

THE BASICS OF SHERIFF'S SALES

ENFORCING
JUDGMENTS AGAINST
REAL ESTATE &
SELLING PROPERTY
AT SHERIFF'S SALE

by Merritt C. Reitzel



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After a creditor succeeds in obtaining a judgment in court against a debtor, the judgment operates as a judgment lien on the debtor's real estate. As such, the judgment creditor is authorized to sell the debtor's real estate at a sheriff's sale to recover the amount it is owed under the judgment. Selling real estate at a sheriff's sale discharges all liens and encumbrances on the real estate that are subordinate to the lien of the listing creditor. The rules for executing upon real property are complex, and the costs are substantial. A judgment creditor must be prepared to strictly adhere to the rules to avoid the risk of the judgment being opened or the sale being set aside after the fact.

The rules and procedures for a real estate execution differ slightly depending on whether the creditor has obtained a money judgment or a judgment in mortgage foreclosure. A judgment in mortgage foreclosure is a judgment "in rem," meaning it creates a judgment lien on land; specifically, the land that is encumbered by the mortgage being foreclosed upon. In contrast, a money judgment is a judgment "in personam," meaning it is a judgment directed at a person, i.e., the judgment debtor.

A money judgment creates a lien on all of the judgment debtor's real and personal property. Rules 3101 through 3159 of the Pennsylvania Rules of Civil Procedure set forth the rules for a real estate execution under a money judgment in Pennsylvania. The rules for executing on a judgment in mortgage foreclosure are set forth by Rules 3180 through 3183. The local rules of court in the county where the real estate will be sold may dictate additional rules and procedures, and should be consulted as well.

Generally, execution on a judgment in mortgage foreclosure will result in a sheriff's sale of the mortgaged real estate that was the subject of the mortgage foreclosure action. Upon obtaining a money judgment, however, the judgment creditor must choose what

real estate will be sold by searching the real estate records to ascertain what real estate the debtor owns or in which he has an interest. All real estate owned by the judgment debtor in the county where execution is sought is subject to execution. If a judgment is against one spouse, however, and both spouses own real estate under a tenancy by the entireties, execution cannot be effectuated against the jointly-owned real estate.

A title searcher should be employed to ascertain the debtor's real estate interests, and the searcher can also provide the judgment creditor with a list of all liens indexed against the debtor's real estate by other creditors. With this information, the judgment creditor can assess what amount it can expect to recover from the proceeds of a sale given the amount of its lien, the estimated value of the real estate, and its lien position in relation to other creditors. The order of lien priority is governed by statute, and priority of mortgages and judicial liens is addressed Chapter 81 of the Pennsylvania Judicial Code, 42 Pa.C.S. §§ 8141-8144.

In several counties, including Dauphin County, real estate records are available in a free, searchable online database.

Dauphin County's Recorder of Deeds site may be accessed at www.dauphinc.org/deeds/. Real estate records are also available online for Cumberland, Perry, and York counties, but those records are available through Landex, a hosting service, and in order to search the real estate records for those counties, a subscription is required and fees are charged based on usage.

Once the judgment creditor identifies the real estate to be attached and sold at a sheriff's sale, it must request that the Prothonotary in the county where the judgment is entered issue a Writ of Execution to the Sheriff in the county where the real estate to be attached is located. As the procedures and required filings related to the Writ of Execution vary from county to county, prior to any real estate

execution, the judgment creditor should consult the local rules of court and contact the prothonotary and sheriff's offices to request a "writ package," which will outline the local requirements for a real estate execution.

Upon receiving the Writ of Execution from the Prothonotary, the Sheriff will schedule the real estate for the next available sheriff's sale. In Dauphin County, four sheriff's sales are scheduled each year. For each of the four sales, there is a cut-off date by which the writ of execution must be received by the sheriff. For example, to list a property for the January 14, 2010 sale in Dauphin County, the Sheriff must have received the writ of execution from the Prothonotary by November 12, 2009. The relevant dates for sheriff's sales in Dauphin County may be accessed at www.DauphinCounty.org/publicly-elected-officials/sheriff/sale-of-real-estate/. Cumberland County also schedules four sheriff's sales per year. The detailed schedule of sales in Cumberland County may be accessed via the County's website at www.ccpa.net, by clicking the "Public Safety" tab and navigating to the Sheriff's page and choosing "Sheriff's Real Estate Sales." ■

