

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

Proposed Recommendation No. 245

**Proposed Amendment of Rule 3129.2 Governing
Advertising of Sheriff's Sales**

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 3129.2 governing advertising of sheriff's sales 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 **May 28, 2010** to:

**Karla M. Shultz
Counsel
Civil Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
P.O. Box 62635
Harrisburg PA 17106-2635
FAX 717-231-9526
civil.rules@pacourts.us**

Rule 3129.2. Notice of Sale. Handbills. Written Notice. Publication

(a) Notice of the sale of real property shall be given by handbills as provided by subdivision (b), by written notice as provided by subdivision (c) to all persons whose names and addresses are set forth in the affidavit required by Rule 3129.1, and by publication as provided by subdivision (d).

Note: Where real estate subject to federal liens is sold in execution under a judgment by confession, see the provisions of the Federal Tax Lien Act of 1966 adding sec. 7425(c) to the Internal Revenue Code, 26 U.S.C.A. § 7425(c), providing for notice to the United States.

For special rules requiring notice by the plaintiff to defendants on judgments by confession entered before December 1, 1973, see Rule 2958.

As to judgments entered after December 1, 1973, see Rule 236 requiring notice of entry by the prothonotary.

(b) The handbills shall be posted by the sheriff in the sheriff's office and upon the property at least thirty days before the sale, and shall include

(1) a brief description of the property to be sold, its location, any improvements, the judgment of the court on which the sale is being held, the name of the owner or reputed owner, and the time and place of sale, and

(2) a notice directed to all parties in interest and claimants that a schedule of distribution will be filed by the sheriff on a date specified by the sheriff not later than thirty days after the sale and that distribution will be made in accordance with the schedule unless exceptions are filed thereto within ten days after the filing of the schedule.

(c) The written notice shall be prepared by the plaintiff, shall contain the same information as the handbills or may consist of the handbill and shall be served at least thirty

days before the sale on all persons whose names and addresses are set forth in the affidavit required by Rule 3129.1.

(1) Service of the notice shall be made

(i) upon a defendant in the judgment who has not entered an appearance and upon the owner of the property.

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

Note: See Rule 76 for the definition of “competent adult”.

(B) by the plaintiff mailing a copy in the manner prescribed by Rule 403 to the addresses set forth in the affidavit; or

(C) if service cannot be made as provided in subparagraph (A) or (B), the notice shall be served pursuant to special order of court as prescribed by Rule 430, except that if original process was served pursuant to a special order of court under Rule 430 upon the defendant in the judgment, the notice may be served upon that defendant in the manner provided by the order for service of original process without further application to the court; and

(ii) upon the defendant in the judgment who has entered an appearance, by the plaintiff in the manner provided by Rule 440, and

(iii) upon each other person named in the affidavit by the plaintiff by ordinary mail at the address set forth in the affidavit with the return address of the plaintiff appearing thereon. The plaintiff shall obtain from the U.S. Postal Service a Form 3817 Certificate of Mailing. Service shall be complete upon mailing. If the mail is returned the validity of the service shall not be impaired and the sale shall proceed at the time fixed in the notice.

(2) The person serving the notice shall file a return of service as provided by Rule 405. If service is made by mail pursuant to subdivision (c)(1)(iii), the return shall include the certificate of mailing and the letter, if returned.

(3) If service on any person is not made at least thirty days prior to the date of the sale stated in the notice, such notice shall be deemed timely if the sale is stayed, continued, postponed or adjourned in accordance with Rule 3129.3 to a date certain which is at least thirty days after the date of the last required service.

Note: This rule does not state the effect of a failure to give the required notice. See *In re Tax Claim Bureau of Lehigh County 1981 Upset Tax Sale Properties: Appeal of Dian K. Haas*, 96 Pa. Commw. 452, 507 A.2d 1294 (1986), involving the failure to give notice of a tax sale.

(d) Notice containing the information required by subdivision (b) shall also be given by publication **by the plaintiff on the writ of execution or** by the sheriff **at the request of the plaintiff on the writ of execution** once a week for three successive weeks in **[a] one** newspaper of general circulation in the county and in the legal publication, if any, designated by rule of court for publication of notices, the first publication to be made not less than twenty-one days before the date of sale. **No additional publication may be required.**

Note: See Note to Rule 3128 as to time, terms and conditions of sale. See also Rule 3131 as to advertisement where a parcel of real property extends across county lines.

Explanatory Comment

Current Rule 3129.2(d) requires that notice of a sheriff's sale be advertised in (1) a newspaper of general circulation and (2) a legal publication if one has been designated by local rule of court for publication of notices. It has been reported that certain counties are requiring publication of the notice of sheriff's sale in multiple newspapers. This additional publication, which is not required by Rule 3129.2, can significantly increase costs imposed for sheriff's sales. The amendment to Rule 3129.2 clarifies the intent of the rule by adding a sentence to subdivision (d) stating that advertising of a sheriff's sale is required in only one newspaper of general circulation.

Subdivision (d) is also being amended to allow the notice of sheriff's sale to be given by publication by the plaintiff on the writ of execution or by the sheriff at the request of the plaintiff on the writ of execution.

By the Civil Procedural
Rules Committee

Stewart L. Kurtz
Chair