

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

IN RE:)	MISC. NO. 325
RULES OF PRACTICE AND PROCEDURE OF)	
COURT OF COMMON PLEAS –)	<u>COURT RULES</u>
GENERAL DIVISION)	
AMENDMENT TO)	
LOCAL RULE 11 FORECLOSURES AND)	<u>ORDER</u>
LOCAL RULE 12 SHERIFF’S SALES)	
_____)	

IT IS HEREBY ORDERED AND DECREED THAT THE RULES OF THE SUMMIT COUNTY COURT OF COMMON PLEAS – GENERAL DIVISION IN REGARD TO LOCAL RULE 11 FORECLOSURES AND LOCAL RULE 12 SHERIFF’S SALES BE AMENDED TO READ AS FOLLOWS:

11.01 – TITLE EVIDENCE; PRELIMINARY JUDICIAL REPORT

In actions for the marshaling and foreclosure of liens on real property or partition of real estate, a Preliminary Judicial Report or a Title Commitment as authorized by R.C. 2329.191(C) shall be filed with the Clerk of Courts by the attorney for the plaintiff at the time of the filing of the complaint. This shall serve as evidence of the state of the record title of the real property in question. Said report may be prepared by an attorney or a competent abstractor or title company. A copy, certified by the attorney or a photographic copy of the original evidence of title, may be filed with the Clerk of Courts in lieu of the original, and shall become and remain a part of the case file. Along with the filing of the Preliminary Judicial Report or a Title Commitment, the attorney shall file a Certificate of Readiness and any required supporting documentation, demonstrating that plaintiff is the real party in interest and the matter is ready to proceed against all necessary parties. This shall be signed by the attorney. The complaint, the Preliminary Judicial Report and the Certificate of Readiness shall be filed as separate documents at the same time and shall be separately time-stamped with the complaint being filed first.

11.02 – FAILURE TO PROVIDE EVIDENCE

If a Preliminary Judicial Report and the Certificate of Readiness, along with all supporting documentation, are not presented to be filed at the time of the filing of the complaint, the Clerk of Courts shall not accept such complaint for filing.

11.03(1)– FINAL JUDICIAL REPORT

(A) The Final Judicial Report must include the correct legal description, parcel, and routing numbers for such property taken from the property deed as approved and released by the County Fiscal Officer’s Property Deed Transfer Division.

(B) Three (3) copies of the Property Description Approval form and the approved legal description shall be filed and time-stamped with the Clerk of Courts and shall be attached to the filing of the Final Judgment Entry in the foreclosure case. The Clerk of Courts will attach one copy of the Final Judicial Report and return the two (2) copies to the party filing the Final Judicial Report which shall then be attached to the Praecipe.

(C) A Final Judicial Report shall be issued and filed with the Clerk of Courts before the Decree of Foreclosure or Decree of Partition is filed. Said report shall state the method of service on each of the parties and shall include a statement indicating whether any additional liens or mortgages have been filed since the date the Preliminary Judicial Report was issued.

11.03(2) PROPERTY DESCRIPTION APPROVAL FORM

The prescribed Property Description Approval form adopted by the Courts will be made available on the Fiscal Officer’s website, Sheriff’s website, and Office of Deed Transfer.

11.04 EXPENSES FOR TITLE EVIDENCE

Expenses of the title work required under this Rule shall include a base search fee not to exceed Two Hundred Dollars (\$200), plus a premium on the Judicial Report issued, based on the fair market value of the property or in the case of a foreclosure, the balance due on the first mortgage or such additional amount as may be allowed by the Court for each property involved. Said cost shall be taxed as part of the costs in said case. No action commenced pursuant to this Rule shall be dismissed without first having paid the Judicial Title costs allowable under this Rule.

11.05 – FISCAL OFFICER AS PARTY DEFENDANT

In all foreclosure actions it shall not be necessary to name the Summit County Fiscal Officer as a party unless a party is contesting the amount of real estate taxes or the Fiscal Officer holds a personal property tax lien on the premises. In all actions in which the Fiscal Officer has been named a party, and in which the taxes are not in dispute nor is there a personal property tax lien, the Fiscal Officer need not file an answer to the complaint or to any cross-claims, but shall be served with a copy of the Confirmation of Sale or the dismissal entry.

11.06 – NOTIFICATION OF SHERIFF’S SALE

The judgment creditor who has requested that an Order of Sale be issued, shall no later than two (2) weeks prior to the sale scheduled thereon, serve written notice in accordance with Civ.R. 5 upon the judgment debtor and upon each other party to the action in which the judgment giving rise to the execution was rendered.

