

DIRECTIONS FOR THE PETITIONER

1. Petitions can be filed up until the **day before** the Sheriff's Sale. However, the sooner the better and Petitions filed at least one week in advance of sale are more favorably received. If you are filing within the week of the Sale, you will be asked to explain why you are filing at that time.

2. If filing in person, you must bring an original and two copies of the Petition to the Office of Civil Administration, in room 296 City Hall (second floor) and pay the \$67.68 filing fee. Because electronic filing is mandatory, a \$1.00 per page scanning fee will be assessed for filings submitted in person (see note below regarding electronic filing). If you cannot afford to pay the filing fee, then you can request that the Court waive that fee by filing a *Petition to Proceed in Forma Pauperis* at the same time the *Petition to Postpone* is submitted for filing.

Note: These documents should be filed electronically in the *Motions* section of the Civil Electronic Filing System accessed through the Court's web-site at <https://courts.phila.gov>. The Office of Judicial Records will provide electronic filing assistance in Room 296 City Hall. For electronic filing support, call (215)686-6651 or email OJRCivil@courts.phila.gov.

3. You must **immediately** serve a copy of the filed Petition and issued Rule on Plaintiff's counsel by one of the following methods:

- a. Hand Delivery
- b. Overnight Courier Service (Fed Ex, UPS, DHL, Airborne Express, US Postal Express Mail)

Note: Documents filed electronically may be delivered electronically by the Court to all interested parties that are signed up for electronic filing.

4. After you serve the Petition you must complete the *Affidavit of Service* attached to the petition form, which will show the date and manner of service of the Petition. You must keep the completed *Affidavit of Service* and bring it with you to your hearing.

5. Bring with you all papers you need to prove your claim that a postponement of the Sheriff's Sale is appropriate. You will not be permitted to return with additional information on a different day. If you hire an attorney or have a housing counselor he/she must accompany you to the hearing.

6. After the hearing, if the Court postpones the Sheriff's Sale you will be given a copy of the Order which you must serve on the Sheriff by either fax (215) 686-3971 (save proof of this fax) or by delivering a copy to the Sheriff's Office (bring an extra copy and have it time-stamped) at:

Real Estate Division
Fifth Floor, Land Title Building
100 South Broad
Philadelphia, PA 19110

PLEASE NOTE

You are strongly urged to call the Save Your Home Philly Hotline for housing counseling assistance at

(215) 334-HOME.

HOUSING COUNSELING AGENCY FACSIMILE TRANSMISSION

DATE: _____

TO: _____
[Name and Facsimile Number for Plaintiff's Attorney]

FROM: _____

[Housing Counseling Agency, including Name & Telephone Number of Counselor]

This facsimile confirms that the individual(s) below have requested assistance from this agency regarding a Sheriff's Sale on tax delinquency:

[Name of Defendant(s) / Homeowner(s) / Heir(s)]

[Property Address]

[Date the Agency plans to meet with Defendant(s) / Heir(s) / Petitioner(s)]

IN THE COURT OF COMMON PLEAS
FOR PHILADELPHIA COUNTY, PENNSYLVANIA

CITY OF PHILADELPHIA,
Plaintiff

v.

Defendant

CIVIL DIVISION

_____TERM 20____

No.

BOOK _____; WRIT

RULE TO SHOW CAUSE ORDER

A hearing will be held in the Philadelphia County Court of Common Pleas in City Hall, in Courtroom _____ on _____, at _____ A.M./ P.M. before The Honorable _____, with respect to this matter. The Petitioner must appear on that date and at that time to present evidence as to the reasons(s) that the (Tax Sale) Sheriff’s Sale should be postponed. Petitioner shall bring all documents to the hearing to support their case.

The Petitioner shall immediately serve a copy of the Petition, Rule to Show Cause Order, the proposed Order and all supporting papers upon Plaintiff’s attorney personally or by courier service. On the date of the hearing, Petitioner must provide the Court an Affidavit of Service. The Petition may be dismissed if the Petitioner fails to prove that the Plaintiff’s attorney was served, and no further postponements of the Sheriff’s Sale may be granted by this Court.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS
FOR PHILADELPHIA COUNTY, PENNSYLVANIA

City of Philadelphia, _____ Term,
Plaintiff, No.

v.

