Sheriff's Sales in Pennsylvania 2023

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Foreword

Attorneys who handle foreclosures, whether they represent sellers, buyers, borrowers or lenders must understand the myriad local rules and practices that apply to sheriff's sales to properly represent their clients' interests. The procedures used by sheriffs across the Commonwealth vary widely by county and counsel must be familiar with the various customs. This program provides a very practical guide to sheriffs' sales in Pennsylvania - the law and the practice.

We are especially grateful to our Course Planner, **Matthew G. Brushwood, Esq.**, Barley Snyder, Wyomissing, for recruiting an outstanding faculty for the program. Each faculty member has devoted significant time and effort developing the course and preparing written materials. All of them are described in the biographical section that follows.

On behalf of all who will benefit from this program we express our sincere gratitude to all of our volunteers.

Pennsylvania Bar Institute
Anita Jones, Program Manager

November 2023

Biographies

PLANNER

Matthew G. Brushwood, Esq.

Mr. Brushwood is Of Counsel at the firm of Barley Snyder, where he is a member of the firm's Creditors' Rights Practice Group. His practice includes residential and commercial mortgage foreclosure as well as representation of secured and unsecured creditors through bankruptcy, regulatory compliance, title curative, eviction, repossession, garnishment, mechanic's lien and other commercial litigation in both state and federal courts. Mr. Brushwood currently serves as co-chair of the Berks County Mortgage Foreclosure Diversion Program Task Force and as a member of the Lancaster County RMFDP Advisory Committee. He earned his B.S. from the Pennsylvania State University and his J.D. from the Widener University School of Law. He is admitted to practice in Pennsylvania. New Jersey and Maryland and a member of the Pennsylvania, Berks, Lehigh and Northampton County Bar Associations.

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Sgt. Gina M. Dascola

Sgt. Dascola has been employed by Allegheny County since August 5, 1985. She began her career with the Minor Judiciary of Allegheny County and she has been employed by the Sheriff's Office since January of 2002. Sgt. Dascola is currently the supervisor of the Real Estate/Civil Division and the Firearm Division of the Sheriff's Office. She assumed this responsibility in 2013 and has worked tirelessly to improve and upgrade the computer systems utilized by her staff. She was the Financial Secretary-Treasurer of the Allegheny County Deputy Sheriff's Association She is responsible for conducting the monthly Sheriff Sales of Real Estate. She was honored to have received the law enforcement LEAD award for facilitating the first Virtual Sheriff Sale in the Commonwealth of Pennsylvania. Sgt. Dascola is honored to have been invited to speak to real estate agents and local government representatives concerning Sheriff Sales of Real Estate in Allegheny County.

Jonathan M. Etkowicz, Esq.

Mr. Etkowicz is the managing Pennsylvania foreclosure attorney of the national creditors' rights firm Robertson, Anschutz, Schneid, Crane & Partners, PLLC where he oversees the firm's non-contested foreclosure practice. He currently serves on the steering committee that oversees the Philadelphia Mortgage Foreclosure Diversion Program. Mr. Etkowicz earned his B.A. from the University of Pittsburgh and his J.D. from Villanova University School of Law. He is admitted to practice law in Pennsylvania and New Jersey, as well as the United States Districts Courts for the District of New Jersey and the Eastern, Middle, and Western Districts of Pennsylvania.

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Andrew Marley is the Managing Attorney for Stern & Eisenberg's Pennsylvania operations. He has extensive experience representing businesses, individuals, and lenders in litigation throughout the Commonwealth of Pennsylvania and in the State of New Jersey. Andrew has successfully litigated multiple cases through both trial and appeal to successful results for his clients. Andrew also serves in a general advisory role for several businesses located in the Greater Delaware Valley, particularly issues dealing with general business operations, collections, real estate, and legal strategies. He has a deep knowledge of the nuances of Pennsylvania Court procedure throughout the Commonwealth. Andrew is a graduate of Pennsylvania State University (2006, B.S Business Management) Temple University School of Law (2011 J.D.).

Jack M. Seitz, Esq.

Jack M. Seitz, Esq. is a founding partner of Lesavoy Butz & Seitz LLC in Allentown, Pennsylvania. A creditors' lawyer, Mr. Seitz has nearly 40 years of experience representing lenders, developers, receivers, and other business clients with a focus on creditors' rights, workouts, asset recovery (including liquor license rights), foreclosure, bankruptcy litigation, receiverships, bank litigation, and fraudulent conveyances throughout Pennsylvania and in New Jersey. Mr. Seitz also concentrates in the litigation of disputes involving fraud, business relationships, and real estate. Mr. Seitz is a frequent lecturer on workout issues, lien divestiture, lien priority issues, lender liability (defense), and best practices in foreclosure and bankruptcy matters. Mr. Seitz is admitted to practice in Pennsylvania, New Jersey and New York and in various federal courts. He is a certified bankruptcy mediator in both the Eastern and Middle Districts of Pennsylvania. Mr. Seitz has been named to "Pennsylvania Super Lawyers" (Creditor Debtor Rights: Business) for thirteen consecutive years (2011 – 2023) and to "Best Lawyers in America" (Bankruptcy and Creditor Debtor Rights; Insolvency and Reorganization Law) for nine consecutive years (2015 – 2023).

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Introduction

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Introduction

Although the Rules of Civil Procedure apply uniformly throughout the Commonwealth of Pennsylvania, the actual practices of prothonotaries, courts and sheriffs can vary. While the general procedures are uniform, there are local customs in each of the 67 counties giving rise to 67 different ways to conduct a Sheriffs Sale.

Rule of Professional Conduct 1.1 Competence. "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. If you intend to practice in the area of sheriff's sales and foreclosures on property, collect on a debt, execute on personal property or bank accounts or otherwise utilize the sheriff sale process, a lawyer must become well versed in the intricacies of this area of the law and become familiar with local customs.

PRACTICE TIP:

Before filing a debt collection action where you will be executing on a judgment in a county that you are unfamiliar with, educate yourself on the applicable local court rules and local procedures used by the sheriff's office in that county. It is also important to be aware of State and Federal Laws that impact your practice.

Chapter One

Mortgage Foreclosure – Getting Started

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Mortgage Foreclosure – Getting Started

I. What is a Mortgage?

A mortgage is a pledge of an estate in real property as collateral security for payment of money or performance of some other act…To secure performance of these obligations, the real property described in the mortgage is conveyed to the mortgagee, provided the conveyance is defeasible (i.e., is to become void) if and when all the covenants have been performed.

Ladner on Conveyancing in Pennsylvania (4th ed. 1979 & Supp. 2003)

II. Getting Started

A. Pre-Complaint Notices

1. Act 6, 41 P.S. §§401, et seq. – Covers loans under an original amount less than the rolling "Base Figure" $301,022.00 for 2023, adjusted annually by the Department of Banking) secured (or potentially secured) by "residential real estate" (two or fewer units):

   a. There are regulations at 10 Pa. Code §§7.1, et seq.

   b. Owner-occupancy is not relevant, but notice is not required if the Property is vacant and abandoned.

   c. The requirement applies to unimproved land upon which two or fewer units are to be built.

   d. Must go by registered or certified mail; courts have ruled that hand delivery was not acceptable even though borrowers refused to accept certified mailing. See *Gettysburg National Bank v. Trace*, 13 D. & C. 3d 679 (1980).

   e. Be careful with content - mistakes in the amount due can render the notice ineffective. *See In re Galloway*, 220 B.R. 236 (Bankr. E.D.Pa. 1998) (notice that said borrowers were in arrears six months rather than three was incorrect and ineffective under Act 6)

   f. But see *CitiMortgage, Inc. v. Barbezat*, 2016 PA Super 7 (2016), where the Superior Court found that an Act 6 notice was not deficient where it named a lender as the mortgagee even though lender would not be assigned the mortgage for another two months after the notice.

g. Where a mortgage foreclosure action is discontinued and re-filed, a new notice under Act 6 is required, even if the loan was never brought current. *See JPMorgan Chase Bank, N.A. v. Taggart*, 203 A.3d 187 (Pa. 2019); *Wells Fargo Bank, N.A. v. Spivak*, 104 a.3d 7 (Pa. Super. 2014)

h. The notice provisions of Act 6 apply only when the original amount of the loan is below the "base figure". Other parts of act apply to loans in excess of that amount (such as the ban on using a confessed judgment to foreclose). However, in *Johnson v. Phelan Hallinan & Schmieg,* the Superior Court held that the base figure is taken as of the date of the origination of the mortgage and not the balance at the time the mortgage fell into default. 202 A.3d 730 (Pa. Super. 2019).

On August 18, 2020, the Pennsylvania Supreme Court affirmed the Superior Court's decision that the Act 6 threshold determination applies to the origination date of the mortgage and not the unpaid principal balance as of the default date.

Up until December 16, 2018, pre-foreclosure attorney fees under Act 6 were limited to $50.00. Pennsylvania Act 32 of 2018, which introduced the Vacant and Abandoned Real Estate Foreclosure Act, also increased the recoverable pre-foreclosure attorney fees to 0.1% of the existing base figure of that year. This Act also establishes reasonableness for attorney fees after the commencement of a foreclosure action with respect to a residential mortgage.

i. There is conflicting authority whether Act 6 permits the borrower to recover attorney fees where the bank voluntarily withdraws the foreclosure action after Act 6 defenses are raised.

   i. In *Generation Mortgage v. Nguyen*, the Superior Court found that a Mortgage Foreclosure Action does not arise out of Act 6 as is required for recoverability of attorney fees under 51 P.S. 503(a). Rather, the cause of action itself arises out of the Rules of Civil Procedure and Act 6 is just a pre-requisite. *See Generation Mortgage*, 138 A.3d 646 (Pa. Super. 2016).

   ii. When a party asserts Act 6 as an affirmative defense it does not rise to the level of creating a cause of action. Accordingly, when lender discontinued the action, party was not entitled to attorney fees or presumption of having prevailed. *See Bayview Loan Servicing, LLC v. Lindsay*, 185 A.3d 307 (Pa. 2018). The Supreme Court reserved for future review whether Act 6 can be raised as a counterclaim.

j. The regulations contain a form notice promulgated by the Secretary of Banking. Use of that form does NOT guaranty that a court will find the lender's notice adequate. See *Bankers Trust Co. v. Foust*, 424 Pa. Super. 89, 621 A.2d 1054 (1993) and cases cited therein. Foust overturns a trial court's decision finding the form notice inadequate due to its lack of information regarding how and when late charges accrued; the Superior Court noted, however, that the Act would trump the form notice if the form truly failed to comply with the Act.

2. Act 91, 35 P.S. §1680.403 –Act 91 requires pre-acceleration notice before foreclosing on any one or two family owner-occupied residential property, even if the loan was for a business purpose. The contents and format of the required notice (including type size) are set by regulation. A list of credit counseling agencies must accompany the notice.

a. *See* regulations at 12 Pa. Code §§31.201, et seq., and list of consumer credit agencies in the appendices to those regulations; a list is also on the PHFA's website. The PHFA regularly updates the list of agencies, which means the issuer of an Act 91 notice should check the PHFA's online list for updates in order to avoid a claim that notice failed to comply with the Act.

b. Form notice combines Act 6 and Act 91; even if the loan amount exceeds the Act 6 base figure, best practice to use combined forms available on PHFA's website.

***Practice Note* - As of September 1, 2016, a combined Act 91 / Act 6 form of notice became mandatory, and issuers must use the form published in the Pennsylvania Bulletin. The PHFA issued a bulletin declaring that no deviations from the approved form will be deemed compliant. The approved Act 91 Notice does not contain an acceleration clause. Since most mortgages require a notice of acceleration, a separate Act 6 Notice or Notice of Acceleration may be needed.**

c. The need to send a notice depends on (i) the type of property (two or fewer residential units), and (ii) owner- occupancy. The purpose of the loan is not relevant.

d. 35 P.S. §1680.401(a) and the regulations at 12 Pa. Code §31.203(3) list exceptions to notice requirement– no notice is required:

i. to homeowners who are more than 24 months delinquent or in default for more than 24 months under the terms of the mortgage;

ii. if the aggregate amount of arrearages due exceeds $60,000;

iii. to a homeowner who has already been sent the notice and who did not apply for a mortgage assistance loan, or who applied for a mortgage assistance loan but whose application was denied, or whose mortgage assistance disbursements were terminated by the Agency for any reason;

iv. to homeowners whose properties do not qualify under 12 Pa. Code §31.202(a);

v. for mortgages insured by FHA/HUD under the National Housing Act (12 U.S.C. §§1701-1715z-18);

vi. for mortgages where the secured property is used primarily for commercial or business purposes;

vii. for a mortgage held by a noncorporate seller (unless the noncorporate seller elects in writing to be covered);

viii. if the mortgage is the third lien or further on the property. 35 P.S. 1680.401c(7).

e. The loan must be in default 60 days before notice can be sent.

***Practice Note*: If you represent a creditor and negotiate a standstill or forbearance agreement, have the agreement specify that the lender does not waive existing defaults in order to avoid the need to wait another 60 days if the mortgagor does not comply with the new agreement.**

f. 35 P.S. §1680.403c(b) describes what the creditor can and cannot do if the mortgagee applies for relief.

g. The regulations say to send the notice by both first-class mail (with certificate of mailing) and certified mail – 12 Pa. Code §31.203(1).

h. A copy must go to the Commonwealth (2008 amendments).

i. Failure to issue a correct Act 91 notice before foreclosure does not deprive the court of jurisdiction. *Beneficial Consumer Discount Co. v. Vukman*, 621 Pa. 192, 77 A.3d 547 (2013).

j. 35 P.S. §1681.5, Act 70, enacted in 2012 while *Vukman* was pending with the Supreme Court, requires a mortgagor to file a legal pleading before the delivery of a deed by the sheriff or marshal, raising the failure or defect in the notice. The Act requires the mortgagor to show prejudice by the defect in the Notice and permits the court to fashion an appropriate remedy which can include imposition of a stay, dismissal of the action, etc.

i. In *Nationstar Mortgage, LLC v. Lark*, 73 A.3d 1265 (Pa. Super. 2013), the Superior Court affirmed the trial court's denial of a Motion to Set Aside Sheriff's Sale where the mortgagor failed to raise challenges to the pre-foreclosure notice until after the Sheriff's Deed had been delivered.

k. The *notice provision* in Act 91 applies to mortgages on residential property even if given to secure a business purpose loan debt but the homeowner will not qualify for assistance if the debt is business related.

3. Mortgage Required Notices. Even if neither Act 6 nor Act 91 apply to the case, the mortgage agreement may have a separate requirement that notice be sent before a foreclosure action can be filed. Many mortgages require notice be sent and an opportunity provided to cure the default prior to beginning judicial proceedings. See HSBC Bank, N.A. as Trustee v. Donaghy, 101 A.3d 129 (Pa. Super. 2014). Similar requirements may also appear in ancillary documents in commercial deals.

a. *National Housing Act*: A provision in the National Housing Act, 2 U.S.C. § 1701x, requires that a mortgagee provide notice of the availability of homeownership counseling to eligible homeowners. This ties into the requirements of the Servicemembers Civil Relief Act described in Part B below § 501-596

b. *Fannie Mae*: Fannie Mae mortgages often have notice requirements.

c. *Fair Debt Collection Practices Act*. If the debt can be considered consumer debt (or if it not clear), notices coming from a covered debt collector (i.e., an attorney) must be sent and contain the Act's "Miranda Warnings." See also, 15 U.S.C.S. §1692, et seq.

4. Potential Challenges to Pre-Foreclosure Notices.

a. *Wells Fargo Bank, N.A., etc., v. Monroe,* 2009 PA Super 13, 966 A.2d 1140 (2009) - Mortgagors argued that an Act 91 notice was deficient because it identified the servicer of the loan but not the

mortgagee. The court dismissed the argument as the mortgagors availed themselves of the rights as set forth in the notice by meeting with a credit counselor and applying for mortgage assistance (which was denied).

b. A lender satisfies its duty to issue Act 6 / Act 91 notices upon sending them; the lender need not prove the borrower actually received them. Further, "where a specified mode of giving notice is prescribed by statute, that method is exclusive." *See First Federal Sav. & Loan Ass. v. Van Why*, 29 Pa. D. &C.3d 675 (Monroe Cty., 1983).

B. Filing the Complaint

1 Start with a complete title search, before filing anything, as certain liens and transfers require the addition of parties and may dictate how to proceed.

a. Request complete copies of all items found on title because you will need to confirm all interests on title, lien priority, and record addresses for the Rule 3129.1 affidavit and for service of notices.

b A current owner search is ***NOT*** adequate because it will not disclose whether there are open liens from a prior owner.

c The search is critical because it will alert the creditor to the presence of any liens for unpaid federal taxes. A foreclosing creditor's ability to discharge a junior federal tax lien depends on complying with *federal* requirements. method for discharging a junior federal tax lien means You will not know if you have to name the government without an up-to-date search. See, below.

d. The affidavit required by Pa.R.C.P. 3129.1 requires the attorney to swear to the status of title and junior liens "***as of the date the praecipe for writ of execution was filed***. . ." Only a thorough and up to date search will comply with that requirement.

