

Explanatory Comment

The Rules of Civil Procedure governing sheriff's sales have been amended in three respects:

Current Rule 3111 governing the service of the writ on the garnishee provides for a continuing garnishment of defendant's property until the underlying judgment is satisfied. Because garnishments can languish indefinitely without any action taken on them, the amendment introduces a procedure that would allow a defendant or a third-party garnishee to petition the court for termination of the garnishment provided that there has been no activity on the garnishment for at least one year. The plaintiff has the opportunity to respond to the petition and set forth the reasons the garnishment should not be terminated.

Current Rule 3129.3 governs the procedures for postponing or continuing a sheriff's sale. The rule, however, is silent as to providing notice of the date to which a sheriff's sale has been postponed. As a remedy, the amendment to Rule 3129.3 requires the plaintiff to file a notice of the date of continued sheriff's sale with the prothonotary at least 15 days before the continued sale date. The plaintiff must also file a certificate of filing with the sheriff's office confirming the filing of the notice with the prothonotary.

The failure to timely file the notice results in the sheriff continuing the sale until the next available sale date. However, noncompliance is not a basis for setting aside the sale unless it is raised prior to the delivery of the sheriff's deed. A sale will only be set aside upon a showing of prejudice.

The amendment to Rule 3135, which governs the correction of the sheriff's deed to real property, addresses the situation when a junior lienholder has failed to receive notice of mortgage foreclosure and has not been divested of its interest. Currently, the

plaintiff is required to hold the sheriff's sale again even though the junior lienholder typically has no interest in purchasing the mortgage. To remedy this duplication of effort and resources, the amendment allows for a plaintiff, its assigns, or the purchaser at the previously held sheriff's sale to file a petition with a rule to show cause requesting that (1) the lien held by the junior lienholder be divested, (2) another sheriff's sale be held in which only the junior lienholder specified in the petition may be the only other bidder allowed other than the senior lienholder who acquired the property at the previously held sheriff's sale, or (3) other relief approved by the court.

By the Civil Procedural
Rules Committee

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Chair