

IN THE  
SUPREME COURT OF PENNSYLVANIA

IN RE: Promulgation of	:	No. 268
Rules of Civil Procedure	:	Civil Procedural Rules
3276 through 3291 Govern-	:	Docket No. 5
ing Deficiency Judgments		

O R D E R

**PER CURIAM:**

AND NOW, this 6th day of December, 1996, Rules of Civil Procedure 3276 through 3291 governing Deficiency Judgments are promulgated to read as attached hereto.

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

## DEFICIENCY JUDGMENTS

### General Provisions

- Rule 3276. Scope
- Rule 3277. Definitions
- Rule 3278. Venue. Supplementary Proceeding
- Rule 3279. Commencement. Petition
- Rule 3280. Answer

### Proceedings under Section 8103(a) to Fix Fair Market Value of Real Property Sold

- Rule 3281. Parties.
- Rule 3282. Petition. Averments. Notice to Defend
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- Rule 3286. Order. Effect

### Proceedings under Section 8103(d) to Mark Judgment Satisfied, Released and Discharged

- Rule 3287. Parties
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- Rule 3289. Service
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## General Provisions

### Rule 3276. Scope

The rules of this chapter govern proceedings pursuant to Section 8103 of the Judicial Code, 42 Pa.C.S. § 8103, relating to deficiency judgments.

NOTE: Section 8103(a) of the Judicial Code provides for a petition to fix the fair market value of real property sold in execution proceedings where the price for the property sold is not sufficient to satisfy the amount of the judgment, interest and costs and the judgment creditor seeks to collect the balance due.

Section 8103(d) provides for a petition to have the judgment marked satisfied, released and discharged when the judgment creditor has not initiated a timely proceeding under Section 8103(a).

Rules 3276 - 3280 are general provisions applicable to both types of petitions. Rules 3281 - 3286 are special rules applicable to petitions under Section 8103(a) while Rules 3287 - 3291 apply to petitions under Section 8103(d).

**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;

"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.

**Rule 3278. Venue. Supplementary Proceeding**

The proceeding shall be brought in the county in which the real property which is sold is located as a supplemental proceeding in the execution proceeding in that county.

**Rule 3279. Commencement. Petition**

(a) The proceeding shall be commenced by filing a petition which shall begin with the notice to defend and set forth the averments required by Rule 3282 or Rule 3288.

(b) The petition shall contain a caption setting forth

(1) the docket number of the execution proceedings in which the real property was sold, and

(2) the names of all petitioners and respondents.

NOTE: See Rules 3281 and 3287 governing parties to the proceeding.

(c) The petition shall be verified and divided into paragraphs numbered consecutively. Each paragraph shall contain as far as practicable only one material allegation.

**Rule 3280. Answer**

(a) Except as provided by subdivision (b), an answer to a petition which contains a notice to defend shall be filed within twenty days after service of the petition.

(b) A respondent served outside the United States shall have sixty days from service of the petition within which to file an answer.

(c) The answer to a petition shall be divided into paragraphs, numbered consecutively, corresponding to the numbered paragraphs of the petition.



**Proceedings under Section 8103(a) to Fix Fair Market  
Value of Real Property Sold**

**Rule 3281. Parties**

(a) The petition shall name the judgment creditor as petitioner.

(b) The petition shall name as respondent any debtor, obligor, guarantor, mortgagor, and any other person directly or indirectly liable to the judgment creditor for the payment of the debt, and any owner of the property affected thereby.

**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 and the date that the sheriff's deed was executed and acknowledged,
- (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

(9) 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 as set forth in the petition.

(b) The petition shall begin with a notice to defend substantially in the following form:

(CAPTION)

NOTICE TO DEFEND

To the Respondent(s):

You have been sued in court. The petition set forth in the following pages requests the court to determine the amount which should be credited against any liability you may have to the petitioner as a result of the purchase by the petitioner at an execution sale of the real property described in the petition. If you wish to defend against the petition, you must take action within twenty (20) days after this petition and notice are served upon you, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matters set forth in the petition. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any claim or relief requested by the petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

NOTE: The office shall be designated by the court under Rule 1018.1(c).

