

**IN THE
SUPREME COURT OF PENNSYLVANIA**

IN RE: Amendment of Rules of : **NO. 359**
Civil Procedure Governing Deficiency : **CIVIL PROCEDURAL RULES**
Judgments : **DOCKET NO. 5**

ORDER

PER CURIAM:

AND NOW, this 7th day of August, 2001, the Pennsylvania Rules of Civil Procedure are amended as follows:

- I. Rules 3277, 3282, 3284 and 3285 are amended to read as attached hereto.
- II. Rule 3286 is rescinded.

This order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective September 4, 2001.

NOTE: New material is underscored.
Deleted material is bracketed.

Rule 3277. Definitions

As used in this chapter,

["judgment" means any judgment which is subject to the provisions of Section 8103 of the Judicial Code and includes a judgment de terris, a judgment in rem and a judgment in personam.

Note: The inclusion of judgments de terris, in rem, and in personam is intended to implement Section 8103(a) of the Deficiency Judgment Law which provides that the "petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered." This changes the practice under prior case law which did not permit the filing of the proceeding supplementary to a matter in which the judgment obtained was not in personam.

The bringing of a deficiency judgment proceeding supplementary to an action in rem or de terris such as mortgage foreclosure does not change the character of the action as in rem or de terris. See Rule 3286.

"judgment creditor" means the holder of a judgment as defined by this rule;]

(1) "prior lien amounts" means the amounts of any prior liens, costs, taxes and municipal claims not discharged by the sale, and the amounts of any such items paid at distribution on the sale[.];

(2) "special allocations" means the special allocations required by Section 8103(f) of the Judicial Code;

NOTE: Section 8103(f) of the Judicial Code provides for certain special allocations when judgment has been entered with respect to a partial recourse obligation or an obligation of which only a portion is guaranteed.

(3) the following words shall have the meanings set forth in Section 8103(g) of the Judicial Code: "judgment", "judgment creditor", and "nonconsumer judgment creditor".

NOTE: Section 8103(g) of the Judicial Code contains several definitions relating to deficiency judgments. The words set forth in paragraph (3) are common to both the rules and the Code.

"Judgment" is defined by Section 8103(g) as "[t]he judgment which was enforced by the execution proceedings referred to in subsection (a), whether that judgment is a judgment in personam such as a judgment requiring the payment of money or a judgment de terris or in rem such as a judgment entered in an action of mortgage foreclosure or a judgment entered in an action or proceeding upon a mechanic's lien, a municipal claim, a tax lien or a charge on land."

"Judgment creditor" is defined by Section 8103(g) as "[t]he holder of the judgment which was enforced by the execution proceedings."

"Nonconsumer judgment creditor" is defined by Section 8103(g) as "[a]ny judgment creditor except a judgment creditor whose judgment was entered with respect to a consumer credit transaction. "

Rule 3282. Petition. Averments. Notice to Defend

- (a) The petition shall set forth:
- (1) the name and address of the judgment creditor,
 - (2) the name and last known address of each respondent,
 - (3) a statement that the petition is filed pursuant to Section 8103(a) of the Judicial Code,
 - (4) the court and number of the execution proceedings, the original judgment and any judgment obtained by transfer,
 - (5) the date [that] the property was [sold by the sheriff] struck down to the successful bidder and the date [that] the sheriff's deed was [executed and acknowledged,] delivered,
 - (6) a description of the real property and its location,
 - (7) the fair market value of the real property,
 - (8) a description of all prior lien amounts if the petitioner desires credit for such amounts, [and]

NOTE: For the definition of prior lien amounts, see Rule 3277.

- (9) if the petition requests a special allocation, a statement that the judgment creditor is a nonconsumer judgment creditor;
- (10) any special allocation required by Section 8103(f) of the Judicial Code, and
- (11) a request that the court fix the fair market value of the real property at the value set forth in the petition and that the court determine any prior lien amounts and any special allocation as set forth in the petition.

- (b) ***

Rule 3284. Order Upon Default or Admission

The court shall, without further notice or hearing, enter an order determining the fair market value of the real property to be the value alleged in the petition, [and] determining the prior lien amounts to be in the amounts alleged in the petition and making any special allocation requested by the petition if

(1) no answer is filed within the required time to a petition which contains a notice to defend and notice has been given as provided by Rule 237.1 et seq., or

(2) an answer is filed which does not deny the allegations in the petition as to the fair market value, [or] the prior lien amounts or any special allocation.

