

Chapter 12 – Miscellaneous

Rule 12.01 – Foreclosure, Quiet Title and Partition Actions

A. Filings

1. In Actions for the Marshaling and Foreclosure of Liens on Real Property The plaintiff shall file a Preliminary Judicial Report with the Clerk of Courts within (14) days after the filing of the complaint, except in actions involving registered lands. The Preliminary Judicial Report must comply with the requirements found in R.C. 2329.191(B) and must be effective within (30) days prior to the filing of the complaint or other pleading requesting a judicial sale. In an action that demands the judicial sale of residential real estate consisting of more than four single-family units or commercial real estate, the party seeking judicial sale may file a commitment for an owner's fee policy of title insurance that complies with the requirements found in R.C. 2329.191(C) instead of a Preliminary Judicial Report.

Prior to submitting any order or judgment entry to the Court that would order the sale of the real estate, the party submitting the order or entry shall file a Final Judicial Report that updates the Preliminary Judicial Report and complies with the requirements found in R.C. 2329.191(B). The Final Judicial Report shall state that the report has been extended through the date of lis pendens found in R.C. 2703.26 and that no third party has acquired an interest since the date of the original report.

2. In Actions to Quiet Title and for Partition

The plaintiff shall file a Preliminary Judicial Report with the Clerk of Courts within (14) days after the filing of the complaint, except in actions involving registered lands.

Within (45) days after completion of service upon all parties, counsel for the plaintiff shall file a continuation of the previously filed Preliminary Judicial Report, stating that the report has been extended to the lis pendens date found in R.C. 2703.26 and that no third party has acquired an interest since the date of the original report.

In all of the above cases, the expense of procuring and updating the instrument of title shall be taxed as costs in the case. Where the evidence of title indicates that necessary parties have not been made defendants, the plaintiff shall add and serve such new parties.

Upon failure of the plaintiff to timely comply with the foregoing, any other interested party, upon notice to plaintiff, may file a motion with the Court

seeking permission to file evidence of title.

B. Failure to Comply

Failure to comply with this Rule shall be grounds for dismissal of the case without notice.

C. Praeceptum for Order of Sale

Any party filing a Praeceptum for Order of Sale with the Clerk of Courts shall attach to it a completed "Carroll County Sheriff's Office Property Description Approval Form" that has been approved by the Carroll County Map Office and Carroll County Auditor's Office.

D. Notice of Sale

In any case, where the Court has ordered the sale of real estate, the Clerk of Courts shall mail a Notice of Issuing Order of Sale of Real Estate to all parties to the suit.

E. Fee Schedule

The expenses of title work required under this Rule include a base search fee not to exceed \$200.00 and a premium on the Judicial Report issued, based on the fair market value of the property. In the case of a foreclosure, the premium on the Judicial Report will be based upon the final principal balance due on the first lien or such additional amount as may be allowed by the Court for each property involved. The costs shall be taxed as part of the costs in the case.

Unless the Court should direct otherwise, the attorneys for the parties for all services in a case of partition of real estate shall be allowed the following fees:

On the appraised value of the real estate if partitioned, or on the gross proceeds of the sale if sold, 8% of the first \$5,000.00, 6% on the next \$10,000.00, and 2% on the balance, provided, however, that such fee shall not be less than \$100.00. The fees shall be divided between counsel under R.C. 5307.25. All attorneys shall maintain detailed and accurate time records of services rendered on the case.

This Rule shall also apply to proceedings for the sale of real estate by a fiduciary in the Court.

Rule 12.02 – Sheriff's Sales

The Carroll County Sheriff has posted the rules and policies governing advertising, deposits, location of sales, the timing of sale/purchase events, deed, etc. Sheriff sale forms are also available online with the Sheriff's website.

