
STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 10

BANKRUPTCY

CHAPTER 13

Mortgaged property

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Interpretation

10.121. For the purposes of this Chapter “land” includes any interest in, or right over, land.

Claim by mortgagee of land

10.122.—(1) Any person claiming to be the legal or equitable mortgagee of land belonging to the bankrupt may apply to the court for an order directing that the land be sold.

(2) The court, if satisfied as to the applicant’s title, may direct accounts to be taken and enquiries made to ascertain—

- (a) the principal, interest and costs due under the mortgage; and
- (b) where the mortgagee has been in possession of the land or any part of it, the rents and profits, dividends, interest, or other proceeds received by the mortgagee or on the mortgagee’s behalf.

(3) The court may also give directions in relation to any mortgage (whether prior or subsequent) on the same property, other than that of the applicant.

(4) For the purpose of those accounts and enquiries, and of making title to the purchaser, any of the parties may be examined by the court, and must produce on oath before the court all such documents in their custody or under their control relating to the bankrupt’s estate as the court may direct.

(5) The court may under paragraph (4) order any of the parties to clarify any matter which is in dispute in the proceedings or give additional information in relation to any such matter and CPR Part 18 (further information) applies to any such order.

(6) In any proceedings between a mortgagor and mortgagee, or the trustee of either of them, the court may order accounts to be taken and enquiries made in like manner as in the Chancery Division of the High Court.

Power of court to order sale

10.123.—(1) The court may order that the land, or any specified part of it, be sold and any party bound by the order and in possession of the land or part, or in receipt of the rents and profits from

it, may be ordered to deliver possession or receipt to the purchaser or to such other person as the court may direct.

- (2) The court may—
 - (a) permit the person having the conduct of the sale to sell the land in such manner as that person thinks fit; or
 - (b) direct that the land be sold as directed by the order.
- (3) The court's order may contain directions—
 - (a) appointing the person to have the conduct of the sale;
 - (b) fixing the manner of sale (whether by contract conditional on the court's approval, private treaty, public auction, or otherwise);
 - (c) settling the particulars and conditions of sale;
 - (d) for obtaining evidence of the value of the property and for fixing a reserve or minimum price;
 - (e) requiring particular persons to join in the sale and conveyance;
 - (f) requiring the payment of the purchase money into court, or to trustees or others; or
 - (g) if the sale is to be by public auction, fixing the security (if any) to be given by the auctioneer, and the auctioneer's remuneration.
- (4) The court may direct that, if the sale is to be by public auction, the mortgagee may bid on the mortgagee's own behalf.
- (5) Nothing in this rule or rule 10.124 affects the rights in rem of creditors or third parties protected under Article 5 of the EC Regulation.

Proceeds of sale

- 10.124.**—(1) The proceeds of sale must be applied as follows—
- (a) first in payment of—
 - (i) the trustee's expenses in relation to the application to the court,
 - (ii) the trustee's expenses of the sale and attendance at it, and
 - (iii) any costs of the trustee arising from the taking of accounts, and making of enquiries, as directed by the court under rule 10.122;
 - (b) secondly, in payment of the amount found due to any mortgagee, for principal, interest and costs; and
 - (c) the balance must be retained by or paid to the trustee.
- (2) Where the proceeds of the sale are insufficient to pay in full the amount found due to any mortgagee, the mortgagee is entitled to prove as a creditor for any deficiency, and to receive dividends rateably with other creditors, but not so as to disturb any dividend already declared.