2. Pa.R.C.P. 1144(a) sets forth who must be named as Defendants to any foreclosure action

a. Mortgagor –Rule 1144(a)(1) requires the mortgagor to be named, but Rule 1144(b) states that you do not have to name the mortgagor if s/he is not the real owner and you set forth in the complaint that s/he is being released from liability for the debt.

b. Personal representative, heir or devisee of the deceased mortgagor, if known.

i. This requires a search of the Register of Wills and Orphans Court records to determine if there was an estate – not just in the county where the property is located, but wherever the borrower/owner lived at the time of death.

ii. In *PNC Bank v. Unknown Heirs*, 929 A.2d 219 (Pa. Super. 2007), the Superior Court held that failure to notify all known legal heirs deprives the court of jurisdiction to enter judgment.

ii. Accordingly, it is not sufficient to just name the personal representative.

c. Real Owner - Pa.R.C.P. 1144(a)(3) requires any "real owner of the property, or if the real owner is unknown, the grantee in the last recorded deed" to be named as a Defendant.

i. If the mortgagor transferred the property or a partial interest to a third party, that post-mortgage grantee is a terre tenant and ***MUST*** be named and served as a defendant in your foreclosure complaint (but not in a confession complaint if the creditor is confessing judgment).

ii. Anyone who acquires title to the Property ***after*** the filing of the complaint, need not be named. See *Bradley v. Price*, 396 PA. 234, 152 A.3d 904 (1959) (a plaintiff need not amend a complaint every time a new owner takes title as there would be no end to the action; new owners are deemed to have constructive notice of a filed foreclosure); *Resolution Trust Corp. v. Warwick Nurseries*, 675 A.2d 730 (Pa. Super. 1996)

d. The United States of America

i. IRS liens attach from date of assessment forward but do not have priority as to purchasers/lienholders (without actual or constructive notice) until a notice of lien is recorded. See 26 U.S.C. §6323.

ii. ***Notices required by state procedure, alone, do not discharge junior IRS liens.*** It is important to follow the procedures set forth in §2410 that require the Complaint to be served upon the US Attorney for the district in which the action was filed and by sending by registered or certified mail to the Attorney General in Washington D.C. See §2410(b).

iii. *Initiating the case with a foreclosure complaint*: If you plan to get to a sheriff's sale by filing a complaint in mortgage foreclosure you must name the USA as a defendant and follow the *federal* rules for (i) manner of service, and (ii) response time. The USA has 60 days to respond, without regard to state pleading rules. Even when the USA's liens are properly discharged, it has a 120 day right of redemption.

iv. *Initiating the case with a confession of judgment (commercial loans):* The creditor need not name the USA as a party but must instead issue a Section 7425 letter - extensive regulations at 26 C.F.R. §301.7425, et seq. The letter can be served by certified mail or hand delivery; regulations allow you to include copy and require IRS to sign it. Letter must be hand served at least 25 days before the sale.

Practice Tip: Per 26 C.F.R. §301.7425-3, the notice letter has to go to the Internal Revenue Service (IRS) official, office and address specified in IRS Publication 786, "Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale," or any successor publication. The relevant IRS publications may be downloaded from the IRS Internet site at http://www.irs.gov.

v. §7425 letter - extensive regulations at 26 C.F.R. §301.7425, et seq.; can be served by certified mail or hand delivery; regulations allow you to include copy and require IRS to sign it - ALWAYS do this and ALWAYS hand deliver; must have delivery at least 25 days before sale.

vi. IRS Publication 786, "Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale," or any successor publication. The relevant IRS publications may be downloaded from the IRS Internet site at *http://www.irs.gov*.

viii. The US Attorney for each District in the Commonwealth handles these differently. Check with the US Attorney's Office for their custom and practice.

ix. Even when the USA's liens are properly discharged, it has a 120 day right of redemption. The government does not often exercise this right but generally will not waive it. *See* 28 U.S.C. §2410. See 28 U.S.C. §2410. The best strategy is to seek a stipulated judgment against the USA calling for discharge of lien but preserving the USA's right of redemption.

3. ***Practice Note!*** Check for Title Issues prior to filing the Complaint, especially discrepancies in legal descriptions. Do this by comparing the deed to the mortgage. If they do not match, you have to fix the problem before going to sheriff's sale. See *Trachtenberg v. Glen Alden Coal Co.*, 354 Pa. 521, 47 A.2d 820 (1946).

III. Getting to Judgment – By Foreclosure Complaint (in Rem)

A. Mortgage Foreclosure Diversion Programs: About 1/3 of the Counties in Pennsylvania have enacted diversion programs or conciliation conferences. The procedures vary by county as does who may participate, how a conference is scheduled and who mediates. Attached hereto is an Appendix which goes into some of the details for each of the counties that currently have Mortgage Foreclosure Diversion Programs. Some programs impact aspects of service and have conferences that are automatically scheduled once the Complaint is filed. Again, it is imperative that you know whether your case falls into the parameters of the conciliation program before the Complaint is filed.

B. *In rem* Nature: Foreclosures in Pennsylvania are *in rem* only – for the property. They are not *in personam* and do not carry personal liability. *See Newtown Vill. P'ship v. Kimme*l, 424 Pa. Super. 53, 55, 621 A.2d 1036, 1037 (1993); Pa.R.C.P. 1141(a). However, Pennsylvania law requires that a foreclosure action demand judgment for the amount due. Pa.R.C.P. 1147(a)(6). The purpose of the dollar amount is only for bidding at the Sheriff's Sale and distribution of funds post-sale.

C. Default Judgment

1. If there is no answer filed or preliminary objections to the Complaint are not filed after completing service upon all the defendants, you may be able to proceed with default judgment. Ensure proper notices are sent in accordance with Pa.R.C.P. 237.1.

2. Nearly 1/3 of the Counties in the Commonwealth have Mortgage Foreclosure Diversion Programs that trump the Rules of Civil Procedure. If the borrowers, property or mortgage meet the conditions of the County's program, it may be necessary to delay the entry of default judgment until mediations are concluded.

3. The Servicemembers Civil Relief Act requires a determination of whether any party is actively serving in the military. The Servicemembers Civil Relief Act ("SCRA"), 50 USCS §3901, et seq., (formerly the Soldiers' and Sailors' Civil Relief Act of 1940) sets forth a number of protections for active members of the military and requirements for creditors and Courts in pursuing relief against a party in the military. These protections may include reduced interest rates on consumer loans, restrictions on landlord evictions,

stays of certain proceedings, and the appointment of counsel in civil actions prior to the entry of judgment.

a. The SCRA protects service members, and in some cases their dependents, against default judgments and Sheriff's Sales. However, it does not impose a permanent stay on a civil proceeding, without limitations. See *Graves v. Bednar* 167 Neb. 847, 95 NW2d 123 (1959) (the statute was not intended to grant immunity from liability).

b. The SCRA requires counsel to be appointed for a member of the military where that individual did not make an appearance. 50 USCS §3931.

c. The SCRA also requires a Court Order for judgment as well as to proceed to Sheriff's Sale. See 50 USCS §3953.

d. As such, when filing for default judgment, an affidavit must be included which states (1) whether or not the defendant is in the military or (2) if the Plaintiff is unable to determine whether or not the defendant is in military service, stating the same.

e. So long as you have the party's full name and either date of birth or social security number, you can check the military status using the DMDC SCRA website. *https://scra.dmdc.osd.mil/scra/#/home*

D. <u>Litigation – By Foreclsoure Complaint</u>

1. Foreclosure actions are governed by Pa.R.C.P. 1141–1150.

a. Pa.R.C.P. 1150 indicates that foreclosure trials are conducted "by a judge sitting without a jury" in accordance with Rule 1038. However, there have been some jurisdictions where the judges have not stricken jury trial demands, like in Philadelphia.

b. Pa.R.C.P. 1148 only permits a counterclaim that arise from the same transaction or occurrence from which the cause of action arose; Rule 1148 must be interpreted narrowly.

i. *Cunningham v. McWilliams*, 714 A.2d 1054 (Pa. Super. 1998) – Counterclaims arising from a mortgagee's alleged fraudulent misrepresentations which induced mortgagors to purchase the mortgaged property are not proper defenses to a foreclosure action and cannot be asserted as counterclaims in such action; rule governing permissible counterclaims to be construed narrowly.

ii. *WM Specialty Mortgage, LLC v. Shuttleworth*, 82 Pa. D.&C.4th 129 (Lawrence County, 2007) – Following the originator's assignment of a residential mortgage to a third party for value, the mortgagor cannot assert a counterclaim alleging violations of the Unfair Trade Practice and Consumer Protection Law, 72 P.S. § 102-2, based on the alleged deceptive conduct of the originator. The court observed that the plaintiff's cause of action arose from the failure of the defendants to honor their mortgage agreement, while the counterclaim related to allegations of deceptive conduct on the part of the originator, not the assignee: "[The originator] is simply not the plaintiff in this mortgage foreclosure action, thus, Defendants' Counterclaim must be stricken.

iii. *But see* (i) *Green Tree Consumer Discount Co. v. Newton*, 909 A.2d 811 (Pa. Super. 2006); (ii) *Indymac Bank F.S.B. v. Vicuna*, 07-0488 (Monroe County, 3/1/07); *Everbank v. Fischer* (Lancaster County, 4/16/12, Ashworth, J.) counterclaims for common law fraud permitted in foreclosure action by assignee since the counterclaims related to the modification of the mortgage at issue in the case and the terms contracted for at the time of origination).

2. Summary judgment is common when borrowers challenge default, or challenge amounts due, or assert defenses without any supporting evidence:

a. *Bank of America, N.A. v. Gibson*, 2014 PA Super 217, 102 A.3d 462 (2014), app. denied, 112 A.3d 648 (Pa. 2015) – General denials to allegations made in the complaint amount to admissions where specific denials are required. The mortgagee is entitled to summary judgment if the mortgagor admits that the mortgage is in default, the mortgagor has failed to pay the obligation, and the recorded mortgage is in the specified amount; mortgagor cannot respond to specific allegations about the amount due with a denial that it is without information sufficient to form a belief as to the truth of those averments. Also held that Mortgage Electronic Registration Systems, Inc. ("MERS") is authorized to assign mortgages

b. *Corestates Bank, N.A. v. Cutillo*, 1999 PA Super 14, 723 A.2d 1053 (1999) – The borrower's failure to contest the lender's assertion that borrower failed to make payments as required under the terms of the note meant the material facts in the case were not in dispute. The court holds that to the extent defenses asserted in new matter are mere general assertions not connected to supporting facts, they are properly dismissed (citing *Seven v. Kelshaw*, 417 Pa.Super.1, 611

A.2d 1232 (1992) for the rule that pleadings must not only apprise the opposing party of the claim being asserted, but must also summarize the essential facts to support the claim).

c. *Washington Federal Sav. & Loan Assoc. v. Stein*, 357 Pa.Super. 286, 515 A.2d 980 (1986) – The court affirms entry of summary judgment considering an uncontested affidavit from the lender's treasurer and uncontradicted averments in the pleadings regarding the borrower's default; also allows for entry of judgment on legal fees when the lender included an attorney's commission of five percent (5%). The court holds that the borrowers cannot rest upon the averments contained in the pleadings and, in order to properly raise a genuine issue of fact, have the burden to present "facts" by counter-affidavits, depositions, admissions, or answers to interrogatories. Pleadings are not an acceptable form of proof and do not help the borrower if the borrower does not offer any evidence to contradict affidavits regarding payment.

d. *First Wis. Trust Co. v. Strausser*, 439 Pa. Super. 192, 653 A.2d 688 (1995) – summary judgment in mortgage foreclosure is appropriate where the mortgagor admits that the loan is in default

e. *Bracnh Banking & Trust Co. v. Bleiler*, Case No. 21-1073 (C.C.P. Bucks, 8/26/21, McMaster, J.) – judgment for lender upon the court's rejection of the borrower's general denials taken as admissions; court expressly held that the lender did not owe the borrowers a duty to restructure the note or forbear from exercising its remedies; court refused to impose a duty of good faith that would modify or defeat the creditor's legal rights.

f. *U.S. Bank Nat'l Ass'n v. Watters*, 2017 PA Super 110 (2017) - definition of "real owner" to be named in complaint is limited to those who have liability on the mortgage; a spouse who is not named on the deed or the mortgage is not a real owner for purposes of a mortgage foreclosure action.

g. *Collins v. Phelan, Hallinan Diamond & Jones, LLP*, E.D.Pa., Case No 17-3727 (3/1/18, Savage, J.) – debt collection law firms are subject to the rules of the Fair Debt Collection Practices Act in cases dealing with mortgage foreclosure and must comply with the Act's requirements; lawyer must cease all collection activity before verifying the debt when the borrower submits a dispute.

h. *Union Community Bank v. Wisser*, Case No. 2016-C-2244 (C.C.P. Lehigh, 1/26/18; Johnson, J.) – court rejects mortgagors' claims regarding the affirmative defense of payment because the evidence

at trial established that defendants failed to make payments and that monthly payments they did make during an alleged "interest only" period were not for an amount equal to or above the total monthly interest being assessed to the account.

3. Standing\Assignments. There has been an explosion of litigation regarding a foreclosure plaintiff's standing to foreclose.

   a. The holder of a mortgage has the right, upon default, to initiate a foreclosure action. *Bank of America, N.A. v. Gibson*, 2014 PA Super 217, 102 A.3d 462 (2014), app. denied, 112 A.3d 648 (Pa. 2015).

   b. A foreclosing party can prove standing either by showing that it (1) originated or was assigned the mortgage, or (2) is the holder of the note specially indorsed to it or indorsed in blank. J.*P. Morgan Chase, NA v. Murray*, 2013 PA Super 55, 63 A.3d 1258, 1267-1268 & n.6 (Pa. Super. 2013).

   c. "For our instant purposes, this is all to say that to establish standing in this foreclosure action, appellee had to plead ownership of the mortgage under Rule 1147, and have the right to make demand upon the note secured by the mortgage." *CitiMortgage, Inc. v. Barbezat,* 2016 PA Super 7, 131 A.3d 65, 68 (2016).

   d. It is acceptable for a mortgage assignee to commence a foreclosure action before the assignment is actually recorded. *U.S. Bank, N.A. v. Mallory*, 2009 PA Super 182, 982 A.2d 986 (2009). However, standing must be plead specifically in the Complaint. *See Wells Fargo Bank, N.A. v. Lupori*, 2010 Pa. Super. 205, 8 A.3d 919 (2010).

   e. All that being said, the mortgagor does not have standing to challenge an assignment of mortgage or transfer between mortgage lender/servicers as s/he is not a party to that agreement. *Bank of New York v. Bach*, 2017 Pa. Super. 85, 159 A.3d 16; *Gerber v. Piergrossi*, 2016 Pa. Super. 130, 142 A.3d 854, 862 (2016). In both of these cases, the Superior Court found that that manner in which a party comes to possess the note is immaterial to its enforceability – i.e. if the mortgagee is in possession of the note specially endorsed or endorsed in blank, it has standing to foreclose.

   f. BUT, see *Bayview Loan Servicing LLC v. Rutledge*, 2016 Phila. Ct. Com. Pl. LEXIS 82, where the trial court entered a verdict for the defendant at trial where the mortgagee (1) failed to introduce into evidence all of the mortgage assignments to show a clear chain of assignments and (2) there were inconsistencies in the allonges and endorsements on the note and the mortgagee failed to show that the

Note is indorsed in blank. Affirmed by Superior Court in an unpublished opinion.

g. In *MB Financial v. Rao*, 201 A.3d 784 (Pa. Super. 2018), the Superior Court held that a lost note affidavit is a business record and qualified as an exception to hearsay such that it was admissible into evidence. The trial court's preclusion of the LNA was prejudicial error to the mortgagee because it established the right to enforce the Note without being in possession under the PUCC.

4. Prior servicer testimony is also a popular defense if the case gets to trial. But admissibility is left to the discretion of the trial court:

a. In *Commonwealth Fin. Sys., Inc. v. Smith*, 2011 Pa. Super. 30, 15 A.3d 492, the Superior Court affirmed the trial court judge's determination that the witness for Commonwealth was not trustworthy in his testimony of their business records. Therefore, the trial court would not permit the witness to testify as to the business records of the prior servicer to establish the debt owed.

b. In *U.S. Bank, N.A. v. Pautenis*, 2015 PA. Super. 129, 118 A.3d 386, the Superior Court again affirmed the trial court's exclusion of the testimony of the mortgage servicer witness finding his testimony to be untrustworthy as he had no experience with the prior servicer loan system. There were specific disputes as to the records presented by U.S. Bank, and when pressed, the witness was unable to explain how the unpaid principal balance was calculated because there was an adjustable rate.

c. In *Bayview Loan Servicing v. Wicker*, 206 A.3d 474 (Pa. 2019), the Supreme Court (affirming the ruling of the Elk County trial judge and Superior Court) held that admission of business records is left to the discretion of the trial court who can use the business records exception to the hearsay rule to determine the trustworthiness of documents to be admitted.