Identification Information for
Philadelphia County Sheriff's
Department:

Defendant(s). BOOK _____; WRIT

ORDER

AND NOW, this _____ day of _____, 20 _____,

upon consideration of the Petitioner's Petition to Postpone Tax Sale (Sheriff's Sale) of Real Property,
it is hereby **ORDERED** and **DECREED** that:

- (1) The Petition to Postpone Tax Sale (Sheriff's Sale) of Real Property is **GRANTED / DENIED**, and the sale is postponed to _____20_____.
- (2) The Petitioner must serve a copy of this Order on the Sheriff by either faxing it to (215) 686-3971 or by delivering a copy to the Sheriff's office at:

Real Estate Division
Fifth Floor, Land Title Building
100 South Broad Street,
Philadelphia, PA 19110
- (3) The Philadelphia County Sheriff's Department shall announce said postponement at the Tax Sale Presently scheduled to be conducted on_____.
THIS MAY BE THE ONLY NOTICE YOU RECEIVE OF THE NEXT SHERIFF SALE DATE FOR THIS PROPERTY.
- (4) This Order resolving Petitioner's *pro se* Petition to Postpone, is entered without prejudice to any appropriately filed request for substantive relief.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS
FOR PHILADELPHIA COUNTY, PENNSYLVANIA

CITY OF PHILADELPHIA,
Plaintiff

v.

Defendant

CIVIL DIVISION

_____TERM 20____

No.

BOOK _____; WRIT

TAX SALE (SHERIFF'S SALE) IS SCHEDULED FOR _____, 20____

**DEFENDANT'S PETITION TO POSTPONE
TAX SALE (SHERIFF'S SALE) OF REAL PROPERTY**

Party Filing Petition:

1. Petitioner is _____, an individual with an interest in
Your Full Name

the above-captioned tax foreclosure case.

2. Petitioner has an interest in the real property involved in this tax foreclosure
Action located at _____ in Philadelphia, Pennsylvania.
House Number & Street Name

Petitioner has interest in the property by virtue of the following:

____ Title Owner: I have a deed in my name.

____ Legal Owner: I have inherited this property.

____ Equitable Owner: I am an heir of the estate for this property or have another legal
interest in the property by law.

Residency:

3. The Petitioner resides at _____.
Where the Petitioner Resides

4. If the Petitioner does not reside at the property in interest, why not?

5. The following **adults** are residing at the property in interest:

Reason(s) Why Sale Should Not Proceed as Scheduled:

6. This Tax Sale (Sheriff's Sale) should not proceed for the following reasons [mark *all* that apply]:

_____ I was not served with the Notice of Sheriff's Sale. *If you select this option, you must provide an explanation with details below, including how you found out about this action.*

_____ I have entered into a Contract for Sale in an amount sufficient to pay the property tax obligation in full within _____.
Number of Days

If you select this option, you must attach a complete copy of the Contract for Sale to this Petition.

_____ I have obtained a commitment to finance, which will satisfy the property tax in full within _____ days.

If you select this option, you must attach a complete copy of the Mortgage Commitment to this Petition.

_____ I have a source of funds sufficient to satisfy the property tax obligation (to cure the arrears) within _____ days.

_____ I dispute the amount which the city claims.

If you select this option, you must explain what you are disputing below and provide proof.

_____ I am hiring an attorney to represent me. This attorney will accompany me to any hearing scheduled by the Court for this Petition. *This attorney must accompany you to each and every hearing.*

_____ The Real Property is listed for sale with a real estate agent. The identity of that Real Estate Broker is:

Name of Real Estate Broker

Telephone Number of Real Estate Broker

If you select this option, you must attach a copy of the Listing Agreement with the Realtor.

Reason(s) Why Sale Should Not Proceed as Scheduled (Continued):

6. (Continued)

_____ I have met with a Housing Counseling Agency on _____ and I am in the process of applying for an Owner Occupied Payment Agreement pursuant to Phila. Code Sec. 19-1305.

_____ I am in the process of applying for an Owner Occupied Payment Agreement pursuant to Phila. Code Sec. 19-1305.

_____ Other reasons/explain:

Detailed explanations required for options above:

Rules of Service:

I understand that I must present proof of service at the hearing. I must provide immediately a complete copy of the motion package documents to Plaintiff's counsel by a method which proves that it was served such as the following:

- Hand delivery at the office of the Plaintiff's counsel,
- Fax the Petition with confirmation that it was received,
- Deliver the Petition by overnight courier service (Federal express, UPS, DHL, Airborne Express, or US Postal Service Express Mail)

I understand that if I do not have proof that I complied with this requirement, that my Petition may be dismissed by the Court, and I may have no further opportunity to postpone the sale.

Verification:

This Petition is verified by me. I understand that the statements contained in this Petition are true and correct to the best of my knowledge, information and belief. I understand that the statement herein is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

BY: _____
Your Signature

Print Your Name

Your Address – [No Post Office Boxes]

Last Four Digits of Your
Social Security Number

Your Birth Date

Telephone Number Where You can be
Reached by the Court or by the City's
Attorney

IN THE COURT OF COMMON PLEAS
FOR PHILADELPHIA COUNTY, PENNSYLVANIA

CITY OF PHILADELPHIA,
Plaintiff

v.

Defendant

CIVIL DIVISION

_____TERM 20__

No.

