

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

Proposed Recommendation No. 255

Proposed Amendment of Rules 3111, 3129.3 and 3135

Governing Sheriff's Sales

The Civil Procedural Rules Committee proposes that Rules of Civil Procedure 3111, 3129.3 and 3135 governing 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 **November 2, 2012** to:

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Rule 3111. Service of the Writ on Garnishee. Effect

(a) The writ shall be served by the sheriff upon the garnishee in the manner prescribed by Rule 402(a) except as otherwise provided by Rules 3112 and 3113. The sheriff shall furnish the garnishee with an additional copy of the writ for each defendant. If the garnishee served was not named in the writ he shall be added as a garnishee and return made accordingly.

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee. It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against the garnishee even though no such property of the defendant was in the garnishee's possession at the time of service.

Note: For limitations on the power to attach tangible personal property see Rule 3108(a).

See Rule 3111.1 providing that service of the writ does not attach the first \$10,000 of each account of the defendant in which any funds are deposited electronically on a recurring basis and are identified as funds that upon deposit are exempt from attachment, or each account of the defendant in which funds on deposit exceed \$10,000 at any time, if all funds are deposited electronically on a recurring basis and are identified as being funds that upon deposit are exempt from attachment.

(c)(1) If a garnishment has not been acted upon within one year of the filing of the garnishment, the garnishee or the defendant may file a petition to terminate the garnishment. The petition shall include a notice that the plaintiff has twenty days to respond to the filing of the petition and that upon failure to do so, the garnishment may be terminated.

(2) Any response to the petition shall be filed within twenty days of the filing of the petition and set forth the reasons not to terminate the garnishment.

(3) If no response to the petition is filed, upon praecipe, the writ of garnishment shall be terminated.

Note: If a response is filed to the petition to terminate the garnishment, it shall be resolved pursuant to motion and answer practice. See Rule 208.1 et seq.

(d) Service of the writ upon the garnishee shall also subject the garnishee to the mandate and injunctive orders of the writ restraining the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further order of the court or discontinuance or termination of the attachment.

[(d)] (e) Violation of the mandate and injunctive orders of the writ may be punished as a contempt.

Rule 3129.3. Postponement of Sale. New Notice. Failure of Plaintiff to Attend Sale

(a) Except as provided by subdivision (b) or special order of court, new notice shall be given as provided by Rule 3129.2 if a sale of real property is stayed, continued, postponed or adjourned.

(b)**(1)** If the sale is stayed, continued, postponed or adjourned to a date certain within one hundred thirty days of the scheduled sale, notice of which sale was given as provided by Rule 3129.2, and public announcement thereof, including the new date, is made to the bidders assembled at the time and place fixed for the sale, no new notice as provided by Rule 3129.2 shall be required, but there may only be two such stays, continuances, postponements or adjournments within the one hundred thirty day period without new notice.

(2) When the sale is stayed, continued, postponed or adjourned as provided by subdivision (b)(1), the plaintiff shall file with the prothonotary a notice of continued sheriff's sale at least fifteen days before the continued sale date. A copy of the notice of continued sheriff's sale shall also be filed with the sheriff's office with a certificate of service confirming the filing of the notice. The sheriff shall continue the sale to the next available sale date if the notice of continued sheriff's sale has not been timely filed. Non-compliance with this subdivision is not a basis for setting aside the sheriff's sale unless raised prior to the delivery of the sheriff's deed. The sale shall be set aside only upon a showing of prejudice.

Note: This subdivision supersedes other provisions of these rules limiting the number of times a sale may be continued.

(3)(i) The notice required by subdivision (b)(2) shall be substantially in the following form:

(Caption)

Notice of Continued Sheriff's Sale

The Sheriff's Sale scheduled for _____, at _____ M. in the
above-captioned matter has been continued until _____ at
_____ M.

Date: _____

By: _____
(Attorney for Plaintiff)

(Address)

(Phone)

(ii) The certificate of service required by subdivision (b)(2) shall be in substantially the following form:

(Caption)

Certificate of Service

On this date, I mailed or delivered to the Sheriff's Office of _____ County a copy of the Notice of Continued Sheriff's Sale in the above-captioned matter.

Date: _____

By: _____
(Attorney for Plaintiff)

(Address)

(Phone)

(c) If the plaintiff or a representative of the plaintiff or a representative of the plaintiff is not present at the sale, the real property shall not be sold. The sheriff shall return the writ of execution to the prothonotary and file a return pursuant to Rule 3130 indicating that the real property was not sold because the plaintiff or a representative of the plaintiff was not present at the sale. Thereafter, the writ may be reissued pursuant to Rule 3106.

Rule 3135. Sheriff's Deed to Real Property. Correction of Deed

(a) When real property is sold in execution and no petition to set aside the sale has been filed, the sheriff, at the expiration of twenty days but no later than 40 days after either the filing of the schedule of distribution or the execution sale if no schedule of distribution need be filed, shall execute and acknowledge before the prothonotary a deed to the property sold. The sheriff shall forthwith deliver the deed to the appropriate officers for recording and for registry if required. Confirmation of the sale by the court shall not be required.

Note: See Rule 3136(a) governing the filing of the schedule of distribution.

(b) If the sheriff has made a defective return of the execution proceeding or has executed a defective deed, including the erroneous description of the real estate, the court upon petition of the purchaser or the purchaser's successors in title may correct the return or deed or order that a new return or deed be executed.

(c) If the plaintiff has failed to give notice to a lienholder, junior in lien priority to the mortgage being foreclosed upon or the judgment being executed, the plaintiff, or its assigns, or the purchaser at the the sheriff's sale may file a petition with rule to show cause requesting that:

(1) the lien held by the junior lienholder be divested, or

(2) if the plaintiff, or its assigns, is the purchaser at the sheriff's sale, another sheriff's sale be held in which only the junior lienholder specified in the petition may be the only bidder allowed other than the senior lienholder who acquired the property at the sheriff's sale, or

(3) such relief as may be approved by order of court.

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rules 3111, 3129.3 and 3135 governing sheriff's sales.

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 the garnishments can languish indefinitely without any action taken on them, the proposed 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 to the defendant when a sheriff's sale has been postponed to a date certain within 130 days of a scheduled sale. There has been an increasing problem with defendants not being notified that a sheriff's sale has been continued. To remedy this, the proposed amendment to Rule 3129.3 would require the plaintiff to file a notice of continued sheriff's sale with the prothonotary at least 15 days before the continued sale date. A copy of the notice must also be filed in the sheriff's office along with a certificate of service confirming the filing of the notice.

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 proposed 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 proposed amendment would allow 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

Diane W. Perer
Chair