

I. Action of Mortgage Foreclosure

Rule 1141. Definition. Conformity to Civil Action

(a) As used in this chapter,

"action" means an action to foreclose a mortgage upon any estate, leasehold or interest in land, or upon both personal property and an estate, leasehold or interest in land pursuant to Section 9604(a) of the Uniform Commercial Code, but shall not include an action to enforce a personal liability.

NOTE: Section 9604(a) of the Uniform Commercial Code, 13 Pa.C.S. § 9604(a), provides that if a security agreement covers both personal and real property, the secured party may elect to proceed as to both the real property and the personal property in accordance with its rights with respect to the real property, in which case the other provisions of Article 9 of the Uniform Commercial Code do not apply.

(b) Except as otherwise provided in this chapter, the procedure in the action shall be in accordance with the rules relating to a civil action.

Rule 1147. The Complaint

(a) The plaintiff shall set forth in the complaint:

(1) the parties to and the date of the mortgage, and of any assignments, and a statement of the place of record of the mortgage and assignments;

(2) a description of the land subject to the mortgage;

(3) the names, addresses and interest of the defendants in the action and that the present real owner is unknown if the real owner is not made a party;

- (4) a specific averment of default;
- (5) an itemized statement of the amount due; and
- (6) a demand for judgment for the amount due.

NOTE: The plaintiff may also set forth in the complaint a release of the mortgagor and the mortgagor's successors in interest. See Rule 1144(b).

If the mortgage is a residential mortgage under Act No. 6 of 1974, 41 P.S. § 101, the complaint should set forth an averment of compliance with the provisions of Section 403 of Act No. 6, 41 P.S. § 403.

(b) If the plaintiff is proceeding against both personal and real property covered by a mortgage as provided by Section 9604(a) of the Uniform Commercial Code, the plaintiff shall set forth in the complaint

- (1) the matters required by subdivision (a), and
- (2) a description of the personal property subject to the mortgage.

NOTE: Section 9604(a) of the Uniform Commercial Code, 13 Pa.C.S. § 9604(a), relates to the rights of a secured party when the agreement covers real and personal property. Compliance with subdivision (b) of this rule is a prerequisite to executing in one proceeding pursuant to Rule 3180(b) against both the real and personal property secured by the mortgage.

Rule 1149. Judgment. Execution.

Judgment in the action shall be enforced as provided by Rules 3180 to 3183, inclusive.

NOTE: Rule 3180 et seq. govern the enforcement of a judgment whether against an estate, leasehold or interest in land or against both personal property and an estate, leasehold or interest in land if the plaintiff has elected to proceed as to both pursuant to Section 9604(a) of the Uniform Commercial Code.

II. Enforcement of Judgments for the Payment of Money

New Rule

Rule 3101.2. Obligation Secured by Real and Personal Property. Plaintiff's Election to Proceed against Both in Accordance with Its Rights against the Real Property

(a)(1) A money judgment on an obligation secured by a mortgage which grants a mortgage lien on an estate, leasehold or interest in land and also a security interest in personal property, at the election of the plaintiff, may be enforced against both in one proceeding pursuant to the rules of this chapter governing execution against real property.

(2) A claim that any tangible personal property levied upon pursuant to a writ of execution is the property of a person other than the defendant in the execution shall proceed in accordance with Rule 3201 et seq. governing sheriff's interpleader.

NOTE: The rules of this chapter governing execution on personal property do not apply to an execution on personal property if an election has been made to proceed under this rule. However, Rule 3201 et seq. governing sheriff's interpleader does apply when tangible personal property levied upon is claimed to be the property of a person other than the defendant in the execution.

For a similar provision applicable to the enforcement of a judgment of mortgage foreclosure, see Rule 3180(b).

(b) The plaintiff shall make the election to proceed under subdivision (a) by filing an affidavit setting forth the place of record of the mortgage and stating that

(1) the mortgage covers both the real property and the personal property against which the plaintiff seeks execution, and

(2) the plaintiff intends to proceed against both in accordance with its rights against the real property pursuant to Section 9604 of the Uniform Commercial Code and this rule.

