



Transfer of Possession proceedings from the County Court to the High Court

20.02.2015

Introduction

It has become apparent that some writ of possession and transfer of possession proceedings have not been dealt with correctly which has led to such instances where both HCEO's and bailiffs are in attendance to evict the defendants. Some courts have reported that High Court Enforcement Officers (HCEO's) are attending the defendant's property to carry out an eviction where bailiffs are also in attendance in executing a warrant for possession issued by the County Court. The HCEO's have informed the County Court Bailiff (on the doorstep) that the possession has been transferred to the High Court following an application to the County Court for a transfer of proceedings.

To avoid such further incidents the following guidance sets out the procedure which should be followed when requests for transfer of possession proceedings to the High Court are received.

Procedure

Section 42 of the County Courts Act provides a general power for the transfer of proceedings to the High Court from a County Court. The party seeking the transfer can make an application to the County Court under section 42(3) of the County Courts Act

<http://www.legislation.gov.uk/ukpga/1984/28/section/42>.

1, Where permission to transfer the possession to the High Court is required the application should be made on an N244 form with the supporting fee for either a without notice or on notice application being paid.

An application is required to transfer possession proceedings whether or not there is an existing warrant of possession. The following specified exceptions do not require an application: In the exceptions below the writ of possession can be dealt with without the need to transfer.

(i) where the possession claim is against trespassers (unless the writ is to be issued after the expiry of three months from the date of the order, in which case permission will be needed);

(ii) where the order for possession was given or made in proceedings where there is a claim for payment of moneys secured by a mortgage, sale of the mortgaged property, foreclosure, delivery of possession to the mortgagee by the mortgagor, redemption, reconveyance of the land or its release from the security, or delivery of possession by the mortgagee.

Permission will not be granted unless it is shown that the current occupant has received notice of the proceedings as the court considers sufficient to enable the occupant to apply to the court for relief. This does *not* apply in the case of action against trespassers.

2. The application fee or fees exemption will need to be accounted for to process the application. See the link to the SOP below for guidance on processing N244 application and further instructions on fees exemption.

http://libra.lcd.gsi.gov.uk/hmcts/documents/lean/civil/general_applications_sop.doc

3. The application to transfer possession proceedings together with any accompanying writ of possession or existing warrants of possession will need to be referred on receipt to a District Judge for consideration.

Any existing warrants of possession will need to be referred to a judge either with the transfer application or separately if the warrant has been issued at another court. This will ensure that courts are aware of the pending transfer application.

4. Orders made by the District Judge.

If a listing is required then the case is to be listed for a hearing as directed by the judge.

If the transfer order is granted it effectively means that the County Court loses enforcement jurisdiction, which is passed to the High Court instead. As a result, the authority of any pending enforcement process issued by the claimant in the County Court needs to be withdrawn by a judge.

It is important that this happens to avoid two competing rights to possession of the same property by both the County Court bailiffs and HCEO's.

Caseman must be updated with final return codes and a general order to show effect of the transfer and status of any existing warrants of possession. If the warrant of possession is at another court then staff must update that court with the status of the pending warrant of possession.

Any accompanying writ of possession will need to be processed and the writ sealed and returned to the applicant. The current fee for a writ of possession is £60 and this fee should be accounted and processed.

If no transfer order is made then a general order to that effect should be created on caseman to reflect the order made. The claimants can then either issue a new warrant of possession or continue with their existing warrant with the County Court bailiffs.

Guidance

The Bailiff Manual and Warrant of Possession SOP will be amended to reflect this process and provide further guidance for staff.

Questions

If you experience any issues in relation to the transfer of possession proceedings please contact the Civil Operations Team
– Civil&FamilyBusinessSupport@hmcts.gsi.gov.uk

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