

Collection Manual

Guidelines for using the court process to pursue tax liabilities

Document last updated May 2018

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Part 1 Guidelines to using the court process to pursue tax liabilities

1. Summary

- 1.1 This summary contains the main points covered in this guideline to assist staff in the use of the Court process to secure payment of tax liabilities.
- 1.2 Solicitor referral is the process by which Revenue commences enforcement action through the Courts. The first step in the process is the referral of a liability to the Solicitor for legal action, that is, solicitor referral via the ICM System. The first legal option available to Revenue will be to obtain a Court judgment that an amount is due to Revenue by a taxpayer. Revenue can then pursue further legal action such as:
- Judgment Mortgage
 - Forced Sale
 - Instalment and Committal Orders
 - Bankruptcy for Individuals
 - Liquidation of Companies.
- 1.3 Revenue has contracts with six firms of external Solicitors for the provision of the legal services associated with debt collection and the enforcement process. With the exception of liquidation work, which is carried out by the Revenue Solicitor's Office (RSO), the legal services associated with Revenue debt collection are performed by one of the six firms. These firms have a high level of experience in this area of law and their personnel are available to discuss the various case options with caseworkers.

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[...]

- 1.4 **VAT Repayment Claim:** In advance of initiating enforcement action in any case where there is a VAT repayment claim on file, the caseworker should contact the relevant District to **establish whether the claim is available for offset (See Paragraph 5.9)**.

- 1.5 All **ICM Enforcement Procedures** are set out in **Part 2 of this Manual**.

Note:

When a case is referred to Solicitor, the taxpayer is liable for costs and fees, including those associated with Court proceedings.

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[...]

2. Introduction

- 2.1 A key aspect of successful caseworking is early identification of the action most likely to impact on the taxpayer and secure payment of the tax debt. The caseworker will initiate appropriate enforcement action when a Final Demand or Estimate fails to result in either full payment of the liabilities or a satisfactory phased payment agreement.
- 2.2 At this stage there are three options available - Sheriff, Solicitor and Attachment. The caseworker will determine the most appropriate enforcement option having regard to the previous compliance history and all other relevant circumstances of each case.
- 2.3 This Manual outlines all of the various possibilities for pursuit action through the Courts. The process is initiated by securing a Court judgment and, if this action is not sufficient to secure payment of the tax debt, the caseworker will then consider whether further Court action is appropriate.

3. Scope

These guidelines are for all Revenue staff engaged in debt management case-working.

4. External solicitors

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[...]

5. Considerations prior to a solicitor referral decision

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[...]

- 5.6 Solicitor referral can be a very effective means of collection and in the majority of cases it will not involve a lengthy legal process. Almost **85%** of the tax collected on Solicitor cases is as a result of the Solicitor demand letter issued prior to the enforcement of judgment stage. Solicitors focus on securing payment or quickly moving to obtain a Judgment. Registration of Judgment will usually have a very serious impact on the financial well-being of a taxpayer by impairing his or her credit rating and therefore, if at all possible, most

businesses will try to pay the debt prior to this stage. Where payment is not made at this stage, the caseworker should consider the various options for enforcement of judgment set out in these guidelines. Alternative enforcement options, for example, liquidation proceedings in company cases, should also be considered in consultation with the Solicitors and taking account of data available from various sources, that is, IBI, Land Registry, Customer Notes etc.

- 5.7 In most instances, once it is decided that the liability is to be pursued through the Courts, all outstanding liabilities should be included in the Solicitor referral. However, in order to obtain a better result for Revenue, there may be occasions when it may be more appropriate to refer part of the liabilities to Solicitor and use an alternative enforcement option, for example, Attachment, to pursue the balance.

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[...]

- 5.8 In addition to various Court actions, there are other possibilities that may help secure payment of the tax debt, such as withholding repayments or refusing to issue a tax clearance certificate. Prosecution for non-submission of tax returns can also be effective in some cases where the debt is based on estimates.