(c) If plaintiff elects to proceed as provided by this rule, the term "real property" as used in this chapter shall be deemed to include the personal property.

NOTE: Subdivision (c) is not applicable to a proceeding in sheriff's interpleader under Rule 3201 et seq. in which tangible personal property levied upon is claimed to be the property of a person other than the defendant in the execution.

III. Enforcement of Judgment in Action of Mortgage Foreclosure

Rule 3180. Judgment. Execution

(a) Judgment shall be enforced by a writ of execution substantially in the form provided by Rule 3257.

NOTE: Where judgment is entered on the obligation secured by the mortgage, execution shall be in accordance with the rules governing the enforcement of judgments for the payment of money.

(b) If the plaintiff is proceeding against both personal and real property covered by a mortgage as provided by Section 9604(a) of the Uniform Commercial Code and has complied with the pleading requirements of Rule 1147(b), the judgment may be enforced in one execution proceeding against both the personal and real property pursuant to the rules of this chapter governing execution on real property.

NOTE: Compliance with Rule 1147(b) governing the complaint in mortgage foreclosure is a prerequisite to executing in one proceeding pursuant to Rule 3180(b) against both the real and personal property secured by the mortgage.

The rules governing execution on personal property do not apply to an execution on personal property under subdivision (b).

For a similar provision applicable to the enforcement of a judgment entered on the obligation secured by the mortgage, see Rule 3101.2.

Rule 3181. Conformity to Rules Governing Enforcement of Judgments for Payment of Money

(a) The procedure for the enforcement of a judgment against real property shall be in accordance with the rules governing the enforcement of judgments for the payment of money with respect to the following:

[(a)] (1) Commencement and Issuance of Writ:--Rules 3103(a), 3103(e) and 3105.

[(b)] (2) Substitution, Reissuance and Expiration of Writ:--Rules 3106(a), 3106(b) and 3106(d).

[(c)] (3) Security for Sheriff:--Rule 3116.

[(d)] (4) Supplementary Relief in Aid of Execution:--Rule 3118, insofar as applicable.

[(e)] (5) Abandonment of Levy:--Rule 3120.

[(f)] (6) Notice of Sale, Stay, Continuance:--Rule 3129.1 through .3.

[(g)] (7) Sale of Mortgaged Property Located in More than One County:--Rule 3131.

[(h)] (8) Setting Aside Sale:--Rule 3132.

[(i)] (9) Lien Creditors as Purchasers:--Rule 3133.

[(j)] (10) Sheriff's Deed, Distribution of Proceeds:--Rules 3135 and 3136.

[(k)] (11) Sheriff's Expenses and Fees, Recovery as Costs, Abandonment of Writ for Nonpayment:--Rule 3138.

[(l)] (12) Sheriff's Return:--Rules 3139(a)(1), 3139(c) and 3139(d).

(b) The procedure for the enforcement of a judgment against both personal and real property as provided by Rule 3180(b) shall be in accordance with

(1) the rules governing the enforcement of judgments for the payment of money as provided by subdivision (a) and

(2) Rule 3201 et seq. governing sheriff's interpleader.

NOTE: Rule 3201 et seq. govern the procedure when tangible personal property levied upon is claimed to be the property of a person other than the defendant in the execution.

Rule 3257. Writ of Execution. Mortgage Foreclosure

The writ of execution in an action of mortgage foreclosure shall be substantially in the following form:

(Caption)

WRIT OF EXECUTION

Commonwealth of Pennsylvania
County of _____

To the Sheriff of _____ County:

To satisfy the judgment, interest and costs in the above matter you are directed to levy upon and sell the following described property:

(1)

(Specifically describe real property)

(2)

(Specifically describe personal property when judgment results from a mortgage covering both personal and real property pursuant to Section 9604(a) of the Uniform Commercial Code)

NOTE: Description of property may be included in, or attached to, the writ.

Amount due \$ _____
Interest from _____ \$ _____
[Costs to be added] \$ _____

(Name of Prothonotary (Clerk))

Seal of the Court

(Deputy)

Date _____

Explanatory Comment

Section 9604(a) of the Uniform Commercial Code (U.C.C.) provides a party with a security interest in personal property and a mortgage on real property with the right to proceed against both in accordance with its rights against the real property:

§ 9604. Procedure if security agreement covers real property or fixtures

(a) Enforcement: personal and real property.-- If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this chapter as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this chapter do not apply.