The party who filed the Writ of Execution of Order of Sale shall file a Motion to Confirm Sale within seven days after the return of the Writ of Execution of Order of Sale and submit to the Court a final proposed Confirmation of Sale Entry within (21) days after

the return of the Writ of Execution of Order of Sale. The proposed Confirmation of Sale Entry shall provide the amounts provided in R.C. 323.47(B)(1), including the amount of any assessments and taxes pro-rated to date of sale, and provide that these amounts be discharged out of the proceeds of the sale. The amount of pro-rated taxes and assessments shall be the same as the amounts on the Tax Verification Worksheet "Per Parcel," which shall be obtained from the sheriff. The proposed Confirmation of Sale Entry must also include Court costs. In order to obtain the amount of court costs in a timely manner, the proposed Confirmation of Sale Entry must be faxed to the Clerk of Courts for calculation of court costs within seven days of the return of the Writ of Execution of Order of Sale.

The Court will not confirm any sheriff's sale until the party ordering the sale has filed a certificate of service of notice of the sale stating that the notice of the sale has been sent to all parties who have appeared in the action, by ordinary mail to their last known address, or their attorney of record. The Court will also not confirm any sheriff's sale unless all other notice requirements in R.C. 2329.26 have been complied with and the purchaser has submitted the contact information required by R.C. 2329.271.

Within seven days of the filing of the Confirmation of Sale Entry by the Court, the party who filed the Writ of Execution of Order of Sale shall prepare a deed to the purchaser. The deed shall conform to the requirements of R.C. 2329.36 and shall be delivered to the Sheriff's Office for signature by the sheriff. The sheriff's office shall record the deed with the county recorder within (14) business days of the date the purchaser pays the balance due on the purchase price. The Sheriff's Office charges a fee to cover the actual costs of recording the deed. If registered land is sold, the procedure found in R.C. 5309.64 shall apply.

If a purchaser fails to pay the balance due on the purchase price within (30) days after the date of the filing of the Confirmation of Sale Entry, the purchaser may be deemed to be in contempt of Court. Upon a finding of contempt, the Court may proceed in accordance with R.C. Chapter 2705.

Rule 12.03 – Receivership

When a receiver is appointed by the Court, the Court will, whenever appropriate, appoint a receiver agreed upon by all parties. An attorney of record in a case shall not act as attorney for the appointed receiver, unless all parties agree or the Court directs otherwise. Within a time period specified by the Court after being appointed, the receiver shall file a report to the Court, submitting the inventory and appraisal, including an account of receipts and expenditures to date. A receiver shall file reports of receipts and disbursements with supporting documentation of the receiver's actions and transactions within three months after the date of appointment or at such other times as the Court may direct. A receiver's compensation and the compensation of the

receiver's attorney will be set by the Court as allowed by statute. Failure to file any report after the report is due or ordered shall be grounds for removal without notice and without compensation. Any person removed as receiver shall be ineligible for any subsequent appointment.

RULE 12.04 – Application of Deposit and Outstanding Court Costs

If the property is sold at a Sheriff's sale, unless otherwise ordered by the Court, costs shall be paid from the proceeds of the sale and the security deposit shall be reimbursed to the depositor upon journalization of the confirmation entry.

Unless the Court directs otherwise, if the property is not sold at a Sheriff's sale, the security deposit shall be applied to any accrued costs. Any excess security deposit remaining shall be reimbursed to the depositor upon journalization of an entry terminating or cancelling a Sheriff's sale. Any balance due, shall be billed to the Plaintiff/Plaintiff's counsel and shall be paid in full within thirty (30) days of journalization.

Any case in which a bankruptcy notice is filed, the Clerk shall apply all deposits to the outstanding costs and bill the Plaintiff/Plaintiff's counsel upon journalization of the entry rendering the case inactive. Upon the completion of the bankruptcy matter, the Plaintiff's counsel shall pay the filing fee deposit; file a Motion to Reactive the case; and a Judgment Entry/Order for the Court's approval. Upon written request by the appropriate party, the Clerk of Court may apply any paid fees to the case, back to the appropriate party.

RULE 12.05 – Termination or Dismissal of a Case

All entries, orders, or notices terminating or dismissing any case shall designate the party(ies) responsible for the payment of costs. If the party(ies) is/are not designated, the security deposit shall be applied toward the payment of costs received by the Clerk of Court.

Any excess cost shall be billed to the party whom initiated the action. Any excess deposit(s) shall be reimbursed to the depositor upon journalization of the dismissal entry.

No extraordinary items shall be taxed as costs unless pre-approved in writing by all parties/attorneys, or ordered by the Court.