BOOK_____; WRIT

**MEMORANDUM OF LAW IN SUPPORT OF
PETITION TO POSTPONE SHERIFF'S SALE**

I. Matter before the Court and Relief Requested:

The Petitioner, _____ (Your Name), pro se, hereby requests that the Court postpone the Sheriff's Sale of the property located at _____, Philadelphia, PA, scheduled for _____ (Date).

II. Statement of the Questions Involved:

Whether the Court should postpone the Tax Sheriff's Sale in a tax foreclosure case under the circumstances set forth in the attached Petition.

Suggested Response: Yes.

III. Operative Facts:

See attached Petition to Postpone Tax Sheriff's Sale.

IV. **Legal Argument:**

The Court may postpone or stay a Sheriff's Sale in accordance with Pa.R.C.P. 3190, which declares that in rem actions to enforce a tax claim are subject to the same rules as a mortgage foreclosures under Pa.R.C.P. 3180 and 3183. Pa.R.C.P. 3183 (b) provides,

Execution may be stayed by the court as to all or any part of the property of the defendant upon its own motion or application of any party in interest showing . . . (2) any other legal or equitable ground.

Pa.R.C.P. 3183 (b)

The power of the Court to stay a Sheriff's Sale upon a showing of any legal or equitable ground derives not only from the Rules of Court, but also from the inherent power of the court to control its own judgments and thereby prevent injustice. Wilner v. Croyle, 214 Pa. Super. 91, 95, 252 A.2d 387, 389 (1969); Link Building and Loan Association v. Melnick, 325 Pa. 182, 184-185, 189 A. 470, 472 (1937) (Stay of execution is common, citing Sinking Fund Commissioners of Philadelphia v. Philadelphia, 324 Pa. 129, 188 A. 314; Augustine v. Augustine, 291 Pa. 15, 139 A. 585; Lewis v. Linton, 207 Pa. 320, 56 A. 874; Taylor's Appeal, 93 Pa. 21).

Pennsylvania courts have not shied from applying this power and have granted stays in individual cases, see e.g. GMAC Mortgage Corp. of Pa. v. Watford, No. 2697, No. 23 Clearinghouse Review No. 5 at 619 (Pa. C.P. Phila. Jan. 27, 1988) (Order staying Sheriff's Sale on foreclosure judgment until defendant's claim for social security benefits could be resolved), as well as granted mass stays of Sheriff's Sales. See e.g., In Order Court Staying Sheriff Sale of Owner-Occupied Dwellings, Jan. Term 1983 #3414 (Bradley, C.J., Feb. 1983) (Order Granting Petition to Stay Sheriff's Sales); In re Order of Court Staying Execution of Sheriff Sales of Debtor Occupied Dwellings, No. 2 1983, Admin. Dkt (C.P. Allegheny Co. 1983) (Papadakos, A.J.); In re Lawrence County Sheriff's Sales Scheduled for January 18, 1983, No. 9 1983, M.D.

(C.P. Lawrence Co. 1983) (Caiazza, J.) (Petition to Stay Sheriff's Sale due to "the poor state of the local economy" granted).

The power to stay a Sheriff's Sale is always available to the Court to prevent an inequitable result and a manifest injustice. Wilner v. Coyle, 214 Pa. Super. at 95, 252 A.2d at 389. The court's right to stay a Sheriff's Sale has been equally recognized in Tax Sales. City of Easton v. Lawler, 862 A.2d 170 (2004). In consideration of the inherent uniqueness of real estate, the court found that a party's "interests may be irrevocably prejudiced by an intervening tax sale." Id. at 173.

The postponement should be granted for the reasons as set forth in the accompanying Petition.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court postpone the Sheriff's Sale of the subject real property as requested in the foregoing Petition.

Respectfully Submitted,

Petitioner

IN THE COURT OF COMMON PLEAS
FOR PHILADELPHIA COUNTY, PENNSYLVANIA

CITY OF PHILADELPHIA,
Plaintiff

v.

Defendant

CIVIL DIVISION

_____TERM 20__

No.

BOOK_____; WRIT

AFFIDAVIT OF SERVICE
(Provide to the Court on the Date of the Hearing)

I hereby verify, subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities, that a copy of the *Petition to Postpone Tax Sheriff's Sale of Real Property* has been served on the Plaintiff's attorney as follows:

DATE SERVED: _____

METHOD OF SERVICE:

By Fax to the following Number: _____
(Confirmation of fax submission is attached)

Hand Delivery as follows:

Name of Plaintiff's Attorney: _____

Office Address: _____

Name of Person Served: _____

Courier Service (Must Attach Original Receipt from Courier Service):

U.S. Postal Service Express Mail Other:

Federal Express

UPS

DHL

Airborne Express

Date: _____

BY: _____
Your Signature

Print Your Name

Your Address - No Post Office Boxes