Written notice shall include a photocopy of the advertisement of Sheriff’s Sale and all information required by R.C. 2329.26. At least seven (7) calendar days prior to the date of the sale, the judgment creditor shall file with the Clerk of Courts a copy of such written notice with proof of service endorsed thereon.

The Sheriff’s Office will, upon receipt, file the Proof of Publication, or a copy if a correction/cancellation was made to the Advertisement, with the Clerk of Courts.

11.07 – APPRAISERS’ FEES

In all actions in which the Summit County Sheriff is called upon to appoint appraisers to appraise real property for the purpose of conducting a judicial sale, the appraisal fees shall be taxed as costs in the action, and each appraiser so appointed shall be compensated and receive fees based upon the Summit County Fiscal Officer, Auditor’s Division, last tax appraisal of the property as shown by the appraisal records.

If residential property, the appraisers shall return the appraisal to the Sheriff within twenty-one (21) calendar days of the issuance of the Order of Appraisal by the Clerk of Courts. R.C. 2329.17(B).

If commercial property, the appraisers shall return the appraisal to the Sheriff within the timing requirements, as established for the sale of the commercial property. R.C. 2329.17(D). If no timing requirements have been established, then the timing as used for residential property appraisals shall apply.

APPRAISERS' FEES

Up to \$5,000 tax value – \$25 each appraiser

More than \$5,000 and up to \$25,000 tax value – \$35 each appraiser

More than \$25,000 and up to \$50,000 tax value – \$50 each appraiser

Over \$50,000 – \$50 each appraiser plus \$1.00 for each \$1,000 or fraction thereof of tax valuation in excess of \$50,000

11.08 – PAYMENT OF REAL ESTATE TAXES

(A) PRORATED TAXES

1. The Lien for Taxes and Assessments that attaches before the Confirmation of Sale, but that are not yet determined, assessed, and levied for the year in which Confirmation occurs, will be estimated and apportioned as PRO RATA to the part of that year that precedes Confirmation, including any penalties and interest on those taxes and assessments. R.C. 323.47(B)(1)(a).
 - a. Summit County Fiscal Office will provide to the Sheriff the estimated Prorated Tax Amount
 - b. Prorated Taxes will be estimated through the Date of Sale
2. Prorated Taxes will be paid out of the Proceeds of the Sale
 - a. If, the Judgment Creditor is the BUYER at the sale, then Prorated Taxes shall not be deducted from the proceeds of the sale, unless such deduction is approved by that Judgment Creditor/BUYER.

(B) TAXES ON TAX DUPLICATE (Delinquents, Liens & Currents)

1. The Lien for ALL other Taxes, Assessments, Penalties and Interest that are already attached for a prior tax year, but that have not been paid on or before the Date of Confirmation, will be included and listed on the Sheriff's website, as provided by the Fiscal Office.
 - a. Summit County Fiscal Office will provide to the Sheriff the amount of Taxes as listed on the Current Tax Duplicate; this is for any Delinquent Taxes, Tax Liens, and Current Taxes not yet paid.
2. Tax Verification Worksheets and Tax Verification Forms are no longer being used.
3. Taxes will be paid out of the Proceeds of the Sale.

NOTE: Both Tax Amounts (Prorated and Delinquent/Currents) can be found on the Sheriff's website at www.co.summit.oh.us/sheriff. These amounts are provided to the Summit County Sheriff from the Fiscal Office and will be posted on the Sheriff's website within one (1) week prior to the sale.

The purchaser shall be responsible for those costs, allowances and taxes that the proceeds of the sale are insufficient to cover. R.C. 2329.52(B).

11.09 – FORECLOSURE ORDER OF SALE PUBLICATION DEPOSIT

The General Division Judges have determined that it is in the best interest of Summit County to increase the filing fee for the Order of Sale Publication deposit to Six Hundred Twenty and no/100 Dollars (\$620.00) effective October 1, 2007. Commencing on October 1, 2007, the funds will be utilized for the purpose of foreclosure case management enhancement.

The revenue funds shall be disbursed as follows:

REVENUE DISBURSEMENT

Akron Legal News \$220

Summit County Sheriff – Sheriff Foreclosure Fee Account \$200

Clerk of Courts – Computerization Account \$100

General Division Special Projects Revenue Fund Account \$100

11.10 – SERVICE OF IN-COUNTY FORECLOSURE COMPLAINTS BY THE SUMMIT COUNTY SHERIFF AND/OR HIS DEPUTIES

(A) All civil foreclosure complaints filed with the Summit County Clerk of Courts shall only be served upon party defendants, including any Unknown Defendants who are listed in the complaint in accordance with Civ.R. 15(D), who reside within Summit County by the Summit County Sheriff and/or his designated Deputies. All party defendants who reside outside of Summit County, Ohio shall have service made in accordance with Civ.R. 4.1 and those related Rules which are applicable. If service is not able to be made by the Sheriff under this Rule, the plaintiff may then avail itself of service by publication and/or by other methods of service as previously set out. If the Sheriff was unable to serve any Unknown Defendants under this Rule and the plaintiff has determined that the Unknown Defendant is a necessary party, plaintiff shall proceed to serve the Unknown Defendant in accordance with Civ.R. 4.4(A) and R.C. 2703.24.