**Rule 3283. Service**

The petition shall be served

(1) upon a respondent who is a defendant in the judgment who has entered an appearance, by the petitioner in the manner provided by Rule 440, and

(2) upon any other respondent

(i) by the sheriff or a competent adult who is not a party to the action in the manner prescribed by Rule 402(a) for service of original process, or

(ii) by the petitioner mailing a copy in the manner prescribed by Rule 403, or

(iii) if service cannot be made as provided in subparagraphs (i) or (ii), pursuant to special order of court as prescribed by Rule 430.

(b) The person serving the petition shall file a return of service as provided by Rule 405.

**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 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.

**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, the trial shall be limited to those two issues 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**

(a) The order of the court, whether upon default, admission or after trial, determining the fair market value of the real property and of the prior lien amounts shall release the respondents named and served to the extent of the fair market value so determined less the prior lien amounts.

NOTE: Section 8103(c)(2) of the Judicial Code provides for a decree to be entered "directing the judgment creditor to file release of the debtors, obligors, guarantors or any other persons directly or indirectly liable for the debts, to the extent of the fair value so fixed".

(b) No order entered in a proceeding pursuant to these rules shall determine or be deemed to have determined whether any respondent is personally liable to the petitioner.

**Proceedings under Section 8103(d) to Mark Judgment  
Satisfied, Released and Discharged**

**Rule 3287. Parties**

The petition shall name the judgment creditor as a respondent.

**Rule 3288. Petition. Averments. Notice to Defend**

(a) The petition shall set forth:

- (1) the name and address of the petitioner,
- (2) the name and last known address of each respondent,
- (3) a statement that the petition is filed pursuant to Section 8103(d) of the Judicial Code,
- (4) the court and number of the execution proceedings, the original judgment and any judgment obtained by transfer,
- (5) a statement that the real property was sold, directly or indirectly, to the judgment creditor in the execution proceedings,
- (6) the date that the property was sold by the sheriff and the date that the sheriff's deed was executed and acknowledged,
- (7) a statement that no petition under Section 8103(a) of the Judicial Code has been filed within six months after the sale, and

(8) a request that the court direct the prothonotary to mark the judgment satisfied, released and discharged.

(b) The petition shall begin with a notice to defend substantially in the following form:

(CAPTION)

NOTICE TO DEFEND

To the Respondent(s):

You have been sued in court. The petition set forth in the following pages requests the court to direct the prothonotary to mark the judgment held by you against the petitioner satisfied, released and discharged as a result of your alleged failure to file a timely petition to fix the fair market value of real property purchased directly or indirectly by you at an execution sale. If you wish to defend against the petition, you must take action within twenty (20) days after this petition and notice are served upon you, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matters set forth in the petition. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any claim or relief requested by the petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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(Name)

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(Address)

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(Telephone Number)

NOTE: The office shall be designated  
by the court under Rule 1018.1(c).

**Rule 3289. Service**

(a) The petition shall be served in the manner provided by  
Rule 440.

(b) Proof of service shall be as provided by Rule 405.

**Rule 3290. Order Upon Default or Admission**

The court shall, without further notice or hearing, enter an  
order directing the prothonotary to mark the judgment satisfied,  
released and discharged 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 that the judgment creditor has  
purchased, directly or indirectly, the real property sold in  
an execution sale on the judgment creditor's judgment and has

failed to file a timely petition to fix the fair market value of the real property under Section 8103(a) of the Judicial Code.

**Rule 3291. Trial**

If an answer is filed which denies the allegations in the petition, the trial shall be 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.

