notes to Form 34:

1. To be used for a default judgment referred to in Order 13 rule 4(1)(a)(i).
2. To be used for a default judgment referred to in Order 13 rule 4(1)(a)(ii).

35. Default judgment after assessment of damages etc. (O. 13 r. 3 & 4; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: of 20

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

DEFAULT JUDGMENT AFTER ASSESSMENT OF DAMAGES ETC.¹

Judicial officer:

Date of order:

The plaintiff having on the day of 20 , obtained default judgment against the defendant for damages *[or as the case may be]* to be assessed, and the amount found due to the plaintiff having been certified at \$*[insert amount]* as appears by the *[master's certificate, or as the case may be]* filed the day of 20 ,

Supreme Court Amendment Rules 2016**r. 17****THE COURT ORDERS THAT:**

The defendant pay the plaintiff —

- (a) \$[insert amount]; and
- (b) \$[insert amount] costs [or costs to be taxed].

The above costs have been taxed and allowed at \$[insert amount] as appears by the Taxing Officer's certificate dated [insert date].

BY THE COURT
REGISTRAR

NOTICE TO DEFENDANT

[Name of plaintiff] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [name of plaintiff] was not entitled to obtain this judgment against you or if you believe that [name of plaintiff] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [name of plaintiff] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [insert name and address].

If you want to contact the lawyer for the plaintiff, you should call [insert name] on [insert number] or email them at [insert email address].

Note to Form 35:

1. The heading and text of this order is to be amended to reflect the assessment.

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36. Default judgment for possession of land other than in a mortgage action (O. 13 r. 5; O. 42 r. 1)**IN THE SUPREME COURT OF WESTERN AUSTRALIA**

No: of 20

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

**DEFAULT JUDGMENT FOR POSSESSION OF LAND OTHER THAN IN
A MORTGAGE ACTION**

Judicial officer:

Date of order:

THE COURT ORDERS THAT:

1. The defendant give the plaintiff vacant possession of the land described in the writ of summons [*or statement of claim*] as [*insert description of land*].
2. The defendant pay the plaintiff \$[*insert amount*] costs [*or costs to be taxed*].

The above costs have been taxed and allowed at \$[*insert amount*] as appears by the Taxing Officer's certificate dated [*insert date*].

BY THE COURT

REGISTRAR

Supreme Court Amendment Rules 2016**r. 17****NOTICE TO DEFENDANT**

[*Name of plaintiff*] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [*name of plaintiff*] was not entitled to obtain this judgment against you or if you believe that [*name of plaintiff*] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [*name of plaintiff*] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [*insert name and address*].

If you want to contact the lawyer for the plaintiff, you should call [*insert name*] on [*insert number*] or email them at [*insert email address*].

36A. Notice to defendant of intention to request Court to make orders for possession, foreclosure or sale of mortgaged property (O. 13 r. 6)

Supreme Court of Western Australia	Action No:
	Notice to defendant of intention to request court to make orders for possession, foreclosure or sale of mortgaged property
Parties	<div style="text-align: right;">Plaintiff</div> <div style="text-align: right;">Defendant</div>

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r. 17

<p>Notice to <i>[insert name of defendant]</i></p> <p>THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS. PLEASE READ IT CAREFULLY</p>
<p>On <i>[date]</i> the plaintiff <i>[name of plaintiff]</i> served you with a notice and a writ of summons, copies of which are attached to this notice. You have not filed a Memorandum of Appearance at the Supreme Court of Western Australia.</p> <p><i>[Name of plaintiff]</i> now intends to ask the Court to order that¹ —</p> <ol style="list-style-type: none"> 1. You pay <i>[name of plaintiff]</i> \$<i>[amount claimed]</i> plus interest of \$<i>[amount of interest per day]</i> per day <i>[plus other amounts and reason (e.g. penalties)] [etc. as required]</i>. 2. You give possession of your <i>[description of property]</i> <i>[at location of property if relevant]</i> to <i>[name of plaintiff]</i>. 3. You pay <i>[name of plaintiff]</i> costs of the action. <p><i>[Name of plaintiff]</i> may request the Court to make these orders 11 days after this notice is served on you.</p> <p>You should try to get legal advice without delay. Legal Aid WA has an online ‘Mortgage stress - self help guide’ available on its website at www.legalaid.wa.gov.au or you can telephone the Legal Aid WA InfoLine on 1300 650 579 for free information or a referral to other services that might be able to assist you (open Monday to Friday 8.30 am to 4.30 pm except public holidays). If you need Translating and Interpreting Services contact 131 450, or the National Relay Service (for hearing and speech impaired) contact 133 677.</p> <p><i>[Name of plaintiff]</i> is represented by <i>[name of law firm representing plaintiff]</i>, whose address is <i>[street address]</i>. If you wish to contact someone at <i>[name of law firm representing plaintiff]</i> in relation to this matter then you should contact <i>[lawyer’s name]</i> on <i>[lawyer’s telephone number]</i> or by email at <i>[lawyer’s email address]</i>.</p> <p>Date _____</p> <p align="center">_____ <i>[Name of law firm representing plaintiff]</i></p>

Note to Form 36A:

1. The text of the order, or orders, should reflect the orders that will be sought. The proposed orders in this form are to be used only if applicable.

