

NORTHERN TERRITORY OF AUSTRALIA  
AMENDMENTS OF LOCAL COURT RULES

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Regulations 2000, No. 38

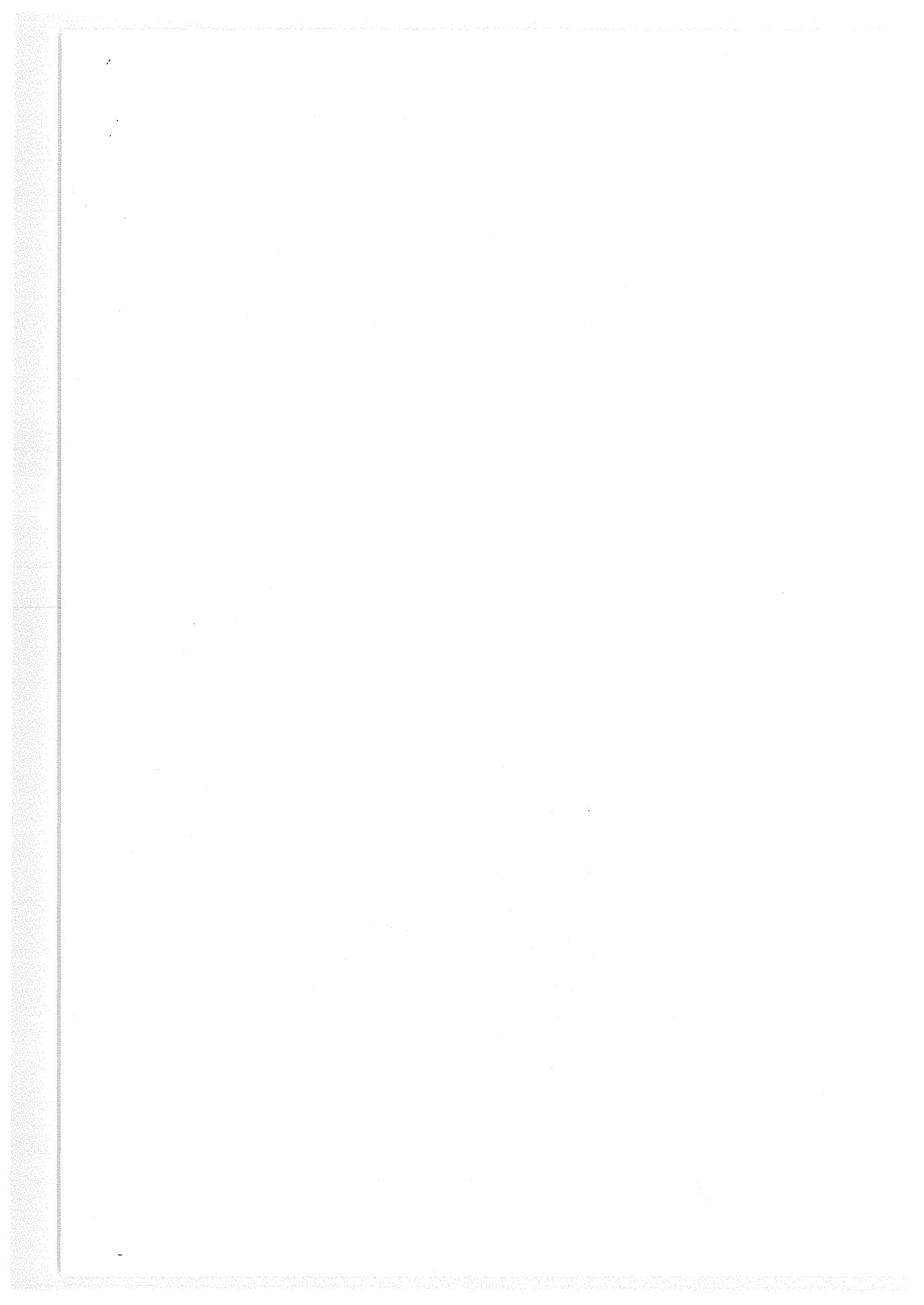
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# NORTHERN TERRITORY OF AUSTRALIA

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Regulations 2000, No. 38\*

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## Rules of Court under the *Local Court Act*

I, HUGH BURTON BRADLEY, the Chief Magistrate of the Local Court, in pursuance of section 21 of the *Local Court Act*, make the following rules.

