

**CHAPTER 400. ENFORCEMENT OF JUDGMENTS RENDERED BY  
MAGISTERIAL DISTRICT JUDGES FOR THE  
PAYMENT OF MONEY**

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**Rule 401. Definitions.**

As used in this chapter:

- (1) *Plaintiff*—The holder of the judgment.
- (2) *Defendant*—A party against whom the judgment has been rendered.

**Official Note:** The definitions in this rule are derived from Pa. R.C.P. No. 3101(a).

**Rule 401.1. Assignment of Judgment; Parties.**

If the judgment has been assigned, upon request of the real party in interest the magisterial district judge shall:

- (1) Cause a docket entry to be made indicating the assignment and the name of the original plaintiff and the name of the real party in interest.
- (2) Issue an amended notice of judgment indicating the assignment and the name of the original plaintiff and the name of the real party in interest.

**Official Note:** The real party in interest (assignee) must produce an assignment of judgment on a form prescribed in accordance with Rule 212, properly executed by the original plaintiff (assignor), before the magisterial district judge notes the assignment on the docket or issues an amended notice of judgment.

When an assignment is entered on the docket pursuant to this rule, the real party in interest becomes the plaintiff as defined in Rule 401, and the original plaintiff shall have no further rights with respect to the judgment.

If the judgment is assigned while there is an outstanding order of execution, the real party in interest should notify the executing officer who is holding the order to assure that any proceeds are distributed properly.

If the judgment has been entered in the court of common pleas the magisterial district judge may not take any action pursuant to this rule. See Rule 402D(4).

**Source**

The provisions of this Rule 401.1 adopted May 17, 2005, effective July 1, 2006, 35 Pa.B. 3218.

**Rule 402. Request for Order of Execution. Entry of Judgment in Court of Common Pleas or Philadelphia Municipal Court.**

A.(1) Execution of a judgment for the payment of money rendered by a magisterial district judge may be ordered by a magisterial district judge in whose office the judgment was rendered or entered, provided the plaintiff files in that office

- (a) not before the expiration of 30 days from the date the judgment is entered by the magisterial district judge, and
- (b) within five years of that date, a request for an order of execution.

(2) The magisterial district judge in whose office the judgment was rendered or entered shall accept all timely requests for an order of execution on that judgment, including when the location of the property to be levied upon is located outside the county of the magisterial district where the judgment was rendered or entered.

B. The request form shall be attached to the order, return and other matters required by these rules.

C. The plaintiff may enter the judgment, for the purpose of requesting an order of execution thereon, in an office of a magisterial district judge other than that in which it was rendered only if levy is to be made outside the county in which the judgment was rendered and the office in which the judgment is entered for execution is that of the magisterial district judge whose magisterial district is situated in the county in which levy is to be made.

The plaintiff may enter the judgment in such other office by filing therein a copy of the record of the proceedings containing the judgment, certified to be a true copy by the magisterial district judge in whose existing office the judgment was rendered or by any other official custodian of the record.

D.(1) The plaintiff may enter the judgment in the court of common pleas in any county or the Philadelphia Municipal Court. When so entered, the indexing,

revival and execution of the judgment shall be in accordance with procedures applicable in the court of common pleas or the Philadelphia Municipal Court.

(2) The judgment may be entered in the court of common pleas or the Philadelphia Municipal Court by filing with the prothonotary or Philadelphia Municipal Court Administrator a copy of the record of the proceedings containing the judgment, certified to be a true copy by the magisterial district judge in whose office the judgment was rendered or by any other official custodian of the record.

(3) The judgment may be entered in the court of common pleas or the Philadelphia Municipal Court after 30 days from the date the judgment is entered by the magisterial district judge. The judgment may not be entered in the court of common pleas or the Philadelphia Municipal Court after five years from the date the judgment is entered by the magisterial district judge.

(4)(a) Within 14 days of entering the judgment in the court of common pleas or the Philadelphia Municipal Court, the plaintiff shall file satisfactory proof of the entry of judgment with the magisterial district court that entered the judgment, and the magisterial district court shall vacate the judgment from its docket.

(b) If after 14 days of entering the judgment in the court of common pleas or the Philadelphia Municipal Court, the plaintiff fails to comply with subparagraph 4(a) of this rule, the defendant may file such proof with the magisterial district court that entered the judgment, and the magisterial district court shall vacate the judgment from its docket.

(5) Except as provided in subparagraphs D(4) and D(6) of this rule, once the judgment is entered in the court of common pleas or the Philadelphia Municipal Court all further process must come from that court and no further process may be issued by the magisterial district judge.

(6) The magisterial district judge shall enter satisfaction on the docket of the magisterial district court proceedings upon the filing by any party in interest of a certified copy of the docket entries of the court of common pleas or the Philadelphia Municipal Court showing the judgment and satisfaction have been entered in that court.

E.(1) As used in this rule, a judgment marked “expired” is a judgment that cannot be satisfied, revived, or vacated because the five-year period designated in Rule 402 has elapsed.

(2) If the plaintiff does not request an order of execution in a magisterial district court or enter the judgment in a court of common pleas or the Philadelphia Municipal Court within five years of the date the judgment was entered by the magisterial district judge, then the judgment shall be marked expired.

**Official Note:** The discretionary language used throughout paragraphs A(1), C, and D is intended to reflect the various options available to the plaintiff for executing upon a judgment rendered by a magisterial district judge.