The provision has already been implemented with respect to confession of judgment by Rule 2958.2(a). The following chapters of rules now have been amended to implement this provision: the action of mortgage foreclosure, execution upon a judgment of mortgage foreclosure and execution upon a judgment for the payment of money.

Action of mortgage foreclosure and enforcement of judgment

The definition of “action” in Rule 1141 has been revised to include both the traditional “action to foreclose a mortgage upon any estate, leasehold or interest in land” and an action to foreclose a mortgage “upon both personal property and an estate, leasehold or interest in land pursuant to Section 9604(a) of the Uniform Commercial

Code.” The amended rule retains the restriction that the action “shall not include an action to enforce a personal liability.”

If a plaintiff brings an action to foreclose a mortgage upon both personal and real property, new Rule 1147(b) governing the complaint requires that, in addition to the usual allegations prescribed by subdivision (a) of the rule, the complaint must set forth “a description of the personal property subject to the mortgage.”

As a plaintiff may proceed against both the personal and real property in one action of mortgage foreclosure, so also the plaintiff may enforce the judgment obtained in the action in one proceeding. Execution Rule 3180 has been amended by adding new subdivision (b) providing that a plaintiff who complies with the pleading requirements of Rule 1147(b) may enforce the judgment “in one proceeding against both the personal and real property pursuant to the rules of this chapter governing execution on real property.”

The note following Rule 3180(b) reinforces the rule by emphasizing that the plaintiff must comply with the pleading requirements of Rule 1147(b) to be able to enforce the judgment against both the personal property and the real property under the rule. The note points out that the procedure to enforce a mortgage foreclosure judgment against real property applies to enforcement of the judgment against the personal property as well. The rules governing enforcement of judgments against personal property do not apply unless otherwise provided by this chapter.

The text of Rule 3181 prior to the present amendment has been designated subdivision (a) of the rule and the subparagraphs have been assigned numbers rather than letters. Subdivision (a) continues to provide that certain rules governing the enforcement of a money judgment are applicable also to enforcement of a judgment of mortgage foreclosure against real property. New subdivision (b) provides that those

rules also apply when the plaintiff is proceeding against both personal and real property. In addition, subdivision (b) incorporates the procedure of Rule 3201 et seq. governing sheriff's interpleader when there is a claim that the personal property which is the subject of the execution proceeding is the property of one other than the defendant.

The form of writ of execution prescribed by Rule 3257 is revised to accommodate an execution against both personal and real property by providing for a description of the personal property to be levied upon as well as a description of the real property.

Enforcement of judgment for payment of money

A plaintiff may bring an action on the underlying obligation secured by a mortgage rather than an action to foreclose the mortgage. When a mortgage grants a mortgage lien on real property and a security interest in personal property, a plaintiff who obtains a money judgment on the underlying obligation may still take advantage of the provisions of Section 9604(a) of the U.C.C. New Rule 3101.2(a)(1) provides that the plaintiff may elect to execute against both the personal and real property "in one proceeding pursuant to the rules of this chapter governing execution against real property." Subdivision (b) requires that the election be made by filing an affidavit and prescribes the content of the affidavit.

Rule 3101.2(a)(1) provides for the execution against personal property secured by a mortgage to proceed "pursuant to the rules of this chapter governing execution against real property." Subdivision (c) reinforces this provision by providing that if "plaintiff elects to proceed as provided by this rule, the term 'real property' as used in this chapter shall be deemed to include the personal property."

Although a party may elect to proceed under Rule 3101.2, subdivisions (a)(1) and (c) of that rule have no application when there is a claim that tangible personal property levied upon is the property of a person other than the defendant in the

execution. Subdivision (a)(2) provides that such a claim is to be determined pursuant to Rule 3201 et seq. governing sheriff's interpleader.

By the Civil Procedural
Rules Committee

R. Stanton Wettick, Jr.
Chair