Dated 29 May 2000.

H. BRADLEY  
Chief Magistrate

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\* Notified in the *Northern Territory Government Gazette* on 5 July 2000.

**AMENDMENTS OF LOCAL COURT RULES**

**1. Principal Rules**

The Local Court Rules are in these Rules referred to as the Principal Rules.

**2. Heading to Part 30**

The heading to Part 30 of the Principal Rules is amended by inserting "*COMMERCIAL TENANCIES ACT OR*" before "*TENANCY ACT*".

**3. New rule**

The Principal Rules are amended by inserting before rule 30.01 in Part 30 the following:

**"30.01A Interpretation**

"A reference in this Part to the *Tenancy Act* is to be read as a reference to that Act as continued in force by section 160 of the *Residential Tenancies Act* in relation to a lease to which the *Tenancy Act* applied immediately before the commencement of the *Residential Tenancies Act*."

**4. Lessor's application for warrant of possession after notice to quit**

Rule 30.01 of the Principal Rules is amended by inserting "*Commercial Tenancies Act or the*" before "*Tenancy Act*".

**5. New rule**

The Principal Rules are amended by inserting after Rule 30.04 the following:

**"30.04A Application may be made by agent**

"An application in accordance with this Part may be made by an agent of a lessor or lessee within the meaning of the *Tenancy Act* or the *Commercial Tenancies Act*, as the case may be, who is authorised in writing to act as the agent of the lessor or lessee."

**6. Service and hearing of application**

Rule 30.05 of the Principal Rules is amended by –

(a) omitting subrules (2) and (3) and substituting the following:

"(2) A copy of the application is to be served personally on the person to whom it is addressed as soon as practicable after the application is filed and not less than 2 days before the date fixed for the hearing.

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"(2A) If it is impracticable to effect personal service of the application or attempts to effect personal service are unsuccessful –

- (a) a copy of the application may be served by leaving it in a letter-box or other receptacle for mail at the last-known residential or business address of the person to whom the application is addressed or by affixing it to a conspicuous part of the premises at that address;
- (b) the applicant must file an affidavit stating the reasons why personal service of the application was not effected and the manner in which the application was served; and
- (c) at the hearing, before considering the application, the Court must be satisfied that the application was properly served in accordance with paragraph (a) and only after all reasonable steps had been taken to effect personal service.

"(3) If the person to whom an application is addressed fails to attend the hearing, the Court may hear and determine the application if it is satisfied that the application was properly served."; and

- (b) by omitting from subrule (4) "an" and substituting "the".

### **7. New Part**

The Principal Rules are amended by inserting after Part 30 the following:

#### **"PART 30A – APPLICATIONS UNDER *RESIDENTIAL TENANCIES ACT***

##### **"30A.01 Application for declaration that term is harsh etc.**

"An application under section 22 of the *Residential Tenancies Act* is to be in accordance with Form 30A-A.

##### **"30A.02 Application for termination of tenancy and order for possession**

"An application under Division 4 of Part 11 of the *Residential Tenancies Act* for an order terminating a tenancy and an order for possession of the premises to which the tenancy relates is to be in accordance with Form 30A-B.

##### **"30A.03 Application for order for possession if tenancy terminated**

"An application under section 104(1) of the *Residential Tenancies Act* is to be in accordance with Form 30A-B.

**"30A.04 Application for order for possession if head tenancy forfeited**

"An application under section 107(3) of the *Residential Tenancies Act* is to be in accordance with Form 30A-C.

**"30A.05 Service and hearing of application**

"(1) On the filing of an application under this Part, a Registrar must fix a date, time and place for the hearing and mark them on the application.

