

Explanatory Comment

Rule 3281 et seq. governing proceedings to fix fair market value of real property sold has been amended in two respects. First, current Rule 3283(a)(1) provides for a petition to fix fair market value to be served upon a respondent, who is a defendant in the judgment and who entered an appearance, pursuant to Rule 440 governing service of legal papers other than original process. Under Rule 440, service may be made by regular mail at the last known address of the defendant.

A problem arises in that the petition to fix fair market value is only filed after a sheriff's sale, and frequently the property that has been sold is the address at which the defendant resided prior to the sheriff's sale and is no longer a current address. Under these circumstances, service by regular mail at the last known address is not likely to furnish notice to the defendant. The amendment to Rule 3283 permits service pursuant to Rule 440 only if there is an attorney of record.

Second, current Rule 3284 provides that the court shall without further notice or hearing enter an order determining the fair market value of the property to be the value alleged in the petition if (1) no answer has been filed within the required time to a petition which includes a notice to defend and notice has been given pursuant to Rule 237.1, or (2) an answer is filed which does not deny the allegations in the petition as to the fair market value, the prior lien amounts, or any special allocation.

The amendment to Rule 3284 shifts to the prothonotary the responsibility for entering judgment upon a praecipe of the petitioner. The prothonotary will ensure that the record shows that (1) service was made pursuant to the requirements of Rule 3283, (2) an important notice was given pursuant to the requirements of Rule 237.1, (3) no answer contesting the allegations in the petition was filed, and (4) the allegations in the petition justify the amount of the judgment that the petitioner seeks.

By the Civil Procedural
Rules Committee

Stewart L. Kurtz
Chair