

Rule 3129.3. Postponement of Sale. New Notice. Failure of Plaintiff to Attend Sale

(a) Except as provided by subdivision (b) or special order of court, new notice shall be given as provided by Rule 3129.2 if a sale of real property is stayed, continued, postponed or adjourned.

(b) If the sale is stayed, continued, postponed or adjourned to a date certain within [one hundred] one hundred thirty days of the scheduled sale, notice of which sale was given as provided by Rule 3129.2, and public announcement thereof, including the new date, is made to the bidders assembled at the time and place [originally] fixed for the sale, no new notice as provided by Rule 3129.2 shall be required, but there may be only [one] two such stays, continuances, postponements or adjournments within the one hundred thirty day period without new notice.

(c) If the plaintiff or a representative of the plaintiff is not present at the sale, the real property shall not be sold. The sheriff shall return the writ of execution to the prothonotary and file a return pursuant to Rule 3139 indicating that the real property was not sold because the plaintiff or a representative of the plaintiff was not present at the sale. Thereafter, the writ may be reissued pursuant to Rule 3106.

Explanatory Comment

Rule 3129.3(b) – Postponement of execution sale of real property

Rule 3129.3(b) formerly provided for one postponement of a sale of real property upon execution to a date within one hundred days of the scheduled sale without giving new notice of sale required by Rule 3129.2. The rule has been amended to permit two postponements within a period of one hundred thirty days of the scheduled sale without giving new notice. The amendment provides flexibility where more than one postponement is needed, saving time and expense. New notice under Rule 3129.2 is required when additional postponements of the sale are required.

Rule 3129.3(c) – Failure of plaintiff to appear at execution sale of real property

Prior to the present amendment, the execution rules did not provide for the instance when the plaintiff, whether in person or by representative, does not attend the sale of real property. New subdivision (c) of Rule 3129.3 addresses this issue. Subdivision (c) provides that, if the plaintiff is not present at the sale, “the real property shall not be sold.” In such a case, the sheriff is directed to “return the writ of execution to the prothonotary and file a return pursuant to Rule 3139.” The plaintiff may again seek to have the property sold but must recommence the proceedings by having the writ of execution reissued pursuant to Rule 3106 and giving new notice under Rule 3129.2.

By the Civil Procedural
Rules Committee

R. Stanton Wettick, Jr.,
Chair