

Practice Direction

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&
NOT TO BE TAKEN AWAY



THE
JAMAICA GAZETTE
EXTRAORDINARY

64H

Vol. CXXVI

THURSDAY, FEBRUARY 13, 2003

No. 7D

The following Notification is, by command of His Excellency the Governor-General, published for general information.

K. G. SEWELL-MILLS, (MRS.)
Actg. Governor-General's Secretary.

JUDICIAL NOTICE

By order of the Chief Justice and with the concurrence of the Judges of the Supreme Court, the following Practice Direction is hereby issued to take effect February 13, 2003.

1. This Practice Direction replaces Practice Directions dated 13/5/69, 21/9/70, 1/10/70 and 18/6/76.
2. Applications for the discharge or modification of restrictive covenants pursuant to section 3 of the Restrictive Covenants (Discharge and Modification) Act ("the Act") are to be by a fixed date claim form, in the form set out in the schedule to this practice direction, with such amendments as are necessary.
3. The fixed date claim form must be supported by an affidavit containing the eight particulars laid down in Rule 4 of the Restrictive Covenants (Discharge and Modification) Rules, 1960 ("the Rules").

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL LIBRARY
U.W.I. MONA, KINGSTON, 7 JAMAICA

The First Hearing

4. At least seven days prior to the date for the first hearing, copies of the fixed date claim form and the affidavit shall be served on the authority and on the local authority which may be concerned with the application.

5. At the first hearing, the Judge in Chambers or the Master will direct what notices, if any, are to be given and to whom, and what advertisements should be placed, and may direct the claimant to furnish the registrar with certain documents mentioned in Rule 6 for the Judge's consideration and which documents are within the applicant's power to produce. Note that pursuant to rule 27.2(7) of the Civil Procedure Rules, 2002, at this first hearing the Judge or Master shall have all the powers of a Case Management Conference.

Notices

6. On being directed as above, the claimant shall give such notices as directed, to persons who appear to be entitled to the benefit of the restrictions. The persons who appear to be so entitled may be decided by the Judge or Master from his perusal of the affidavit in support and any other documents such as title deeds supplied to the registrar.

7. The notices served and/or advertised by the claimant shall give persons entitled to object to the discharge or modification of the restrictions at least 14 days from the giving of the notice, an opportunity to object if they so desire.

8. The time for objecting must be specified in the notice.

9. Notices should clearly and prominently show the civic address or if no street and number, the exact location of the premises the subject matter of the application so as to make its description readily identifiable by any layman. It will be sufficient if the civic address or description of the subject matter is shown at the heading of the notice as shown below:

" Restrictive Covenants (Discharge and Modification) Act
Suit No.
Re: 12 England Road, Kingston 7, St. Andrew.
Take notice..... etc."

10. This requirement is in addition to, and not in substitution for, a full description by lot, volume and folio number which may be stated in the body of the notice.

11. The notice need not publish the statutory grounds on which the claimant relies unless so directed by the Judge/Master. However, the purpose of the application should be stated briefly so as to alert the persons to whom the notice is addressed of the nature of the application, e.g.

"Purpose:

- (a) To rectify a building breach of the covenant;
- (b) To permit the user of the premises for a purpose now restricted by the covenant;
- (c) To develop the land into a subdivision of xx private dwelling houses/apartments/condominiums/town house development" or as the case may be.

12. Where a notice (including one used in an advertisement) does not comply with the above requirements the court may regard the notice as being insufficient.

The Second Hearing

13. There shall be a second hearing before any order or determination is made.

14. The claimant should notify the registrar when the notices referred to above have been served and advertised.

15. By Rule 8, as soon as practicable after the expiration of the time for filing objections and claims for compensation, the registrar is required to fix the time and place for the second or final hearing of the application.

16. The registrar must also notify the claimant, the authority and the local authority, and every person who has duly lodged an objection, of the date of the second or final hearing of the application.

17. The Judge may in the course of the second hearing, adjourn the matter for further notices to be given to persons whom the Judge considers should be given notice otherwise than by advertisement.

18. A final hearing conducted in breach of this Practice Direction or of Rule 8 of the Rules, is an irregularity and is liable to be set aside on application by anyone entitled to be heard.

19. As any discharge or modification of restrictive covenants is a final order affecting persons' property rights, this Practice Direction and the Rules should be strictly complied with.

Dated this 10th day of February, 2003.

LENSLEY WOLFE,
Chief Justice.



FIXED DATE CLAIM FORM

FORM 2 [Rule 8.1(4)]

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

IN THE MATTER of ALL THAT parcel of land part of number 85 Old Hope Road, formerly part of Hopefield in the parish of St. Andrew and being the land comprised in Certificate of Title registered at Volume 1118 Folio 242 of the Register Book of Titles

AND

IN THE MATTER of the restrictions affecting the subdivision of the said land

AND

IN THE MATTER of the Restrictive Covenants (Discharge and Modification) Act.

The Claimant, A.B. (full name and if an individual, state occupation) of (full address) claims an Order that the following restrictions endorsed on Certificate of Title registered at Volume 1118 Folio 242 which read as follows:

- 1. The land comprised in this Certificate is not to be subdivided into lots smaller than one acre each.
- 2. No buildings other than a private dwelling house with the necessary outbuildings appurtenant thereto to cost together Three Thousand Dollars at the least is to be erected on the lots;

affecting the user of ALL THAT parcel of land part of number 85 Old Hope Road, formerly part of Hopefield in the parish of St. Andrew and being the land comprised in Certificate of Title registered at Volume 1118 Folio 242 of the Register Book of Titles be modified to read as follows:

- (a) The land comprised in this Certificate is not to be subdivided into lots smaller than 1/2 acre each;
- (b) No buildings shall be erected on the said land without the approval of the relevant authorities.

I certify that all facts set out in this Claim Form are true to the best of my knowledge, information and belief.

Dated the day of 20xx.

.....
Claimant's Signature

NOTICE TO

Town and Country Planning
Authority
16 Oxford Road
Kingston 5

Kingston and St. Andrew
Corporation
24 Church Street
Kingston

The first hearing of this claim will take place at The Supreme Court, Public Buildings, King Street, Kingston, on the _____ day
of _____ 20____, at _____ a.m./p.m.

**This Claim Form has no validity if it is not served within six months of the date below unless it is accompanied by an
order extending that time. See Rule 8.14(1).**

[Seal]

The Registry is at King Street, Kingston, telephone numbers (876) 922-8300—9, fax (876) 967-0669. The office is open
between 9:00 a.m. and 4:00 p.m. Mondays to Thursdays and 9:00 a.m. to 3:00 p.m. on Fridays except on Public Holidays.

John Brown & Co.,

.....
Claimant's Attorney-at-Law

Dated the _____ of _____ 20____

The Claimant's address for service is /or is that of his Attorney-at-Law (specify address of Claimant or name of
Attorney-at-Law having conduct of the case as appropriate with telephone and facsimile numbers).

Filed by (specify name and address of Attorney-at-Law or firm of Attorneys-at-Law filing the claim).