Under paragraph A(1) of this rule, the execution proceedings are commenced by requesting an “order of execution.” The request may not be filed before the expiration of 30 days after the date the judgment is entered by the magisterial district judge. This will give the defendant an opportunity to obtain a supersedeas within the appeal period. The request must be filed within five years of the date the judgment is entered by the magisterial district judge. No provision has been made for revival of a judgment in magisterial district court proceedings.

Under paragraph A(2), if the plaintiff requests an order of execution in the magisterial district court where the judgment was entered and the property to be levied upon is outside the county of that magisterial district, then the magisterial district judge shall accept the request and use the available automated system to facilitate the transfer of the request to the magisterial district court in the magisterial district where the property is located. The magisterial district judge who receives a request to levy upon property located outside the county of the magisterial district shall neither reject it solely on this basis nor direct the plaintiff to file it with the other court. This requirement is consistent with Rule 403A, which provides that “[u]pon the filing of the request form, the magisterial district judge. . . shall issue the order of execution thereon.”

Paragraph C provides for entering the judgment, for the purpose of requesting an order of execution, in an office of a magisterial district judge other than that in which the judgment was rendered when levy is to be made outside the county in which the judgment was rendered. *Compare* Pa.R.C.P. No. 3002.

As to paragraph D, *see* Section 1516 of the Judicial Code, 42 Pa.C.S. § 1516. The 30-day limitation in the rule appears to be required by this Section. Certification by the magisterial district judge should not be done before the expiration of 30 days after the date of entry of the judgment. The only method available to renew a judgment would be to record the judgment in the prothonotary’s or Philadelphia Municipal Court Administrator’s office prior to the expiration of the five-year period and then follow the applicable Rules of Civil Procedure for the revival of judgments. *See* Pa.R.C.P. No. 3025 *et seq.*; *see also* Phila. M.C.R. Civ.P. No. 126c. Also, paragraph D makes clear that when the judgment is entered in the court of common pleas or the Philadelphia Municipal Court, all further process shall come from that court and that no further process shall be issued by the magisterial district judge except that the magisterial district judge shall enter on the magisterial district court docket vacating of the judgment due to its entry at the court of common pleas or the Philadelphia Municipal Court, or proof of satisfaction of a judgment that had been entered in the court of common pleas or the Philadelphia Municipal Court and subsequently satisfied in that court. This exception is necessary so that procedures exist for entering satisfaction of all judgments with the magisterial district court, regardless of whether the judgment has been certified to and satisfied in the court of common pleas or the Philadelphia Municipal Court. A plaintiff filing a judgment in the court of common pleas or the Philadelphia Municipal Court is required to file satisfactory proof of the entry of judgment with the magisterial district court that entered the judgment, and the magisterial district court will then vacate its judgment. This step ensures that only the enforceable common pleas or Philadelphia Municipal Court judgment will be reportable as an outstanding liability of the defendant.

Paragraph E provides that a judgment shall be marked expired if the plaintiff does not request an order of execution in a magisterial district court or enter the judgment in a court of common pleas or the Philadelphia Municipal Court within five years of the date the judgment was entered by the magisterial district judge. Limiting the time period for entry of the judgment to five years will give a plaintiff sufficient time to act without indefinitely penalizing a defendant.

#### Source

The provisions of this Rule 402 amended through April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499; amended March 27, 1992, effective 90 days from the date on which the Order is signed, 22 Pa.B. 1893 and 1900; amended December 15, 2000, effective January 1, 2001, 30 Pa.B. 6882;

amended April 5, 2002, effective January 1, 2003, 32 Pa.B. 2199; amended September 26, 2013, effective December 25, 2013, 43 Pa.B. 5989; amended July 22, 2019, effective January 1, 2020, 49 Pa.B. 4003. Immediately preceding text appears at serial pages (368674) to (368676).

**Rule 403. Issuance and Reissuance of Order of Execution.**

A. Upon the filing of the request form, the magisterial district judge shall note on the form the time and date of its filing and shall issue the order of execution thereon. The magisterial district judge shall deliver the order of execution for service and execution to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge issuing the order is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth.

B. (1) Upon written request filed by the plaintiff within five years from the date of entry of the judgment, an order of execution shall be reissued at any time, and any number of times.

(2) If an order of execution is superseded by an appeal, writ of certiorari, supersedeas, or a stay pursuant to a bankruptcy proceeding or other federal or state law, and

(a) the appeal, writ of certiorari, or supersedeas is stricken, dismissed, or otherwise terminated; or

(b) the bankruptcy or other stay is lifted; and

(c) the plaintiff wishes to proceed with the order of execution,

the plaintiff must file with the magisterial district judge a written request for reissuance of the order of execution in accordance with subparagraph (1).

C. A written request for reissuance of the order of execution filed pursuant to subparagraph B(2) must be accompanied by a copy of the court order or other documentation striking, dismissing, or terminating the appeal, writ of certiorari, or supersedeas, or lifting the bankruptcy or other stay.

**Official Note:** Under subdivision A, the order may be executed by the sheriff of the county in which the office of the issuing magisterial district judge is situated, as well as by any certified constable in that county.

If payment of the judgment was ordered to be made in installments under Rule 323, the magisterial district judge should not issue an order of execution on the judgment unless it appears that there was a default in the installment payments.