5.9 **Enforcement of Debt where a VAT Repayment Claim has been made**

If a taxpayer has submitted a VAT Repayment Claim that is the subject of an open Work Item, then BEFORE enforcing any outstanding tax the caseworker should contact the relevant District to confirm whether the claim is available for offset:

- If the claim can be offset against outstanding tax, then only the remaining debt should be enforced.
- If the claim is not available for offset against outstanding taxes, then the caseworker should notify the taxpayer accordingly prior to enforcement referral.

If the VAT repayment claim has been withheld pending receipt of additional information, the caseworker should make it clear to the taxpayer that unless the information requested is provided within a defined deadline (1-2 weeks) the outstanding tax will be enforced.

6. When is solicitor enforcement appropriate?

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[...]

7. Solicitor enforcement on company debts

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[...]

8. Enforcement of Irish cases

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[...]

9. Solicitor referral to obtain court judgment

- 9.1 The first step in the Court process is the referral of the liability to the Solicitor for a Court judgment. All subsequent enquiries from taxpayers in relation to the liabilities included in referrals should then be directed to the relevant solicitor.
- 9.2 The taxpayer will be liable for the costs and fees that arise when a case has been referred to the Solicitor and Court proceedings have been initiated

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10 Deadlines

- 10.1 Most Court actions are subject to specific time limits and deadlines either because of the date of the Court hearing or because time periods are specifically laid down in the relevant legislation. Care should be taken to ensure that any required action such as swearing an Affidavit is carried out within the timeframe specified by the Solicitors.

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[...]

11. Additional liability

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[...]

12. Withdrawal of solicitor's referral by Revenue

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[...]

13. Referrals returned – withdrawn by solicitor

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[...]

14. Obtaining judgment

- 14.1 A Court judgment is a legal determination that an amount is due by a judgment debtor to a judgment creditor. In Revenue cases, it is a determination by the Court that a taxpayer owes an amount (tax and-or interest) to Revenue. Revenue Judgments are valid for 12 years. **(See further information at 14.5)**
- 14.2 The majority of Court judgments can be obtained within two to three months if the liability is not contested. If the taxpayer disputes the liability, a full Court hearing may be required and this will inevitably take longer.
- 14.3 The purpose of seeking a Court judgment is to put pressure on the taxpayer to pay the debt. In some cases, the judgment or even the threat of a judgment will be sufficient to achieve the desired outcome.

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15. Publication of the judgment

- 15.1 Where obtaining a judgment has not achieved the desired result, the caseworker should consult with the Solicitor to decide on the next course of action.
- 15.2 As a first step, it is usually agreed that the judgment should be registered and published. Once it has been confirmed that no payment has been received on foot of the judgment, the Solicitor should be asked to arrange for registration and publication of the judgment.

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[...]

- 15.4 Registration and publication of the judgment have the effect of putting details of the debt into the public domain causing adverse publicity for the individual. Stubbs Gazette and Experian All Ireland Gazette search the Court records in order to publish the list of judgments registered in their respective publications.

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[...]

16 Satisfaction of judgments and discharge of judgment mortgages

16.1 Satisfaction Piece

The Satisfaction of a Judgment is registered in the Central Office of the Four Courts, Dublin, for publication. The Central Office is where all Court Judgments are registered for publication.

Registration of Satisfaction can occur if the payment of the Judgment sum is full or partial or indeed if there is no payment but an agreement is reached with Defendant to vacate the Judgment for whatever reason.

The process requires that a Satisfaction Piece is completed, signed by the Plaintiff and registered in the Central Office.

Judgments registered in the Central Office are a matter of public record but the Central Office has no role in publication of the Judgment. Iris Oifigiuil, Experian and Stubbs Gazette collect the Judgment details from the public record, probably on a weekly basis, and publish these details. It is also open to other publications, such as national or local newspapers, to collect and publish this information.

It is useful to note that in cases where the Judgment has not been registered for publication there is no way of publicly recording the fact that the judgment is now satisfied.

16.2 Deed of Discharge

A Discharge of a Judgment Mortgage *or* Release of a Judgment Mortgage is registered in the Land Registry or Registry of Deeds (whichever is appropriate) when the plaintiff agrees to discharge or release a Judgment Mortgage that was previously registered on the Defendant's property.

