

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of both Rule 3135 and the 2005 explanatory comment to the rule. First, current Rule 3135, which provides for the sheriff to execute a sheriff's deed only at the expiration of twenty days after either the filing of a schedule of distribution or the execution sale, is inconsistent with the 2005 explanatory comment, which advises that where a schedule of distribution is not required, the sheriff must execute and acknowledge the deed within twenty days of the date of the sale. The 2005 explanatory comment was incorrect in that if the sheriff were required to execute the deed within twenty days of the date of the sale where no schedule of distribution is required, there would be no time for the debtor to petition the court before the delivery of the sheriff's deed if the sheriff were to execute the deed immediately after the sale. The proposed amendment corrects the 2005 explanatory comment by conforming it to the text of the rule.

Second, Rule 3135 has been amended to provide a set time period within which the sheriff must execute the deed after either the filing of the schedule of distribution or the execution sale if no schedule of distribution is required. Current Rule 3135 only provides a minimum amount of time, i.e. twenty days after the filing of the schedule of distribution or the execution sale if no schedule of distribution is required, after which the sheriff is authorized to execute the deed. It sets no future date by which the sheriff must have executed the deed. The proposed amendment establishes a twenty to forty day window within which the sheriff must execute the deed after either the filing of the schedule of distribution or the sheriff's sale. This time period will ensure that a debtor has sufficient

time to petition the court to set aside the sale pursuant to Rule 3132, while encouraging the timely execution of the deed by the sheriff.

By the Civil Procedural
Rules Committee

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Chair