Rule 3285. Trial

If an answer is filed which denies the allegations in the petition as to the fair market value, [or] the prior lien amounts or the entitlement of the petitioner to any special allocation, the trial shall be limited to such of those [two] issues as are raised by the answer, which shall be heard by a judge sitting without a jury in accordance with Rule 1038.

NOTE: Rules 206.4 through 206.7 governing petitions and answers do not apply to a petition subject to these rules.

Rule 3286. Order. Effect

Rescinded.

Explanatory Comment

These amendments to the rules of civil procedure governing deficiency judgments are prompted by the passage of Act No. 144 of 1998 which amended provisions of the Judicial Code relating to the Statute of Limitations, 42 Pa.C.S. § 5522(b)(2), and the Deficiency Judgment Act, 42 Pa.C.S. § 8103.

Statute of Limitations

Section 5522(b)(2) of the Judicial Code provides that a petition for the establishment of a deficiency judgment must be commenced within six-months. Act No. 144 of 1998 revised the language specifying the date from which the six month period is calculated. Prior to amendment, the section used the language that the period commenced “following sale of the collateral of the debtor under the provisions of section 8103 (relating to deficiency judgments).” Act No. 144 deleted the words “sale of the collateral of the debtor under” and revised the provision to read:

(b) Commencement of action required.—The following actions and proceedings must be commenced within six months

(2) A petition for the establishment of a deficiency judgment following execution and delivery of the sheriff’s deed for the property sold in connection with the execution proceedings referenced in the provisions of section 8103 (relating to deficiency judgments).

Prior to the present amendment, Rule 3282(a)(5) required the petition to fix the fair market value under the Code to set forth “the date that the property was sold by the sheriff and the date that the sheriff’s deed was executed and acknowledged”. In light of

the revision to the Judicial Code, the rule is revised to require the petition to set forth:

- (5) the date the property was struck down to the successful bidder and the date the sheriff's deed was delivered,

Deficiency Judgment Act

Definitions

The Deficiency Judgment Act contained no provision defining terms until Act No. 144 of 1998 amended Section 8103 of the Judicial Code by adding new subsection (g). However, the rules of civil procedure governing deficiency judgments did contain Rule 3277 defining three terms: judgment, judgment creditor and prior lien amounts.

New Section 8103(g) includes definitions of the terms "judgment" and "judgment creditor" which are substantially identical to the definitions of those terms formerly found in Pa.R.C.P. 3277. The definitions of those terms in Rule 3277 are deleted by the present amendments and the duplication of definitions thus eliminated. The statutory definitions have been incorporated into the rules by Rule 3277(3).

The definition of the term "prior lien amounts" found in Rule 3277 remains unchanged.

At the same time, Act No. 144 introduced the concept of "special allocations" into the Deficiency Judgment Act. To alert the bench and bar to this concept, a definition has been added to Rule 3277:

- (2) "special allocations" means the special allocations required by Section 8103(f) of the Judicial Code.

Section 8103(g) of the Code defines terms relating to special allocations including "nonconsumer judgment creditor". That term is used in Rule 3282(a)(9) and the statutory definition is incorporated by reference in Rule 3277(3).

Special Allocations

Act No. 144 also amended Section 8103 by adding new subsection (f) entitled “Certain special allocations” which is specific in its application. The subsection applies only if the judgment creditor is a nonconsumer judgment creditor. Further, it applies to two particular types of obligations: a partial recourse obligation and an obligation of which only a portion is guaranteed. The term “partial recourse obligation” is defined by Section 8103(g) the Code as “[a]n obligation which includes both a nonrecourse portion and a recourse portion.”

Rule 3282(a) has been revised to accommodate the new provisions of Section 8103(f). The text of paragraph (9) has been transferred to new paragraph (11) with the addition of a reference to “any special allocation.” New text has been added to paragraph (9) and new paragraph (10) has been added to provide that, if a special allocation is requested, the petition contain averments that the judgment creditor is a nonconsumer judgment creditor and that a special allocation is required by Section 8103(f) of the Code.

Rule 3284 governing the order to be entered upon default or admission and Rule 3285 governing the trial if an answer denies the allegations of the petition are also amended to accommodate the new Code provision requiring “certain special allocations”.

Order and Its Effect

Rule 3286 governing the order of the court and its effect has been rescinded. Subdivision (a) relating to the effect of the order determining the fair market value of the real property was based upon language in Section 8103(c)(2) of the Deficiency Judgment Act which has been deleted by Act No. 144. Subdivision (b) relating to the

order as affecting personal liability of the respondent is no longer necessary in view of the Act as amended.

By the Civil Procedural
Rules Committee

Rea Boylan Thomas
Chair