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r. 17

36B. Request to enter default judgment in a mortgage action (O. 13 r. 6)

Supreme Court of Western Australia		Action No:	
		Request to enter default judgment in a mortgage action	
Parties	Plaintiff Defendant		
Request	The plaintiff requests the Supreme Court to enter default judgment against [<i>insert defendant</i>] on the ground that [<i>insert defendant</i>] has failed to enter an appearance to the writ of summons filed on [<i>insert date</i>] and served on [<i>insert date</i>].		
Orders sought	The plaintiff seeks the following orders: 1. 2.		
Amount owing and daily interest	The amount owing to the plaintiff under the mortgage as at the date of the filing of this notice is \$[<i>insert amount</i>]. The amount of a day's interest is \$[<i>insert amount</i>]. ¹		
Affidavits in support	The following affidavits containing all the information required by Order 13 rule 6(2)(b)(ii) are filed with this notice: 1. 2.		
Date of Notice		Date of filing	
Contact details of party or lawyer	Name		
	Firm		
	Address		

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(These details will be inserted into the judgment.)	Phone		Fax	
	Email			
	Reference			
Signature of party or lawyer	Party/Party's Lawyer		Date	

Note to Form 36B:

1. This item must be included if the claim includes a claim for interest to judgment. See Order 13 rule 6(3)(b).

36C. Default judgment in a mortgage action (O. 13 r. 6; O. 42 r. 1)

IN THE SUPREME COURT OF WESTERN AUSTRALIA	
	No: of 20
BETWEEN:	
AB	Plaintiff,
and	
CD	Defendant.
DEFAULT JUDGMENT IN A MORTGAGE ACTION	
Judicial officer:	
Date of order:	
THE COURT ORDERS THAT¹:	
1. The defendant, within [<i>insert number</i>] ² days after service of this judgment, give the plaintiff [<i>insert "vacant" if applicable</i>] possession of [<i>description of property</i>] [<i>at location of property if relevant</i>].	

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2. The defendant pay the plaintiff —

- (a) \$[insert amount], which is the amount due under the mortgage as at today's date; and
- (b) interest of \$[insert amount] per day from [insert date] until payment in full in accordance with the terms of the mortgage; and
- (c) \$[insert amount] costs [or costs to be taxed].

The above costs have been taxed and allowed at \$[insert amount] as appears by the Taxing Officer's certificate dated [insert date].

BY THE COURT

REGISTRAR

NOTICE TO DEFENDANT

[Name of plaintiff] has obtained this judgment against you. **This notice contains important information about your rights. Please read it carefully.**

If you believe that [name of plaintiff] was not entitled to obtain this judgment against you or if you believe that [name of plaintiff] should not be allowed to enforce this judgment against you then —

- you may apply to the Court for an order setting aside or varying the judgment under the *Rules of the Supreme Court 1971* Order 13 rule 14; or
- you may apply to the Court for an order suspending the enforcement of all or part of the judgment under the *Civil Judgments Enforcement Act 2004* section 15.

You should seek legal advice before applying to the Court for orders setting aside or varying the judgment, or suspending the enforcement of all or part of the judgment, because these applications may be complex and you may be ordered to pay costs to [name of plaintiff] if your application does not succeed. The Court cannot suspend the enforcement of all or part of a judgment unless there are special circumstances.

Legal Aid WA has an online 'Mortgage stress - self help guide' available on its website at www.legalaid.wa.gov.au which includes information about what to do if a judgment is made against you.

You can telephone the Legal Aid WA InfoLine on 1300 650 579 for free information or a referral to other services that might be able to assist you (open

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Monday to Friday 8.30 am to 4.30 pm except public holidays). If you need Translating and Interpreting Services contact 131 450, or the National Relay Service (for hearing and speech impaired) contact 133 677.

CONTACT DETAILS

The name and address of the law firm representing the plaintiff is: [*insert name and address*].

If you want to contact the lawyer for the plaintiff, you should call [*insert name*] on [*insert number*] or email them at [*insert email address*].

Notes to Form 36C:

1. This form is to be used for default judgment in any mortgage action. The text of the order, or orders, should reflect the effect of the mortgage in question and the orders sought. The proposed orders in this form are to be used only if applicable.
 2. 28 days unless the Court orders otherwise. See Order 13 rule 6(6).
- 37. Judgment (other than default judgment) after assessment of damages etc. (O. 42 r. 1)**

IN THE SUPREME COURT OF WESTERN AUSTRALIA

No: of 20

BETWEEN:

AB

Plaintiff,

and

CD

Defendant.

JUDGMENT (OTHER THAN DEFAULT JUDGMENT) AFTER ASSESSMENT OF DAMAGES ETC.¹

Judicial officer:

Date of order:

The plaintiff having on the day of 20 , obtained judgment against the defendant for damages [*or as the case may be*] to be

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assessed, and the amount found due to the plaintiff having been certified at \$[insert amount] as appears by the [master's certificate, or as the case may be] filed the day of 20 ,

THE COURT ORDERS THAT:

The defendant pay the plaintiff —

- (a) \$[insert amount]; and
- (b) \$[insert amount] costs [or costs to be taxed].

The above costs have been taxed and allowed at \$[insert amount] as appears by the Taxing Officer's certificate dated [insert date].

BY THE COURT
REGISTRAR

Note to Form 37:

1. The heading and text of this order is to be amended to reflect the assessment.

18. Schedule 2 Forms 60, 61, 82, 99 and 108 amended

- (1) In Schedule 2 Forms 60, 61, 82 and 99 delete "Barrack Street," and insert:

David Malcolm Justice Centre, 28 Barrack Street,

- (2) In Schedule 2 Form 108 delete "Stirling Gardens, Barrack Street," and insert:

David Malcolm Justice Centre, 28 Barrack Street,

THE HON. CHIEF JUSTICE WAYNE MARTIN AC
Chief Justice of Western Australia
Supreme Court of Western Australia.

Date: 11 November 2016.