Subdivision B will permit the reissuance of an order of execution upon a timely-filed written request of the plaintiff. *Compare* Pa.R.C.P. No. 3106(b). The written request for reissuance may be in any form and may consist of a notation on the permanent copy of the request for order of execution form, "Reissuance of order of execution requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reissued order of execution, "Reissued. Request for reissuance filed \_\_\_\_\_ (time and date)." A new form may be used upon reissuance, those portions retained from the original being exact copies although signatures may be typed or printed with the mark "/s/." There are no filing costs for reissuing an order of execution, for the reissuance is merely a continuation of the original proceeding. However, there may be additional server costs for service of the reissued order of execution.

## 246 Rule 404

GENERAL

The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

### Source

The provisions of this Rule 403 amended through April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499; amended March 27, 1992, effective 90 days from the date on which the Order is signed, 22 Pa.B. 1893 and 1900; amended July 16, 2001, effective August 1, 2001, 31 Pa.B. 4055; amended April 5, 2002, effective July 1, 2003, 32 Pa.B. 2207; amended August 14, 2013, effective in 30 days on September 13, 2013, 43 Pa.B. 4967; amended April 17, 2020, effective September 1, 2020, 50 Pa.B. 2252. Immediately preceding text appears at serial pages (399221) to (399222).

### Rule 404. Notation of Time of Receipt.

The sheriff or certified constable receiving the order shall note upon the form the date and time that it was received.

**Official Note:** Compare Pa. R.C.P. No. 3105.

### Source

The provisions of this Rule 403 amended July 16, 2001, effective August 1, 2001, 31 Pa.B. 4056. Immediately preceding text appears at serial page (272488).

### Rule 405. Service of Order of Execution.

A. Service of the order of execution shall be made by the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge is situated by levy within 60 days of the issuance or reissuance of the order. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth.

B. At the time of the levy, the officer executing the order of execution shall give the defendant a copy of the order or leave it at the place of levy, but if the place of levy is not the defendant's residence or usual place of business and the defendant has not been given a copy of the order the copy shall be mailed to the last known address of the defendant. If the levy is made upon property of the defendant in the possession of another person, a copy of the order shall similarly be made available to that person as well as to the defendant.

**Official Note:** The 60 day limitation in subdivision A was considered to allow the executing officer sufficient time in which to make the levy. The executing officer may make as many levies as necessary within the 60 day limitation under an order of execution.

**Source**

The provisions of the Rule 405 amended through April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499; amended July 16, 2001, effective August 1, 2001, 31 Pa.B. 4055. Immediately preceding text appears at serial page (272488).

**Rule 406. Property Subject to Levy.**

The levy pursuant to the order of execution issued by the magisterial district judge shall be made only upon tangible, nonperishable personal property of the defendant. The levy may be made upon any such property within the county wherein the order is issued.

**Official Note:** The first sentence in this rule restricts levy pursuant to an order of execution issued by a magisterial district judge to levy upon tangible, nonperishable personal property of the defendant. It was thought that the various intricacies applying to levy or attachment execution upon other types of property, particularly when garnishees are involved (see Pa. R.C.P. Nos. 3140—3148) were too technical and certainly too time consuming for magisterial district court execution proceedings.

**Source**

The provisions of this Rule 406 amended April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499. Immediately preceding text appears at serial pages (31610) and (25087).

**Rule 407. General Monetary Exemption.**

A defendant may claim his statutory exemption in kind or in cash at any time before the date of the sale by notifying the officer executing the order of his claim and, if the exemption is claimed in kind, by designating the specific items of property which he elects to remain as exempt. Failure of the defendant to claim his statutory exemption shall not constitute a waiver thereof.

**Official Note:** Compare Pa. R.C.P. No. 3123(a). The general monetary exemption referred to in this rule is contained in the Judicial Code, § 8123, 42 Pa.C.S. § 8123, as amended by § 10(93) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53. The debtor may not, either by express or implied contract, waive exemptions from executions granted by statute. See the Judicial Code, § 8122, 42 Pa.C.S. § 8122, as amended by § 10(92) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53.

**Source**

The provisions of this Rule 407 amended through April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499. Immediately preceding text appears at serial page (25087).

**Rule 408. Setting Aside Exempt Property.**

A. Upon receipt of a claim for exemption in kind, the officer executing the order shall set aside from the designated property enough thereof as appraised by

him to equal the value of the exemption unless the property is incapable of division. In the event of failure of the defendant to claim his statutory exemption, the executing officer shall similarly choose, appraise and set aside property in kind.

B. If the executing officer cannot set aside property in kind because the property in his hands is not capable of appropriate division, he shall set aside from the proceeds of the sale and pay to the defendant in cash the amount of his statutory exemption.

C. The defendant, or any party in interest, may appeal to the magisterial district judge who issued the order of execution from any appraisal or designation of property made by the executing officer, provided the appeal is made within two (2) days after the appraisal or designation; but the plaintiff may appeal at any time before the sale from a setting aside of property by the executing officer on the ground that it is excessive or illegal.

**Official Note:** Compare Pa. R.C.P. No. 3123(b), (c), (d). The provision for the plaintiff seems necessary because of the limited nature of the levy under Rule 406 and because he may not be aware, within two days, of a setting aside similar to the right of the defendant, under Rule 420A(2), to contest a levy claimed to be excessive or illegal.