"(2) If the name of a tenant within the meaning of the *Residential Tenancies Act* on whom an application is to be served is not known, the application may be addressed to the occupier of the premises to which the application relates.

"(3) A copy of the application is to be served personally on the person to whom it is addressed as soon as practicable after the application is filed and not less than 2 days before the date fixed for the hearing.

"(4) If it is impracticable to effect personal service of the application or attempts to effect personal service are unsuccessful –

- (a) a copy of the application may be served by leaving it in a letter-box or other receptacle for mail at the last-known residential or business address of the person to whom the application is addressed or by affixing it to a conspicuous part of the premises at that address;
- (b) the applicant must file an affidavit stating the reasons why personal service of the application was not effected and the manner in which the application was served; and
- (c) at the hearing, before considering the application, the Court must be satisfied that the application was properly served in accordance with paragraph (a) and only after all reasonable steps had been taken to effect personal service.

"(5) If the person to whom an application is addressed fails to attend the hearing, the Court may hear and determine the application if it is satisfied that the application was properly served.

"(6) If the applicant fails to attend the hearing, the Court may dismiss the application or make the orders it considers appropriate.

"(7) If neither party attends the hearing, the Court may make the orders it considers appropriate.

**"30A.06 Court to issue warrant**

"(1) If an order for possession is made in relation to premises, subject to the terms of the order, the Court may, on the written request of the landlord within the meaning of the *Residential Tenancies Act* in relation to the premises or his or her agent authorised in writing, issue a warrant of possession.

"(2) If an order for possession is made in relation to premises by the Commissioner of Tenancies, the landlord within the meaning of the *Residential Tenancies Act* in relation to the premises or his or her agent authorised in writing may apply to a Registrar for the issue of a warrant of possession to enforce the order by producing the original order to, and filing a copy of the order with, a Registrar.

"(3) A warrant of possession is to be in accordance with Form 46A."

**8. Repeal and substitution**

Division 2 of Part 37 of the Principal Rules is repealed and the following substituted:

***"Division 2 – Appeals under Residential Tenancies Act or Tenancy Act***

**"37.10 Application of Division**

"This Division applies to an appeal under section 150 of the *Residential Tenancies Act* or section 19 of the *Tenancy Act*.

**"37.11 Interpretation**

"(1) In this Division –

'appellant' means a person who appeals to the Court under section 150 of the *Residential Tenancies Act* or section 19 of the *Tenancy Act*;

'Commissioner of Tenancies' means the Commissioner of Tenancies within the meaning of the *Residential Tenancies Act*.

"(2) A reference in this Division to the *Tenancy Act* is to be read as a reference to that Act as continued in force by section 160 of the *Residential Tenancies Act* in relation to a lease to which the *Tenancy Act* applied immediately before the commencement of the *Residential Tenancies Act*.

**"37.12 Notice of appeal**

"(1) An appellant commences an appeal by filing a notice of appeal in accordance with Form 37C in the Registry of the office of the Court at a proper venue as specified in rule 5.01.

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"(2) As soon as practicable after filing a notice of appeal, the appellant must serve a copy on –

- (a) the Commissioner of Tenancies; and
- (b) all other persons directly affected by the order, determination, variation or decision made by the Commissioner of Tenancies.

**"37.13 Commissioner of Tenancies to provide information**

"Within 7 days after being served with a notice of appeal, the Commissioner of Tenancies must file all information in his or her possession relating to the matter to which the appeal relates, other than evidence obtained in the course of a conference in accordance with the *Residential Tenancies Act*.

**"37.14 Notice of appearance**

"Within 7 days after a person other than the Commissioner of Tenancies is served with a notice of appeal under rule 37.12, the person must serve on the appellant a notice of appearance in accordance with Form 37D.

**"37.15 Persons who may be joined**

- "(1) A person who is –
- (a) affected by the relief sought by a notice of appeal under this Division; or
  - (b) interested in maintaining the decision appealed against in accordance with this Division,

may apply to be joined by the Court as an appellant or respondent in relation to the appeal.