(B) Such service shall be made by the Summit County Sheriff and/or his designated Deputies assigned to the Summit County Sheriff.

(C) The Summit County Clerk of Courts for the Summit County Common Pleas Court General Division shall, upon the filing of all foreclosure actions, transmit all necessary documents and paperwork promptly to the Summit County Sheriff's Civil

Division so that the Sheriff and/or his designated Deputies can commence service of such foreclosure complaints on those defendants who have listed their residential or business address as shown to be within Summit County, Ohio.

(D) The Summit County Sheriff and/or his designated Deputies shall make at least three (3) attempts of service upon each of the designated defendants within the complaint who reside within Summit County, Ohio. Additionally, the Sheriff shall leave door hangers with information as to how to contact the Sheriff regarding such matters should personal service fail at the designated location prescribed for service. The Sheriff and/or his designated Deputies shall make a written return after each attempt of service and of said service when it is made. Such return shall be sufficiently detailed for purposes of the Sheriff to maintain necessary administrative information regarding his duties, and also for the Summit County Clerk of Courts to maintain appropriate records required by law. All said returns shall be made promptly by the Summit County Sheriff and/or his designated Deputies to the Summit County Clerk of Courts.

(E) The Summit County Clerk of Courts may purchase electronic service equipment for use by the Summit County Sheriff and/or his designated Deputies when making service. Such electronic service equipment shall be capable of receiving and storing signatures for service of complaints or summons. The Summit County Sheriff and/or his designated Deputies shall initiate the use and training of such electronic service equipment as soon as practicable in cooperation with the Summit County Clerk of Courts. The Summit County Clerk of Courts and the Summit County Sheriff shall maintain close coordination to ensure the accuracy of all recorded information received and stored by the electronic service equipment.

(F) The Summit County Common Pleas Court General Division and the Summit County Clerk of Courts shall, by separate written agreement, provide for the cost of maintaining, repairing and/or replacing electronic equipment.

11.11 – ORDERS TO WITHDRAW/CANCEL SALE

A Motion and Order to Withdraw/Cancel a Sheriff's Sale must be filed at least forty-eight (48) hours prior to the scheduled Sheriff's Sale. For Mortgage Sales held on Fridays, the Motion to Withdraw/Cancel must be filed no later than 10:00 a.m. on the Wednesday prior to the sale. For Delinquent Tax Sales held on Tuesdays, the Motion to Withdraw/Cancel must be filed by 10:00 a.m. on the Friday prior to sale. If the Motion to Withdraw/Cancel is not timely filed, the sale will proceed as scheduled.

12 – SHERIFF'S SALES

12.01 – BID AND DEPOSIT

Effective September 28, 2016, pursuant to R.C. 2329.211, in every sale of real estate, the Sheriff shall require from the bidder, a deposit of Cash, Certified Check, Cashier's Check or Money Order, PAYABLE to the Summit County Sheriff, in amounts as follows:

For Residential Properties:

1. If Appraised Value is \$10,000 or less, the deposit will be \$2,000
2. If Appraised Value is more than \$10,000, but less than or equal to \$200,00, the deposit will be \$5,000
3. If Appraised Value is more than \$200,000, the deposit will be \$10,000

If the Judgment Creditor is the purchaser at the sale of residential property, they shall not be required to make a sale deposit. All other purchasers shall make a sale deposit as listed above.

For Commercial Properties:

1. The purchaser at the sale shall make a deposit pursuant to the requirements, if any, established for the sale by way of Court Order. If no requirements have been established by Court Order, then the deposit for Commercial Properties will follow the rules for deposit for Residential Properties.

For Delinquent Tax Sales

1. Deposits for Delinquent Tax Sales shall follow the same rules for Residential Properties:
 - a. If Minimum Bid value is \$10,000 or less, the deposit will be \$2,000
 - b. If Minimum Bid is more than \$10,000, but less than or equal to \$200,000, the deposit will be \$5,000
 - c. If Minimum Bid value is more than \$200,000, the deposit will be \$10,000

When required, sale deposits shall be tendered to the Sheriff at the time of acceptance of the bid, at the sale.