#### **Rule 409. Notice Accompanying Order of Execution.**

The copy of the order of execution given or made available to the defendant under Rule 405B shall contain the following notice:

##### NOTICE TO DEFENDANT

(1) This Order of Execution has been issued because there is a judgment against you which remains unpaid. It may cause your tangible personal property to be taken and sold to pay the judgment.

(2) The law provides that certain property cannot be taken on this order of execution. Your real estate cannot be taken on this execution, nor can perishable personal property or personal property which is intangible such as your bank accounts. There are some other types of property which are exempt from execution under State and Federal Law, such as wearing apparel, bibles, school books, sewing machines, military uniforms and equipment, most wages and unemployment compensation, social security benefits, certain retirement funds and accounts, certain veteran and armed forces benefits, certain insurance proceeds and such other exemptions as may be provided by law.

(3) In addition, there is a general monetary exemption of \$300. However, this exemption may be reduced or extinguished by the value of property you own which could be taken on a writ of execution issued by a court of common pleas but which cannot be taken on this order of execution which is issued by a magisterial district judge. For example, the \$300 exemption may be reduced or extinguished by the value of your equity in real estate or by money you have in a bank account, except money in your bank account which is itself generally



exempt from execution, such as social security payments. Also, the \$300 exemption does not apply to a judgment for support, a judgment against a debtor who is not an individual, a judgment obtained for board for four weeks or less or a judgment for \$100 or less obtained for wages for manual labor.

(4) If you are entitled to all or part of the \$300 exemption, you may claim it at any time before the execution sale by notifying the officer (constable or sheriff) executing this order of your claim. You should tell the officer whether you want this exemption to be taken out of the property levied upon or out of cash from the proceeds of the sale and, if the exemption is claimed in property, you should designate the property which you choose to retain as exempt. If you claim this exemption in property, the officer executing this order will set aside, from the property designated by you, property as appraised by the officer up to the value of your exemption. If you do not claim this exemption, the officer will choose, appraise and set aside property up to the value of your exemption for you. If the property cannot be so divided, the officer will set aside from the proceeds of the sale and pay to you in cash the amount of your exemption or whatever lesser amount is received as proceeds of the sale.

(5) You may appeal to the magisterial district judge who issued this order from any appraisal or designation of property made by the officer executing this order, provided the appeal is made within two days after the appraisal or designation. Also, at any time before the sale, you may file with the magisterial district judge who issued this order an objection to the levy on the ground that it is illegal or is excessive compared to the amount of the judgment, interest and probable costs. Upon such an appeal or objection, the magisterial district judge will notify you of the date and time of the hearing on the appeal or objection. You must be prepared at the hearing to present your side of the case. An appeal from an appraisal or designation of property made by the officer executing this order may simply state, "I appeal from the (appraisal) (designation) made by the officer executing the order of execution against me (name)." An objection to the levy on the ground that it is illegal or is excessive compared to the amount of the judgment, interest and probable costs may simply state, "I object to the levy against me (name) on the ground that it is (illegal) (excessive)." Appeals and objections should be made in writing.

(6) YOU MAY FEEL THAT YOU NEED THE ADVICE OF A LAWYER IN THIS MATTER. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND WHERE YOU CAN GET LEGAL HELP.

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Name

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Address

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Telephone Number

**Official Note:** This rule requires that the defendant be given notice of certain rights and exemptions relative to orders of execution issued by magisterial district judges.

Subdivision (2) of the rule first sets forth the limitations upon execution in these cases contained in Rule 406. It then gives some general information concerning State and Federal exemption. More specifically, these are as follows:

#### EXEMPTIONS UNDER PENNSYLVANIA LAW

1. General \$300 statutory exemption, Judicial Code, § 8123, 42 Pa.C.S. § 8123.
2. Particular personal property exemption—wearing apparel, bibles and school books, sewing machines, military uniforms and equipment, Judicial Code, § 8124(a), 42 Pa.C.S. § 8124(a).
3. Certain retirement funds and accounts, Judicial Code, § 8124(b), 42 Pa.C.S. § 8124(b):
  - Public School Employees, 24 P. S. § 8533.
  - State Employees, 71 P. S. § 5953.
  - Police Pension Funds, 53 P. S. § 761.
  - Philadelphia Pension Fund, 53 P. S. § 13431.
  - Pittsburgh Pension Fund, 53 P. S. § 23561.
  - Pennsylvania Municipal Employees, 53 P. S. § 881.101 *et seq.*
  - Private employees' pensions or annuity funds, Judicial Code, § 8124(b)(7), 42 Pa.C.S. § 8124(b)(1)(vii).
  - Self-employed retirement or annuity funds, Judicial Code, § 8124(b)(8), 42 Pa.C.S. § 8124(b)(1)(viii).
4. Certain insurance proceeds, Judicial Code, § 8124(c), 42 Pa.C.S. § 8124(c):
  - Fraternal society benefits, Judicial Code, § 8124(c)(1), (8), 42 Pa.C.S. § 8124(c)(1), (8).
  - Workmen's Compensation, Judicial Code, § 8124(c)(2), 42 Pa.C.S. § 8124(c)(2).
  - Group Insurance, Judicial Code, § 8124(c)(5), 42 Pa.C.S. § 8124(c)(5).
  - Life insurance and annuities, Judicial Code, § 8124(c)(3), (4), (6), 42 Pa.C.S. § 8124(c)(3), (4), (6).
  - Accident and disability, Judicial Code, § 8124(c)(7), 42 Pa.C.S. § 8124(c)(7).
  - No-fault motor vehicle accident benefits, 40 P. S. § 1009.106(f).
5. Personal earnings, subject to the exceptions for support, board, student loan obligations, Judicial Code, § 8127, 42 Pa.C.S. § 8127.
  - Unemployment Compensation, 43 P. S. § 863.
6. Tangible personal property on international exhibition, Judicial Code, § 8125, 42 Pa.C.S. § 8125.
7. Common carrier, property in interstate transit, Judicial Code, § 8126, 42 Pa.C.S. § 8126.
8. See also Judicial Code, Section 8121, 42 Pa.C.S. Section 8121.