The Discharge registered in the Land Registry or Registry of Deeds only states that the plaintiff:

"...hereby requires the cancellation in the said folio of the entry of judgment mortgage"

This means that while the Discharge or Release has the effect of cancelling the Judgment Mortgage on the property, it does not affect the status of the Judgment and therefore the plaintiff has the option to use another form of collection enforcement of the Judgment which continues to exist.

As with a Satisfaction, a Deed of Discharge can also be registered under any circumstances, that is, if there has been full, partial or indeed no payment of the Judgment liability but an agreement is reached with Defendant to vacate the Judgment for whatever reason. Revenue may agree to this in certain exceptional circumstances, for example, whereby we agree to accept from the taxpayer an irrevocable Letter of Undertaking to pay the Judgment liabilities out of the proceeds of the sale of the property

For relevant templates see [Appendix 3 - Deed of Discharge - Land Registry](#) and

[Appendix 4 - Deed of Discharge - Registry of Deeds](#)

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[...]

17 Collector-General's dedicated Enforcement Unit

The role of the Dedicated Enforcement Unit (DEU) is

To use dedicated enforcement measures to pursue and conclude collection activity in cases of serious debt and non-compliance where standard enforcement collection measures have proved unsuccessful.

The main Dedicated Enforcement measures are:

- **Bankruptcy**
- **Forced sale**
- **Committal Order or Committal to prison**
- **Mareva Injunction**
- **Garnishee Order**
- **Receiver by way of Equitable Execution**

Cases are referred to DEU by HEOs in Debt Management Units and by the Revenue Regions when any of above enforcement options is considered suitable.

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[...]

18 Prosecution programme for VAT 3 and P35 (including LPT) and imposition of penalties

Penalties & Prosecutions Unit (PPU) Newcastlewest initiates criminal prosecution proceedings to deal with the non-filing of VAT 3 and P35 (including LPT) returns. Prosecution is contingent on evidence that there is serious non-compliance and/or a definite expectation that a substantial liability will be quantified on receipt of the relevant returns. PPU also imposes civil penalties under Section 987 of TCA 1997.

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[...]

19 Commonality checks

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20 Judgment mortgage or forced sale

- 20.1 Following a Court judgment, one option is to put pressure on the taxpayer for payment of the tax debt by registering the judgment as a mortgage against the taxpayer's property. A registered mortgage ensures that if the property is subsequently disposed of either in the normal course or as a result of a Forced Sale, the Revenue debt will be paid out of the net proceeds of sale, that is, the price received for the property less the costs of the sale and any earlier mortgages or judgments registered against the property. However, in many instances the judgment mortgage will not become immediately relevant unless the taxpayer wishes to sell or re-mortgage the property.
- 20.2 When a judgment mortgage is registered on a taxpayer's property consideration should be given to seeking Court approval for permission to sell the property without the taxpayer's consent. This is called a Forced Sale or a Mortgage Suite. See [Judgment Mortgage Procedure](#).

21 Considerations prior to proceeding to judgment mortgage

- 21.1 The key factor in deciding on whether to obtain a Judgment Mortgage is to identify a suitable property owned by the taxpayer.

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[...]

Companies and judgment mortgages (JMs on company assets)

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[...]

23 Registration of a judgment mortgage plus costs

There are two separate systems for recording transactions to property in Ireland:

1. The registration of title system (**Land Registry**) which provides a state guaranteed title to property and
2. The registration of deeds system (**Registry of Deeds**) which records the priority of the registered deeds and conveyances.

Both systems are mutually exclusive and both systems are under the control and management of the Property Registration Authority of Ireland.

Land Registry and Registry of Deeds register the Judgment Mortgage against the property and send a copy of the Solicitor's application to register the charge on CRO.

The Solicitors acting on behalf of Revenue must carry out the following action:

- If Judgment is recovered against a company and that Judgment is subsequently converted into a Judgment Mortgage affecting any property of the company, then there is a requirement on the part of the **creditor (Revenue)** to file **Form C10**
- The judgment mortgage shall be void against the liquidator and any creditor of the company unless the **Form C10** and the relevant **Judgment Mortgage Affidavit** are submitted together with the filing fee of €40

24 Risks for consideration in relation to judgment mortgages

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[...]