5. Other Defenses may include –

a. No oral agreements to forbear: the Statute of Frauds applies to mortgages and foreclosures. So any agreement to forbear from foreclosure must be in writing. See *Strausser v. Pramco*, III, 2008 PA Super 28, 944 .2d 761 (2008) *Atlantic Financial Federal v. Orianna* Historic Associates, 594 A.2d 536 (Pa. Super. 1991).

b Loss Mitigation may give rise to an equitable defense, but it is not an absolute defense to the contractual obligations and a mortgagee's

right to proceed. See *HSBC Bank, N.A. v. Donaghy*, 2014 Pa. Super. 215, 101 A.3d 129.

c. Attorney Fees and Costs are typically collectible under the terms of the mortgage. While there are a variety of cases that find 5% or 10% of the outstanding principal to be a reasonable amount for attorney fees, be careful of the intersection between these cases and the FDCPA. *See Kaymark v. Bank of Am*., N.A. 783 F. 3d 168 (3rd Cir. 2015) where the Court found a FDCPA violation where the debt collector charged a percentage of the principal balance rather than the actual cost as permitted under the loan agreement.

   i. *See* 68 Pa.C.S. §2311, effective 12/17/2018 which addresses the limitation on creditor's attorney fees. The statute also states that attorney fees are presumed to be reasonable if they are actually incurred and where they conform to the guidelines issued by the Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), Department of Housing and Urban Development and the Department of Veterans Affairs

   ii. The court always has power to review the number included in judgment. See *McMullen v. Kutz*, 985 A.2d 769 (Pa. 2009) (court has authority to review the reasonableness of attorney's fees despite a contractual provision that says nothing about the fees having to be reasonable).

   iii. The Superior Court held that where the agreement authorized the lender to "hire or pay someone else," the lender could not recover for attorney fees attributable to work performed by in-house counsel. See *Enter. Bank v. Frazier Family, L.P*. 2017 Pa. Super. 256, 168 A.3d 262.

d. *Nanty-Glo* and Affidavits: two recent cases highlight the relevant law

   i. The Superior Court reversed the grant of summary judgment where the only support for the fact that the loan was in default was an affidavit from the bank. Because there was no other evidence supporting the default, admission of the evidence alone was a violation of *Nanty Glo*. See *Wells Fargo Bank, N.A. v. Premier Hotel Grp., LLC* 2017 Pa. Super. 405

   ii. The Superior Court has affirmed an exception to the *Nanty Glo* rule where an affidavit is submitted along with

additional evidence such as the payment history and admissions of the opposing party. See *Wells Fargo Bank, N.A. v. Joseph*, 2018 Pa. Super. 27, ___ A.2d ___ (2018)

IV. Getting to Judgment – By Confession of Judgment - Commercial Loans (in Personam)

A. Rules are found at Pa. R.C.P. 2951–2976 (money judgments) and 2970–2976 (real property).

B. When confessing judgment on an instrument secured by an associated mortgage, the resulting judgment lien relates back to the recording of the mortgage for priority purposes. *Steinhardt v. Russian Orthodox, etc.,* 363 Pa. 222, 77 A.2d 393 (1951); *U.S. Bank National Ass'n v. Walnut Park Plaza Associates,* 2009 Phila. Ct. Com. Pl. LEXIS 274 (12/29/09, Fox, J.).

C. Benefits:

1. Usually offers a quicker path than other methods if the mortgagor contests the procedure.

2. Throws the burden of proof onto the defendants.

3. Judgment creditor gets an instant judgment lien against defendant's real estate in that county and the judgment can be easily moved to other counties for the same purpose.

D. Limited to commercial transactions.

1. Key difference is the notice of defendant's rights required by Rule 2956.1. A mortgagee proceeding to a sheriff's sale must use the special praecipe for writ of execution described in Pa.R.C.P.2957, which contains a certification regarding service of the notice of defendant's rights.

E. If the debtors have assets in other states, you have to determine whether you will be able to bring a judgment confessed in Pennsylvania to that state:

1. New Jersey. New Jersey passed a uniform statute on domesticating foreign judgments, but before that law was enacted a number of New Jersey courts refused to enforce judgments confessed in PA on grounds the PA courts lacked in personam jurisdiction. See United Pacific Ins. Co. v. Estate of Lamanna, 181 N.J. Super. 149, 436 A.2d 965 (1981) (PA procedures to vacate confessed judgment violate due process and equal protection; denies summary judgment motion in action to enforce judgment on issues pertaining to notice and the voluntariness of guarantor's agreement to permit confession of judgment). For the effect of the post-1996 amendments, which addressed some of the issues discussed in the United Pacific case, see Tara Enterprises, Inc. v. Daribar Management Corp., 369 N.J. Super. 45, 848 A.2d 27 (2004) (accepts notion of enforcing PA

confessed judgment in NJ but holds that such a judgment against a guarantor is not entitled to full faith and credit and is not valid if the issuing court lacked in personam jurisdiction; found lack of jurisdiction in this case, where the judgment was entered against a guarantor based on a confession clause in a note not signed by the guarantor).

2. Florida. The Supreme Court of Florida specifically held that Florida courts must honor PA confessed judgments even though they are contrary to the public policy of Florida and not permitted in any form. Trauger v. A.J. Spagnol Lumber Co., 442 So.2d 182 (1983).

F. Practice tips: Notice, Notice and More Notice

a. A judgment debtor must move to challenge a confessed judgment within 30 days of service of the Rule 2958.1 notice (assuming the creditor opted for that form of notice). The judgment creditor should issue and serve the Rule 2958.1 notice as soon as the judgment is entered, even if the creditor does not intend to execute right away, in order to start and end the 30 day clock on the defendant's right to challenge the judgment.

i. In *PNC Bank v. Kerr*, 2002 PA. Super. 205, 802 A.2d 634 (2002), the Superior Court held that the period for measuring the defendant's "promptness" begins NOT with the filing of the judgment, but with service of the notice. The Court held that a petition filed in 2000 to challenge a judgment confessed in 1994 was timely because it was filed within 30 days of the execution notice. A creditor can avoid this scenario by immediately serving the notice described in Rule 2958.1

b. Be sure the return of service specifically mentions the execution notice, especially if you use the Rule 2958.1 notice. Rule 2957(b)(2)(ii) requires that counsel certify in the praecipe for writ of execution that the Rule 2958.1 notice was served "as evidenced by a return of service filed of record."

c. Serve defendant with a SEPARATE notice of rights under 42 Pa.C.S. § 2737.1 at the time judgment is entered. This statute, enacted in 2001, requires its own notice. See First Union v. Portside Refrigerated, etc., 827 A.2d 1224 (Pa. Super. 2003). The Supreme Court took action to undo *Portside* by adding subpart (g) to Rule 2959 in September 2004. Rule 2959(g) prohibits a court from opening or striking a judgment based on a failure to serve notices required by a statute. Even so, it's worth adding one page to the set to include this notice.

<u>Practice Note</u>: Beware of the potential for a merger problem on the entry of a judgment. Unless the loan documents EXPRESSLY preserve covenants for the payment of attorneys' fees and advance reimbursement following the entry of judgment, such terms

may dissipate because the documents merge with the judgment. See Wilmington Trust v. Brolley, 2019 Pa. Super. 286 and EMC Mortgage, LLC v. Biddle, 2015 Pa. Super. 79, 114 A.3d 1057.

IV. After Judgment is Entered – Now What? Writs and the Sale Process

A. Objective: deliver clear title to a third party by discharging all contemporaneous or junior liens.

B. Rules

1. There are separate rules for executing on money judgments (Pa.R.C.P. 3101 – 3159) and foreclosure judgments (Pa.R.C.P. 3180–3183).

2. The brief Rules on foreclosure judgments incorporate most but not all of the Rules applicable to executing on money judgments.

3. Make sure to contact the County Sheriff and Prothonotary to ensure that your Writ filing includes all of the necessary documents. Every County has their own required forms. Most including a Praecipe for Writ of Execution, Writ of Execution, Legal Description, Affidavit pursuant to Pa.R.C.P. 3129.1 and service forms. Others require short and long legal descriptions, military affidavits, property abstracts, tax assessor request forms, etc.

C. Procedures

1. Once the writ of execution is filed, obtain an updated title report, with a good through or cover date of the date the writ of execution was filed.

   a. Pa.R.C.P. 3129.1 requires that prior to taking a property to Sheriff's Sale, the Plaintiff needs to file an affidavit setting forth all parties with a record interest in the Property as of the date of the writ of execution.

   b. Therefore, it will be necessary to have an update to capture all new interests that may have been filed since the complaint was filed.

2. Notice Requirements: notice of the impending Sheriff's Sale is provided in four (4) different ways, all of which are outlined in detail in Pa.R.C.P. 3129.1-3129.3. The notices shall include a brief description of the property, judgment information, the name of the owner, the time and place of the sale and a notice with regard to claims that may be made post-sale

   a. Notice of Sale to the Parties – required pursuant to Pa.R.C.P. 3129.2(c)(1).

i. Notice of the sale shall be served upon defendants to the action as well as the owner of the Property. ***Practice Note – if the property is deeded to a new owner after the Complaint is filed, the Complaint does not have to be amended, but the Notice of Sale MUST be served on the new owner.***

ii. The Notice of Sale has to be served on the owner/defendant in the same manner as one would serve original process, by either a sheriff or competent adult. *See* Pa.R.C.P. 402, et seq.

b. Advertising – required pursuant to Pa.R.C.P. 3129.2(d).

i. The details regarding each property to be sold must be advertised by publication by the sheriff once a week for 3 successive weeks in one newspaper of general circulation in the county and in the legal publication designated by local rules, if any.

ii. Explanatory Comment made in 2010 states that only one newspaper of general circulation is required along with the legal publication.

iii. Note that some counties split their advertising between regional newspapers based on where in the county the property is located; but each property is only advertised in one (1) newspaper of general circulation. There is no definition for "newspaper of general circulation."

iv. The first publication must be run at least 21 days prior to the sale

c. Sheriff's Handbill - required pursuant to Pa.R.C.P. 3129.2(b).

i. The handbills are posted by the Sheriff in the Sheriff's Office and upon the Property at least 30 days prior to the sale.

ii. Most Sheriffs prepare the handbills themselves.

d. Lienholder Notices – required pursuant to Pa.R.C.P. 3129.1 and 3129.2(c)(1)(iii)

i. An affidavit, substantially in the form laid out under Rule 3129.1(c), must be filed with the Sheriff before a Property can go to Sheriff's Sale.

ii. Rule 3129.2(a) states that notice to all the individuals set forth on the affidavit must be sent at least 30 days prior to the date of sale. The notice must describe the property, the judgment, the name of the owner and the time and place of the sale.

iii. Service of the notice of sale on lienholders is complete as of the date of the mailing. The Plaintiff is directed to obtain a USPS Form 3817, Certificate of Mailing which reflects the date and proof of mailing.

iv. Even if the mail is returned, service of the notice of sale is still valid.

v. The individuals that need to be listed in the affidavit include, the owner, any party with a judgment or mortgage on title, any other person who has any record interest in the property and anyone who has an interest not of record which may be affected by the sale.

vi. The affidavit is verified to the best of the affiant's knowledge and signed under 18 Pa.C.S. §4904 regarding false statements

vii. What about liens filed after the writ of execution but before the sale? It seems, therefore, that the date filing the praecipe cuts off the attachment of additional liens requiring notice. *See Gambler v. Huyett*, 679 A.2d 831 (Pa. Super. 1996) (refers to cut off point as the date the praecipe is filed). However, sending out notice may be easier or cheaper than arguing with a title company or handling protracted litigation post-sale.

Practice Note – it is better to send more notice than not enough. If you have multiple addresses, send notice to each address. When in doubt, send it out!!!

3. Failure to provide proper or timely notice to an interested party means that the lien may pass through the sale without being divested or discharged. But, see Pa.R.C.P. 3135(b) for a safety net. This will be discussed in a later chapter.

   a. ***Practice Note: Do not ignore returned pieces of mail the Post Office could not deliver because an executing creditor has the duty to use diligent efforts to serve those whose interests will be affected by the sale, despite Rule 3129.2(c)(1)(iii.)*** See *RTC Mortgage Trust 1994-N-2 v. Fry*, 556 Pa. 603, 730 A.2d 476 (1999). The Supreme

Court held that the junior mortgage survived the sale where the notice was returned to the Plaintiff with an indication that the address was no longer valid and provided an updated address. However, "due process does not require that extraordinary efforts be expended to locate and notify the mortgagee."

b. If you can't find the creditor but know who represents that person in pending litigation, sending notice to the creditor at the creditor's last known address AND the attorney of record may be sufficient. *M&T Mortgage Corp. v. Keesler*, 2003 PA Super 182, 826 A.2d 877 2003).

4. Motions to Reassess Judgment

a. It may be worthwhile to motion the court for a reassessment of the judgment to ensure that the amount of the judgment is reflective of what is actually owed.

b. There is no such thing as an open-ended judgment in mortgage foreclosure. If you fail to get an order allowing reassessment, the debtor can satisfy the debt by paying the judgment amount. See *Morgan Guar. Trust Co. of NY v. Mowl*, 705 A.2d 923 (Pa. Super. 1998) ("[mortgagee] should have sought approval of the court to amend its judgment and was not permitted to collect an additional $38,000 that was not included in the judgment); *Nationsbanc Mortgage Corp. v. Grillo*, 2003 PA Super 221, 827 A.2d 489 (2003) (a mortgagee "had every right to petition the court to amend the writ of execution to include additional interests and costs prior to appellant's good faith tender").

c. More recently, in *EMC Mortgage LLC v. Biddle*, 2015 Pa. Super. 79, 114 A.3d 1057 (Pa. Super. 2015), the Superior Court recognized the trial court's power to amend a judgment until the judgment is discharged or satisfied. However, the court found that upon the entry of judgment, the doctrine of merger merged the terms of the mortgage into the judgment. Therefore, the court must determine which expenditures survive the entry of judgment and can be included. In Biddle, the Court held that "an evidentiary hearing is necessary to develop a record" that supports the award of additional damages to the Plaintiff.

d. ***Practice Note: Discuss this with your client and present all options. You do not want to be responsible for the loss to your client because of a failure to reassess damages.***

e. ***Practice Note 2: some judges use their equitable power in granting – or refusing to grant – Motions to Amend Judgments. It is important that your motion be supported with explanations, reference to the mortgage and note, and a breakdown of the amounts incurred since the complaint was filed.***

5. Postponement of Sale

a. Pursuant to Pa.R.C.P. 3129.3, the sale of the Property can be postponed 2 times over the course of 130 days without providing new notice as described above, so long as this is announced at the Sheriff's Sale. Beyond 2 times or 130 days and Plaintiff will need a court order.

b. Rule 3129.3(b)(2)(i), enacted in 2014, requires a notice filed with the Prothonotary when the sale is postponed. The form of the notice and certificate of filing are set forth in Rule 3129.3(b)(3).

i. The Notice must be filed at least 15 days before the continued sale date.

ii. If the sale is postponed and notice is not filed, the Sheriff "shall" continue the sale to the next available sale date.

iii. However, failure to comply with this rule is not a basis to set aside the sale.

Chapter One

Appendices

All paragraphs contained within the body of the notice shall appear in 12 point font.

Date:_____

Act 91 Notice* (24 point font, bold)

La Notificación de Acto 91* (14 point font, bold)

Save Your Home From Foreclosure

This is an official Act 91 Notice. You are receiving this notice because Pennsylvania law requires mortgage lenders to send it to homeowners facing foreclosure. This notice contains important legal information about your rights and how you can save your home. **YOU MAY BE ELIGIBLE FOR STATE FUNDED ASSISTANCE** from the Homeowner's Emergency Mortgage Assistance Program (HEMAP), a program of the Pennsylvania Housing Finance Agency (PHFA).

CALL A COUNSELING AGENCY FOR A MEETING.
APPLYING FOR HEMAP MAY TEMPORARILY STOP A FORECLOSURE ACTION.

To apply, you must have a face-to-face meeting with a HEMAP-approved Consumer Credit Counseling Agency within 33 days of the date of this notice. This meeting is free and is the only way to apply for HEMAP. A list of approved Counseling Agencies is attached. A list is also available at http://www.phfa.org/counseling/hemap.aspx. If after speaking with a Counseling Agency you have further questions about HEMAP, please call 1 (800) 342-2397. Individuals with hearing impairment may call 711 (RELAY).

To make sure you meet the deadline, please call a Counseling Agency **immediately** to schedule a face-to-face meeting. Keep this entire Act 91 Notice, including the attached Account Summary, and have it available for your face-to-face meeting, whether done in person or remotely. A counselor can:

- Help you apply for HEMAP and explain how the program works.
- Talk with your lender about a loan modification or other repayment plan.
- Explain possible options to avoid foreclosure such as loss mitigation, refinancing your loan, selling or transferring your property to a third party or having a third party cure the delinquency on your behalf through a short sale or assumption of mortgage.
- Provide referrals for other assistance, programs or services.
- Explain other rights you may have, including your right to assert the non-existence of the debt and any other defenses you may have.

Even if you miss the deadline, you may still apply for HEMAP, but a late HEMAP application will not stop your lender from foreclosing. However, if your application is approved, a HEMAP assistance loan will bring your mortgage current and stop the foreclosure. HEMAP may also temporarily help you make future mortgage payments.

Alternatively, you may save your home from foreclosure by curing your default. That means paying your lender all amounts currently due, including reasonable late charges, attorney fees and other costs and by otherwise fulfilling your mortgage obligations. You may cure the default at any time up to one hour before a Sheriff's Sale, up to three times in any calendar year.

If you have filed a petition in bankruptcy, this notice is provided for informational purposes only and is not an attempt to collect a debt. If you are protected by a bankruptcy filing you may still apply for HEMAP assistance.

*CONSULTE AL DORSO LA TRADUCCIÓN DE ESTA NOTIFICACIÓN IMPORTANTE, O LLAME AL 1.800.342.2397.