## **EXPLANATORY COMMENT**

The new rules governing deficiency judgment proceedings accomplish two objectives. First, they supply a procedure lacking since the repeal by the Judiciary Act Repealer Act (JARA)<sup>1</sup> in 1978 of the Deficiency Judgment Act<sup>2</sup> of 1941. Second, they provide for the filing of a proceeding to fix the fair market value of real property sold as a supplement to the action in which the judgment was entered, thereby eliminating a procedural difficulty which has been termed the "deficiency judgment trap."

### **I. The New Procedure**

In 1978 the Deficiency Judgment Act of 1941 was repealed and replaced by a new provision, Section 8103 of the Judicial Code.<sup>3</sup> The Code provision eliminated much of the procedure in the former statute and made specific mention of matters which would be governed by general rules. The new rules complement the Code provision.

Section 8103 of the Judicial Code contemplates two petitions. One is a petition under subsection (a) by the judgment creditor to fix the fair market value of the real property sold on execution. The other is a petition under subsection (d) to have the judgment marked satisfied when the judgment creditor has failed to timely file a petition to fix the fair market value of the real property.

As the note to Rule 3276 indicates, the new rules are drafted around these two petitions. The first five rules, Rules 3276 through 3280, are general provisions applicable to both petitions under the Code. They govern the scope of the rules, definitions,

venue of the proceeding, commencement by petition and the formal requirements of the petition and answer.

The second group of six rules, Rules 3281 through 3286, are rules which apply to the petition to fix the fair market value of real property sold under Section 8103(a) of the Judicial Code. They specify the parties to the proceeding, the averments to be set forth in the petition and a notice to defend, the manner of serving of the petition, the order to be entered upon default or admission, the trial of the matter and the eventual order and its effect.

The final group of five rules, Rules 3287 through 3291, apply to the petition to mark the judgment satisfied, released and discharged under Section 8103(d) of the Judicial Code. These rules parallel the rules just mentioned, prescribing the parties to the proceeding, the averments to be set forth in the petition and a notice to defend, the manner of serving of the petition, the order to be entered upon default or admission and the trial of the matter.

## **II. Supplementary Proceeding**

Section 8103(a) of the Judicial Code provides that the "petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered." It has been held, however, that the proceeding may not be brought as a supplement to an action of mortgage foreclosure, an action *de terris*.<sup>4</sup> Rather, the proceeding must be brought in connection with an action *in personam*. The inability to bring a proceeding supplementary to an action of

mortgage foreclosure, coupled with the time constriction of a six-month period following the sale of the collateral in which to bring the proceeding,<sup>5</sup> has created difficulties for the practitioner.

The rules remove the impediment to bringing a deficiency judgment proceeding supplementary to an action of mortgage foreclosure. First, Rule 3277 defines judgment as "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*." Second, Rule 3278 provides that the "proceeding shall be brought in the county in which the real property which is sold is located as a *supplemental proceeding in the execution proceeding* in that county." Thus, in an action of mortgage foreclosure, an action *de terris*, the petition to fix the fair market value "shall" be filed following the sale of the real property as a supplementary proceeding in the execution proceeding.

In allowing a deficiency judgment proceeding to be brought supplementary to an action *de terris* or *in rem*, the character of the action is not altered. As Rule 3286(b) states, the deficiency judgment proceeding merely fixes the fair market value of the real property sold and does not impose personal liability on any respondent.

**BY THE CIVIL PROCEDURAL  
RULES COMMITTEE**

**EDWIN L. KLETT  
CHAIRMAN**

## NOTES

1. Section 2(a)[1227] of the Act of April 28, 1978, P.L. 202, No. 53, 42 P.S. § 20002(a)[1227].
2. Act of July 16, 1941, P.L. 400, No. 151, 12 P.S. § 2621.1 et seq. (Repealed).
3. 42 Pa.C.S. § 8103.
4. *McDowell Nat. Bank of Sharon v. Stupka*, 310 Pa. Superior Ct. 143, 456 A.2d 540 (1983).
5. Section 5522(b)(2) of the Judicial Code, 42 Pa.C.S. § 5522(b)(2).