#### EXEMPTIONS UNDER FEDERAL LAW

1. Certain wages and compensation:
  - Longshoremen's and harbor workers' compensation, 33 U.S.C. § 916.
  - Merchant seamen's wages, 46 U.S.C. § 601.
  - Injury or death resulting from war-risk hazard, 42 U.S.C. § 1717.
2. Social Security benefits, 42 U.S.C. § 407.
3. Certain retirement funds and accounts:
  - Civil Service, 5 U.S.C. § 8346(a).
  - Foreign Service, 22 U.S.C. § 1104.
  - Railroad Retirement, 45 U.S.C. §§ 228L, 231m.
  - Judges' annuities, 28 U.S.C. § 376(n).

4. Certain veteran and armed forces benefits:
  - Laws administered by the Veterans Administration, 38 U.S.C. § 3101.
  - Armed Forces Survivor Benefit Plan, 10 U.S.C. § 1450(i).
  - Savings deposited with armed forces, 10 U.S.C. § 1035.
  - Medal of Honor Roll Special Pension, 38 U.S.C. § 562(c).
5. Miscellaneous: Property of a foreign state, 28 U.S.C. §§ 1609, 1611.
  - Homestead Land, 43 U.S.C. § 175.
  - Rail Fund, 45 U.S.C. § 822(e).

Subdivision (3) deals with the reduction or extinguishment of the \$300 general monetary exemption when the defendant owns property generally subject to execution but not subject thereto under the limitations applying to orders of execution issued by magisterial district judges. See the Judicial Code, § 8123(c), 42 Pa.C.S. § 8123(c). The subdivision then sets forth other statutory exclusions from the \$300 general monetary exemption. See the Judicial Code, § 8123(b), 42 Pa.C.S. § 8123(b).

Subdivision (4) informs the defendant of the procedures for claiming the \$300 monetary exemption. See Rules 407 and 408A and B.

Subdivision (5) informs the defendant of the right to appeal from appraisals or designations of property (see Rule 408C) and of the right to file an objection to the levy on the ground that it is illegal or excessive (see Rule 413). The defendant is also informed under subdivision (5) that he/she will be given a hearing on these matters (see Rules 420 and 421).

Subdivision (6) contains advice as to obtaining the help of a lawyer.

#### Source

The provisions of this Rule 409 amended through July 1, 1982, effective August 16, 1982, 12 Pa.B. 2264. Immediately preceding text appears at serial pages (43157) to (43158).

### Rule 410. Stay of Execution Generally.

(A) Execution shall be stayed as to the property of the defendant upon the occurrence of any of the following:

- (1) Upon written request of the plaintiff to the magisterial district court.
- (2) Upon the entry of a bond with the magisterial district court by any person or party in interest, with security approved by the magisterial district judge, in the amount of the plaintiff's judgment, including probable interest and costs, or in such lesser amount as the magisterial district judge may direct, naming the Commonwealth of Pennsylvania as the obligee, and conditioned to pay the amount due within 90 days of the entry of the bond, unless the time for payment is extended by the magisterial district judge.
- (3) Upon request of the defendant or party in interest to the magisterial district court made in compliance with federal or state law.

(B) When execution is stayed pursuant to this rule, the stay may not be lifted without written order of the magisterial district judge.

(C) After a stay is lifted, execution may proceed without reissuance of the order of execution.

**Official Note:** Compare Pa.R.C.P. No. 3121(a). Other rules in this chapter may also provide for a stay in specific circumstances covered by those rules. The magisterial district court shall enter stays in compliance with federal or state law, such as the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901 *et seq.*

**Source**

The provisions of this Rule 410 amended April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499; amended June 9, 2008, effective January 1, 2009, 38 Pa.B. 3355; amended August 14, 2013, effective in 30 days on September 13, 2013, 43 Pa.B. 4967; amended April 17, 2020, effective September 1, 2020, 50 Pa.B. 2252. Immediately preceding text appears at serial pages (368341) to (368342).

**Rule 411. Right of Executing Officer to Break and Enter.**

The officer executing the order, after having made a levy upon any personal property, may enter the place or building in which the goods are contained either peaceably or by breaking in by force for the purpose of taking manual possession of or selling the property levied upon. No bond shall be required of the plaintiff by the executing officer.

**Official Note:** Compare Pa. R.C.P. No. 3127.

**Rule 412. Notice of Sale.**

(A)(1) The executing officer shall give notice of the sale of personal property at least six days prior to the sale.

