

# Writ of Possession in Extra-Judicial Foreclosure of Real Estate Mortgage: A Critical Analysis

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This Article revisits the writ of possession as a mechanism of an extra-judicial foreclosure of real estate mortgage. The Author points out infirmities in issuing the writ and the inadequacies of the procedure.

Firstly, an *ex parte* issuance of the writ is unfairly tilted in favor of one side. Next, the Author proposes to allow the questioning of the validity of the real estate mortgage and the extra-judicial foreclosure proceedings in the same petition. One, because Act No. 3135, the governing law on extra-judicial foreclosures, does not prohibit but in fact, permits it. Another reason is to avoid multiplicity of suits. And lastly, in the interest of the administration of justice and fair play.

The Author then examines the jurisdiction of the special land registration court in summary proceedings for the issuance of a writ of possession and the indispensable requisite of adequate notice under the due process clause of the Constitution. The procedure for issuing a writ of possession is of special interest in this part of the Article. Jurisdiction of the special land registration court over the person of the mortgagor is acquired by service of notice. Jurisdictional facts must be established to warrant the issuance of the writ of possession. The lack of notice to the mortgagor, except by publication, of the extra-judicial foreclosure is a ground to deny the petition for issuance of the writ of possession.

Finally, the Author provides for suggestions to reform the inequities of case law as regards the issuance of the writ of possession.