



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 91-2021

TO : ALL CONCERNED JUDGES AND CLERKS OF COURT OF THE FIRST AND SECOND LEVEL COURTS

SUBJECT : Assessment and Collection of Fees on Petitions for Issuance of Writ of Possession in Extrajudicial Foreclosure of Mortgages

Acting on the numerous inquiries regarding the assessment and collection of fees relative to Petitions for Issuance of Writ of Possession in Extrajudicial Foreclosure of Real Estate Mortgages under Act No. 3135, as amended by Act No. 4118, all Clerks of Court are hereby **REMINDED** to treat said petitions as *motions* for purposes of assessment and collection of the appropriate fees, if there is no third party claimant.

Section 7, Act 3135, provides that:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, **collect the fees** specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. (Emphasis supplied)

Significantly, in *Metropolitan Bank & Trust Company vs. Hon. Salvador Abad Santos*,¹ the Supreme Court ruled that the Petitions for Issuance of Writ of Possession in Extrajudicial Foreclosure of Real Estate Mortgages under Act No. 3135, as amended by Act No. 4118, are not initiatory pleadings but are considered *motions*, thus:


¹ G.R. No. 157867, 15 December 2009.

xxx The ex-parte petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. xxx An application for a writ of possession is a mere incident in the registration proceeding. Hence, although it was denominated as a "petition," it was in substance merely a motion. [Emphasis supplied]

Thus, considering that *ex-parte* petitions for the issuance of a writ of possession are considered motions,² and since the motion fee for *other motions* is still suspended pursuant to the Resolution of the Court *En Banc* dated 21 September 2004 in A.M. No. 04-2-04-SC, you are only required to collect the fees prescribed in Section 21(e) of Rule 141, Revised Rules of Court, on reception of evidence in *ex-parte* proceedings (with legal research fee), in addition to the prescribed fees in Land Registration Authority (previously Land Registration Commission) cases.

For strict compliance.

07 July 2021


JOSE MIDAS P. MARQUEZ
Court Administrator


MMA/ACI/DSI

²G.R. NO. 160479 : June 8, 2005.