Fecha: _____

Notificación sobre la Ley 91*

Act 91 Notice*

Salve a su Hogar de la Ejecución Hipotecaria

La presente es una notificación oficial sobre la Ley 91. Usted está recibiendo esta notificación porque la ley de Pennsylvania requiere que los prestamistas hipotecarios la envíen a los propietarios de viviendas que se encuentren enfrentando una ejecución hipotecaria. Este aviso contiene información legal importante acerca de sus derechos y de lo que puede hacer para salvar su hogar. **ES POSIBLE QUE SEA ELEGIBLE PARA OBTENER AYUDA CON FONDOS ESTATALES** del Programa de Asistencia de Emergencia Hipotecaria para Dueños de Hogares (HEMAP, por sus siglas en inglés), un programa de la Agencia de Financiamiento de Hogares de Pennsylvania (PHFA, por sus siglas en inglés).

LLAME A UNA AGENCIA DE ASESORAMIENTO PARA CONCERTAR UNA REUNIÓN. LA SOLICITUD PARA EL HEMAP PUEDE DETENER DE FORMA TEMPORARIA LA EJECUCIÓN DE UNA HIPOTECA.

Para presentar su solicitud, debe celebrar una reunión presencial con una Agencia de Asesoría Crediticia para el Consumidor aprobada por el HEMAP, antes de que transcurran 33 días, a partir de la fecha de esta notificación. Esta reunión es gratuita y es la única manera de solicitar el HEMAP. Se adjunta una lista de Agencias de Asesoría aprobadas. También puede encontrar una lista en http://www.phfa.org/counseling/hemap.aspx. Si luego de hablar con una Agencia de Asesoría tiene alguna pregunta sobre el HEMAP, por favor llame al 1 (800) 342-2397. Las personas con discapacidades auditivas pueden llamar al 711 (RELÉ).

Con el fin de asegurar que cumpla con el plazo, por favor llame a una Agencia de Asesoría y programe una reunión presencial **de inmediato**. Conserve esta Notificación sobre la Ley 91, con el Resumen de Cuenta adjunto, y téngalo disponible para su reunión presencial, ya sea en persona o de forma remota. Un asesor puede:

- Ayudarlo a presentar su solicitud al HEMAP y explicarle cómo funciona el programa.
- Hablar con su prestamista acerca de una modificación del préstamo u otro plan de pago.
- Explicarle las opciones posibles para evitar la ejecución de la hipoteca, como la mitigación de pérdidas, la refinanciación del préstamo, la venta o transferencia de su propiedad a un tercero, o que un tercero pague el atraso en su nombre, a través de una venta al descubierto o asumiendo la hipoteca.
- Derivarlo a otro tipo de asistencia, programa o servicio.
- Explicarle otros derechos que pueda tener, incluido su derecho de reivindicar la no existencia de la deuda y cualquier otra defensa que tenga.

Incluso si no cumple con el plazo, es posible presentar su solicitud para el HEMAP, pero la solicitud tardía al HEMAP no impedirá que su prestamista ejecute la hipoteca. Sin embargo, si se aprueba su solicitud, el préstamo de ayuda del HEMAP pondrá su hipoteca al día y detendrá la ejecución. El HEMAP también puede ayudarlo, de manera temporal, a realizar los pagos de hipoteca futuros.

También puede optar por la alternativa de subsanar el incumplimiento para salvar a su hogar de la ejecución hipotecaria. Eso significa pagarle a su prestamista todos los montos adeudados a la actualidad, incluidos los cargos moratorios, los honorarios de abogados y otros costos razonables, y cumplir con sus obligaciones hipotecarias. Puede subsanar el incumplimiento en cualquier momento, hasta una hora antes de la subasta judicial, un máximo de tres veces por cada año calendario.

Si usted ha presentado una solicitud de quiebra, esta notificación se proporciona solo con fines informativos y no es un intento de cobrar una deuda. Usted puede solicitar la ayuda del HEMAP, incluso si está protegido por una declaración de quiebra.

*SEE REVERSE SIDE FOR TRANSLATION OF THIS IMPORTANT NOTICE OR CALL 1.800.342.2397. (10 POINT FONT)

Fecha:_____

ACT 91 NOTICE (12 point font, bold)
Account Summary (12 point font, bold)

Your Loan Details: (16 Point Font, Bold)[1]

Name(s) on Account: (12 Point Font)[2]	[Name(s)] The name(s) of the homeowner(s) and any other name appearing on the account; if the notice is being provided to additional parties not appearing on the account, the names of the additional parties shall be included under the names of the homeowner and other names appearing on the account. (12 Point Font)[3]
Address of Mortgaged Property:	[Address] The address of the mortgaged property. [Address]
Account Number:	[Account Number] The account number used by the mortgagee to reference the homeowner's account.

How to Contact Your Lender:

Current Lender or Servicer:	[Lender or Servicer Name] The name of the current Lender/Servicer for the account.
Lender or Servicer Address:	[Address] The address of the current Lender/Servicer [Address] for the account.
Lender or Servicer Phone Number:	[Phone Number] The general phone number for the Lender/Servicer (i.e., a 1(800) number).
Contact Person:	[Name] The name of a contact person at Lender/Servicer for the account.
Phone Number:	[Phone Number] The direct phone number for the contact person for the account.
Fax Number:	[Fax Number] The fax number for the contact person for the account.
Email:	[Email Address] The email address for the contact person for the account.

Default Information:

Monthly Payments Missed:	[Months missed e.g., Jan. 2014-August 2014]
Total Amount Past Due:	**$[amount(s)[4]**; itemize and describe; ***Please be aware that fees and costs may continue to accrue through the duration of the delinquency.*** An itemization of all amounts necessary to cure the delinquency, including fees and costs. Language regarding the continued accrual of fees should appear at the end of the itemization.

[1] All Table headings shall appear in 16 point font, bold.
[2] All Field headings shall appear in 12 point font.
[3] All account information shall appear in 12 point font unless otherwise indicated.
[4] All amounts listed in this field shall appear in 12 point font, bold. The itemization and description of the amounts shall not appear in bold.

How to Cure the Default:

Within 30 Days of the Date on This Notice:	Pay **$[amount]**[5], plus any payment and other charges that have become due to your lender or servicer by cash, cashier's check, certified check or other means acceptable to both parties.
Send Payment and Make Payable to:	[Lender or Servicer Name]Lender/Servicer name and [Address]address where the Lender/Servicer receives [Address]payment.
To Cure "Other Default":	[describe]Action homeowner must take to remedy a default other than a financial default.
Is the Mortgage Assumable?	Language indicating whether the mortgage is assumable. If the mortgage is assumable, the text in this box should read, "Yes, you may sell or transfer your home to a buyer or transferee who will assume the mortgage debt, if all the outstanding payments, charges and attorneys fees and costs are paid prior to or at the sale and if the other requirements of the mortgage are satisfied." If the mortgage is not assumable, the text in this box should read "No" only. If the mortgage is not assumable under the terms of the contract, but the Lender is willing to discuss the possibility of allowing an assumption of the mortgage, the text in this box should read "No, but please contact your Lender to discuss your options."

[5] All amounts listed in this field shall appear in 12 point font, bold.

Mortgage Foreclosure Mediation Programs

Allegheny County

- Notice of conciliation program is served with the complaint with the Save Your Home Hotline number (1-866-298-8020)
- The borrower is required to call and make an appointment with a participating housing counseling agency
- The court schedules the conciliation hearing and a stay is imposed
- Lenders may file a Motion to Lift Stay if/when settlement negotiations fail
- The judge is present at all the conciliation hearings and oversees the conference, which is attended by the borrower, housing counselor, and lender's counsel.

Beaver County

- The borrower is required to first contact a housing counseling agency and meet with a counselor
- If the counselor believes that the borrower is eligible for assistance, then the counselor will assist the borrower in filling out the appropriate documentation to enter into the mediation program. The borrower has 30 days from the date on which the complaint is served to opt in to the program
- The case is stayed for 60 days to allow the mediation to occur

Berks County

- Notice of the Program is served with the complaint on the borrower
- Once the certification and urgent notice is served on the borrower they have 10 days to contact a housing counselor
- The housing counselor then has three days to advise the court administrator and lender's counsel that the borrower will be participating in the program
- The conciliation conference will occur no earlier than 90-100 days from the date of the order
- The case is stayed until after the conciliation process is concluded
- After meeting with the housing counselor, the borrower has 20 days to provide a complete financial package to the counselor
- The housing counselor must submit the borrower's financial information and documents to the lender's counsel at least 45 days prior to the conciliation conference
- The conciliation conference will be conducted by a conciliator designated by the court

Blair County

- The Program Notice is served on the defendant along with the foreclosure complaint. To obtain a conference, the defendant must file a form with the court certifying the property is owner occupied. A conference will be scheduled w/in 60 days.
- Lender's counsel must come to the conference prepared to provide proof of the defaulted mortgage (i.e. a complete payment history)
- The borrower must come to the conference with a financial package

Bucks County

- Notice of conciliation program is served with the complaint with the Save Your Home Hotline number (1-866-760-8911)
- Upon a request from the borrower to the Hotline for assistance and a conciliation conference, an Order for Conference shall be generated by the Court. The Order for Conference will be sent to all parties to the mortgage foreclosure action
- The housing counselor or borrower is required to submit a complete financial package to the lender's counsel at least 14 days before the conciliation conference
- The conciliation conference shall be conducted by judge *pro tem* designated by the Court
- The entry of the Order for Conference shall include a stay of other proceedings in the case until at least 20 days following the conciliation conference
- In litigated cases, Judges have been scheduling the cases for conferences to press settlement.

Butler County

- Notice of conciliation program is served with the complaint with the Save Your Home Hotline number (724-431-0081).
- The borrower must meet with a housing counselor within 30 days from the date of service and file a Request for Conference.
- The court will then issue an order scheduling a conciliation conference and requiring the lender to contact the borrower or borrower's attorney within 10 days of the order and provide a loss mitigation application
- The order also requires the borrower to serve a completed financial package to the lender's counsel within 14 days before the conference.

Clinton County

- The Prothonotary prepares and then sends the Mortgage Foreclosure Diversion Program Notice to the Sheriff to serve with the complaint on the borrower
- The borrower can call the court to opt-in to the program.
- If the borrower does so, then an order is issued staying the case and scheduling a conciliation conference

Cumberland County: program sunset July 1, 2014

Delaware County: program sunset December 31, 2017

Fayette County

- Notice of the diversion program and availability of a 90 day stay is served with the complaint
- The borrower has 20 days from being served with the complaint to engage in foreclosure mitigation counseling with Southwestern Pennsylvania Legal Services (1-800-846-0871) and apply for the 90 day stay
- There is no conciliation conference

Greene County

- Conference will be scheduled within 60 days of filing a complaint and will impose a stay on the foreclosure. A conference is scheduled on all cases, including commercial and non-occupied properties.
- At the conference, the lender must provide a reinstatement figure and the defendant must provide proof of income and expenses

Lackawanna County

- Complaint must identify if the property is residential; if so, Notice of Residential Mortgage Foreclosure Diversion Program must be served with the complaint on the defendant.
- The Notice of Conciliation Program is served on the borrower with the complaint and the foreclosure case is stayed for 60 days to request a conciliation conference
- The borrower must then meet with a housing counselor and provide a complete financial package.
- The housing counselor or attorney will then file a Request for Conciliation Conference with the court
- The Court Administrator will then issue a case management order scheduling the case for a conference
- At least 14 days before the conference, the borrower must serve his or her financial information on the lender's counsel

Lancaster County

- Pursuant to Lancaster County Administrative Order No. A.D. 27-2021, entered June 1, 2021 and effective August 1, 2021, Lancaster County has created Residential Mortgage Foreclosure Diversion Program.
- This program applies to any mortgage foreclosure on residential owner–occupied properties filed on or after August 1, 2021, with four or fewer residential units,

which serve as the primary residence of the defendant homeowner, for which are not subject of bankruptcy, divorce, or estate proceedings.

- For any eligible action commenced prior to August 1, 2021, additional steps and notice are required procedurally before judgment can be entered either by default or dispositive motion and at the discretion of the presiding judge, any eligible matter may be entered into the program any time prior to a scheduled sheriff's sale.
- After August 1, 2021, the paper filing of all complaints for residential mortgage foreclosure complaints is mandatory.
- Once the Complaint is filed, the Court will issue a Case Management Order and schedule first conference shall be scheduled no sooner than ninety 90 days and later than 120 days from the Order.
- The Order imposes a number of procedural requirements and obligations on both the foreclosing plaintiff and defendant(s), failure to comply may result in removal from the program, dismissal of the complaint and/or additional sanctions, if appropriate.
- A representative of plaintiff who has actual authority to resolve the action must attend the conciliation conference.

Lawrence County

- Plaintiff's counsel must provide a mandatory notice to the court when filing and serving foreclosure complaints for owner occupied property
- If defendant calls and meets with the housing agency listed on the notice and is eligible, s/he must file a Certificate of Participation w/in 30 days after service of Complaint.
- Court will enter order imposing 60 day stay of foreclosure proceedings and scheduling a conciliation conference.

Lehigh County

- The Court schedules conciliation conferences for all owner occupied foreclosure actions.
- A stay is imposed upon scheduling a conference until further order of court.
- Borrower/Defendants must submit workout application and file a Certificate of Participation with the Court 15 days before the Conference

Luzerne County

- For all cases designated as owner-occupied, the Prothonotary will send a notice of mediation to the borrower, with a copy to the housing counseling agency, explaining the availability of foreclosure mediation
- If the borrower wants to participate in the program, he or she has to opt-in to the program by contacting the housing counseling agency which will contact the Court about scheduling a mediation
- The borrower is required to send a workout package to the lender's counsel at least 21 days before the mediation

Lycoming County

- Notice of conciliation program is served with the complaint and the borrower is directed to contact North Penn Legal Services at 570-323-8741 within 14 days of receiving the notice
- If the defendant returns a form to the Court Administrator requesting a conference, a stay will be imposed until after the conference.
- Once Plaintiff receives Stay Order and Election of Participation, Plaintiff shall serve Defendant(s) and North Penn Legal Services, (c/o Jennifer Heverly, Esq) with the Notice of Participation
- Within fourteen days of receiving the Notice of Participation, Defendant(s) must contact North Penn to obtain pro bono counsel.
- Once Plaintiff receives notification from North Penn that counsel has been appointed, Plaintiff shall provide Defendant(s) with Loss Mitigation application within 21 days.
- If the application is not returned within 21 days Plaintiff may petition the court to schedule a status conference
- Plaintiff required to notify Defendant(s) within 10 days of any deficiencies in the loss mitigation application
- Certificate of Readiness for Settlement Conference can be filed once all deficiencies have been addressed
- Court to issue Order Scheduling Foreclosure Diversion Conference within 30 days of receiving the Certification of Readiness

Monroe County

- Notice of conciliation program/Urgent Notice is served with the complaint with the Save Your Home Hotline number (Consumer Credit Counseling Services 570-420-8980)
- The contact information for the lender representative is disclosed on the Notice
- The borrower must contact a housing counseling agency within 15 days of service of the complaint and file a Certificate of Participation to opt into the program.
- The borrower must provide a completed financial package to the lender's counsel at least 15 days before the conference
- The conference will be held by a court appointed attorney who will serve as a conciliator and assist the parties in reaching an agreement

Montgomery County

- Limited to owner occupied residential mortgage foreclosure complaints filed on or after June 1, 2015 with a total debt of $300,000.00 or less.
- Per Court Rules, Defendants that are estates or divorced are not eligible for program
- Upon the filing of a complaint, the Court will issue a scheduling order which stays the entry of judgment until the matter is released from the program

- Once the conference is scheduled, the lender's attorney must attend the conference in person.

Northampton County

- Where properties are owner occupied, Plaintiff must include a notice with the complaint advising of the Save Your Home Hotline
- Once the complaint is filed, a Case Management Order is issued scheduling a conference within 90 days which is served by the Sheriff along with the complaint
- The Case Management Order requires the borrower to call a housing counselor and schedule a meeting within 10 days of being served with the complaint and notice
- The Case Management Order requires the borrower to provide financial documentation to the counselor which then must be submitted to the lender's counsel at least 10 days before the conference.
- The lender's representative with settlement authority must attend the conference in person unless otherwise excused.

