

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE
NEW SOUTH WALES



[Published in Gazette No. 121 of 5 November 1993]

1. This rule is made by the Rule Committee on 1 November 1993, and has effect on and from 5 November 1993.

2. The Local Courts (Civil Claims) Rules 1988 are amended as follows:

(a) Part 30 rule 19

Omit the rule, insert instead the following rule:

Conditions of sale

19. (1) The Sheriff or bailiff shall sell personal property under a writ of execution, or require any auctioneer appointed to sell the property:

(a) on terms as to payment that the purchaser shall pay:

(i) an amount equal to at least 10% of the purchase price by way of deposit immediately upon the sale; and

(ii) the balance of the purchase price within such period, not exceeding 2 working days after the sale, as the Sheriff or bailiff may determine prior to the sale; or

(b) on terms as to payment that the purchaser shall pay the whole of the purchase price immediately upon the sale.

(2) The Sheriff or bailiff shall require payment to be in cash, by bank draft or, if the Sheriff so approves, by credit card.

(3) Where payment is made by credit card, any charge made to the Sheriff, bailiff or auctioneer in respect of the payment shall form part of the costs of the execution.

(b) Part 30A rule 14

Omit the rule, insert instead the following rule:

Conditions of sale

14. (1) The Sheriff or bailiff shall sell land under a writ of execution, or require any auctioneer appointed to sell the land:

- (a) on terms as to payment that the purchaser shall pay:
 - (i) an amount equal to at least 10% of the purchase price by way of deposit immediately upon the sale; and
 - (ii) the balance of the purchase price within such period, not exceeding 6 weeks after the sale, as the Sheriff or bailiff may determine prior to the sale; or
 - (b) on terms as to payment that the purchaser shall pay the whole of the purchase price immediately upon the sale.
- (2) Where a sale of property under a writ of execution is partly of land and partly of other property, the other property may be sold on the same terms as to payment as the land.
- (3) The Sheriff or bailiff shall require payment to be in cash, by bank draft or, if the Sheriff so approves, by credit card.
- (4) Where payment is made by credit card, any charge made to the Sheriff, bailiff or auctioneer in respect of the payment shall form part of the costs of the execution.
- (5) Upon completion of a sale of land under a writ of execution, the Sheriff's Officer or bailiff required to execute the writ and the purchaser shall sign a contract of sale in the approved form.
- (6) The purchaser of land sold under a writ of execution shall take at his own expense the registrar's assurance of the interest sold.
3. In respect of orders for costs made, or entitlements to costs otherwise arising, on and after 1 December 1993, the Local Courts (Civil Claims) Rules 1988 are amended as follows:
- (a) Part 31 rule 6
 - (i) Omit subrule (1) (b), insert instead the following paragraph:
 - (b) fees to solicitors, properly incurred, are to be calculated:
 - (i) at 28% of the fixed fee, if costs are allowed on the 1st scale;
 - (ii) at 44% of the fixed fee, if costs are allowed on the 2nd scale;
 - (iii) at 72% of the fixed fee, if costs are allowed on the 3rd scale;
 - (iv) at 80% of the fixed fee, if costs are allowed on the 4th scale;

- (v) at 90% of the fixed fee, if costs are allowed on the 5th scale; or
- (vi) at the amount of the fixed fee, if costs are allowed on the 6th scale.
- (ii) Omit subrule (2) (d) and (e), insert instead the following paragraphs:
 - (d) exceeds \$5,000 but does not exceed \$15,000, on the 4th scale;
 - (e) exceeds \$15,000 but does not exceed \$20,000, on the 5th scale; or
 - (f) exceeds \$20,000, on the 6th scale.
- (b) Part 31 rule 7 (1)
 - (i) Omit “\$1,020”, insert instead “\$1,275”;
 - (ii) Omit “\$2,040”, insert instead “\$2,550”;
 - (iii) Omit “\$144”, insert instead “\$180”;
 - (iv) Omit “\$168”, insert instead “\$210”.
- (c) Part 31 rule 8
 - (i) In subrule (1) omit “\$360”, insert instead “\$450”;
 - (ii) In subrule (2) omit “\$180”, insert instead “\$225”;
 - (iii) In subrule (3) omit “\$360”, insert instead “\$450”.

EXPLANATORY NOTE

The purpose of the amendments in paragraph 2 is to bring the rules as to sales under writs of execution into line with the Supreme Court Rules and the District Court Rules, and in particular to provide for a completion period of 6 weeks, instead of the present 2 working days, for a purchase of land sold under a writ.

The purpose of the amendments in paragraph 3 is to eliminate an anomaly between the scales and percentages applying to fixed costs and those applying to costs in contested matters. The effect of all these amendments, when considered together, is not to increase any item of costs.

E. J. O’Grady
Secretary to the Rule Committee
