

SC CIRCULAR NO. 7-2002, January 22, 2002

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TO: ALL EXECUTIVE JUDGES, CLERKS OF COURT, SHERIFFS IN THE OFFICE OF THE CLERK OF COURT AND BRANCH SHERIFFS IN THE REGIONAL TRIAL COURTS

SUBJECT: GUIDELINES FOR THE ENFORCEMENT OF SUPREME COURT RESOLUTION OF DECEMBER 14, 1999 IN ADMINISTRATIVE MATTER NO. 99-10-05-0 (RE: PROCEDURE IN EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE), AS AMENDED BY THE RESOLUTIONS DATED JANUARY 30, 2001 AND AUGUST 7, 2001

These guidelines are issued pursuant to the Supreme Court En Bane Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0, as amended by the resolutions of January 30, 2001 and August 7, 2001, directing the Office of the Court Administrator to prepare the guidelines for the enforcement of A.M. No. 99-10-05-0 on the extra-judicial foreclosure of mortgages.

Sec. 1. All applications for extra-judicial foreclosure of mortgage, whether under the direction of the Sheriff or a notary public pursuant to Art. No. 3135, as amended, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the Ex-Officio Sheriff (A.M. No. 99-10-05-0, as amended, March 1, 2001).

Sec. 2. Upon receipt of the application, the Clerk of Court shall:

- a. Examine the same to ensure that the special power of attorney authorizing the extra-judicial foreclosure of the real property is either inserted into or attached to the deed of real estate mortgage (Act No. 3135, Sec. 1, as amended);
- b. Give a file number to the application and endorse the date and time of its filing and thereafter docket the same, keeping, in this connection, separate docket books for extra-judicial foreclosure sales conducted by the Sheriff and those conducted by notaries public;
- c. For the conduct of extra-judicial foreclosure of real estate or chattel mortgage under the direction of the sheriff, collect the appropriate filing fees and issue the corresponding official receipt pursuant to the following schedule:

If the amount of the indebtedness or the mortgagee's claim is:

- (1) Less than P50,000.00 P275.00
- (2) P50,000.00 or more but less than P100,000.00 400.00
- (3) P100,000.00 or more but less than P150,000.00 500.00
- (4) P150,000.00 or more-but less than P200,000.00 650.00
- (5) P200,000.00 or more but less than P250,000.00 1,000.00

- (6) P250,000.00 or more but less than P300,000.00 1,250.00
- (7) P300,000.00 or more but less than P400,000.00 1,500.00
- (8) P400,000 or more but less than P500,000.00 1,750.00
- (9) P500,000.00 or more but not more than P1,000,000.00 2,000.00
- (10) For each P1,000.00 in excess of P1,000,000.00 10.00

(Section 7(c), Rule 141, Rules of Court, as amended by A.M. No. 00-2-01-SC, February 1, 2000).

Cooperatives, thrift banks, and rural banks are not exempt from the payment of filing fees and other fees under these guidelines (A.M. No. 98-9-280-RTC, September 29, 1998; A.M. No. 99-3-93-RTC, April 20, 1999; and A.M. No. 92-9-408-0).

d. In case the application is for the extra-judicial foreclosure of mortgages of real estates and/or chattels in different locations covering one indebtedness, issue, apart from the official receipt for the fees, a certificate of payment indicating the amount of indebtedness, the filing fees collected, the mortgages sought to be foreclosed, the real estates and/or chattels mortgaged and their respective locations, for purposes of having the application docketed with the Clerks of Court in the places where the other properties are located and of allowing the extra-judicial foreclosure to proceed thereat. (A.M. No. 99-10-05-0, par. 2(e)).

Sec. 3. The application for extra-judicial foreclosure shall be raffled under the supervision of the Executive Judge, with the assistance of the Clerk of Court and Ex-Oficio Sheriff, among all Sheriffs including those assigned to the Office of the Clerk of Court and Sheriffs assigned in the branches of the court. A Sheriff to whom the case has been raffled shall be excluded in the succeeding raffles and shall participate again only after all other Sheriffs shall have been assigned a case each by raffle (Administrative Circular No. 3-98, Feb. 5, 1998).

Sec. 4. The Sheriff to whom the application for extra-judicial foreclosure of mortgage was raffled shall do the following:

- a. Prepare a Notice of Extra-judicial Sale using the following form:

"NOTICE OF EXTRA-JUDICIAL SALE"

"Upon extra-judicial petition for sale under Act 3135/1508 filed _____; _____ against (name and address of Mortgagor/s) to satisfy the mortgage indebtedness which as of _____ amounts to P_____, excluding penalties, charges, attorney's fees and expenses of foreclosure, the undersigned or his duly authorized deputy will sell at public auction on (date of sale) _____ at 10:00 A.M. or soon thereafter at the main entrance of the _____ (place of sale) to the highest bidder, for cash or manager's check and in Philippine Currency, the following property with all its improvements, to wit:

"(Description of Property)"

"All sealed bids must be submitted to the undersigned on the above stated time and date."

"In the event the public auction should not take place on the said date, it shall be held on _____, _____ without further notice."