Philadelphia County

- Notice of conciliation program is served with the complaint with the Save Your Home Hotline number (215-334-4663)
- The First hearing is scheduled by the Court. The borrower, the Housing Counselor and the Lender's Counsel are required to attend. At this hearing, the agenda is for all parties to discuss the borrower's intent and request the proper proof of resources from the borrower

    - If the borrower does not appear, the Court will enter an Order of Court as: Failure to Appear and Proceed with Foreclosure
    - If the borrower does appear, but has not submitted all required financial documents, the court will automatically postpone the hearing for approximately 35 days. During this time, the borrower will be required to submit a complete updated workout package to the lender's counsel 14 days before the second hearing

- The Second hearing-

    - If the borrower submitted a complete updated workout package at least 14 days before this hearing, the lender will be required to provide an answer to this workout package. Failure to provide an answer will result in a postponement of the Conciliation hearing
    - If the borrower did not submit a completed updated workout package at least 14 days before this hearing, the Court may enter an Order removing the case from this program

Pike County

- Mortgage Foreclosure Diversion Program Notice is served with the complaint

- The borrower has 20 days to opt in to the program by filing a Certification that the Premises are Owner-Occupied and Request for Conciliation Conference with the Prothonotary
- If the borrower opts-in, then all proceeding are stayed for sixty (60) days
- A conciliation conference is scheduled during the sixty (60) day period

Schuylkill County

- Upon the filing of a complaint in a residential mortgage foreclosure action, the Prothonotary shall prepare a copy of the Mortgage Foreclosure Diversion Program "Urgent Notice" which is to be served with the complaint on the borrower
- After service, the case is stayed for 90 days
- The borrower has 7 days after receipt the Urgent Notice to schedule a meeting with the housing counselor. The borrower and housing counselor must then meet with in the next 14 days
- The borrower must bring all requested financial and employment information to enable the housing counselor to draft a proposal
- Within 45 days of the intake meeting, the Housing Counselor shall submit to the lender or the lender's representative a Mortgage Modification Plan or a statement that the Housing Counselor was unable to develop a plan
- If no plan is submitted, the lender may petition the Court, after notice to the borrower, to lift the stay
- If a plan is submitted, the housing counselor shall attempt to negotiate a resolution of the default with the lender's representative
- If no agreement is reached through negotiations, the housing counselor shall complete the Request for a Court Supervised Conciliation Conference and forward it to the court
- The court will then schedule a conciliation conference

Somerset County

- When the mortgage foreclosure complaint is filed, the Prothonotary's office provides a notice of the Mortgage Foreclosure Diversion Program that the lender shall serve with complaint on the borrower
- The borrower must attend a foreclosure mitigation counseling session with Southwestern Pennsylvania Legal Services within 20 days of the date of the service of the complaint
- After attending the counseling session, the borrower, through a representative of Southwester PA Legal Services, can apply for a 60 day stay of the foreclosure proceedings by sending a written request to the judge within 10 days of the counseling session
- There is no actual conciliation conference

Washington County

- When the mortgage foreclosure complaint is filed, the Prothonotary's office provides a notice of the Mortgage Foreclosure Diversion Program that the lender shall serve with complaint on the borrower
- The borrower is required to attend a Foreclosure Mitigation Counseling session in the courthouse within 20 days of being served with the complaint and notice.
- If after attending the session, the borrower can request a 90 day stay of proceedings
- There is no actual conciliation conference

Chapter Two

Day of Sale

Updated 2023 by:
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Day of Sale

I. Procedural Rules

The Pennsylvania Rules of Civil Procedure relating to actions in Mortgage Foreclosure provide that a judgment in the action shall be enforced as provided by Rules 3180 to 3183 inclusive. See Pa.R.C.P. 1149. Rule 3180(a) provides simply that a judgment in mortgage foreclosure shall be enforced by a writ of execution, and Rule 3181 provides that the procedure for enforcing judgments against real property is in accordance with the rules of civil procedure governing executions for the payment of money. The rules also provide the form for the Praecipe for Writ of Execution, Pa.R.C.P. 3256, and the Writ of Execution, Pa.R.C.P. 3257.

After the writ of execution is issued, and a sheriff's sale is scheduled, the executing plaintiff is required to file an Affidavit listing as of the date the praecipe for writ of execution was filed, the name and addresses of the owners or reputed owners of the real estate, any other persons who have an record lien on the property, every other person who has any record interest in the property which may be affected by the sale, and every other person who has an interest in the property not of record which may be affected by the sale and of which the plaintiff has knowledge. Pa.R.C.P. 3129.1. Notice of the sheriff's sale must be given by handbills, by written notice to all persons listed in the Affidavit required under Pa.R.C.P. 3129.1, and by publication. Pa.R.C.P. 3129.2. Rule 3129.2(b) provides that the handbills are required to be posted by the sheriff in the sheriff's office and upon the property at least thirty (30) days before the sale and must include the following:

> (1) a brief description of the property to be sold, its location, any improvements, the judgment of the court on which the sale is being held, the name of the owner or reputed owner, and the time and place of sale, and
>
> (2) a notice directed to all parties in interest and claimants that a schedule of distribution will be filed by the sheriff on a date specified by the sheriff not later than thirty days after the sale and that distribution will be made in accordance with the schedule unless exceptions are filed within ten days after the filing of the schedule.
>
> In addition to the handbills, Rule 3129(c) provides that:
>
> The written notice shall be prepared by the plaintiff, shall contain the same information as the handbills or may consist of the handbill and shall be served at least thirty days before the sale on all persons whose names and addresses as set forth in the affidavit required by Rule 3129.1.

The Rule also provides the manner in which service of the notice shall be made, and there is a distinction between service upon the defendant in the judgment and the other persons named in the affidavit. See Pa.R.C.P. 3129.2(c)(1). Finally, this Rule requires that notice shall also be

given by publication by the sheriff once a week for three successive weeks in a newspaper of general circulation in the county and in the legal publication, if any, designated by rule of court for publication of notice, the first publication to be made not less than twenty-one days before the date of sale. Pa.R.C.P. 3129.2(d).

Rule 3129.3 provides that no new notice of the sheriff's sale shall be given if the sale is stayed, continued, postponed or adjourned to a date certain within one hundred thirty days of the scheduled sale, and public announcement thereof, including the new sale date, is made to the bidders assembled at the time and place fixed for the sale. However, there may only be two such stays, continuances or postponements within the one hundred thirty day period without new notice or a court order.

After a writ of execution has been issued, Rule 3183(a) provides that the execution shall be stayed (1) upon the written direction of the plaintiff to the sheriff; (2) upon a showing of exemption or immunity of property from execution; (3) upon showing of a right to a stay under the provisions of an Act of Congress or an Act of Assembly. Rule 3183(b) provides that the execution may be stayed by the court upon its own motion or upon application of any party in interest showing (1) a defect in the writ or service; or (2) any other legal or equitable ground. In addition, the court may impose such terms and conditions or limit the duration of the stay. Pa.R.C.P. 3183(c). The Court may on application of a party interest set aside the writ or service (1) for a defect therein; (2) upon a showing of exemption or immunity of property from execution; or (3) upon any other legal or equitable ground.

II. Conditions of Sale

While the Pennsylvania Rules of Civil Procedure govern the issuance of the writ of execution, and provide for the legal requirements for notice of the sheriff's sale and the manner of service, these rules are silent about the actual conditions governing the sheriff's sale. Local practice governs most of the conditions of sale, and apart from the few requirements set forth in Rule 3129.2(b) regarding the description of the property and the contents of the notice of sale, including the date and time of the sale, most conditions of sale are left to the discretion of the sheriffs in each of the counties.

The time of sale, amount of deposit (or down money), time for payment of the balance or settlement on the writ, the forfeiture of deposit, re-sales, and similar terms and conditions are not prescribed by the Rules of Civil Procedure, but rather are governed by local practice, and the sheriff may impose reasonable conditions which encourage competitive bidding and provide for the completion of an orderly sale. See In re Hays' Estate, 159 Pa. 381, 28 A.2d 158 (1893).

A. Time and Place of Sale

Rule 3129.2 provides that the notice of sale must set forth the time and place of sale. However, it is up to the sheriff to schedule the sale. Generally, the sheriff will publish a calendar which will set forth the dates for the upcoming year along with a cutoff date, which is the last date

for issuing a writ of execution and delivering the same to the sheriff to be included in the next scheduled date of sale. Between the writ and sale date there can be anywhere from six (6) weeks to four (4) months, so as to allow the sheriff sufficient time to set up the sale, post the handbills, make service of the notice of sale and publish the same as required by law.

Similarly, the sheriff will determine the place of the sale, which is almost always the same. The place of sale may be in an auditorium, courtroom, or even held in the sheriff's office (if sufficiently large enough to accommodate all interested parties and bidders). In response to the COVID-19 Pandemic, several sheriffs have transitioned their sales to an online auction format. Currently the following counties are utilizing Bid4Assets to conduct online sales: Adams, Armstrong, Beaver, Berks, Carbon, Chester, Elk, Franklin, Monroe, Montgomery and Philadelphia. The following counties will be utilizing RealAuction to conduct online sales: Butler and Lancaster. The following counties are utilizing RealForeclose to conduct online sales: Fayette, Lebanon, Washington and York. The following county is utilizing Microsoft Teams to conduct online sales: Allegheny.

B. Sale of Real Property Located in More than One County

Rule 3131(a) provides that where real property to be sold in execution consists of an interest in a single tract of land which lies in more than one county, the writ shall be directed to the sheriff of the one of those counties and the plaintiff shall file a petition with the court of that county for leave to sell the same at execution. Rule 3131(b) further provides what must be contained in the petition to the court. In addition where the court enters an order directing the sale to include land in another county, a copy of the pleadings and the order of court shall be filed by the plaintiff in the office of the prothonotary of such other county. Notice of the sale must also be advertised in each county. Pa.R.C.P. 3131 (d).

C. Conditions of Sale

The terms and conditions of sale are governed by local practice and are generally included along with the list of properties being sold at sale and published in accordance with Pa.R.C.P. 3129.2(d). The conditions of sale can be obtained on the sheriff's website in some counties, and generally consist of the following:

(1) the opening bid amount, which may include the costs of the sheriff as well as any outstanding taxes and municipal claims;

(2) the increments in the bid amounts, which are usually a minimum of $100.

(3) that the successful bidders must pay a deposit immediately following the sale in cash, certified check, or cashier's check;

(4) the time required to complete settlement on the writ or pay the balance of the bid (which may be the following week or 30 days, but can be as short as 12:00 noon on the day of the sale);

(5) whether the minimum bid includes payment of delinquent taxes, sewer liens or other municipal liens;

(6) whether or not the purchaser is responsible for payment of delinquent taxes or other municipal liens on the property;

In the event the successful purchaser does not have the deposit moneys at the sale, the sheriff may re-auction the property immediately for sale. If the purchaser fails to comply with the terms and conditions of sale, or in the event the balance of the purchase price is not paid as required, the successful purchaser will forfeit his deposit moneys, and the sheriff may forthwith, without any further notice, cause the property to be advertised for sale and shall look to the defaulting bidder for payment of all costs occasioned by the re-advertised sale. Depending on the County, the Property can revert to the Plaintiff or need to be re-sold at a subsequent sale.

In 2018, the Superior Court of Pennsylvania held that the Venango County Sheriff's Office practice of adding realty transfer taxes to the winning bid at sheriff's sale was improper. *Northwest Savings bank v. Barbara A. Knapp, et al*, 2016 PaSuper 218 (2016). The Superior Court held that the Venango County Sheriff's procedure of adding realty transfer taxes contravened the clear and unambiguous language of 72 Pa.C.S.A. §8101-C and 72 Pa.C.S.A. §8107-D. Thus, all state and local taxes must be paid from the winning bid and not added to the winning bid.

D. Failure of Plaintiff to Appear at Sheriff's Sale

If the plaintiff or a representative of the plaintiff is not present at the sale, the real property shall not be sold, and the sheriff shall return the writ of execution to the prothonotary noting thereon that the property was not sold because plaintiff or a representative of the plaintiff was not present. Pa.R.C.P. 3129.3(c). However, the sheriff may decide on its own motion or initiative to continue or postpone the sale so as to allow the plaintiff or its attorney an opportunity to proceed with the sale at the later date rather than staying the writ altogether. Prior to the amendment of this Rule in 2006, the sheriff was free to proceed with the sale regardless of the attendance of the plaintiff.

Practice Note: Rule 3129.3 permits only two (2) postponements over the course of one-hundred thirty (130) days so if Plaintiff's Counsel fails to appear and cannot be postponed pursuant to Rule 3129.3(b), the sale must be stayed.

E. Announcements at the Sale

The sheriff will announce the procedures and conditions of sale immediately prior to the sale. In addition, prior to the sale of each property, the sheriff may read the information contained

in the sheriff's handbill, the writ number, judgment amount, civil action number, the names of the plaintiff and defendant. The sheriff may either read the legal description of the property, or in most cases, simply the address of the property, or an abbreviated description of the property or writ number. The attorney for the plaintiff may also make announcements prior to the sale which may be necessary to inform the bidders as to any pertinent information concerning the sale, such as pending litigation, motions or title claims or issues. The plaintiff's attorney should be aware of the local practice allowing such announcements since some counties may require an advance request to make an announcement, while other counties may welcome such announcements and others prohibit the practice absent a court order.

The sheriff will announce the opening bid for the each property being sold. The opening bid may either be a dollar bid ($1.00), costs (either generally or specific amount), or costs and taxes (depending on the county).

F. Announcement of the Plaintiff's Upset Bid

The upset price or bid is the amount the lender requires to be obtained by the sheriff so as to either (1) result in full payment to plaintiff of its judgment, together with interest and costs, after payment of the sheriff's fees, costs, distribution costs, real estate taxes and liens, and poundage and transfer taxes or (2) result in an amount sufficient that the lender would accept to satisfy its lien. Announcement of the plaintiff's upset bid is required in some counties as a means to expedite the sale, while in other counties it is prohibited or considered to have a "chilling" effect on bidding. However, where permitted, care should be taken by the plaintiff's attorney to accurately announce his or her upset bid. Of course, the plaintiff judgment creditor or executing lien creditor may announce an upset bid less than the full amount of its judgment or the amount owed, and be satisfied with obtaining a price that is consistent with the actual value of the property.

III. Bidding at the Sale

A. <u>Calculating Bid</u>

The creditor can choose what to bid but cannot realize more than what is owed out of the sale proceeds. In calculating the amount of the bid, the following items need to be considered for a bid based on the total debt owed:

a. The Judgment amount;

b. Interest on the Judgment at the legal rate of interest of 6% from the date of the entry of the judgment to the date of sale, or the contract rate of interest.

c. Sheriff's costs, which include:

i. Sheriff's Poundage/Commission - 2% on the first $250,000 bid and .5% of the remaining amount (except in Philadelphia County where poundage is 8% of the first $5,000 bid and 2% on the balance;

ii. Distribution Costs – title search and title insurance costs incurred by the sheriff where there is any competitive bidding;

iii. Transfer taxes – which is based on the fair market value as determined by multiplying the local tax assessment by the common level ratio factor (CLR) for the county as established by the Department of Revenue. See 72 Pa.C.S.A. §8101-C.

iv. Costs of sale (advertising, posting, service, etc.)

d. Delinquent real estate taxes and municipal liens;

e. Condominium or Homeowners Association Liens – See 68 Pa.C.S.A. §3315 and 68 Pa.C.S.A. §5315 (Lien for assessments that come due for the six month period prior to judicial sale).

The purpose in calculating the bid is that the executing mortgagee or creditor will receive the amount of its judgment, interest and costs, after the sheriff makes distribution or payment for the aforementioned items. This would normally result in a total debt bid.

In most counties, bidding starts at the costs of sale and the tax liens that have been provided to the sheriff prior to the sale.

In addition to calculating the bid as above, the executing mortgagee or creditor may determine that it is in its best interest to bid only up to a specified amount which is usually the real or fair market value of the real estate, and perhaps even discounted by a certain percentage representing an amount which the lender would normally incur as an expense in carrying and marketing the property on the open market should it become the successful bidder at the sheriff's sale (such as real estate commissions, hazard insurance, maintenance, additional transfer taxes). This would be considered a specified bid.

B. Poundage

The Sheriff Fee Act, 42 Pa.C.S.A. §21101 et seq., sets forth the various fees that a sheriff is entitled to collect for services performed in connection with real estate executions, including the costs for receiving, docketing and making the writ, service or posting a notice or copy, levying on each separate piece or parcel of land, service of the writ against real estate of each defendant, advertising public sale by handbills, crying the sale, distribution of proceeds, executing and acknowledging a deed to real property, etc. In addition, and most importantly to the sheriff, is that the sheriff is entitled to receive, as an official fee, a commission based upon the total amount bid

for the property whether paid to the sheriff or credited to the purchaser, of 2% of the first $250,000 and of 0.5% of the remaining amount. 42 Pa.C.S.A. §21104. This provision does not apply to Philadelphia where poundage is 8% of the first $5,000 bid and 2% on the balance.

Section 21104 of the Sheriff Fee Act is set forth below:

(a) GENERAL RULE. – For executing court-issued writs or orders requiring the levy, seizure or sale of lands and tenements, the following fees apply and, unless otherwise stated in this section, shall be paid by the plaintiff, petitioner or other moving party:

(1)	Receiving, docketing and making	$ 15.00
(2)	Serving or posting a notice or copy	15.00
(3)	Levying on each separate piece of parcel of land	15.00
(4)	Service of a writ against real estate of defendant requiring service on third party for each party	15.00
(5)	Making immediate return of service on a garnishee when writ or other item is retained for further action	5.00
(6)	Advertising public sale in newspaper, for each parcel of land, in addition to cost of publication and printer's bill	15.00
(7)	Advertising public sale by handbills, for each parcel of land separately cribed by metes and bounds or otherwise, in addition to publication and printer's bills	15.00
(8)	Each sale held subsequent to the first sale	20.00
(9)	Crying the sale of each separate parcel of land separately sold	10.00
(10)	Distribution of proceeds	25.00
(11)	Executing and acknowledging a deed to real property, payment to be made by grantee	30.00

(b) ADDITIONAL FEES.—Except under (a)(8), the sheriff shall receive as an official fee a commission based upon the total amount bid for the property, whether paid to the sheriff or credited to the purchaser, of 2% of the first $250,000 and of 0.5% of the remaining amount.

(c) FEES CHARGEABLE TO SHERIFF.—The purchaser shall pay to the sheriff fees of the prothonotary and fees of the recorder chargeable to the prothonotary or the recorder to the sheriff relating to consummation of real estate executions including, but not limited to, the recording of the deed.