(2) The executing officer shall give notice of the sale in the following manner:

(a) By handbill posted in the magisterial district court from which the order of execution issued and, if different from the court from which the order issued, in the magisterial district court in the magisterial district in which the place of the sale is located.

(b) By handbill posted at the place of sale and, if different from the place of sale, at the place of levy.

(c) By mailing a copy of the handbill to the plaintiff and to the defendant at his or her last known address.

(B) The notice of sale shall include a notice that all claims to the property must be filed before sale in the magisterial district court from which the order of execution issued and that all claims to the proceeds must be filed in that court before distribution; that a proposed schedule of distribution will be filed in that court on a date specified not later than five days after the sale; and that distribution will be made in accordance with the proposed schedule unless exceptions are filed in that court within ten days thereafter. No further notice of the filing of the schedule of distribution need be given.

(C) If a new date for sale is set, new notice shall be given as prescribed in paragraphs (A) and (B) of this rule.

**Official Note:** Compare Pa.R.C.P. No. 3128. See Section 8151 of the Judicial Code, 42 Pa.C.S. § 8151, as to giving notice to the Department of Revenue.

**Source**

The provisions of this Rule 412 amended through December 16, 1983, effective December 1, 1983, 13 Pa.B. 3875; amended June 9, 2008, effective January 1, 2009. Immediately preceding text appears at serial page (309546).

**Rule 413. Objections to Levy and Property Claims.**

If before the sale:

(1) the defendant files in the office of the magisterial district judge from whose office the order of execution issued an objection to the levy on the ground that it is illegal or is excessive compared to the amount of the judgment, interest and probable costs, or

(2) a third party files in the office of the magisterial district judge a claim to all or part of the property levied upon

the magisterial district judge shall stay the sale of property affected by the objection or claim pending a determination under Rule 420.

**Official Note:** This rule provides for a stay of sale pending determination under Rule 420 of the matters mentioned. As to the defendant's objections, see generally Pa. R.C.P. No. 3121. As to a stay because of property claims, see Pa. R.C.P. No. 3121(a)(3).

**Rule 414. Plaintiff as Purchaser.**

Whenever personal property sold on execution is purchased by a plaintiff entitled to receive all or part of the proceeds of the sale, the officer executing the order, upon proof of that fact, shall accept on account of the purchase price the receipt of the plaintiff up to the amount of the proceeds to which he is entitled.

**Official Note:** Compare Pa. R.C.P. No. 3133. Since only tangible, personal property is involved, lien creditors are not included in this provision as they are in the cited rule.

**Rule 415. Transfer of Property to Purchaser.**

When the officer executing the order sells personal property in execution, he shall upon request of the purchaser execute and deliver to the purchaser a bill of sale setting forth the caption of the case and a description of the property.

**Official Note:** Compare Pa. R.C.P. No. 3134.

**Rule 416. Distribution of Proceeds. Priorities.**

A. Not later than five days after the sale of personal property the officer executing the order shall prepare a proposed schedule of distribution of the proceeds of sale which shall be kept on file in the office of the magisterial district judge from which the order issued and shall be available for inspection. No schedule of distribution need be filed when the property is sold to the plaintiff for costs only.

B. When a receipt of the plaintiff has been accepted on account of the purchase price, the schedule shall set forth the plaintiff's name and address, the amount of the judgment and the amount of credit claimed or allowed upon the purchase price.

C. Unless written exceptions are filed in the office of the magisterial district judge from which the order issued not later than ten days after the filing of the proposed schedule of distribution, the officer executing the order shall distribute the proceeds of the sale directly to the party or parties entitled to receive the proceeds in accordance with the proposed schedule.

D. When levies are made against the same property by one or more executing officers under orders of execution issued at the request of separate plaintiffs, priority of distribution of the proceeds of the sale as between such plaintiffs shall be determined by the time their respective requests for orders of execution or reissuance thereof were filed in the office of the issuing magisterial district judge.

**Official Note:** Subdivision C makes clear that it is the responsibility of the executing officer to distribute the proceeds of the sale directly to the party or parties entitled to receive the proceeds. The executing officer should segregate from personal funds, hold in escrow, and ensure the safekeeping of any proceeds held prior to distribution.

Compare Pa. R.C.P. No. 3136(a), (b), (d), and 3137(a). Subdivision D of this rule bases the determination of priorities on the diligence of the plaintiffs and recognizes that there may be more than one executing officer in some instances. It differs from Rule 3137(a) under which priorities are based on the time of delivery of the writs of execution to the sheriff, since it was thought that priorities should not depend upon the time of transmission of the order of execution from the magisterial district judge to the executing officer.

#### Source

The provisions of this Rule 416 amended March 2, 1977, 7 Pa.B. 893; effective March 2, 1977; amended October 26, 2004, effective January 1, 2005, 34 Pa.B. 6131. Immediately preceding text appears at serial pages (256520) and (303835).

### **Rule 417. Officer's Expenses and Fees.**

The plaintiff shall pay expenses and fees of execution promptly upon demand of the executing officer, but before service of the order of execution the executing officer may require the plaintiff to pay in advance only expenses and fees incident to levy. Expenses and fees of execution paid by the plaintiff shall be deemed taxable costs for refund to him from the proceeds of any sale.

