

New Court Rules in Pennsylvania allow additional Sale Postponement
Effective: January 1, 2007

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The Supreme Court of Pennsylvania enacted a rule change that will make the sheriff's sale process in Pennsylvania more flexible for lenders. The new rule of civil procedure (Rule 3129.3) goes effect on January 1, 2007, and applies to sales held after that date.

Currently, the lender may postpone a sheriff's sale once to a date certain within one hundred (100) days of the original sale date without having to give additional notice or additional advertising. After the first postponement, the lender or borrower must obtain a court order to postpone. If the court denies the motion, it would be necessary for the lender to stay the pending sale and reschedule an entirely new sale date at considerable cost and delay.

The new rule allows the lender two (2) postponements without additional costs or court order, as long as both of the postponements are within one hundred and thirty (130) days of the originally scheduled sale date. This greater flexibility will allow lenders more time to explore home retention options, such as short sales and repayment plans. In addition, this change will keep the fees and costs associated with postponements to a minimum, and reduce the need for court orders for a 2nd postponement. There is a possibility that the local courts may be more reluctant to postpone sales by court order, we will wait and see how the courts react to those requests.

The Flat Tire Rule:

The new rule also provides that a sheriff's sale will be stayed if a representative of the lender is not present at the sale. Before the enactment of this new provision, some Pennsylvania sheriffs would conduct the sale even if the lender's attorney or representative were not present at the sale due to an emergency or miscommunication. If no one bid on behalf of the lender and a third party purchased the property for an amount less than the lender's bid, the result would be a windfall for the third party and a loss for the lender. The rule change should prevent this inequitable result which was prompted, in part, by an actual case where an attorney missed a sheriff's sale due to a flat tire.

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