

IN THE
SUPREME COURT OF PENNSYLVANIA

IN RE: Technical Amend- : No. 270
ment of Rules of Civil : Civil Procedural Rules
Procedure : Docket No. 5

O R D E R

PER CURIAM:

AND NOW, this 5th day of March, 1997, the Pennsylvania Rules of Civil Procedure are amended as follows:

1. Rules 1480, 1481, 3010, 3011, 3232, 3233, 3242, 3243, 3244, 3245, 3249 and 3250 are rescinded and notes are added to read as attached hereto.
2. Rules 3160 and 3181(f) are amended to read as attached hereto.
3. Rule 3191 is promulgated to read as attached hereto.
4. The notes to Rules 3182, 3190 are amended to read as attached hereto.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1997.

NOTE:

Underscored material is added.
Bracketed material is deleted.
A new rule is not underscored.

ABOLITION OF SPECIAL ACTIONS

Rule 1480. Domestic Attachment

Rescinded.

NOTE: Rule 1480 governing domestic attachment has been rescinded as obsolete.

Rule 1481. Civil Arrest Before Judgment

Rescinded.

NOTE: Rule 1481 governing civil arrest before judgment has been rescinded as its substance has been incorporated into Section 5108(b) of the Judicial Code, 42 Pa.C.S. § 5108(b).

TRANSFER OF JUDGMENTS TO OTHER COUNTIES

Rule 3010. Acts Of Assembly Not Suspended

Rescinded.

NOTE: [This act authorizes the defendant in confessed judgments transferred to another county to petition for opening of judgment in the county of original entry or in the county of execution.] The Act of 1945 prescribing venue of a petition to open a confessed judgment and preserved by this rule has been repealed. See Rule 2959(a)(1).

RULE 3011. Acts of Assembly Suspended

Rescinded.

NOTE: Former Rule 3011 preserved an Act of Assembly which was subsequently repealed.

ACTION OF EJECTMENT

Rule 3160. Judgment. Execution

A judgment for possession shall be enforced by a writ of possession substantially in the form provided by Rule 3254. If the judgment includes rents, profits or damages, execution for such rents, profits or damages shall be in accordance with the rules governing the enforcement of judgments for the payment of money.

ACTION OF MORTGAGE FORECLOSURE

Rule 3181. Conformity to Rules Governing Enforcement of Judgments for Payment of Money

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(f) Notice of Sale, Stay, Continuance: - Rule 3129.1 through
.3.

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Rule 3182. Service of Writ. Levy

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NOTE: Service of the writ upon the mortgagor or real owner is not required but notice of the sale is required by Rule 3129.1.

**ACTIONS UPON MECHANICS LIENS, MUNICIPAL
AND TAX CLAIMS AND CHARGES ON LAND**

Rule 3190. Judgment. Execution

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NOTE: [The Acts] Statutory procedures relating to enforcement of tax liens by sale under the Real Estate Tax Law of July 7, 1947, P.L. 1368, as amended, 72 P.S. § 5860.101 et seq., and other acts authorizing Treasurer's sale remain unsuspended. See Rule 3191(a)(2)(viii).

[The writs of levavi facias provided by § 28 of the Municipal Claim Act of May 16, 1923, P.L. 207, 53 P.S. § 7278, and the Fiscal Code of April 9, 1929, P.L. 343, § 1404, as last amended Aug. 7, 1963, P.L. 559, § 1, 72 P.S. § 1404, § 8 of Act of June 9, 1911, P.L. 736, 72 P.S. § 3491 and similar Acts are abolished.]

Statutory provisions relating to municipal claims and liens remain unsuspended. See Rule [3233 for Acts of Assembly not suspended relating to] 3191(a)(2)(i) through (viii) for provisions including special stay provisions, sequestration of rents, upset price, sale clear of lien and preferences.

See Rule 3191(b) for Acts of Assembly suspended insofar as they provide for writs of levavi facias and scire facias.

Rule 3191. Acts of Assembly

(a) The rules governing the enforcement of a judgment in rem in an action or proceeding upon a mechanics' lien, municipal claim,

tax claim or charge on land shall not be deemed to suspend or affect:

(1) Mechanics' Liens.

(i) Sections 303(c) and 508 of the Act of August 24, 1963, P.L. 1175, No. 497, 49 §§ 1303(c) and 1508.

NOTE: These sections provide for the loss of the lien when property is conveyed in good faith prior to the filing of a claim and for the priority of a lien.

(2) Municipal and Tax Claims.

(i) Section 24 of the Act of May 16, 1923, P.L. 207, as amended, 53 P.S. § 7275.

NOTE: This Section relates to sequestration of rents.

(ii) Section 27 of the Act of May 16, 1923, P.L. 207, 53 P.S. § 7277.

NOTE: This Section relates to stay upon entry of security and admission of validity of claim.

(iii) Section 29 of the Act of May 16, 1923, P.L. 207, as amended, 53 P.S. § 7279.

NOTE: This Section relates to upset sale price and discharge of liens.

(iv) Section 30 of the Act of May 16, 1923, P.L. 207, 53 P.S. § 7280.

NOTE: This Section relates to execution against quasi public corporations and preference of claims.

(v) Section 31 of the Act of May 16, 1923, P. L. 207, 53 P.S. § 7281.

NOTE: This Section relates to procedure
for selling free and clear of all liens.

(vi) Sections 31.1, 31.2 of the Act of May 16, 1923, P.L. 207, as added and amended, 53 P.S. §§ 7282, 7283.

NOTE: These Sections relate to procedure for selling free and clear of all claims in first class counties and cities.

(vii) Section 32 of the Act of May 16, 1923, P.L. 207, 53 P.S. § 7293, as added and amended.