If such deposit is not so tendered forthwith, the Sheriff shall reopen the bidding immediately, starting with the next highest bid, if still available, and continuing until a sale is made to a bidder who meets the requirements of this Rule regarding deposits. The purchaser shall be required to pay interest at the rate of ten percent (10%) on the unpaid balance of the bid amount, unless paid within eight (8) days after the date of sale. The entire balance of the purchase price shall be paid within

thirty (30) days of the filing of the Confirmation of Sale. Any interest received shall be applied toward the satisfaction of the judgment in the action.

12.02 – TIME AND PLACE

Mortgage Sales shall be held at the West Door of the Courthouse on Fridays at 10:00 a.m. Eastern Time.

Delinquent Tax Sales, when scheduled, shall be held at the West Door of the Courthouse on Tuesdays at 10:00 a.m. Eastern Time.

12.03 – SHERIFF’S RETURN OF SALE

Immediately following the sale on Friday, the Sheriff shall make the Sheriff’s Writ of Execution – Report of Sale to the Court showing the name and address of the purchasers and the amount of the bid with a Purchaser Information Form as prescribed by R.C. 2329.26, 2329.27 and 2329.271, endorsed by the Sheriff.

If any tax certificate parcel is twice offered for sale pursuant to R.C. 5721.39 and remains unsold for want of bidders, the officer who conducted the sales shall certify to the Court that the parcel remains unsold after two (2) sales. The Court, by entry, shall order the parcel forfeited to the certificate holder who filed the request for foreclosure or notice of intent to foreclose under R.C. 5721.37.

12.04 – CONFIRMATION OF SALE OR VACATED SALE

Counsel shall prepare and submit to the Court an Order of Confirmation of Sale approved by all parties who have entered an appearance in the matter no later than thirty (30) days from the date of the Return of the Sheriff’s Writ of Execution – Report of Sale and the endorsed Purchaser Information Form. Counsel for plaintiff shall file a Motion for Confirmation of Sale in accordance with Rule 7.14. Upon filing the Confirmation of Sale, counsel shall provide to the Sheriff, within seven (7) calendar days, the deed packet, to include:

1. Time-Stamped copy of filed Confirmation of Sale
2. Prepared, completed Sheriff’s Deed
3. Completed Conveyance Form
4. Monies Due

Sheriff shall review and approve or reject the Deed and Conveyance Form. The approved Deed will be recorded by the Sheriff with the Fiscal Officer’s Recording Division, within fourteen (14) business days of payment of the purchase price. The Sheriff will charge a fee of Seventy-Five Dollars (\$75) as an associated administrative cost to process each Conveyance Form and to record each Deed.

Pursuant to Summit County Local Ordinance 2008-394, the \$200 Foreclosure Education fee shall be disbursed by the Sheriff's Office at the time of Final Distribution.

The Clerk of Courts shall ensure that all Confirmations of Sale and Orders Vacating Sale are served upon the Summit County Sheriff, Civil Division, either electronically or via hand delivery.

12.05 – FAILURE TO PAY BY PURCHASER

A purchaser who fails to pay the entire purchase price to the Sheriff within said thirty (30) days from the filing of the Confirmation of Sale may be held in contempt of Court, unless an extension of time is granted by the Court. If such extension is not granted, the Sheriff, or other parties in interest, may immediately cause a citation to be issued commanding the purchaser to appear before the Court and show cause as to why such purchaser should not be held in contempt. If the purchaser is found in contempt, the Court, in determining the penalty, shall take into consideration the cost of readvertising and all expenses and losses necessarily incurred by reason of delay in the sale of the premises and any party in interest may request the issuance of an Alias Order of Sale by filing a praecipe with the Clerk of Courts.

12.06 – ADDITIONAL COSTS AND TAXES

The purchaser shall be responsible for those costs, allowances, and taxes, etc., that the proceeds of the sale are insufficient to cover. (Based on Sections 2329.20, 2329.21, 2329.26 of the Revised Code.)

12.07 – POSTING OF RULES

The Sheriff shall keep a copy of these Rules conspicuously posted at the place where sales are conducted, and shall call attention to them before receiving bids.

THE ABOVE AMENDMENTS TO LOCAL RULE 11 FORECLOSURES AND LOCAL RULE 12 SHERIFF'S SALES SHALL BE IN EFFECT IMMEDIATELY UPON THE FILING OF THIS ORDER AND SHALL SUPERSEDE THE PREVIOUS LOCAL RULE 11 AND LOCAL RULE 12.

IT IS SO ORDERED.