**Official Note:** This rule will restrict requiring advance payments before service of the order of execution to payments for expenses and fees, including mileage, incident to levy. Compare Pa. R.C.P. No. 3138. See also Rule 419(7).

Amended June 1, 1971, effective immediately.

#### Source

The provisions of this Rule 417 amended April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499. Immediately preceding text appears at serial page (31613).

### **Rule 418. Abandonment of Levy for Inability to Hold Sale.**

(A) Except as otherwise provided in paragraph (B), the officer executing the order shall abandon the levy if sale of the property levied upon is not held within three months after the levy.

(B) Periods during which sale is stayed under any provision of these rules shall be excluded in computing the three month period provided in paragraph (A), but in all cases the officer executing the order shall abandon the levy if sale of the property levied upon is not held within six months.

**Official Note:** Compare Pa.R.C.P. No. 3120(2). This rule requires the executing officer to abandon the levy if sale is not held within three months, excluding time periods when the execution may be stayed, but in all cases the levy must be abandoned if the sale is not held within six months of the levy. It was considered that the particular execution proceedings should terminate under these circumstances.

**Source**

The provisions of this Rule 418 amended March 2, 1977, 7 Pa.B. 893, effective March 2, 1977; amended June 9, 2008, effective January 1, 2009, 38 Pa.B. 3356. Immediately preceding text appears at serial page (309548).

**Rule 419. Officer's Return.**

The officer executing the order shall make a return on the order of execution form. The return shall show:

- (1) The date, time and place of any levy.
- (2) His appraisal of the value of any property set aside as exempt property.
- (3) The date, time and place of any sale.
- (4) The proceeds received from any sale, specifying any sale on receipt to the plaintiff.
- (5) His expenses and fees.
- (6) Any distribution made by him.





(7) If no levy upon property of the defendant could be made, or if the levy was abandoned, the reasons therefor; or that the order was returned unexecuted for nonpayment of expenses and fees.

**Official Note:** Compare Pa. R.C.P. No. 3139. The return required by this rule is quite detailed in view of the fact that executing officers will often be constables.

**Rule 420. Determination of Property Claims and Disputes.**

A. The magisterial district judge from whose office the order of execution issued shall hear and determine the following matters:

- (1) An appeal made in accordance with Rule 408C from an appraisal, designation or setting aside of property by the officer executing the order.
- (2) Any objection by the defendant to the levy on the ground that it is illegal or excessive which was filed in accordance with Rule 413.
- (3) Claims of third parties to the property levied upon which were filed in accordance with Rule 413.
- (4) Exceptions to the proposed distribution filed in accordance with Rule 416C.

B. In acting under subdivision A of this rule, the magisterial district judge may:

- (1) Reappraise or redesignate property appraised or designated by the executing officer, or order inclusion in the levy of property set aside by that officer.
- (2) Order the abandonment of the levy in whole or part, or release property from the levy.
- (3) Stay or prohibit a sale of all or part of the property levied upon.
- (4) Order that property levied upon be released to a third party who has a valid claim thereto.
- (5) Stay the distribution, or order a distribution different than that proposed by the executing officer.

C. The magisterial district judge from whose office the order of execution issued may, upon written request of any party in interest made before delivery of property sold pursuant to the order and upon proper cause shown, set aside the sale of that property and order a resale or enter any other order which may be just and proper under the circumstances.

**Official Note:** Subdivision A of this rule sets forth the various disputes concerning the execution that, along with property claims, may be brought before the magisterial district judge. Subdivision B sets forth the relief that the magisterial district judge may grant in connection with these disputes. The provisions of this rule can be compared with the Pennsylvania Rules of Civil Procedure as follows:

- A(1)—See Pa. R.C.P. No. 3123(d)
- A(2)—See Pa. R.C.P. Nos. 3119(2) and 3121
- A(3)—See Pa. R.C.P. Nos. 3121(a) and 3202
- A(4)—See Pa.R.C.P. No. 3136(f)
- B(1)—See Pa. R.C.P. No. 3123(d)
- B(2)—See Pa. R.C.P. Nos. 3119(2) and 3121
- B(3)—See Pa. R.C.P. No. 3121

B(4)—See Pa. R.C.P. Nos. 3201-3213

B(5)—See Pa. R.C.P. Nos. 3136 and 3213

This rule does not provide for a preliminary determination by the executing officer as to the merits of a property claim by a third party (see Pa. R.C.P. Nos. 3206, 3207), for it was considered that the magisterial district judge should be readily available for this purpose and that it would not be desirable to allow constables to make any such determination. Also, it was thought to be permissible to require the magisterial district judge to make the determinations and to take the actions mentioned in this rule as an exercise of power ancillary to the magisterial district judges general power to order execution of the judgment. Subdivision C of the rule is based on Pa. R.C.P. No. 3132.

#### Source

The provisions of this Rule 420 amended April 22, 2004, effective July 1, 2004, 34 Pa.B. 2465. Immediately preceding text appears at serial pages (256522) and (300293).

### **Rule 421. Time for Hearing and Determination; Effective Date of Orders and Determination.**

A. The magisterial district judge shall hold hearings on matters to be determined under Rule 420 not later than five days after they are filed, and shall notify all parties in interest of the date and time of the hearing by telephone or other timely means of communication. The magisterial district judge shall enter a determination not later than three days after the hearing.