"(2) The Court may order the addition or removal of a person as an appellant or respondent to an appeal under the *Residential Tenancies Act* or the *Tenancy Act*.

"(3) A person is not to be made an appellant under the *Residential Tenancies Act* or the *Tenancy Act* without his or her consent.

**"37.16 Joinder of Commissioner of Tenancies**

"(1) The Commissioner of Tenancies may apply to be joined by the Court as a respondent to an appeal under the *Tenancy Act* by lodging an application under Part 25.

"(2) The Court may, of its own motion or on the application of the Commissioner of Tenancies, order that the Commissioner of Tenancies be joined



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as a respondent to an appeal under the *Residential Tenancies Act* or the *Tenancy Act*.

"(3) The Commissioner of Tenancies must, within 7 days after being joined as a respondent to an appeal, file and serve a notice of appearance in accordance with Form 37D on the appellant and all other persons directly affected by the order, determination, variation or decision made by the Commissioner of Tenancies to which the appeal relates.

### **"37.17 Intervention of Commissioner of Tenancies**

"(1) The Commissioner of Tenancies may intervene in an appeal under the *Residential Tenancies Act* by filing a notice of intervention within 7 days after being served with a notice of appeal under rule 37.12(2)(a).

"(2) As soon as practicable after filing a notice of intervention, the Commissioner of Tenancies must serve a copy on the appellant and all other persons directly affected by the order, determination, variation or decision made by the Commissioner of Tenancies to which the appeal relates.

### **"37.18 Prehearing conference**

"(1) When a notice of appeal is filed, a Registrar must fix a date, time and place for a prehearing conference and mark them on the notice of appeal.

"(2) The prehearing conference is to be held not later than 6 weeks after the notice of appeal is filed.

"(3) A party for whom physical attendance is impracticable may, with the leave of the Court obtained in accordance with rule 32.03, attend by teleconferencing.

"(4) At a prehearing conference, the Court may give the directions it considers appropriate, including a direction setting the matter down for the hearing of the appeal.

### **"37.19 Representation**

"A party to an appeal may appear –

- (a) in person;
- (b) by an agent authorised in writing by the party; or
- (c) in accordance with rule 1.15(b), (c) or (d)(i), (ii) or (iv).

**"37.20 Hearing of appeal**

"(1) At the hearing of an appeal the Court may hear, in the order it considers appropriate, submissions from –

- (a) the appellant;
- (b) the Commissioner of Tenancies; and
- (c) all other persons directly affected by the order, determination, variation or decision to which the appeal relates.

"(2) If a person to whom the notice of appeal is addressed fails to attend the hearing, the Court may hear the appeal if it is satisfied that the notice of appeal was properly served on the person.

"(3) If the appellant fails to attend the hearing, the Court may dismiss the appeal or make other orders it considers appropriate.

"(4) If no party attends the hearing, the Court may make the orders it considers appropriate."

**9. Repeal and substitution**

Rule 38.08 of the Principal Rules is repealed and the following substituted:

**"38.08 Costs under *Commercial Tenancies Act, Tenancy Act and Residential Tenancies Act***

"The appropriate percentage referred to in rule 38.04(1) in relation to an application under Part 30 or Part 30A is in the discretion of the Court and is to be fixed by the Court when making a final determination or a costs order in the proceedings."

**10. Schedule 1**

Schedule 1 to the Principal Rules is amended –

- (a) by inserting in Form 30A "*COMMERCIAL TENANCIES ACT* OR" before "*TENANCY ACT*";
- (b) by inserting after Form 30D the forms set out in the Schedule;
- (c) by inserting in the heading to Form 37C "*SECTION 150 OF RESIDENTIAL TENANCIES ACT* OR" before "*SECTION 19*";
- (d) by omitting from Form 37C "*DETERMINATION OR VARIATION*" and substituting "*ORDER, DETERMINATION, VARIATION OR DECISION*";

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- (e) by omitting from Form 37C "determination or variation" (wherever occurring) and substituting "order, determination, variation or decision"; and
- (f) by omitting from Form 37C "Form 37B" and substituting "Form 37D".

