

OCA CIRCULAR NO. 189-2015, August 17, 2015

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TO :

Executive/Presiding Judges, Clerks of Court/Officers-in-Charge/Accountable Officers and Sheriffs of the Second Level Courts

SUBJECT :

Unauthorized Collection of One Thousand Pesos (P1,000.00) Deposit in Extra-Judicial Foreclosure Cases

As a result of the financial audits conducted by the Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator, a number of second level courts were found to have collected One Thousand Pesos (P1,000.00) for every extra-judicial foreclosure case filed in their respective courts to defray the expenses related to the posting of court notices where the subject property is located or in the barangay where the property is situated.

In this regard, Paragraph 2 of Section 10, Rule 141, Revised Rules of Court is instructive. The same provides:

IN ADDITION TO THE FEES HEREINABOVE FIXED, THE AMOUNT OF ONE THOUSAND (P1,000.00) PESOS SHALL BE DEPOSITED WITH THE CLERK OF COURT UPON FILING OF THE COMPLAINT TO DEFRAY THE ACTUAL TRAVEL EXPENSES OF THE SHERIFF, PROCESS SERVER OR OTHER COURT- AUTHORIZED PERSONS IN THE SERVICE OF SUMMONS, SUBPOENA AND OTHER COURT PROCESSES THAT WOULD BE ISSUED RELATIVE TO THE TRIAL OF THE CASE. IN CASE THE INITIAL DEPOSIT OF ONE THOUSAND (P1,000.00) PESOS IS NOT SUFFICIENT, THEN THE PLAINTIFF OR PETITIONER SHALL BE REQUIRED TO MAKE AN ADDITIONAL DEPOSIT. THE SHERIFF, PROCESS SERVER OR OTHER COURT AUTHORIZED PERSON SHALL SUBMIT TO THE COURT FOR ITS APPROVAL A STATEMENT OF THE ESTIMATED TRAVEL EXPENSES FOR SERVICE OF SUMMONS AND COURT PROCESSES. ONCE APPROVED, THE CLERK OF COURT SHALL RELEASE THE MONEY TO SAID SHERIFF OR PROCESS SERVER. AFTER SERVICE, A STATEMENT OF LIQUIDATION SHALL BE SUBMITTED TO THE COURT FOR APPROVAL. AFTER RENDITION OF JUDGMENT BY THE COURT, ANY EXCESS FROM THE DEPOSIT SHALL BE RETURNED TO THE PARTY WHO MADE THE DEPOSIT. (Emphasis ours.)

Please be reminded that the One Thousand Pesos (P1,000.00) referred to in the abovementioned provision is intended for actual travel expenses in the service of court processes relative to the trial of the case. Simply put, an extra-judicial foreclosure proceeding is not one of the cases contemplated in said rule since it is not considered as part of a court trial.

Moreover, Section 3 of Act No. 3135 does not require posting of notices in the barangay where the property is located. Thus:

"SECTION 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than

four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city." (Emphasis ours.)

In fact, in *Fortune Motors (Phils.) Inc. vs. Metropolitan Bank and Trust Company, et. al*, G. R. No. 115068, 28 November 1996, the Honorable Court ruled:

"x x x Act 3135 does not require posting of the notice of sale on the mortgaged property. Section 3 of the said law merely requires that the notice of the sale be posted for not less than twenty days in at least three public places of the municipality or city where the property is situated. The aforementioned places, to wit: the Sheriffs Office, the Assessor's Office and the Register of Deeds are certainly the public places contemplated by law, as these are places where people interested in purchasing real estate congregate.

Henceforth, considering the foregoing pronouncements, the clerk of court/accountable officer is hereby directed to refrain from collecting One Thousand Pesos (P1,000.00) as cost for the posting of notices in every extra-judicial foreclosure case. The posting of notices where the property is located or in the barangay where the property is situated is the obligation of the interested party.

For your information and strict compliance.

17 August 2015

(SGD.) JOSE MIDAS P. MARQUEZ
Court Administrator

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