25 Discharging a judgment mortgage

- 25.1 Arrangements must be made for discharge of any Judgment Mortgage(s) where payment is received against the tax debt covered by such Judgment Mortgage(s).
- 25.2 In some instances the taxpayer will propose that the tax debt be paid out of the proceeds of the sale of the property and may request that Revenue lift the Judgment Mortgage in advance so that a sale can proceed. In these instances the Judgment Mortgage can be removed provided there is a solid guarantee that Revenue will get paid from the proceeds of sale, for example, a letter of unconditional and irrevocable undertaking from the taxpayer's solicitor confirming that Revenue will be paid from the proceeds of the sale of the property within an agreed timeframe.

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26 Instalment Order

- 26.1 A decision to proceed with an application for a Court Instalment Order must be approved at Principal Officer level
- 26.2 Relying on a Court judgment, Revenue can apply to the Court for an Examination of the taxpayer's means and an Instalment Order for payment of the tax debt based on the taxpayer's ability to pay
- 26.3 This procedure is relatively inexpensive as proceedings are taken in the District Court local to where the taxpayer normally resides

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27 Committal Order

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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- 27.2 To ensure a Committal Order hearing where taxpayers fail to comply with Instalment Orders, Revenue will need to provide evidence to prove the taxpayer's non-compliance with the original Instalment Order and that the non-compliance is due to **wilful refusal** or **culpable neglect**
- 27.3 Revenue's evidence proving wilful refusal or culpable neglect will need to be watertight as otherwise the Court may treat the Committal proceedings as Variation proceedings, possibly resulting in a reduction in the amounts payable under the initial Instalment Order. However, in the absence of any reasonable explanation by the taxpayer, the Court may grant a Committal Order for imprisonment if the judge is satisfied that the creditor (Revenue) has established that:
- the failure to pay the sum in respect of which the debtor has made a default is not due to inability to pay, but is due to their wilful refusal or culpable neglect, **and**
 - the debtor has no goods that could be taken in execution under any process of the Court by which the Judgment Order or Decree for the debt was given.
- 27.4 If the Court grants a Committal Order, Revenue may then instruct the Solicitor to arrange for the issue of an arrest warrant to the Gardaí with the intention of committing the taxpayer to prison for a period not exceeding 3 months.

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28 Bankruptcy

- 28.1 Where a person is not in a financial position to settle their debts, a creditor may apply to the Court to have the person adjudicated bankrupt under the Bankruptcy Act 1988. As a precursor to seeking bankruptcy, it is Revenue's policy to have obtained a Court judgment for the outstanding liability. In

exceptional cases, bankruptcy proceedings can commence based on the tax liability on record without judgment

- 28.2 On being adjudicated bankrupt, the person's assets, (with certain exceptions such as the articles of clothing, furniture and tools of the individual's trade), are taken over by a Court appointed Official Assignee to be used to pay off creditors in a predetermined order. The Official Assignee is based in the offices of the Insolvency Service of Ireland (ISI)
- 28.3 Bankruptcy legislation dictates that a debtor may not present a petition for adjudication unless they have made reasonable efforts to reach an appropriate arrangement with their creditors. In considering a creditor's petition, the Court must consider whether the debtor's inability to meet his liabilities could be more appropriately dealt with by means of a Debt Settlement Arrangement (DSA) or a Personal Insolvency Arrangement (PIA)

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[...]

- 28.6 It is an offence under the Companies Act 1963, as amended, for a bankrupt person to act in various capacities including Director, Auditor, Manager, Liquidator or Receiver of a company without the consent of the Court
- 28.7 Certain professions are governed by bodies where members' personal finances are subject to regulatory requirements
- 28.8 Other implications of bankruptcy for individuals are that their credit rating is greatly reduced and financial institutions may not grant them loan approval. Furthermore, the bankrupt taxpayer will also have to inform the Official Assignee if he/she wishes to travel abroad.