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**SCHEDULE**

Rule 10(b)

**FORM 30A-A**

Rule 30A.01

**APPLICATION FOR DECLARATION THAT TERM OF  
TENANCY IS HARSH OR UNCONSCIONABLE**

LOCAL COURT  
AT [*VENUE*]

Claim No.

BETWEEN THE ..... name  
APPLICANT  
(*person* ..... address for  
*seeking* ..... service  
*declaration*)

and

RESPONDENT ..... name  
..... address

TO THE RESPONDENT

The tenant is a party to a tenancy agreement in respect of the following premises:

[*describe premises*]

The applicant applies to the Court under section 22 of the *Residential Tenancies Act* for an order that the following term of the tenancy agreement in relation to those premises is harsh and unconscionable:\*

[*specify term*]

[*signature of applicant*]

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The application will be heard by the Court at [address of Court] at a.m./p.m. on [ date] or as soon afterwards as the business of the Court allows.

Filed:

Registrar

\* Delete if inapplicable.

Do not ignore this notice. If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office. If you fail to attend at the hearing of this application, the Court may hear the matter in your absence.

FORM 30A-B

Rules 30A.02 and 30A.03

APPLICATION UNDER DIVISION 4 OF PART 11 OF RESIDENTIAL TENANCIES ACT FOR ORDER TERMINATING TENANCY AND APPLICATION FOR ORDER FOR POSSESSION OF PREMISES

LOCAL COURT AT [VENUE]

Claim No.

BETWEEN THE APPLICANT (person seeking order) name address for service

and

RESPONDENT name address

TO THE RESPONDENT

The applicant applies to the Court under section ..... of the Residential Tenancies Act for an order terminating the tenancy at the following premises:

[describe premises]

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The applicant states:

1. \*I am the landlord/tenant.  
\*I am the agent of the landlord authorised in writing.
2. I seek the termination of the tenancy on the following grounds:

AND/OR\*

The applicant applies to the Court under section 104 of the *Residential Tenancies Act* for an order for possession in relation to those premises\*.

The applicant states:

1. \*I am the landlord/tenant.  
\*I am the agent of the landlord authorised in writing.
2. I gave the tenant a notice of termination on (*date*).
3. I attach a copy of the notice of termination.

[*signature of applicant*]

The application will be heard by the Court at [*address of Court*] at a.m./p.m. on [*date*] or as soon afterwards as the business of the Court allows.

Filed:

Registrar

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office. If you fail to attend at the hearing of this application, the Court may hear the matter in your absence.

FORM 30A-C

Rule 30A.04

**APPLICATION FOR ORDER FOR POSSESSION OF  
PREMISES IF HEAD TENANCY FORFEITED**

LOCAL COURT  
AT [VENUE]

Claim No.

BETWEEN THE  
APPLICANT ..... name  
(*person*  
*seeking* ..... address for  
*order*) ..... service

and

RESPONDENT ..... name  
..... address

PREMISES TO WHICH APPLICATION RELATES:

[*describe premises*]

The applicant applies to the Court under section 107 of the *Residential Tenancies Act* for the following order(s):

- \* An order for possession in relation to the premises.
- \* An order vesting the landlord's interest under the tenancy agreement in me so that the tenant holds the above premises directly from me as landlord.

The applicant states:

I have the following interest in the premises:

[*e.g. I have purchased it/have been granted a mortgage over it.*]

[*signature of applicant*]

The application will be heard by the Court at [*address of Court*] at a.m./p.m. on [*date*] or as soon afterwards as the business of the Court allows.

Filed:

Registrar

*Local Court Rules*

\* Delete if inapplicable.

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office. If you fail to attend at the hearing of this application, the Court may hear the matter in your absence.

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