The sheriff is entitled to collect a commission of any amount paid to the executing mortgagee to stay the sale, such as in the case of reinstatement or payoff of the mortgage. In 1993, in the case of *York Federal Savings and Loan Association v. Anderson,* 157 Pa.Cmwlth. 342, 630 A.2d 59 (1993), the Commonwealth Court held that the amount of the sheriff's commissions was to be based on the amount of the debt and not the amount bid at the sale. This issue once again came before the Commonwealth Court which reviewed its prior decision in the matter of *Jersey Shore State Bank v. Brewer*, 668 A.2d 626 (Pa.Cmwlth. 1995). There, the Commonwealth Court stated that the York Federal case was incorrectly decided, and held that the sheriff could calculate commissions only on the actual amount bid. Unlike other counties, Philadelphia does not charge or collect poundage on any amounts received by the mortgagee to reinstate or payoff the mortgage prior to sale.

C. Transfer Taxes

Transfer taxes are based on the maximum amount of the bid or the fair market value as determined by multiplying the local tax assessment by the common level ratio factor (CLR) for the county as established by the Department of Revenue. *See* 72 Pa.C.S.A. §8101-C. Where the executing creditor is the successful purchaser at the sheriff's sale, the transaction is excluded from imposition of transfer taxes. 72 Pa.C.S.A. §8101-C.3(16). Most counties also exempt from realty transfer taxes sheriff's deeds or deed in lieu to the foreclosing mortgage. Also exempted from payment of transfer taxes are government agencies such as the Secretary of Housing and Urban Development, the Secretary of Veterans' Affairs, Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). See 72 Pa.C.S.A. §8101-C.2. The exemption must be stated in the transfer tax affidavit. Where the attorney on the writ is the successful bidder at the sheriff's sale and thereafter assigns his bid to an entity other that the executing mortgagee, or plaintiff in the action, transfer taxes will be due on the transaction.

While the State excludes transfer taxes on the conveyance to the executing mortgagee following a judicial sale, no such exemption is allowed for the imposition of the 3.278% transfer taxes imposed in Philadelphia County.

Where the property sells to a third party, transfer taxes will come out of the sale proceeds prior to distribution to any other obligation, including the foreclosing creditor. *See Northwest Sav. Bank v. Knapp*, 149 A.3d 95 (Pa. Super. 2016).

D. Bidding at the Sale

Care should be taken in reviewing the Sheriff's Conditions of Sale as to the actual conduct or limitations upon the attorney on the writ bidding at the sale. In some counties, the attorney on the writ bidding at the sale can control the bidding and may stay the writ at any time before the auctioneer's hammer falls. Any bidder at the sale has a right to retract his bid and the sheriff cannot prescribe any conditions which deprive him of such right. *Fisher v. Seltzer*, 23 Pa. 308 (1854). See *Pennsylvania Co. v. Broad Street Hospital,* 354 Pa.123, 47 A.2d 281 (1946). Once the hammer falls, and bidding is closed at the sale, the bidder has entered into a binding contract. *Lal v. Ameriquest Mortgage Co.,* 858 A.2d 119 (Pa.Super. 2004).

Even though the attorney on the writ can stay the sale at any time before the bid is accepted, once competitive bidding has commenced, some counties permit the attorney to postpone a sale up to the amount of his judgment and costs, while other counties specifically prohibit this.

E. Continuances or Postponements of the Sheriff's Sale

Pursuant to Rule 3129.3 the plaintiff may stay, continue, postpone, or adjourn a sheriff's sale without providing new notice to the defendant or other parties in interest so long as the sale is continued, postponed or adjourned to a ***date certain*** within one hundred thirty (130) days of the scheduled sale, and public announcement thereof, including the new sale date, is made to the bidders assembled at the time and place fixed for the sale. However, the Rule also provides that there may only be two such stays, continuances or postponements within the one hundred thirty day (130) period without new notice. The limit of two such postponements would apply whether the postponements are pursuant to plaintiff's direction or court order. Simply because the court may have ordered the sale continued or postponed does not mean that the plaintiff may still postponement or continue the sale two additional times. However, further postponements or continuances may be obtained upon application to the court. Rule 3183(b)(2) and (d)(3), provides that the court may stay an execution upon any legal or equitable ground, and may impose reasonable conditions on the stay and limit the stay to a reasonable time.

> ***Practice Note: some judges will generally continue or stay the sale or perhaps for a period of time (30 days, 6 months, etc.). This is unacceptable to most Sheriffs which require that the Order state the new sale date in accordance with the Sheriff's schedule of sale dates***.

On March 7, 2014, the Pennsylvania Supreme Court approved amendments to, *inter alia*, Rule 3129.3, effective April 7, 2014. New subsection 3129.3(b)(2)(i) requires the Plaintiff on a writ to file (A) a notice of the date of continued sheriff's sale with the prothonotary at least fifteen days before the continued sale date, and (B) a certificate of filing with the sheriff confirming the filing of the notice of the date of continued sheriff's sale with the prothonotary. The sheriff shall continue the sale to the next available sale date if the notice of the date of continued sheriff's sale has not been timely filed. The continuance imposes a new obligation on the plaintiff to meet the requirements described in 3129.3(b)(2)(i)(A) and (B). A note to the new rule 3129.3 indicates that

the amendments supersede other provisions of the rules limiting the number of times a sale may be continued including the provisions of 3129.3(b)(1).

F. Purchasing Real Property at the Sheriff's Sale

1. Attorney on the Writ as the Successful Purchaser

In many cases, there will be no bidding at the sale and the property will be "knocked down" or sold to the attorney on the writ for the opening bid or costs. Where the plaintiff is the successful bidder at sheriff's sale, generally, he is not required to pay the deposit moneys at the time of sale as a condition of the sale, although this may vary by county, especially if the costs, taxes or other liens exceed the initial deposit paid when the writ is issued. Where the sheriff's costs, including, advertisement, service, etc., are less than the deposit with sale, the attorney on the writ will receive a refund from the deposit. Nor is the executing plaintiff or any other lien creditor required to pay in the balance of the purchase price. Rule 3133 provides that whenever the real property is purchased by the plaintiff or any other lien creditor entitled to receive all or part of the proceeds of the sale, the sheriff upon proof of that fact shall accept on account of the purchase price the receipt of the purchaser up to the amount of the proceeds to which the purchaser is entitled.

It is not unusual for the attorney on the writ to assign his bid following the sale. This may occur where there has been a sale of the underlying loan obligation, or it is determined that taking title in the name of an investor, real estate holding company, subsidiary corporation of the lender, or an assignee, etc., is more advantageous. Sometimes, the winning bidder may even obtain a purchaser for the property before settling on the writ. In such cases, the attorney on the writ must execute an Assignment of Bid and provide the same to the sheriff when making settlement on the writ. *****Consider the impact of transfer taxes*****

Apart from tendering the balance of the purchase price or costs due the sheriff, the plaintiff must still comply with all other terms and conditions of sale, which may include preparing the sheriff's deed and realty transfer tax affidavits of value.

2. Third Party Bidder as the Successful Purchaser

Where a third party is the successful bidder of the sale, they are required to pay the required deposit immediately after the bidding is concluded. If they fails to pay the required deposit moneys the sheriff will put the property back up for sale. As indicated above, in the event the successful purchaser fails to comply with the terms and conditions of sale, they will forfeit the deposit moneys, and the sheriff may cause the property to be advertised for sale, and may also look to the defaulting bidder for payment of all costs occasioned by the re-advertised sale.

Where there is a second bidder who registers a bid at the sale, this second bidder will be permitted to complete settlement on the writ in accordance with the terms of the sale. The bidder who wishes to register a second at the sale in the event the highest bidder fails to comply with the terms and conditions of the sale will be required to give the sheriff the same down moneys and

agree to the same conditions as the highest bidder. In some counties, the attorney on the writ is automatically registered as the second bidder.

Where the purchaser fails to settle with the sheriff on the writ, reference should be made to the Conditions of Sale.

3. Deficiency Judgments

The Pennsylvania Deficiency Judgment Act, 42 Pa.C.S.A. §8103(a) provides in pertinent part, as follows:

> Whenever any real property is sold, directly or indirectly, to the judgment creditor in execution proceedings and the price for which such property has been sold is not sufficient to satisfy the amount of the judgment, interest and costs and the judgment creditor seeks to collect the balance due on said judgment, interest and costs, the judgment creditor shall petition the Court having jurisdiction to fix the fair market value of the real property sold. The petition shall be filed as a supplementary proceeding in the matter in which the judgment was entered.

A petition to fix fair market value and set deficiency must be filed within six months of the sale of mortgaged property. 42 Pa.C.S.A. §5522(b)(2). The six-month time period begins to run when the deed to the property is delivered to the creditor. *Bryn Mawr Trust Co. v. Healy,* 667 A.2d 719 (Pa. Super. 1955); *Delaware Valley Factors, Inc. v. G.B. Echenhofer Co., Inc.,* 313 A.2d 318 (Pa. Super. 1973).

Thus, if an executing mortgagee wishes to preserve its right to seek a deficiency judgment against the debtor or mortgagor, it must be the successful purchaser of the real property at sheriff's sale. Allowing the property to be sold for less than the total debt due on the judgment to a third party will prevent any action to collect the balance due.

4. Lien Priority

The Lien Priority Law, 42 Pa.C.S.A. §8141 provides that liens have the following priority:

(1) Purchase money mortgage - from the time it is delivered to the mortgagee, provided it is recorded within ten (10) days after its date; otherwise, it has priority from the time it is left for record;

(2) Other mortgage - from the time it is left for record;

(3) Verdict for a specific sum of money – from the time it is recorded by the Court;

(4) Adverse judgment, order or decree – from the time it is rendered;

(5) Amicable judgment - from the time the instrument on which it is entered is left for entry;

(6) A writ which, when issued and indexed by the Prothonotary, creates a lien upon real property; and

(7) Any other instrument which, when entered or filed and indexed in the Prothonotary's Office, creates a lien against real property.

Certain other liens have a "super priority", such as certain taxes due the Commonwealth of Pennsylvania pursuant to 72 P.S. §1401, corporate taxes. Further, 53 P.S. §7106 provides priority to municipal claims. However, compare to 72 P.S. §§7242, 7345 which give certain liens to the Commonwealth priority as of the date the lien is filed, not super priority. Accordingly, it is important to review the claim and verify whether the lien is filed under a statute that gives it super priority.

Certain other lienholders are afforded protection from judicial sales. 42 Pa.C.S.A. §8152(a) provides that a judicial or other sale of real estate shall not affect the lien of a mortgage thereon, if the lien of the mortgage is or shall be prior to all other liens upon the same property except: (1) other mortgages, ground rents and purchase money due the Commonwealth; (2) taxes, municipal claims and assessments, not at the date of the mortgage duly entered as a lien in the office of the clerk of the court of common pleas; (3) taxes, municipal claims and assessments whose lien though afterwards accruing has by law priority given it. Subsection (c) provides that a judicial sale or other sale of real estate in proceedings under a prior judgment or a prior ground rent, or in foreclosure of a prior mortgage, shall discharge a mortgage later in lien.

A foreclosure by a first mortgagee divests all subordinate mortgages and judgment liens. *Liss v. Medary Homes, Inc.*, 388 Pa. 139, 130 A.2d 137 (1957). However, a judicial sale on a lien which is junior to a mortgage will discharge the lien of that mortgage if the mortgage is junior to anything other than other mortgages, ground rents, purchase money due the Commonwealth, taxes, municipal claims and assessments, not at the date of the mortgage duly entered as a lien in the office of the clerk of the court of common pleas, and taxes, municipal claims and assessments whose lien though afterwards accruing has by law priority given it. See *Public Federal Savings and Loan Association v. Neumann*, 334 Pa.Super. 389, 483 A.2d 505 (1984).

Other liens to consider and the impact of the Sheriff's Sale include child support 23 Pa.C.S. §4352, and homeowners/condominium associations under 68 Pa.C.S. §§3315, 5315.

IV. Bankruptcy

The filing of a bankruptcy petition by a defendant prior to the sheriff's sale will result in an automatic stay of the proceedings. See 11 U.S.C.A. §362. Section 362(a) of the United States Bankruptcy Code provides that the filing of a bankruptcy petition operates as a stay as to the commencement, or continuation, including the employment of process, of a judicial, administrative, or other action or proceeding against the debtor. The stay continues in effect until the bankruptcy case is dismissed, a discharge order is entered, or relief from the automatic stay is obtained by the creditor.

Most of the time, the bankruptcy petition is filed on the eve of the sheriff's sale as a means to stop or stay the sale. In this case, the attorney for the plaintiff should verify that a bankruptcy petition has been filed and notify the Sheriff. When the petition is filed on the morning of the sale, even with the aid of PACER, the attorney may have difficulty verifying the bankruptcy. Even in that case, the sheriff should have received a time stamped copy of the bankruptcy petition from the debtor or debtor's counsel. Once the filing of the bankruptcy petition is confirmed, the attorney for plaintiff may postpone or continue the sale in accordance with Rule 3129.3(b).

The United States Court of Appeals for the Third Circuit held in the case of *Taylor v. Slick*, 178 F.3d 698 (3rd Cir. 1999), that postponement of a sheriff's sale to a date certain with public announcement made thereof at the time and place of the sale in accordance with Pa.R.C.P. 3129.3 does not violate the automatic stay provisions contained in Section 362 of the United States Bankruptcy Code, 11 U.S.C. §362, and oral announcement of the postponement at the sale was sufficient notice to the debtor.

Problems arise when the bankruptcy petition is filed prior to service of the notice of sale and/or advertising of the sheriff's sale. Where the bankruptcy petition is filed before advertising is completed (three successive weeks as required by Pa.R.C.P. 3129.2(d)), then the sheriff's sale must be stayed. If the advertising has been completed prior to the filing of the bankruptcy petition, the sale can then be postponed pursuant to Rule 3129.3, since the other procedural requirements can be accomplished once the bankruptcy case is either dismissed or relief from stay is granted the creditor.

The Bankruptcy Reform Act of 2005 provided relief to creditors from repeat filers. Section 362(c)(3) of the Act provides that if a single or joint bankruptcy case is filed by the debtor who is an individual under Chapter 7, 11 or 13, and if there was a single or joint case of the debtor pending within the preceding 1 year period but was dismissed, the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debtor shall terminate with respect to the debtor on the 30th day after the filing of the latter case. 11 U.S.C.A. §362(c)(3). At first blush, the language in this section appears better than it really is since Section 362(c)(3) terminates the stay with respect to actions taken against the property of the debtor but not against property of the estate. Therefore, a foreclosure proceeding is nonetheless stayed without action by the court. In re Williams, 346 B.R. 361 (Bankr. E.D.Pa. 2006).

However, where the debtor has had two or more single or joint cases pending within the previous year but were dismissed, Section 362(c)(4) of the Bankruptcy Code provides that the stay under subsection (a) shall not go into effect upon the filing of the later case, and upon request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. 11 U.S.C.A. §362(c)(4). While the court may enter an order confirming that no stay is in effect in this situation, the sheriff generally does not require such a "comfort order", and because such bankruptcy cases are filed last minute, opportunity to obtain such an order is difficult, if not impossible minutes before the sheriff's sale. Instead, many sheriff's will accept a letter from plaintiff's counsel indicating that the stay is not in effect by virtue of Section 362(c)(4). The letter

should include the dockets from the two previously bankruptcy cases, as well as copies of the dismissal orders from the prior cases.

Chapter Two

Appendices

ADAMS COUNTY
Pennsylvania

Sheriff Sales

The **Adams County Sheriff's Office** will now be holding all Sheriff Sales virtually through **Bid4Assets**.



(https://www.bid4assets.com/adamscountysheriffsales)

Basic Bidding Information for Mortgage Foreclosure Properties

1. You will be bidding against the bank.
2. The bank has a predetermined amount that they will bid to. This is called the "upset price". Only the bank, on day of sale, knows what this amount will be. It may be more or less than the judgment amount.
3. If you are the successful bidder, upon the auction's close, purchaser will have their deposit applied towards their balance due. Purchaser must pay the balance of 20% of the purchase price plus a 1.5% buyer's premium (on the total purchase price) by close of the next business day of the Sheriff's Office. The balance (of your bid) is due within 20 calendar days. If the balance is not paid within those 20 days, you lose your down payment.
4. The deed will be recorded in 60 days.
5. You will not have the deed in time to use that property for a mortgage. (Therefore, you cannot be pre-approved for a mortgage). The properties are not guaranteed in any way and debts against that property may become yours. It is strongly recommended that a title search be conducted on any property prior to bid.
6. The properties are owned by the debtors until they are sold on day of sale. Properties are not open for public viewing.

Real Estate Statement of Value (/Dept/Sheriff/Documents/RealEstate/StatementofValue.pdf) - *If the most recent form (Real Estate Statement of Value) is not used, your Deed will be rejected by the Adams County Recorder of Deeds.*

Disclaimers:
All Sheriff Sales start at 10:00 a.m.
All inquiries to Sheriffsales@adamscounty (mailto:Sheriffsales@adamscounty)

(mailto:Sheriffsales@adamscounty.us)

How Do I?

(/Dept/Sheriff/Documents/Documents/SheriffSaleFAQs.pdf) **Sale Dates**

(/Dept/Sheriff/Pages/SalesDates.aspx) **Execution Package**

(/Dept/Sheriff/Pages/ExcutionPackage.aspx) **Court Order**

(/Dept/Sheriff/Documents/Documents/CourtOrder2021-MS-8.pdf) **Conditions of Sale** (/Dept/Sheriff/Documents/Documents/ConditionsofSale.pdf)

Post Sale (/Dept/Sheriff/Documents/Documents/PostSale.pdf)

Adams County, Pennsylvania Sheriff Sale auctions are available now on Bid4Assets. This video will guide you through the steps to participate in these auctions including registering a Bid4Assets account and due diligence research.

bid4assets® YouTube (https://www.youtube.com/watch?v=U0TUzd6jskI)



Q: What is a Sheriff Sale?
A: A Sheriff Sale is an execution on a judgment that may be taken on Real Estate and/or Personal Property to satisfy a debt.

