

ORPHANS' COURT DIVISION RULE 12.9, 12.10 and 12.11

RULES 12.9, 12.10 and 12.11 PUBLIC OR PRIVATE SALE OR OPTIONS OF REAL PROPERTY; MORTGAGE OR LEASE OF REAL PROPERTY

Any petition for leave to make a public or private sale of real property of a decedent or to mortgage, lease, or exchange real property, or to grant an option for the sale, lease, or exchange of real property under Sections 3351, 3352, 3353 or 3354 of the PEF Code shall set forth the following:

Sec. 1. Real Property.

(a) the name, residence and date of death of the decedent; whether the decedent died testate or intestate; the name and date of appointment of the personal representative; and the amount of bond given by the personal representative, if any;

(b) a description adequate to describe the real property involved, with the improvements thereon, how acquired by the decedent, its rental income or value, its value shown by the inventory, and, if the Pennsylvania transfer inheritance tax appraisalment has been filed, its value as shown therein;

(c) the names of all parties interested as heirs, devisees, legatees, or lienholders who will be affected by the granting of the petition, the interest of each, an indication of whether any of such are not *sui juris*, together with the names of their fiduciaries, if any:

(d) the names of the parties in interest consenting to the transaction;

(e) the reasons why the sale or other requested disposition of the real property is desirable for the proper administration and distribution of the estate; and

(f) the mortgages, if any, to be discharged by sale with the consent of the mortgagees;

When approval of a private sale, or an exchange, or an option is sought, then in addition to the requirements set forth in subparagraphs (a) through (f) immediately above, the petition shall set forth:

(g) the name of the proposed purchaser, purchase price, terms of the transaction and that, in the opinion of the petitioner, the price offered is better than can be obtained at public sale; and

(h) that the real property has been valued by at least two qualified real estate appraisers not personally interested in the proposed transaction.

When approval of a mortgage or lease is sought, then in addition to the requirements of subparagraphs (a) through (f) of Section 1 of this rule, the petition shall set forth the name of the person desiring to enter into the transaction, together with a summary of the terms of the instrument which the Court is requested to approve.

Sec. 2. Exhibits.

Exhibits to such petitions shall be attached in the following order:

- (a) a copy of the will, if any;
- (b) a certificate of the proper county authority showing the assessed value of the real property;
- (c) the joinder of parties who consent to the transaction; and
- (d) a copy of the inventory;

When approval of a private sale, or an exchange, or an option is sought, then in addition to the exhibits required by subparagraphs (a) through (d) immediately above, the following exhibits shall be attached:

- (e) a copy of the contract of sale or other instrument which the Court is requested to approve; and
- (f) copies of the affidavits of the appraisers or the appraisals which conform to the requirement of the PA. O.C. Rules.

When approval of a mortgage or lease is sought, then in addition to the exhibits required by subparagraphs (a) through (d) of this Section 2, a copy of the proposed mortgage or lease shall be attached as an exhibit.

Sec. 3. Notice.

If the property is located in Allegheny County, then public notice of a proposed public or private sale, or an exchange, or an option shall be given by advertisement once a week for three successive weeks in the daily editions of

the Pittsburgh Legal Journal and in one newspaper of general circulation published in Allegheny County. If the property is not located in Allegheny County, then such public notice shall be given in the legal periodical, if any, of that county and in one newspaper of general circulation published in such county. In either case, public notice shall include the posting of at least five notices of the proposed sale, exchange or option on and in the immediate vicinity of the premises to be sold, exchanged, or optioned.

Sec. 4. Bid Process.

On or before the return day of a public sale, the proofs of publication and of posting of notice, if required, shall be filed. On such return day, the Court will then open the sales to competitive sealed bidding or may permit competitive oral bidding in an open court or the Court may refer the matter to the Clerk and fix the time and place during the same day when the Clerk will offer the property at auction and make immediate return thereto to the Court. The successful bidder shall forthwith deposit cash or its equivalent with the personal representative in a sum not less than ten percent of the amount of the bid; the balance shall be paid as directed by the Court.

Sec. 5. Additional Security.

On or after the return day of a sale or other transaction hereunder, the Court shall fix the amount of the security or additional security which the personal representative shall be required to enter. If, however, the facts warrant and a stipulation is entered by the surety on any existing security accepting liability for the proceeds of the sale or other transaction, the Court may excuse the personal representative from entering security or additional security. The surety on any additional bond, except for cause shown, shall be the same as on the original bond. The bond shall be presented to the Court for approval.

Sec. 6. Similar Petitions.

Petitions of trustees under Secs. 7133, 7141 and 7142 of the PEF Code, petitions of guardians under Secs. 5152 and 5155 of the PEF Code, and petitions of guardians under Secs. 5521 and 5522 of the PEF Code, shall conform so far as possible to the provisions of this rule.

Sec. 7. Personal Property.

When a sale, pledge, mortgage, lease, exchange, or option of personal property requires the approval of the Court, then the petition for such approval shall conform so far as possible to the provisions of this rule.