

STATE OF VERMONT  
VERMONT SUPREME COURT  
\_\_\_\_\_ TERM, 2021

**Order Promulgating Amendment to Rule 80.1(f) of the Vermont Rules of Civil Procedure**

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 80.1(f) of the Vermont Rules of Civil Procedure be amended to read as follows (deleted matter struck through; new matter underlined):

**RULE 80.1. FORECLOSURE OF MORTGAGES AND JUDGMENT LIENS**

(f) **Accounting; Attorney’s Fees.** If default has been entered as provided in subdivision (c) and the parties have not agreed upon the sum due and included it in a form of judgment, the clerk, upon request of the plaintiff accompanied by an affidavit as to the amount due and upon 7 days’ notice to all parties who have appeared, shall proceed to take an accounting and find the amount of principal, interest to date, and costs due. Such accounting shall be made upon forms furnished by the state. If defendant is an infant or incompetent person, a plaintiff entitled to judgment by default shall proceed as provided in Rule 55(b)(2) (c)(1). If the entry is not by default, an accounting shall be taken at such time and in such manner as the court may order. Reasonable attorney’s fees claimed by the plaintiff under the mortgage or other instrument evidencing indebtedness in an amount not exceeding two percent of the total of principal, interest, and costs due, or in a greater amount expressly agreed upon in the mortgage or other instrument, shall be allowed and included in the amount found due to the accounting without hearing, unless defendant objects, or plaintiff claims a higher fee in the demand for judgment. Upon such objection or claim, attorney’s fees shall be set by the court after notice and hearing.

**Reporter’s Notes—2021 Amendment**

Rule 80.1(f) is amended to update a cross-reference to the provision of the Civil Rules setting forth the appropriate procedure to be followed in proceedings by default against a minor or incompetent defendant.

By virtue of an amendment of V.R.C.P. 55 promulgated November 5, 2019, effective January 6, 2020, the relevant provisions of former V.R.C.P. 55(b) are now incorporated in V.R.C.P. 55(c). The existing cross-reference in former V.R.C.P. 80.1(f) to V.R.C.P. 55(b)(2) referred to the language of that rule that judgment by default was to be entered without notice or hearing if defendant “is not an infant or incompetent person.” For greater clarity the present amendment refers to amended V.R.C.P. 55(c)(1), which carries forward former V.R.C.P. 55(b)(1) in revised form, setting forth specific requirements regarding

representation for minor or incompetent parties, with the added requirement of an affidavit as to the movant's knowledge of the age and competency of the party.

2. That this amendment be prescribed and promulgated, effective on \_\_\_\_\_. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2021.

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice

PROPOSED