Q: Where are the Sheriff Sales held?
A: The Sheriff Sales are held in the Gold Room on the 4th floor of the Allegheny County Courthouse, 436 Grant Street, Pittsburgh, Pennsylvania.

Q: How can I find out if a property is going for sale?
A: To inquire about a particular property, you may call the Allegheny County Sheriff's Office during regular business hours. Please note that the properties are NOT listed by lot and block. When inquiring, please have either the address of the property, sale number and/or the property owner's name.

Q: What stops a Sheriff Sale?
A: A Sheriff Sale can be stopped by (1) the writ being stayed --that is all proceedings involving the sale of property is stopped; (2) a court order; (3) a bankruptcy being filed. (4) payment of the full amount due in full.

Q: What happens when a listed sale is postponed?
A: A scheduled Sheriff's sale may be postponed up to 130 days without a order of the court. When a sale is postponed, the sale will maintain its original sale date and number. For this reason, it is important that the ORIGINAL sale date and sale number be known. There are times when a sale may be postponed more than once, even if this happens, the sale will still maintain its original sale date and number.

Q: When do the Sheriff's Sales take place?
A: The Sheriff's Sale is the first Monday of every month. In the event of a holiday, the sale will be conducted on Tuesday.

Q: How much does it cost to bring a property to sale?
A: The cost is approximately $2,000.00, which is used for advertising the property for sale.

Q: Where are the Sheriff Sales advertised?
A: The Sheriff's Sales are presently advertised in the Post-Gazette and Pittsburgh Legal Journal. The Sheriff sales are advertised for three Mondays prior to the sale.

Q: What methods of payment are accepted?
A: The Sheriff's Office accepts cash, cashier's checks and money orders. The cashier's checks and money orders should be made payable to the Treasurer of Allegheny County. NO PERSONAL CHECKS.

Q: How much money is required at the time of the Sheriff's Sale?
A: At the time of sale, you must bring 10% of the bid price. The balance is due the Friday (the week of the sale) following the sale before 10:00 AM.

Q: What determines the amount of money the property will be sold for?
A: The attorney who represents the particular lender, taxing body or a judgment holder determines the amount that they are seeking. This bid will rarely be less than the cost and taxes that have been totaled to bring the property to sale. In a mortgage foreclosure it is usually a total representing the amount of the judgment, taxes and necessary fees that have been paid into the Sheriff to bring the property to sale.

For example: Judgment $32,000; Cost (Fees): $1,200; Taxes: $6,000 A third-party purchaser may be required to begin the bid at the Sheriff Sale: $39,200

Q: Is any property research required before the Sheriff's Sale?
A: The Sheriff's Office strongly recommends doing a complete title search. Please visit the following offices: Register of Wills, Prothonotary, Recorder of Deeds, Federal Clerk of Courts, County Clerk of Courts, the County Treasurer and local government Tax Collector. (municipal and school taxes). This will also assist you in deciding whether to buy the property or not.





The Allegheny County Sheriff's Office is presently making and will continue to make reasonable efforts to make the Allegheny County Real Estate sale available on Microsoft Teams for judgment creditors and registered bidders throughout the course of the sale event, however, the Allegheny County Sheriff's Office is not responsible for any service interruptions, including but not limited to interruptions that may affect aspects of the sale. Bid information and other notifications in the on-screen chat function, audio or video display may be subject to delays or disruption due to functionality in the Microsoft Teams application, the County's Internet provider or your Internet provider and therefore beyond the control of this Office. The Allegheny County Sheriff's Office is presently and will continue to make all reasonable efforts to assure reliability and security of the sale through the use of third-party providers, but this Office and does not warrantee that the auction will be uninterrupted, technically error free or virus-free.

This sale is a judicial sale and participants are to conduct themselves in the online sale as though they were present in the physical room of the sale. Participants who engage in improper behavior will be removed from the sale teleconference and will not be permitted to participate in the monthly sale.

Additionally, the sale will be broadcast to the public on the Allegheny County Sheriff's Office Facebook page. Again, the Allegheny County Sheriff's Office is presently making and will continue to make all reasonable efforts to assure that the live-stream of the sale is available, but cannot warrantee that the transmission of the auction will not be interrupted due to functionality of Facebook or third-party Internet service providers of which this Office has no control.

All fields required to be registered bidder for the Allegheny County Judicial Sheriff Sales.

You MUST fill in ALL form fields below. Failing to do so will result in an incomplete submittal and you will not receive a bidder number. Upon submittal, please allow TWO BUSINESS DAYS to receive your bidder number, as this process is not automatic.

VIRTUAL SHERIFF SALE BIDDER REGISTRATION

Bidder registration has ended for the October 2021 sale.

WATCH THE VIRTUAL SHERIFF SALE ON FACEBOOK



UPON FILING A MORTGAGE FORECLOSURE, A TAX SALE OR EXECUTION OF A JUDGMENT YOU WILL NEED TO PROVIDE THE FOLLOWING:

- Writ of Execution - Affidavit of Act 91 of 1983
- Affidavit of Last Known Mailing Address
- Notice of Sheriff's Sale
- Sheriff Form 56 (4 COPIES) provided
- Sheriff Form (ALL CAPS) Brief
- Description of Property to be sold
- Notice of Sheriff's Sale for EACH defendant, if service is requested & direction form
- Sheriff Form 14 (Direction Form) for each address, for handbill
- Long Description of the Property
- Self- Addressed envelope with postage for each direction form

WHEN FILING A MONEY JUDGMENT, YOU WILL NEED:

Bring everything in the list above as well as:

- Exemption Claim Notice for each defendant and a copy for the Sheriff's Office
- Copy of the Writ of Execution for each defendant with a self-addressed envelope with postage for each defendant

FILING CORRESPONDENCE

When filing any correspondence concerning Sheriff's Sales, you must include the sale number and sale date in the upper right-hand corner of the papers or the papers will be returned (IE #21, 7 May 2001)

The direction sheet must have the sale number and the postponement date in the upper right-hand corner, as well. (IE #21, 7 May 2001, PP August)

If you wish to make use of the following online Sheriff's Direction Forms, please not to receive a Return of Service notification from the Sheriff's Office. In turn, you must include the following:

- Duplicate Request of Service
- Self-addressed stamped envelope





You are responsible to have your own title searches. Also, it is your responsibility to make sure that the property that you bid on is the property you want. The Sheriff's Office will not provide an investigation as to where the property is located. We are not a real estate agency, furthermore we do not have keys to the properties we sell, so we cannot provide a walk-through of the home. The only pictures that we can direct you to are those that are on the Allegheny County Real Estate website.

We have no other information about a particular parcel of property other than what was provided to us by the attorney representing the plaintiff when the property was originally advertised for sale. We do not verify or certify the property description information.

Should you be a successful purchaser of property at the Sheriff's Sale and there is somebody still residing at the property, it is your responsibility to have him or her removed from your property by legal processes.

If you wish to bid on properties that are being sold at Sheriff's Sale, you must have at least 10% of your bid at the time of sale in the form of cash, money order or attorney's check. You may apply more than 10% deposit required if you choose.

Please be sure that you have the necessary 10% with you at the time of your bid, failure to have the proper amount will result in the property being resold. We do not allow you to go to the bank.

This procedure is necessary in order to continue to conduct the Sheriff's Sales in an orderly fashion.

When a bidder does not have 10% of their bid at the time of sale, it causes confusion and unnecessary delays in the proceedings.

When you come into the Sheriff's Office to pay the remainder of your bid amount from the sale, you must also pay $181.75 to have your deed recorded. Your payment must be in the form of a cashier's check or money order made payable to to the Department of Real Estate. NO PERSONAL CHECKS OR CASH WILL BE ACCEPTED.

Remember, all balances of the bid MUST BE PAID IN to the Sheriff's Office by Friday of the sale week no later than 10:00 A.M.

Failure to pay any balances will result in the forfeiture of your deposit and the property being re-exposed to sale at this time.

VIRTUAL SHERIFF SALE INFORMATION

If you would like to participate in the virtual sale, you must register. A member of the Sheriff's Office will contact you via email and participants shall provide a copy of their valid state ID or Driver's License to obtain a bidder number. Failure to do so will result in no admittance to virtual sale. Please fill out ALL fields on the Bidder Registration form. Failure to do so will result in an incomplete submittal and you will not received a confirmation email or bidder number. Upon submittal, please allow two business days to received your bidder number, as this process is not automatic.

Please view the Real Estate page for contact information at the Sheriff's Office.

Allegheny County Sheriff's Office, 436 Grant Street, Courthouse 111, Pittsburgh, PA 15219
Phone - 412-350-4700 | Fax - 412-350-6388

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Sheriff's Sales

Beaver County Transitions to Online Sheriff's Sales August 9, 2021

Beaver, PA, July 30, 2021- Beginning in August, the Beaver County Sheriff's Office in Pennsylvania will conduct its sheriff's sales online though real estate auction site Bid4Assets.com. The first sale will be held August 9, 2021. The time frame for this auction will be 10am-12pm. The sale's new online format eliminates COVID-19 concerns while exposing auctions to a wider range of buyers, allowing participants to bid using cellphone, laptops, tablets and desktops.

"This is a big step forward for our office and based on Bid4Assets' success working with other counties in the Commonwealth, we believe it will be a positive change for our residents," said Beaver County Sheriff Tony Guy. "The goal for these sales is to promote active bidding and satisfy the unpaid debt. This can help the previous owner get out of debt and in some cases even claim surplus funds."

Bidders must register a free Bid4Assets account and fund a $5,000 (five thousand dollars) bid for deposit to participate in the auction. Terms of sale MUST be read before bidding on any auction. Available auctions and Terms of Sale can be viewed at any time at www.bid4assets.com/beaversheriffsales (http://www.bid4assets.com/beaversheriffsales).

Tony Guy, Sheriff

Please call us if you have any questions at 724-770-4612.

CONDITIONS OF SALE

The Subscriber, Eric J. Weaknecht, Sheriff of the County of Berks, offers to sell this day of , 20 by public sale or auction and by virtue of certain writs of execution issued out of the Court of Commons Pleas of Berks County, and to him upon the terms and conditions ("Conditions of Sale") as follows:

1. Based on the health and safety recommendations of the Centers for Disease Control and Prevention ("CDC") and Pennsylvania Department of Health ("Department of Health") due to the COVID-19 pandemic, the scheduled sale shall be conducted virtually at Bid4Assets.com ("Bid4Assets").

2. All bidders must complete the Bid4Assets on-line registration process to participate in the auction ("Auction"). All bidders must submit a Ten Thousand and 00/100 Dollars ($10,000.00) deposit ("Deposit") plus a Thirty-Five and 00/100 Dollars ($35.00) processing fee to Bid4Assets before the start of the Auction. Such single Deposit shall be associated with the Auction held as of this date ("Auction Date") and shall allow a bidder to bid on all of the properties that close on the Auction Date. The Deposit will be applied equally among properties purchased by the bidder on the Auction Date.

3. All properties are sold "AS IS" with NO expressed or implied warranties or guarantees whatsoever. The Sheriff and Bid4Assets shall not be liable as a result of any cause whatsoever for any loss or damage to the properties sold. In anticipation of participating in the Auction and purchasing a property, the bidder assumes all responsibility for due diligence. It is the responsibility of the bidder to investigate any and all liens, encumbrances and/or mortgages held against the property which may not be satisfied by the post-sale Schedule of Proposed Distribution under Pa.R.C.P. 3136 ("Schedule of Proposed Distribution").

4. The plaintiff's attorney shall submit the plaintiff's upset price ("Upset Price") to Bid4Assets at least one (1) hour prior to the start of the Auction. The Upset Price is the least amount the plaintiff will accept for a property. The Sheriff's cost will be added to the Upset Price to determine the minimum bid for the auction.

5. The highest bidder shall be the purchaser. Upon the auction's close, purchaser shall have their deposit applied towards their balance due. Purchaser shall pay the balance of 10% of the purchase price plus a 1.5% buyer's premium (on the total purchase price) by close of business of the Sheriff's Office on the first (1st) business day following the Auction ("Due Date"). Purchaser shall then have 10 days to pay the remaining balance. Payments shall be made to Bid4Assets.

6. Failure to comply with the Conditions of Sale, including but not limited to the failure to so pay the remaining balance by the Due Date and complying with all post-sale instructions required by the Sheriff and Bid4Assets, shall result in a

default ("Default") and the down payment shall be forfeited by the highest bidder to pay the costs of sale.

7. The highest bidder shall be responsible for the cost of preparing the deed poll and such other costs that are imposed by law, which are included in the Sheriff's costs.

8. In the event an overpayment of the balance due is received, no funds less than Fifteen and 00/100 Dollars ($15.00) will be refunded.

9. In the event of a Default by the highest bidder, the next highest bidder may be notified by Bid4Assets. The Sheriff may choose at their discretion to settle with the next highest bidder who has complied with all of the Conditions of Sale.

10. The Plaintiff, pursuant to Court Order, or the Sheriff, in the Sheriff's sole discretion, may cancel the sale after the Auction closes for any reason, including without limitation bankruptcy.

11. Poundage will be paid on the final sale price.

12. All bidding after the opening bid shall be in increments of at least One Thousand and 00/100 Dollars ($1,000.00).

13. If the Sheriff's grantee is to be anyone other than the purchaser, a written assignment must be filed with the Sheriff.

BUCKS COUNTY SHERIFF'S OFFICE

SHERIFF'S SALE

CONDITIONS OF SALE

1. The Sheriff sells all the right, title, and interest of the Defendant in the property. All properties are sold "AS IS" with NO expressed or implied warranties or guarantees whatsoever. The Sheriff and Bid4Assets shall not be liable as a result of any cause whatsoever for any loss or damage to the properties sold. In anticipation of participating in the Auction and purchasing a property, the bidder assumes all responsibility for due diligence. It is the responsibility of the bidder to investigate any and all liens, encumbrances and/or mortgages held against the property which may not be satisfied by the post-sale Schedule of Distribution under Pa. R.C.P. 3136.
2. Prospective bidder must complete the Bid4Assets on-line registration process to participate in the auction. All bidders must submit a $10,000.00 deposit (plus a $35.00 processing fee) to Bid4Assets before the start of the auction. This single deposit will be associated with a particular auction date and allows a bidder to bid on all of the auctions that close on that particular date.
3. The plaintiff's attorney shall submit their "upset price" at least 1 hour prior to the start of the auction. The "upset price" is the least amount the plaintiff will accept for a property and it will become the new minimum bid for the auction.
4. All bidding shall be in increments of $1000.00 (One Thousand and No/100 dollars).
5. The successful bidder shall pay the exact amount of the remaining balance, which includes a 1.5% buyer's premium on the purchase price, within 10 calendar days of the sale. If the payment deadline falls on a federal holiday, payment deadline shall be close of business on the first business day after that date. Payment shall be made to Bid4Assets.
6. **Failure to pay the balance by the due date will result in a default and the forfeiture of the bidder's deposit.** In the event of a default the next highest bidder may be notified by Bid4Assets. The Sheriff may settle with the second highest bidder who has complied with all of the conditions of sale. The defaulting party shall also be liable to the plaintiff and/or the Sheriff for any and all costs incurred for the resale of the property.

7. Winning bidder shall comply with all post sale instructions required by the Sheriff's Office and Bid4Assets. The winning bidder shall be responsible for the cost of preparing the deed and such other costs that are imposed by law.
8. The plaintiff, at the discretion of the Sheriff's Office, can at any time cancel the sale prior to the auction for reasons of bankruptcy and/or any other reasons that may arise.
9. Bankruptcy or any other court action concerning the Sheriff's Sale will not relieve the successful bidder from their requirements to complete the sale.
10. The Schedule A distribution will be completed pursuant to Pennsylvania Rules of Civil Procedure after the sale by the Sheriff's title company, for all properties sold to third party bidders.
11. The Schedule A distribution directs how the purchase price of the property will be disbursed and which liens will be satisfied. Our title company follows the Pennsylvania Rules of Civil Procedure when determining these payments.
12. Once we receive and review the distribution we will email a copy to the third party bidder and all parties involved. It will also be made a part of the case history at the Prothonotary's Office.
13. Distribution payments will be made in accordance with the proposed Schedule A unless exceptions are filed on or before the 10th day of the distribution date. Pending litigation will delay processing the distribution and deed.
14. Winning bidder must comply with post-sale instructions required by Bid4Assets and the Sheriff's Office. The Sheriff's Office must receive your **vesting instructions and two *completed and signed* Pennsylvania Realty Transfer Tax Statement of Value forms, with *original signatures on both,*** to process the deed. If the Sheriff's grantee is to be anyone other than the purchaser, a written assignment must be filed with the Sheriff. The fee for this is $150.00. Once recorded the deed cannot be emailed to you. **A 6X9 *self-addressed stamped envelope* is required to mail you your recorded deed.**

Important Points to Remember:

- The Sheriff's Office highly recommends that you seek the advice of an attorney to review the pros and cons of a Sheriff's Sale purchase.
- The Sheriff's Office does not guarantee clear title to any property being sold.
- The winning bidder may be responsible for additional liens; *your due diligence is required.*
- The winning bidder may be responsible for completing an eviction. Seek legal advice for all matters related to the eviction process.
- The Sheriff's Office and Bid4Assets do not have any keys to the properties.
- Prospective bidders cannot inspect the interior of any property listed for sale.
- Each purchase is unique; situations and issues will vary from case to case.
- The Sheriff's Office complies with the Pennsylvania Rules of Civil Procedure.