_____ (date)

"SHERIFF"

b. (1) In case of foreclosure of real estate mortgage, cause the publication of the notice of sale by posting it for not less than twenty (20) days in at least three (3) public places 'in the municipality or city where the property is situated and if such property is worth more than four hundred (P400.00) pesos, by having such notice published once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the municipality or city (Sec. 3, Act No. 3135, as amended). The Executive Judge shall designate a regular working day and definite time each week during which said notice shall be distributed personally by him for publication to qualified newspapers or periodicals as defined in Sec. 1 of P.D. No. 1079, which distribution shall be effected by raffle (A.M. No. 01-1-07-SC, Oct. 16, 2001). Unless otherwise stipulated by the parties to the mortgage contract, the debtor-mortgagor need not be personally served a copy of the notice of the extra-judicial foreclosure.

For real estate mortgages covering loans not exceeding P100,000.00, exclusive of interests due and unpaid, granted by rural banks (RA No. 7353, Sec. 6) or thrift banks (RA No. 7906, Sec. 18), publication in a newspaper shall be dispensed with, it being sufficient that the notices of foreclosure are posted for a period of sixty (60) days immediately preceding the public auction in die most conspicuous areas of the municipal building, the municipal public market, the rural bank, the barangay hall, and the barangay public market, if any, where the land mortgaged is situated. Proof of publication shall be accomplished by an affidavit of the Sheriff and shall be attached to the records of the case.

(2) In case of foreclosure of a chattel mortgage, post the notice for at least ten (10) days in two (2) or more public places in the municipality where the mortgagor resides or where the property is situated (Sec. 14, Act No. 1508, as amended).

Sec. 5. Conduct of the extra-judicial foreclosure sale— ,

a. The bidding shall be made through sealed bids which must be submitted to the Sheriff who shall conduct the sale between the hours of 9 a.m. and 4 p.m. of the date of the auction (Act 3135, Sec. 4). The property mortgaged shall be awarded to the party submitting the highest bid and, in case of a tie, an open bidding shall be conducted between the highest bidders. Payment of the winning bid shall be made either in cash or in manager's check, in Philippine currency, within five (5) days from notice.

b. The sale must be made in the province in which the real property is situated and, in case the place within the said province in which the sale is to be made is the subject of stipulation, such sale shall be made in said place in the municipal building of the municipality in which the property or part thereof is situated (Act No. 3135, as amended, Sec. 2);

In case of a chattel mortgage, the sale shall be made at a place in the municipality where the mortgagor resides or where the property is situated (Sec. 14, Act No. 1508, as amended).

Sec. 6. After the sale, the Clerk of Court shall 'collect the appropriate fees pursuant to Sec. 9(1), Rule 141, as amended by A.M No. 00-2-01-SC, computed on the basis of the amount actually collected by him, which fee shall not exceed P-100,000.00 (A.M. No. 99-10-05-0, March 1, 2001, 2[d]). The amount paid shall not be subject to a refund even if the foreclosed property is subsequently redeemed.

Sec. 7. In case of foreclosure under Act No. 1508, the Sheriff shall, within thirty (30) days from the sale, prepare a return and file the same in the Office of the Registry of Deeds where the mortgage is recorded.

Sec. 8. The Sheriff or the notary public who conducted the sale shall report the name/s of the bidder/s to the Clerk of Court.

Sec. 9. Upon presentation of the appropriate receipts, the Clerk of Court shall issue and sign die Certificate. of

Sale, subject to the approval of the Executive Judge or, in the latter's absence, the Vice-Executive Judge. Prior to the issuance of the Certificate of Sale, the Clerk of Court shall, in extra-judicial foreclosure conducted under the direction of the sheriff, collect P300.00 as provided in Section 20(d), Rule 141, as amended, and in extra-judicial foreclosure sales conducted under the direction of a notary public, collect the appropriate fees pursuant to Rule 141, §20(e), which amount shall not exceed P100,000.00 (Minute Res., A.M. No. 99-10-05-0, August 7, 2001).

Sec. 10. After the Certificate of Sale has been issued, the Clerk of Court shall keep the complete records for a period of one (1) year from the date of registration of the certificate of sale with the Register of Deeds, after which the records shall be archived. Notwithstanding the foregoing, juridical persons whose property is sold pursuant to an extra-judicial foreclosure shall have the right to redeem the property until, but not later than, the registration of the certificate of foreclosure sale which in no case shall be more than three (3) months after foreclosure, whichever is earlier (R.A. 8791, Section 47). In case the property is redeemed, the Clerk of Court shall assess the redemptioner's fee as provided in Section 7 (k), Rule 141, as amended. If the property is not redeemed, the Clerk of Court shall, as a requisite for the issuance of the final Deed of Sale, assess the highest bidder the amount of P300.00 as provided in Section 20(d), Rule 141, as amended.

Sec. 11. These guidelines shall take effect on April 22, 2002.

Issued this 22nd day of January 2002.

(Sgd.) PRESBITERO J. VELASCO, JR.
Court/Administrator

Copy furnished:

- Office of the Chief Justice
- Offices of the Associate Justices
- The Presiding Justice, Court of Appeals
- The Presiding Justice, Sandiganbayan
- The Court Administrator
- The Deputy Court Administrators
- The Clerk of Court
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