B. The magisterial district court shall promptly give or mail to the parties written notice of the determination. Notice of the determination shall contain advice as to the right of the parties to file a Statement of Objection, the time within which the statement must be filed, and that the statement is to be filed with the court of common pleas.

C. Rescinded.

D. Any stay of the whole or part of the execution proceedings ordered by the magisterial district judge shall be effective immediately. All other orders and determinations with respect to the whole or part of the execution proceedings shall not take effect until after the expiration of ten days from the date of entry of the order or determination.

**Official Note:** Paragraph A of this rule provides a time schedule within which the matters mentioned in Rule 420 must be heard and determined. These matters should be dealt with expeditiously.

Paragraph D provides that, except for stays, determinations and orders of the magisterial district judge concerning the execution proceedings shall not take effect until after the expiration of ten days from the date of entry of the determination or order. This will give any aggrieved party in interest a chance to obtain a stay by filing a statement of objection in the court of common pleas during that period of time. See Rule 1016.

The form to be used for the Notice required by Rule 421 shall be in substantially the following form:

## Notice

PLAINTIFF \_\_\_\_\_ v. DEFENDANT \_\_\_\_\_

This is to notify you that in the above case:

Docket No. \_\_\_\_\_ the following decision was made:

You have the right to file a Statement of Objection within ten (10) days from \_\_\_\_\_

The Statement of Objection must be filed with the Court of Common Pleas of \_\_\_\_\_ County on a form available at any Magisterial District Court or from the Prothonotary at:

\_\_\_\_\_  
Courthouse Address\_\_\_\_\_  
Date of Decision\_\_\_\_\_  
Magisterial District Judge**Source**

The provisions of this Rule 421 amended April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499; amended March 27, 1992, effective 90 days from the date on which the Order is signed, 22 Pa.B. 1893 and 1900; amended September 3, 2003, effective January 1, 2004, 33 Pa.B. 4663; amended June 1, 2006, effective October 1, 2006, 36 Pa.B. 2955. Immediately preceding text appears at serial pages (309550) to (309551).

**Rule 481. Acts of Assembly Suspended.**

All Acts of Assembly or parts thereof inconsistent with the execution rules in this chapter are suspended to the extent of such inconsistency.

**Source**

The provisions of this Rule 481 amended through April 25, 1979, effective May 25, 1979, 9 Pa.B. 1499. Immediately preceding text appears at serial pages (25091) to (25094).

**Rule 482. Acts of Assembly Not Suspended.**

The following Acts of Assembly shall not be deemed suspended or affected:

- (1) The Uniform Commercial Code, as revised and reenacted by the Act of October 2, 1959, P. L. 1023, 13 Pa.C.S. § 1101 et seq.
- (2) Section 9 of the Act of June 7, 1887, P. L. 365, 15 P. S. § 12009.

**Official Note:** This Section provides that members of cooperative associations shall be individually liable but that no execution can be issued against any member individually until execution on a judgment against the association is returned unsatisfied in whole or in part.

- (3) Section 3377 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 3377.

**Official Note:** This Section of the Probate, Estates and Fiduciaries Code provides that execution shall not issue upon property of the estate of a decedent except upon certain conditions.

- (4) Sections 9 and 10 of the Act of May 21, 1921, P. L. 1045, No. 379, 39 P. S. §§ 359, 360.

**Official Note:** These Sections of the Fraudulent Conveyance Act relate to equitable remedies of creditors.

(5) Section 1 of the Act of May 24, 1933, P. L. 987, 40 P. S. § 117.

**Official Note:** This Section relates to the right of a plaintiff to maintain an action against an indemnity insurer upon return of execution unsatisfied against the insured.

(6) Section 1516 of the Judicial Code, 42 Pa.C.S. § 1516.

**Official Note:** This Section pertains to lien of judgment when the judgment is entered in the court of common pleas.

(7) Section 8151 of the Judicial Code, 42 Pa.C.S. § 8151, added by § 10(96) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. No. 53.

**Official Note:** This Section requires a report or return concerning property to be sold on execution to be given to the Department of Revenue, unless exempted by regulation of that Department.

(8) Section 21 of the Act of April 6, 1937, P. L. 200, 63 P. S. § 281-21.

**Official Note:** This Section provides that, with certain exceptions, a pawnbroker shall have first lien on all pledges and shall not be required by legal process to deliver a pledge without surrender of the pawn ticket.

(9) Section 83 of the Act of June 16, 1936, P. L. 755, 68 P. S. § 321; Section 1 of the Act of May 7, 1929, P. L. 1589, as amended by § 1 of the Act of June 22, 1931, P. L. 889, 68 P. S. § 322.

**Official Note:** These Sections provide for landlord's priority for rent on execution sale against his tenant.

(10) Sections 1114 and 1116(b) of the Vehicle Code, 75 Pa.C.S. §§ 1114 and 1116(b).

**Official Note:** These Sections of the Vehicle Code relate to change of ownership by operation of law or judicial sale and to certificates of title.

(11) Any Act of Assembly providing immunity or exemption of property from execution.

**Official Note:** See, for example, the exemptions from execution contained in Subchapter B of Chapter 81 of the Judicial Code, 42 Pa.C.S. § 8121, et seq.

#### Source

The provisions of this Rule 482 amended through June 30, 1982, effective August 16, 1982, 12 Pa.B. 2266. Immediately preceding text appears at serial page (43165).

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