29 Debtor petitions for bankruptcy

- 29.1 **Section 11(3) of the Bankruptcy Act 1988** (amended by the Personal Insolvency Act 2012), allows a person experiencing financial difficulties to present a petition to the Court to declare him/herself bankrupt
- 29.2 The Court will consider adjudicating an individual bankrupt only if it is satisfied that a Debt Settlement Arrangement (DSA) or a Personal Insolvency Arrangement (PIA) is not a more appropriate option
- 29.3 If the Court is satisfied that bankruptcy is the only viable option for the debtor then it will adjudicate the debtor bankrupt
- 29.4 Once adjudicated bankrupt, the debtor will meet with the Official Assignee to arrange publication of a Bankruptcy Notice outlining the date for the statutory sitting at which creditors may attend and submit claims for payment.

30 Mareva injunction

A **Mareva injunction** is used to restrain the dissipation of assets before or after a judgment. Its effectiveness is dependent on the injunction being sought immediately on receipt of intelligence of the potential sale of assets. It effectively freezes the assets so that the affected party cannot remove them from the jurisdiction or otherwise dispose of assets below a certain value wherever they might be located, until the Court tells them otherwise. A judgment is not required in order to make a Court application for a Mareva injunction. Collector-General approval is required before instructing the external solicitors to proceed with a Mareva injunction application.

31 Garnishee Order

A **Garnishee Order** grants the creditor a legal attachment of any monies now due but not yet paid to the debtor, for the purpose of satisfying debts. In order to be effective, the applicant creditor must have very good intelligence in relation to any such monies due. In such circumstances the creditor can apply to the Court upon Affidavit for a conditional Order of Garnishee directing that the third party pay the monies directly to the creditor. In order to apply to the Court for a Garnishee Order the creditor is required to have a judgment in respect of the outstanding liabilities. Collector-General approval is required in advance of instructing the external Solicitors to proceed with an application to the Court for a Garnishee Order.

32 Receiver by way of Equitable Execution

The process of **appointing a Receiver by way of Equitable Execution** may be used where a third party will owe money to a debtor at some point in the future. The Affidavit in support of the application needs to show that Revenue has reason to believe that a sum of money, but not necessarily a debt, is held by or about to be paid by some other person to or on behalf of a judgment debtor and that the said judgment debtor has a beneficial interest. A judgment is required in order to apply to the Court to appoint a Receiver by way of Equitable Execution. Collector-General approval is required in advance of instructing the external solicitors to proceed to make an application to the Court to appoint a Receiver by way of Equitable Execution.

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. . .

Appendix 1 – District Court Certificate

**AN CHUIRT DUICHE
THE DISTRICT COURT
District Court Area of**

District No.

Between:-

MICHAEL GLADNEY / JOSEPH HOWLEY (DELETE AS APPROPRIATE)

Plaintiff

-and-

[PLEASE INSERT]

Defendant

CERTIFICATE

Issued pursuant to Section 960 J of The Taxes Consolidation Act, 1997 (as amended)

I, **(Print name clearly)**
of the Collector-General's Office, Office of the Revenue Commissioners, Sarsfield House, Francis Street, Limerick, an Officer of the Revenue Commissioners duly authorised pursuant to the provisions of Section 960B of the Taxes Consolidation Act, 1997 (as amended) hereby certify that at the time of issue of these proceedings one or more of the followings matters occurred:

- a. [An assessment to tax was duly made] / [A return to tax was duly made]
(Delete as appropriate)
- b. [The assessment has become final and conclusive within the meaning of The Tax Acts] /
[The return has become final and conclusive within the meaning of The Tax Acts]
Delete as appropriate)
- c. The sum of € in respect of arrears of the tax and interest was and remains due and outstanding,
- d. A demand for the payment of the outstanding tax has been duly made prior to the issue of the within proceedings.

e. The stated amount of income tax under Schedule E is due and outstanding.

