

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

Proposed Recommendation No. 233

**Amendment of Rule 3281 et seq. Governing
Proceedings to Fix Fair Market Value of Real Property Sold**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 3281 et seq. governing proceedings to fix fair market value of real property sold be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent no later than **August 22, 2008** to:

**Karla M. Shultz, Esquire
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055**

**or E-Mail to
civil.rules@pacourts.us**

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

Rule 237.1. Notice of Praecept for Entry of Judgment of Non Pros for Failure to File Complaint or by Default for Failure to Plead

(a)(1) As used in this rule,

“judgment of non pros” means a judgment entered by praecipe pursuant to Rule 1037(a) and 1659;

Note: When a defendant appeals from a judgment entered in a magisterial district [judge] court, Pa. R.C.P.M.D.J. 1004(b) authorizes the appellant to file a praecipe for a rule as of course upon the appellee to file a complaint or suffer entry of a judgment of non pros. The entry of the judgment of non pros is governed by Pa. R.C.P. No. 1037(a) and is subject to this rule.

“judgment by default” means a judgment entered by praecipe pursuant to Rules 1037(b), 1511(a), 3031(a), and 3146(a).

(2) No judgment of non pros for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered

(i) in the case of a judgment of non pros, after the failure to file a complaint and at least ten days prior to the date of the filing of the praecipe to the party’s attorney of record or to the party if unrepresented, or

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the praecipe to the party against whom judgment is to be entered and to the party’s attorney of record, if any.

The ten-day notice period in subdivision (a)(2)(i) and (ii) shall be calculated forward from the date of the mailing or delivery, in accordance with Rule 106.

Note: The final sentence of Rule 237.1(a)(2) alters the practice described in the decision of *Williams v. Wade*, 704 A.2d 132 (Pa. Super. 1997).

- (3) A copy of the notice shall be attached to the praecipe.
- (4) The notice and certification required by this rule may not be waived.

Note: A certification of notice is a prerequisite in all cases to the entry by praecipe of a judgment of non pros for failure to plead to a complaint. Once the ten-day notice has been given, no further notice is required by the rule even if the time to file the complaint or to plead to the complaint has been extended by agreement.

See Rule 237.4 for the form of the notice of intention to enter a judgment of non pros and Rule 237.5 for the form of the notice of intention to enter a judgment by default.

- (b) This rule does not apply to a judgment entered
 - (1) by an order of court,
 - (2) upon praecipe pursuant to an order of court, or
 - (3) pursuant to a rule to show cause.

Note: See Rule 3284 which requires that in proceedings to fix fair market value of real property sold, notice must be given pursuant to the requirements of Rule 237.1 et seq.

Rule 3281. Parties

- (a) The petition shall name the judgment creditor as petitioner.
- (b) The petition **[shall]** may 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 3283. Service

[(a) 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 matter provided by Rule 440, and

(2) upon any other respondent]

(a)(1) If there is an attorney of record, service shall be made upon the respondent's attorney of record pursuant to Rule 440(a)(1)(i) or (ii).

(2) If there is no attorney of record, service shall be made

(i) by the sheriff or a competent adult in the manner prescribed by Rule 402(a) for service of original process, or

Note: See Rule 72 for the definition of "competent adult".

(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 servicing 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, determining the prior lien amounts to be in the amounts alleged in the petition and making any special allocation requested by 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, the prior lien amounts or any special allocation.]

(a) The prothonotary, on praecipe of the petitioner, shall enter judgment against the defendant for the failure to file within the required time an answer to the petition, which contains a notice to defend substantially in the form set forth in Rule 3282(b), upon determining that

(1) the petition was served pursuant to the requirements of Rule 3283 and

(2) notice was given pursuant to the requirements of Rule 237.1 et seq.

(b) In all cases, the court, on motion of a party, may enter an appropriate judgment against a party if an answer was filed, but does not deny the allegations in the petition as to the fair market value, prior lien amounts, and any special allocation.

Explanatory Comment

The Civil Procedural Rules Committee is proposing to amend Rule 3281 et seq. governing proceedings to fix fair market value of real property sold 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 proposed amendment to Rule 3283 would permit 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.

New subdivision (a) shifts to the prothonotary the responsibility for entering judgment upon a praecipe of the petitioner, in which there is an averment that no answer to the petition has been filed within the required time. 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 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

R. Stanton Wettick, Jr.
Chair