

RULE 45: Foreclosure

(A) Pleading

In every action demanding the judicial sale of real estate, the party or parties seeking such judicial sale shall attach legible copies of the following documents to the initial pleading:

1. the Note and recorded mortgage drafted pursuant to Chapter 5301.; or
2. the recorded Affidavit for Mechanic's Lien drafted pursuant to R.C. § 1311.06; or
3. the file-stamped copy of the Certificate of Judgment filed pursuant to R.C. § 2329.02 or Authenticated Foreign Judgment and Affidavit filed pursuant to R.C. §§ 2329.022 and 2329.023; or
4. any other written instrument upon which the party relies as the basis for a judicial sale.

If the plaintiff is not the payee of the Note or the original mortgagee, then the assignment of mortgage bearing the plaintiff's name shall also be attached to the complaint. If the documents are not attached, the reason for the omission must be stated in the pleading.

Because R.C. 323.11 and 5721.10 provide that the lien of the state for real estate taxes is the first lien on the subject property and continues until paid, neither the Hamilton County Treasurer nor the Hamilton County Auditor shall be joined as a party to any such action unless the party requesting the judicial sale intends to contest either the amount of, or the priority of, the charges against each of the subject real estate parcels as shown on the general tax list prepared and certified by the Hamilton County Auditor. Any such claim shall be pled as a separate claim for relief and shall join only the Hamilton County Treasurer as the party responsible for collection of taxes.

If either the Hamilton County Treasurer or the Hamilton County Auditor, or both, are joined as a party in violation of this rule, neither shall be required to file an Answer, or otherwise plead in the action and the court shall proceed to adjudicate the matter as though neither the Treasurer or Auditor had been joined. The Auditor and Treasurer will also not be required to attend any hearings unless specifically directed to do so by the court with notice to the Prosecutor's office.

For any judicially ordered sale, the party responsible for the sale shall make certain the real property taxes are paid from the proceeds of the sale. No entry distributing proceeds shall be accepted by the Clerk of Courts which does not provide for payment to the Hamilton County Treasurer of all required real estate taxes. The party responsible for the preparation of the entries shall obtain written verification of the amount due from the Treasurer's office to be delivered to the officer of the sale and attached to the Confirmation and Distribution Entries.

(B) Receiverships

1. The following procedure shall be applied upon the filing of a motion for the appointment of a receiver in a foreclosure case with the Clerk of Courts:
 - a. The party seeking the appointment shall schedule a hearing before the Common Pleas Magistrate;
 - b. Unless the mortgage provides for appointment of a receiver without notice, notice of the hearing shall be served on interested parties either by attachment to

the complaint and original summons, or by certified mail in accordance with the Ohio Rules of Civil Procedure;

c. Notice, if required, shall be served on the owner of the property three (3) days before the hearing; and

d. The Court may continue hearings from time to time upon the showing of good cause.

2. Appointment of Receivers – Prerequisites:

a. Before any receiver is appointed in a foreclosure case, the following must be demonstrated by affidavit, evidence or representation of counsel:

(1) That legal or equitable grounds exist necessitating the appointment of a receiver, and

(2) That the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt, or on grounds other than those prescribed herein.

3. Oath and Bond:

a. Upon appointment, a receiver shall qualify and give a bond in the amount required by the Court. Bond shall generally be of a nominal sum in the amount of \$100.00, when the property is vacant and it is anticipated in the motion and order that the receiver's duty will be that of caretaker. Bond shall generally be in a sum equal to the sum of monthly rents or accounts receivable, where there are rents and profits to be collected. If the receiver fails to qualify and give bond, the appointment is voidable.

4. Duties of Receivers:

a. All receivers shall take charge of property pending litigation, preserve property from waste or destruction, receive rents and profits, hold income subject to order of the Court, and have authority to sue in forcible entry in the receiver's name and capacity.

b. Within ninety (90) days of the date of their appointment and every ninety (90) days thereafter, receivers shall file a report of receipts and disbursements with the Clerk of Courts.

c. Absent wording in the original Order, no receiver shall diminish the financial resources of the receivership through expenditure for repairs, real estate taxes and assessments, gas, light and water bills, trash pick-up and insurance, without first procuring an order from the Court for that purpose, except that necessary outlays under \$200.00 which may be made without the order, subject, however, to the final approval of the Court in the receiver's account.

d. A Final Receiver Report shall be filed with the court within 60 days after the filing of the Order Distributing Proceeds. The Final Receiver Report shall indicate that no funds remain in the receiver's account and that all outstanding bills have been paid. The receiver shall not be dismissed until the Final Receiver's Report is approved by the Court as filed.

Any party, or counsel thereof, with an active claim with a cause of action for judicial sale of real property must be present at all case management conferences. No telephonic appearances are authorized except through written leave of the Common Pleas Magistrate or Judge.

(D) Bankruptcy

Where a defendant has filed bankruptcy, the defendant, or plaintiff upon notification from the defendant, shall file a “Notice of Bankruptcy and Suggestion of Stay” and send a file-stamped copy of the Notice to the Common Pleas Magistrate as soon as practicable. Upon the receipt of the Notice, no further court settings will be scheduled and no further documents shall be filed with the Clerk of Courts regarding the bankrupt party until plaintiff or other party seeking judgment moves for, and is granted, an order to reinstate the case to the active docket.

NOTHING IN THIS RULE SHALL PREVENT A PARTY FROM COMPLYING WITH FEDERAL BANKRUPTCY LAW.