NOTE: This Section relates to right of redemption after sale.

(viii) The Real Estate Tax Sale Law approved July 7, 1947, P.L. 1368, as amended, 72 P.S. § 5860.101 and all other acts authorizing Tax Bureau or Treasurer's sale on tax liens.

(ix) Sections 4 to 9, inclusive, of the Act of March 1, 1956, P.L. (1955) 1196, 53 P.S. §§ 7287 to 7292, except insofar as § 7 relates to execution, acknowledgment and delivery of sheriff's deed.

NOTE: These Sections relate to sale of vacant lots in "conservation areas" free and clear of all liens and without any right of redemption.

(b) The following Acts of Assembly are suspended in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c):

(1) Section 28 of the Act approved May 16, 1923, P.L. 207, 53 P.S. § 7278.

NOTE: This Section provides for execution upon a judgment by writ of levavi

facias and specifies the form of the writ and procedure thereon.

(2) Section 1404 of the Fiscal Code of April 9, 1929, P.L. 343, Art. XIV, 72 P.S. § 1404, only insofar as it may authorize sale of real estate subject to tax liens on writ of scire facias.

NOTE: This Section authorizes writs of scire facias to issue and be prosecuted to judgment and execution on Commonwealth tax liens.

(3) Section 7 of the Act approved March 1, 1956, P.L. (1955) 1196, 53 P.S. § 7290, insofar as it relates to acknowledgment and delivery of sheriff's deed.

NOTE: This Section relates to the execution, acknowledgment and delivery of deeds in sale of tax delinquent vacant lots located in blighted "conservation areas".

ACTS OF ASSEMBLY NOT SUSPENDED

Rule 3232. Action of Mortgage Foreclosure

Rescinded.

NOTE: Former Rule 3232 preserved Acts of Assembly which were subsequently repealed.

Rule 3233. Action Upon Mechanics' Liens, Municipal Claims, Tax Claims, and Charges on Land

Rescinded.

NOTE: Former Rule 3233(a)(1) preserved statutory provisions which were subsequently repealed. See Rule 3191(a)(1)(i) for preservation of the Act of 1963 governing the enforcement of a judgment in rem in an action or proceeding upon a mechanics' lien.

All of the Acts of Assembly preserved by former Rule 3233(b) continue to be preserved under Rule 3191(a)(2).

ACTS OF ASSEMBLY SUSPENDED

Rule 3242. Action of Ejectment

Rescinded.

NOTE: Former Rule 3242 suspended statutory provisions which were subsequently repealed.

Rule 3243. Action of Replevin

Rescinded.

NOTE: Former Rule 3243 suspended statutory provisions which were subsequently repealed.

Rule 3244. Action of Mortgage Foreclosure

Rescinded.

NOTE: Former Rule 3244 suspended statutory provisions which were subsequently repealed.

Rule 3245. Action Upon Mechanics Liens, Municipal Claims,

Tax Claims and Charges on Land

Rescinded.

NOTE: See Rule 3191(b) for the suspension of statutory provisions governing writs of scire facias and levari facias.

RULES SUPERSEDED

Rule 3249. Attachment Rules Superseded

Rescinded.

NOTE: Rule 3249 governing attachment rules superseded has been rescinded as obsolete.

ABOLITION OF CIVIL ARREST AFTER JUDGMENT

Rule 3250. Abolition of Civil Arrest After Judgment

Rescinded.

NOTE: Rule 3250 governing civil arrest after judgment has been rescinded as its substance has been incorporated into Section 5108(b) of the Judicial Code, 42 Pa.C.S. § 5108(b).

EXPLANATORY COMMENT

The following recent amendments to the rules of civil procedure are technical in nature and do not affect practice or procedure.

I. Amendment of Rules Governing Transfer of Judgments and Enforcement of Judgments in Special Actions

The Judiciary Act Repealer Act (JARA), enacted in 1978, repealed literally thousands of statutory provisions governing civil practice and procedure and amended many others. Since that time the references to these repealed and amended statutes contained in the Rules of Civil Procedure have been eliminated gradually. The recent amendments continue this process, rescinding rules which preserved or suspended repealed statutes and amending rules by eliminating obsolete references and citations.

Rule 3160 governing the enforcement of a judgment of ejectment is amended to conform to Rule 1055 which provides for the complaint in an action of ejectment to state a cause of action for rents as well as profits and damages.

Rule 3191 governing the preservation and suspension of Acts of Assembly relating to an action or proceeding upon a mechanics' lien, municipal claim, tax claim or charge on land does not set forth new procedure but is a restatement and relocation of the substance of present Rules 3233 and 3245. New Rule 3191 immediately follows Rule 3190 governing the procedure in the same types of actions.

II. Rescission of Rules Abolishing Special Actions

Four rules relating to the abolition of special actions or procedures have been rescinded.

Rule 1480 promulgated in 1954 abolished the action of domestic attachment and suspended the Acts of Assembly which formed the basis of the action. Those Acts were repealed by JARA in 1978 so that Rule 1480 became obsolete.

Similarly, Rule 3249 promulgated in 1960 provided for the supersession of the then existing 1954 attachment rules and advised that pending attachment proceedings would be governed by the then newly adopted attachment execution rules. Thirty-six years later, the 1954 attachment rules remain superseded and the 1960 attachment execution rules continue in force, rendering Rule 3249 obsolete.

The substance of Rule 1481 abolishing civil arrest before judgment and Rule 3250 abolishing civil arrest after judgment has been incorporated into Section 5108(b) of the Judicial Code, thus rendering the rules unnecessary.

By the Civil Procedural
Rules Committee

Edwin L. Klett
Chairman