Certified this day of

Signed:

Name:

Officer of the Revenue Commissioners

3. I say and believe that prior to the issue of proceedings, the Plaintiff has called upon the Defendant to discharge the said sum of € _____ yet despite the aforesaid demand, the Defendant has failed, refused and, or neglected to discharge the full amount thereof. *[Due allowance has been made for certain credits subsequently arising, as specified in paragraph 2 above].*
4. I say and believe that as of the date of swearing hereof, the said sum of € _____ remains due and owing by the Defendant to the Plaintiff.
5. I say and believe and am advised that the Defendant has no defence to the Plaintiff's claim [**duly adjusted as set out at paragraph 2 above**].
6. I therefore pray that this Honourable Court make an order as is set out in the notice of motion granting the Plaintiff liberty to enter final judgement in the sum of € _____ together with such further or other Order as to this Honourable Court may deem appropriate.

Sworn/Affirmed before me by
 this _____ day of
 20____
 at _____
 in the County of _____
 before me a Commissioner for
 Oaths/
 Practising Solicitor empowered to
 administer Oaths
 and I know the Deponent

 DEPONENT

 COMMISSIONER FOR OATHS
 PRACTISING SOLICITOR

This Affidavit is filed by

Solicitors on behalf of the Plaintiff

Filed this _____ day of _____ 20____

Record No: 2014/54R

**THE HIGH COURT
(Revenue)**

Between:

**MICHAEL GLADNEY / JOSEPH
HOWLEY (delete as appropriate)**

Plaintiff

- AND -

Defendant

AFFIDAVIT

REF

Appendix 3 - Deed of Discharge – Land registry

FORM 63

Requisition by a judgment creditor for the cancellation in the register of an entry of a notice of deposit of an affidavit of judgment as a mortgage or an entry of judgment mortgage (Rule 114)

LAND REGISTRY

County

Folio

Joseph Howley, [as Successor to Michael Gladney,]* Collector General of the Revenue Commissioners and the judgment creditor specified in an affidavit of judgment registered on the _____ day of _____ 20____ at entry number _____ as a burden on the interest of _____ in the property described in folio _____ of the register County _____, hereby requires the cancellation in the said folios of the entry of judgment mortgage.

Dated the _____ day of _____ 20 .

Signed by the said Joseph Howley

_____ in the presence of:

Joseph Howley

Note — This application for cancellation may also be made by the personal representative of the judgment creditor.

*delete as appropriate

Appendix 4 – Deed of Discharge – Registry of Deeds

THIS INDENTURE made the day of 200 between
of

(hereinafter called “the Grantor”) of the one part and of
(hereinafter called “the Grantee”) of the other part.

WHEREAS the Grantor obtained and entered up a Judgment in the Court
against the Grantee on in a cause entitled the Court,
Court area of
Record No.

between , Plaintiff and , Defendant, for the sum of €
and for € costs making in the aggregate the sum of € (hereinafter
called “the Judgment debt”) and **WHEREAS** on foot of the said Judgment an Affidavit
of Ownership was registered in the Registry of Deeds at Dublin on 20 ,
(Book No. , No.) under the provisions of the Judgment Mortgage Act 1850 as a
Mortgage affecting such interests as the Grantee was possessed of or was entitled to
in law or in equity over the lands tenements hereditaments and premises that is to
say **ALL THAT AND THOSE** the lands and premises known as situate
in the Barony of and County of

and **WHEREAS** the Grantee has requested the Grantor to release
the said Judgment Mortgage insofar as it relates to the said premises and no more
which the Grantor has agreed to do upon the terms and in the matter hereinafter
appearing.

NOW THIS INDENTURE WITNESSETH that in pursuance of the premises the Grantor
as Judgment Mortgagee hereby surrenders and releases unto the Grantee **ALL THAT
AND THOSE** the lands and premises known as

TO HOLD the same unto the Grantee his executors, administrators and assigns freed
and discharged from the said Judgment Mortgage and from all monies due and
owing on foot thereof **PROVIDED ALWAYS** that nothing herein contained shall
restrict, limit or affect the right of the Grantor to enforce the balance of the said
Judgment or a Judgment Mortgage in respect thereof against the Grantee on any
other property or security.

SIGNED SEALED and **DELIVERED**

by the **GRANTOR** in the presence of:

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[...]