

**PROPOSED AMENDMENTS TO LOCAL RULES OF PRACTICE AND PROCEDURE  
FOR THE GENERAL DIVISION OF THE MONTGOMERY COUNTY  
COURT OF COMMON PLEAS**

**COMMENTS DUE BY APRIL 2, 2010**

**COMMENTS REQUESTED:** Pursuant to Loc. R. 1.03, Local Rules of Practice and Procedure for the General Division of the Montgomery County Court of Common Pleas, proposed amendments to **Local Rule 2.23, Judicial Sale of Real Estate**, are being published for a sixty-day public comment period beginning Wednesday, February 3, 2010, through Friday, April 2, 2010.

Comments on the proposed amendments to Local Rule 2.23, Judicial Sale of Real Estate, can be submitted via email to [rulecom@montcourt.org](mailto:rulecom@montcourt.org) or in writing to:

James W. Drubert, Court Administrator  
Montgomery County Common Pleas Court, General Division  
41 N. Perry Street  
P.O. Box 972  
Dayton, OH 45422

**COMMENTS MUST BE RECEIVED BY 4:30 P.M. ON FRIDAY, APRIL 2, 2010.**

**Rule 2.23 – Judicial Sale of Real Estate**

Amended 5/10/95; Effective 6/15/95

Amended 11/14/02; Effective 1/1/03

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5 I. CERTIFICATION:

6 A. In every action hereinafter filed in any division of the Common Pleas Court of Montgomery County,  
7 Ohio, wherein a judicial sale of real estate is contemplated by the Complaint or subsequent  
8 pleadings the party praying for said sale or the attorney for the party praying for said sale shall  
9 endorse thereon the following Certification:

10 1. “The undersigned hereby certifies that an examination of the public records of Montgomery  
11 County, Ohio, has been made to determine the ownership of subject real estate and all parties  
12 who may claim an interest therein, and that, in the opinion of the undersigned, all parties have  
13 been named as parties to this action,” stating as exceptions any interested party not so named.

14 II. ORDER:

15 A. Upon any Decree subsequently issued which orders the sale of real estate, the party or attorney  
16 having requested said sale shall further certify:

17 1. “The undersigned hereby certifies that the examination of title to subject real estate has been  
18 extended to (date) to determine if any parties have acquired any interest therein subsequent to

19           said previous examination and said examination discloses that, in the opinion of the  
20           undersigned, there are no such parties except parties to whom the doctrine of lis pendens  
21           applies,” also stating as further exceptions any such party not subject to lis pendens.

22   III. NOTICE OF SALE:

23       A. In every action in any division of the Common Pleas Court of Montgomery County, Ohio, wherein a  
24       judicial sale of real estate is ordered by the Court, the attorney for the plaintiff, or such other party  
25       requesting the sale, shall promptly mail notice of the time, date and location of the sheriff’s sale to  
26       the record owner(s) of the subject real estate and to all other interested parties not in default for  
27       failure to appeal, or their counsel of record, at their respective last known addresses. The record  
28       owner(s) of the real estate shall be noticed by mail in all cases whether or not in default for failure  
29       to appear, except when said owner(s) were originally served with summons solely by publication.  
30       No other parties to the proceeding in default of answer need be served with notice of sale except  
31       by publication as provided by R.C. Sections 2329.26 and 2329.27. Failure to provide timely notice  
32       to interested parties shall constitute grounds for denying confirmation of the sale.

33   IV. REQUIRED FILING:

34       A. Not less than fourteen (14) days prior to the scheduled sale date, for the party requesting the sale  
35       shall file with the Clerk of Courts a Certificate of Service of Notice of Sale Date specifying the date  
36       and manner of service and the names and addresses of all interested parties or their respective  
37       counsel of record who were sent notice. Failure to timely file the certificate of service required by  
38       this rule shall constitute grounds for denial of the confirmation of sale.

39   V. CANCELLATION OF SALE:

40       A. In every action in any division of the Common Pleas Court of Montgomery County, Ohio, wherein a  
41       judicial sale of real estate ordered by the Court is to be canceled, it is ordered by this Court that the  
42       attorney and/or party canceling the sale must file an entry canceling sale or present a copy of a  
43       filed bankruptcy petition. The party requesting the cancellation must arrange to have a copy of the  
44       file-stamped entry or bankruptcy petition delivered to the Montgomery County Sheriff prior to said  
45       sale. It is not the responsibility of the Montgomery County Clerk of Courts or the Bailiff to notify  
46       the Sheriff of any cancellation.

47   VI. PROCEDURE:

48       A. The Sheriff, deputy or party conducting the sale shall, prior thereto, announce that any purchasers  
49       shall have thirty (30) days from the date of sale to obtain an examination of title to said real estate.  
50       Should examination disclose the title so purchased to be unmarketable by reason of any defect in  
51       the proceedings or the existence of any interest not disclosed in either of the certifications  
52       described above, no liability shall be predicated on the certifications but said purchaser may, within  
53       the thirty (30) day period, notify the Court thereof by written motion requesting that said sale be  
54       set aside. If the Court, upon hearing thereof, finds said title to be unmarketable, the Court shall

55 refuse to confirm said sale. The Court may, however, fix a reasonable time, not to exceed ninety  
56 (90) days, within which such defects may be corrected.

57 VII. WAIVER:

58 A. A purchaser may waive any part or all of the thirty (30) day period by signing the Confirmation  
59 Entry, but no Confirmation Entry not approved by the purchases shall be filed until said period has  
60 expired.

61 VIII. TERMS OF SALE:

62 A. Mortgage Foreclosure Sales, Terms of Sale:

63 1. The successful bidder must deposit 10% of the purchase price immediately following the sale.  
64 The required 10% deposit is waived where the purchaser is the first lien holder. The unpaid  
65 balance of the purchase price must be paid to the Montgomery County Sheriff by certified or  
66 cashier's check within fifteen (15) days of the filing date of the Confirmation of Sale and  
67 Distribution Entry.

68 B. Treasurer's Tax Sales, Terms of Sale:

69 1. The successful bidder must deposit \$1,000.00 plus transfer and recording fees immediately  
70 following the sale. The unpaid balance must be paid to the Montgomery County Sheriff by  
71 certified or cashier's check within fifteen (15) days of the filing date of the confirmation of sale  
72 and distribution entry.

73 IX. Section 1 of the Rule (Certification) shall not apply to proceedings under R.C. Section 5721.18.

74 X. APPRAISERS' FEES:

75 A. Pursuant to O.R.C. 2335.01, 2335.02 and 311.19, the Court of Common Pleas for Montgomery  
76 County, Ohio, orders that the appraisers' fee for the judicial sale of real estate shall be \$60.00.

77 B. Upon motion made with notice and an opportunity for all parties to be heard, the appraiser(s) may  
78 be awarded such lesser or additional compensation as the Court shall determine just and proper.

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**EFFECTIVE APRIL 7, 2010**

The proposed amendments to Loc. R. 2.23 will take effect on **April 7, 2010**, unless prior to such date the Court in its discretion, amends, modifies, or withdraws the local rule. In the event the Court amends, modifies, or withdraws the local rule, the revision will be published for a thirty-day notice period.