(E) Judgment

1. Default

- a. All motions for default shall list each defendant and the date service was perfected thereon.
- b. A party seeking default judgment shall file an “Affidavit of Account”. The affiant shall be the party seeking judgment or an employee of the plaintiff familiar with the mortgagor’s account. All relevant information required pursuant to 50 App. U.S.C. § 521(b)(1) [Service members Civil Relief Act] may be included within the Affidavit of Account, or by separate affidavit. The amount claimed due and owing in the Affidavit of Account must match the amount listed on the proposed Judgment and Decree in Foreclosure.
- c. Pursuant to Civ. R. 55(A) and L.R. 13(A), parties seeking default judgment shall deliver to the Common Pleas Magistrate a file-stamped copy of the Motion for Default, file-stamped copies of all relevant affidavits and the proposed Judgment and Decree in Foreclosure. The moving party shall also include a file-stamped copy of the Final Judicial Report or commitment. Where a party otherwise in default has made an appearance, the moving party shall contact the Common Pleas Magistrate to schedule a hearing on the Motion for Default and notify all appearing defendants. The hearing shall be set at least seven days after notice is sent to the appearing party.
- d. Where a junior lienholder seeks default judgment on its claim, all lienholders who claim an interest senior to that of the party seeking judgment shall file an Affidavit of Account attesting to the outstanding balance due and owing. This requirement shall not apply if the Court has previously awarded a decree of foreclosure to the lienholder claiming the senior interest, or the attorney for the senior lienholder signs the proposed entry.

2. Summary Judgment

- a. Where a junior lienholder seeks summary judgment on its claim, all lienholders who claim an interest senior to that of the party seeking judgment shall file an Affidavit of Account attesting to the outstanding balance due and owing. This

requirement shall not apply if the Court has previously awarded a decree of foreclosure to the lienholder claiming the senior interest, or the attorney for the senior lienholder signs the proposed Magistrate's Decision.

b. If one or more of the defendants have failed to timely answer and the plaintiff has filed motions for default, the moving party may include the defaulting parties in the Entry Adopting the Magistrate's Decision granting summary judgment.

c. The moving party shall attach a file-stamped copy of the Final Judicial Report or commitment with the Entry Adopting the Magistrate's Decision granting summary judgment.

(F) Judicial Sale

1. Parties seeking an Order of Sale shall complete the "Praeipere for Order (Sale of Possession)" located at www.courtclerk.org/cp_civil_forms.asp. Parties seeking an Order of Sale and interested buyers shall also complete a "Purchaser Information Sheet" located at www.courtclerk.org/cp_civil_forms.asp. Parties may generate and utilize alternative "Praeipere for Order - Sale" and "Purchaser Information Sheet" forms, so long as information contained on the alternative forms is identical to that contained on the published forms.

2. Terms of Sale. Purchasers at judicial sale must present a cashier's check to the execution officer equal to 10% of the appraised value of the real property ("the deposit"). The balance of the sale price, payable by cashier's check, shall be due within thirty (30) days of the Confirmation of Sale. Failure to timely pay the balance of the sale price may result in the forfeiture of the deposit.

(G) Confirmation of Sale, Ordering Deed, and Distribution of Proceeds

1. The Entry Confirming Sale and Ordering Deed shall be proffered to the Common Pleas Magistrate within thirty (30) days of the writ of execution indicating the sale was made, in all respects, in conformity with [sections 2329.01 to 2329.61 of the Revised Code](#). The attorney who filed the writ of execution shall make to the purchaser a deed for the lands and tenements and deliver said deed to the sheriff's office within seven (7) days following the journalization of the Entry Confirming Sale and Ordering Deed.

2. An Order Distributing Proceeds shall not be proffered to the Common Pleas Magistrate until the full purchase price and fees have been received by the Sheriff's Office. The Order Distributing Proceeds shall state whether the distribution is in full or partial satisfaction of the judgment. If the foreclosing party seeks a distribution pursuant to R.C. § 5301.233 or in equity for funds in excess of court costs, unpaid property taxes, or the amount equal to the unpaid principal, accrued interest, and late fees, then the attorney of record for the foreclosing party shall prepare and file a Confirmation Worksheet which shall indicate how much additional distribution is requested. Documentation sufficient to support the additional distribution shall be attached to the Confirmation Worksheet. A blank Confirmation Worksheet is available at www.courtclerk.org/cp_civil_forms.asp.

3. A clause allowing a mortgagee to collect reasonable attorney fees in a Note backing a commercial transaction is enforceable only if the total amount owed on the Note at the time the Note was executed exceeds \$100,000.00. Attorney's fees for cases involving the foreclosure of residential property are collectable only where the Note backs a

commercial transaction and contains a provision allowing said fees. Reasonable attorney fees incurred by a unit owners' association in a foreclosure action against the defaulting unit owner for unpaid common assessments are enforceable if such a provision is contained within a declaration of condominium ownership and/or condominium by-laws.

4. No Writ of Possession shall issue until all sale proceeds and fees have been paid. A Writ of Possession may issue pursuant to R.C. §§ 2327.02(C) and 5303.15 against any named occupant of real property if a judgment against said occupant has been obtained. The Sheriff shall return the Writ unexecuted when he/she determines that the occupant is other than a named party.

(H) Distribution of Excess Funds

Any defendant claiming an interest in any excess funds from a judicial sale must file a motion requesting a supplemental distribution. Such motion must set forth the reasons why the movant is entitled to the claimed funds. The movant shall schedule a hearing on the motion with the Common Pleas Magistrate and serve the plaintiff and all other parties not in default a copy of the motion and a notice of hearing.

The above rule shall be effective June 30, 2017.