

## **RULE 72**

### **PAYMENT INTO AND OUT OF COURT**

#### **PAYMENT INTO COURT**

- 72.01** (1) A person who seeks to pay money into court shall file with the Registrar,
- (a) a requisition for payment into court that refers to any statutory provision or rule that authorizes the payment into court; and
  - (b) a copy of any order, report, offer to settle or acceptance of offer under which the money is payable.
- (2) On receiving the material referred to in subrule (1), the Registrar shall receive the money.
- (3) The party paying the money into court shall pay it into the court in the name of the Registrar.
- (4) On receiving the money, the Registrar shall give a receipt to the party paying the money in.
- (5) A party paying into court under an offer to settle or an acceptance of offer shall forthwith serve a notice of payment into court (Form 72A) on every interested party, but the notice shall not be filed.

#### **PAYMENT OUT OF COURT**

##### **Authority for Payment Out**

- 72.02** (1) Money may be paid out of court only in accordance with an order or report or on consent under subrule (4).

##### **Payment Out under Order or Report**

- (2) A person who seeks payment of money out of court in accordance with an order or report shall file with the Registrar,
- (a) a written request for payment out;
  - (b) a certified copy of the order or report, unless one has already been filed with the Registrar; and
  - (c) an affidavit stating,
    - (i) in the case of a report, that the report has been confirmed and the manner of confirmation, or

- (ii) in the case of an order, that the time prescribed for an appeal has expired and no appeal is pending,  
unless such an affidavit has already been filed with the Registrar and the Registrar shall then pay the money to the person to whom the order or report directs that it be paid.
- (3) Where the Official Guardian or Public Guardian and Trustee seeks payment out in accordance with an order or report the Official Guardian or Public Guardian and Trustee may file one written request dealing with more than one proceeding and need not file the affidavit referred to in clause (2)(c).

#### **Payment Out on Consent**

- (4) A party who seeks payment out of court, on consent, of money paid into court shall file with the Registrar,
  - (a) a written request for payment out;
  - (b) the consent of all parties or their lawyers; and
  - (c) an affidavit stating that all parties have consented to the payment and that neither the party who paid the money into court nor the party to whom it is to be paid is under disability,and the Registrar shall then pay the money out to the party in accordance with the consent.
- (4.1) Subrule (4) does not apply if the money was paid into court under an order that provides that a further order of the court is required for the money to be paid out of court.

#### **Payment Out of Interest**

- (5) Money paid out of court under subrule (2) or (4) shall be paid out with accrued interest, if any, unless the order, report or consent provides otherwise.

#### **Consent by Insurer on Behalf of Party**

- (6) Where the insurer of a party has paid money into court on behalf of the party and an affidavit setting out the relevant facts is filed with the Registrar, the consent required by clause (4)(b) may be given by the insurer on behalf of the party and, where the party is entitled to payment out, the money may be paid out to the insurer.

#### **Minor Attaining Age of Majority**

- (7) Money in court to which a party is entitled under an order or report when the party attains the age of majority may be paid out

to the party on filing with the Registrar,

- (a) a requisition for payment out; and
- (b) an affidavit proving the identity of the party and that the party has attained the age of majority.

**Payment Directly to Lawyer**

- (8) Where money has been paid into court as security for costs or an order has been made for payment of costs out of money in court and the order does not provide for payment out directly to a lawyer, the money may be paid out to the lawyer for the party entitled, on filing with the Registrar the material required by subrule (2) or (4) and the affidavit of the party stating that the party consents to payment of the money directly to the lawyer rather than to the party.

**Payment to Personal Representative**

- (9) Where money or securities in court are to be paid out or transferred to a person named in an order or report who has died, the money or securities may be paid or transferred to the deceased person's personal representative on proof to the satisfaction of the Registrar of the person's death and of the personal representative's authority.

**Party under Disability**

- (10) An order for payment out of court of money in court to the credit of a person under disability may be obtained on motion to a judge by or on notice to the Official Guardian, unless the Public Guardian and Trustee is committee of the person's estate, in which case the motion shall be made by or on notice to the Public Guardian and Trustee.
- (11) A motion under subrule (9), other than a motion made by the Official Guardian or the Public Guardian and Trustee, shall be supported by an affidavit in Form 72B.
- (12) A motion under subrule (9) by the Official Guardian or the Public Guardian and Trustee may be made without notice unless the court orders otherwise.
- (13) In an order under subrule (9), the judge may fix the costs of the moving party and direct that they be paid out of the money in court directly to the moving party's lawyer.

**DISCHARGE OF A MORTGAGE**

- 72.03** (1) A person entitled to a discharge of a mortgage held by the Prothonotary may send to the Prothonotary the document required discharging the mortgage with a request that the Prothonotary execute the document.
- (2) Where the Prothonotary is satisfied that the money secured by the mortgage has been paid in full and that the discharge document is in proper form, the Prothonotary shall execute the discharge document.
- (3) After executing the discharge document, the Prothonotary shall hand over all documents that relate to the mortgage in return for a receipt for the documents and shall assign any policy of insurance in respect of the mortgaged property to the person entitled to the discharge or as the person directs in writing.

#### **STOP ORDER**

- 72.04** (1) On motion without notice in a proceeding or, where there is no proceeding pending, on application without notice by a person who claims to be entitled to money or securities held or to be held in the future by the Registrar for the benefit of another person, the court may make a stop order (Form 72 C) directing that the money or securities shall not be dealt with except on notice to the moving party or applicant.
- (2) On a motion or application for a stop order, the moving party or applicant shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to any person for which the moving party or applicant ought to compensate the person.
- (3) A person who has obtained an order under subrule (1) may make a motion on notice to all interested parties for an order for payment out.