- Handbills are posted on each property and are also posted outside the Sheriff's Office at the Bucks County Justice Center.
- The full listing of properties is available on the Sheriff's website under Real Estate Sheriff's Sales. https://buckscounty.org/government/RowOfficers/Sheriff/SheriffSalesListings
- Sales are held the second Friday of every month. A calendar of dates is published on the Sheriff's office website.
- The sales are open to the public via an on-line format at www.Bid4Assets.combuckscountysheriffsales – registration is required.
- Deeding instruction packet for properties Sold for Costs to the Plaintiff must include:
    - The law firm's cover letter stating plaintiff's vesting instructions.
    - Two ***completed*** **Pennsylvania Realty Transfer Tax Statement of Value forms with *original signatures* on both.**
    - One copy of the ***complete mortgage.***
    - A 6X9 self-addressed stamped envelope for the return of the recorded deed.
    - Refunds will be mailed with the cost sheet after the deed has been recorded.

Bid4Assets can also be accessed on mobile devices and tablets.

Terms and conditions are subject to change by the Sheriff and Bid4Assets.

Sheriff Sales Listings

NEW - NOTE TO BIDDERS:
Starting in April 2021, Bucks County's sheriff sales will be conducted online via Bid4Assets. Please read the Conditions of Sales.

Registration is required and can be completed by accessing Bid4Assets Signup.

The move to online sheriff's sales is in accordance with enhanced public safety measures designed to safeguard participants and staff. Please visit: Bid4Assets.

Please direct all inquiries to: ShrRealEstateDivision@buckscounty.org

Sheriff Real Estate Sales Listings

The County of Bucks and the Sheriff of Bucks County make no representations or warranties as to the suitability of this information for your particular purpose, and that to the extent you use or implement this information in your own setting, you do so at your own risk. The information provided herewith is solely for your own use and cannot be sold. In no event will the County of Bucks nor the Sheriff of Bucks County be liable for any damages whatsoever, whether direct, consequential, incidental, special, nor any claim for attorney fees, arising out of the use of or inability to use the information provided herewith.

Bucks County and the Sheriff of Bucks County assume no responsibility for any information that is inaccurate or falsely submitted by the plaintiff's attorney(s).

It is understood that the Sheriff Sale information and documents are public information and are available to the public.

The properties are not available for tour or inspection. The buyer gets the property "as is", caveat emptor (let the buyer beware). The Sheriff's Office does not have information on liens or taxes.

Properties on the list may be adjourned up to one hundred thirty (130) days by the attorney of record, anytime up to the actual time of sale. Properties may be remove any time, by proper authority. Interested parties should check the sale list on the website for current updates.

- Pursuant to Pa.R.C.P. 3129.3, which became effective 4/7/2014, a Sheriff Sale may be stayed, continued, postponed or adjourned to a date certain two times within 130 days of the scheduled sale without formal notice by handbill and writing as required by 3129.2 of the Pa.R.C.P. Counsel will comply with the notice and filing requirements as more fully set forth in 3129.3 (b).
- Any subsequent postponements will continue to be permitted only by special order of the court. See 3129.3 (a) Copies of all court orders must be provided by counsel to the Sheriff's Office and served by first class mail upon the defendant(s).
- Failure to comply with the foregoing will result in the sale being stayed.

This web site is provided as a public service and updated periodically; however, the information provided is limited and not required by law. If you have additional questions concerning the purchase of property at Sheriff's sale or the filing of any legal pleadings, please contact your attorney. Employees of the Sheriff's Office are not permitted to give legal advice.

These questions are considered legal advice:

1. Will I owe any more money after the sale?
2. Are inheritance taxes included?
3. When can I change the locks?
4. Am I responsible for evicting the current occupants? If so, how do I evict them?
5. How do the liens on the property get paid?
6. Are all liens included in the purchase price?
7. Will I be responsible for additional mortgages on the property?
8. Can I start making repairs to the property after I paid the full purchase amount?

Sheriff Sales

Policies & Procedures for Real Estate Sheriff Sales

1. There are two types of Real Estate Foreclosures in Bucks County.

- Mortgage and Judgment defaults on real estate sales are processed through the Sheriff's Office. Sales of this type take place each month on the second Friday at 12 Noon, except where holidays occur; then the sale will be on the Thursday before the second Friday.
- Tax Sales are processed through the Tax Claim Bureau; these sales are only for delinquent taxes. Sales of this type take place in September, November and December of each year. For information on these sales, you may contact the Tax Claim Bureau, 5thfloor of the courthouse, or call 215-348-6274 or 215-348-6275.

2. Sheriff Sales are advertised once a week for three successive weeks:

- By posting Sheriff Handbills on the property.
- Advertising in the Bucks County Law Reporter
- Advertising in a newspaper or general circulation where the property is located.

3. Properties on the list may be adjourned up to one hundred thirty (130) days by the attorney of record, anytime up to the actual time of sale. Properties may be removed at any time, by proper authority. Interested parties should check the sale list on the website for current updates.

- Pursuant to Pa.R.C.P. 3129.3 which became effective April 7, 2014, a Sheriff Sale may be stayed, continued, postponed or adjourned to a date certain two times within 130 days of the scheduled sale without formal notice by handbill and writing as required by 3129.2 of the Pa.R.C.P. Counsel will comply with the notice and filing requirements as more fully set forth in 3129.3 (b).
- Any subsequent postponements will continue to be permitted only by special order of the court. See 3129.3 (a) Copies of all court orders must be provided by counsel to the Sheriff's Office and served by first class mail upon the defendant(s).
- Failure to comply with the foregoing will result in tne sale being stayed.

4. Properties are not available for inspection prior to sale. If however, the property is vacant, please contact the attorney on the writ.

5. The Sheriff does not research properties for debts/liens prior to the sale. Bidders are recommended to obtain professional assistance such as an attorney or title searcher unless you are capable of searching records to ascertain obligations against any of the listed properties. Some debts and liens on properties require review in the following offices:

- Recorder of Deeds
- Prothonotary
- Tax Claim Bureau
- Local Tax Collector
- Water and Sewer Authority
- Electric Services (owned by Local Government)

Zoning information of the property may be helpful. Also, corporate liens should be checked through Pennsylvania Department of Revenue, Harrisburg, PA.

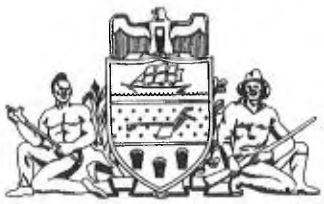
6. In the process of the execution the Sheriff incurs certain costs and fees set by the State Legislature. Average Sheriff costs might be approximately $2,000.

David Olweiler
Real Estate Deputy

David B. Dowling
Solicitor

Office of the Sheriff

Jack Duignan
Chief Deputy



Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 780-6590 fax: (717) 255-2889

Nicholas Chimienti, Jr.
Sheriff

SHERIFF SALE OF REAL ESTATE

Document requirements for a Real Estate Sale

1. Original Writ of Execution (provided to Sheriff's Office by Prothonotary)
2. Deposit check in minimum amount of $2,000 (1 or 2 parcels) payable to Dauphin County Sheriff
   3 or more parcels include an additional $1,000 per parcel
3. Affidavit pursuant to PA RCP No. 3129.1 stating property to be sold, defendant(s) name(s), and last known address(es)
4. Notice of Sheriff Sale of Real Estate pursuant to PA RCP No. 3129.1 (2 copies per defendant), with long legal description attached
5. Service Instructions for Sheriff
6. Waiver of Watchman
7. Affidavit of Non-Military Service, if applicable
8. Affidavit of Certificate of Service / Mailing pursuant to PA RCP No. 3129.2c (service to lien holders) filed and received by Sheriff prior to sale of property
9. Notice of Execution pursuant to PA RCP 2958.2 if a CONFESSED JUDGMENT
10. Long legal description must contain in the following suggested order:
    a) Sale No.: (leave blank; to be assigned by Sheriff)
    b) Name of Attorney Representing Plaintiff
    c) Judgment Amount: $(dollar amount)
    d) Situate in (list municipality or township and county)
    e) Tax Parcel # (00-000-000)
    f) Premises Being: (full address of property to be sold)
    g) "Seized and sold" statement which includes Judgment Number

If successful bidder:

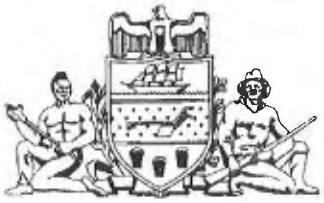
a) Letter of Instruction regarding to whom to strike the deed (if other than Plaintiff see (c)).
b) Two copies fully, correctly completed Realty Transfer Tax Statements and self-addressed, stamped envelope. Original signature is required on one copy of Statement. Tax codes, school district codes, and Statement available on Sheriff Website.
c) If applicable: check for Transfer Tax made payable to Dauphin County Recorder of Deeds
d) If applicable, as invoiced by the Sheriff, check for balance due on case made payable to Dauphin County Sheriff.

David Olweiler
Real Estate Deputy

David B. Dowling
Solicitor

Office of the Sheriff

Jack Duignan
Chief Deputy



Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 780-6590 fax: (717) 780-6557

Nicholas Chimienti, Jr.
Sheriff

WAIVER OF WATCHMAN

Any Deputy Sheriff levying upon or attaching any property under within Writ may leave same without a WATCHMAN, in custody of whoever is found in possession, (after notifying such person of such levy or attachment), without liability on the part Of such Deputy or the Sheriff to any Plaintiff herein for any loss, destruction, or removal of any such property before Sheriff's Sale thereof.

_____(SEAL)

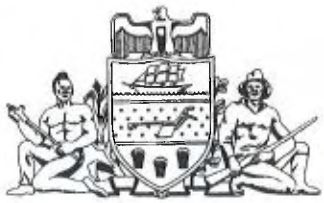
_____Date

David Olweiler
Real Estate Deputy

David B. Dowling
Solicitor

Office of the Sheriff

Jack Duignan
Chief Deputy



Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 780-6590 fax: (717) 780-6557

Nicholas Chimienti, Jr.
Sheriff

SHERIFF SALE

By virtue of certain writ of Execution issued out of the Court of Common Pleas and Orphans' Court of Dauphin County, Pa, and to me directed, I will expose at Public Sale or Outcry, at the Dauphin County Courthouse in the City of Harrisburg, Dauphin County, Pa, on Thursday, (DATE)_____at 10:00 A.M., the following real estate, to wit:

NOTICE is further given to all parties in interest and claimants. Schedule of proposed distributions will be filed by the Sheriff of Dauphin County, on Tuesday, __(DATE)_____and distributions will be made in accordance with the said schedule unless exceptions are filed thereto within ten (10) days thereafter.

CONDITIONS OF SALE

The Highest and Best Bidder Shall Be The Buyer

TERMS

The purchaser will be required to pay the full amount of his bid by TWO O'CLOCK P.M. on the day of sale, and if complied with, a deed will be tendered by the Sheriff at the next Court of Common Pleas for Dauphin County conveying to the purchaser all the right, title, interest and claim which the said defendant has in and to the said property at the time of levying the same. ALTHOUGH NOT PART OF THE MINIMUM BID, PROPERTY SOLD FOR THE MINIMUM BID DOES NOT DISCHARGE DELINQUENT AND/OR OUTSTANDING TAXES AND THE PURCHASER WILL BE RESPONSIBLE FOR SAME. If above conditions be not complied with on the part of the Purchaser, the property will again be offered for sale by the Sheriff at THREE O'CLOCK P.M., on the same day. The said purchaser will be held liable for the deficiencies and additional cost of said sale.

Nicholas Chimienti, Jr.
Sheriff of Dauphin County

Conditions of Sale – DAUPHIN COUNTY

The Highest and best bidder shall be the buyer.

Terms: the purchaser will be required to pay the full amount of his bid by two o' clock PM on the day of the sale, and if complied with, a deed will be tendered by the Sheriff at the next Court of Common Pleas for Dauphin County, conveying to the purchaser all the right, title, interest and claim which said defendant has in and to said property at the time of levying the same.

Although not part of the minimum bid, property sold for the minimum bid does not discharge delinquent and/or outstanding taxes and the purchaser will be responsible for the same. A free-clear title is not guaranteed.

If above conditions be not complied with on the part of the purchaser, the property will again be offered for sale by the Sheriff at three o'clock PM on the same day in the Sheriff's Office, Room 104 of the Courthouse. The said purchaser will be held liable for the deficiencies and additional cost of said sale.

Nicholas Chimienti Jr, Dauphin County Sheriff

BIDDING INSTRUCTIONS:

When an upset bid is announced, a minimum bid of $1.00 over the upset price will be accepted, however every bid after that must be at a minimum of $100.00 increments.

Deeds

A condition of sale sheet will be provided in order to instruct the Sheriff to whom to prepare the deed. For properties selling for more than opening bid, a title search is ordered. A distribution sheet is prepared and posted for ten days seeking public comment, after which a distribution of funds is made.

On all properties sold at Sale, the Recorder of Deeds requires two (2) Tax Statement of Value Certificates (at least one of which must be an original with an original signature), attached with a self-addressed, stamped envelope in which the deed will be mailed to the new owner.

Distribution

Exceptions to the distribution of funds may be filed during the ten (10) days of public comment. If no exceptions are filed, the Sheriff's Deed will be recorded. Distribution is made in priority order to creditors. This order is set by law. Distribution dates are listed on the Sheriff's Website.

Staying a Writ

When a writ is stayed, the attorney for the plaintiff is required to advise the Sheriff.

Sheriff's Poundage

Poundage, i.e. a fee, is paid to the County of Dauphin for each sale, if consideration is received. The amount is 2% of the bid price up to an amount of $250,000, and .005% is calculated on the remaining amount.

General Information

Deputies and employees of the Sheriff are unable to offer legal advice.

Payment by personal check for any matter in the Sheriff's Office is not accepted.

Definitions and useful terms

Continuance - the attorney of record may request the sale continued to a later date.

Poundage - a handling fee charged by the County on the sale of real estate.

Precipe for Writ of Execution - a request for the Prothonotary to issue a writ of execution/judgment on real property, pursuant to PA RCP 3180-3183.

Stay - term used when a sale is stopped.

Upset Price - the highest amount the attorney of record is prepared to bid for the client.

Writ of Execution - a document issued by the Prothonotary directing the Sheriff to execute on a judgment.

Effective: 3/15/2013

Conditions of Sale

The down money listed in the advertisement of the sale of the property must be paid in cash (not in excess of $9000.00) .or by certified check payable to the Sheriff of Delaware County immediately after the property is knocked down to the highest bidder; otherwise the property may immediately be presented for sale.

The balance of the purchase money together with the cost of preparing all documents and such other fees and costs as are by law imposed shall be paid in cash (not in excess of $9000.00) or by certified check made payable to the Sheriff of Delaware County within ten (10) days of the date of the sale without further demand.

Any successful bidder when making a payment n cash must present photo identification acceptable to the Sheriff in his sole discretion.

The second highest bidder may register the highest sum bid, in writing, upon payment of the down money as required. Should the purchaser fail to comply with these Conditions of Sale, the registered bidder, if he so elects, shall be the successful bidder. As the successful bidder, he must make the balance of the required payment within ten (10) days of the date of the default of the first highest bidder without further demand.

Upon the default of the purchaser if there is no registered bidder or, if there is a registered bidder who elects not to purchase the property, the writ shall be returned to the Office of Judicial Support marked "Conditions of Sale Not Met" and a new writ will be required to schedule the property for resale. The down money deposited by the registered bidder shall be returned when practicable without interest. Any money paid on account by the defaulting purchaser shall be forfeited and applied to pay the costs of the sale and the costs of any subsequent sale, but in no event shall the purchaser be relieved from liability for all costs and damages arising out of such default.

Any person representing the plaintiff at the sale shall present written authorization acceptable to the Sheriff when the property is called stating that he or she is authorized to act on behalf of the plaintiff or the attorney on the writ. An attorney from the office of the attorney on the writ may act on behalf of the attorney on the writ upon presenting credentials acceptable to the Sheriff in his sole discretion. Should neither the plaintiff nor an acceptable representative of the plaintiff be present when the property is called for sale, the sale of the property shall be stayed.

Any bidding above costs for a property shall begin at the upset price announced by plaintiff's counsel when the bidding is opened. The upset price will be viewed as the least amount acceptable by the plaintiff. All bidding above the upset price shall be in increments of $100.00. If no upset price is announced by plaintiff's counsel, all bidding above costs shall begin in not less than $100.00 increments.

All real estate is sold "as is" with no guarantees or warranties either expressed or implied and may be subject to mortgages and priority liens.

Properties may be sold in any order and not as numerically listed.

The Sheriff reserves the right to adjust or modify these Conditions of Sale on a case by case basis and shall resolve all issues and disputes arising during the auction in his sole discretion.

SHERIFF OF DELAWARE COUNTY
MEDIA, PENNSYLVANIA 19063

PHONE 610-891-4296 - FACSIMILE 610-891-1765

Jerry L. Sanders, Jr.
Sheriff

Michael Donohue
Chief Deputy

March, 2021

UNTIL FURTHER NOTICE: Due to current and ongoing restrictions related to the COVID-19 Pandemic,

The March 15, 2013, Conditions of Sales with respect to Real Estate Sheriff Sales shall be amended temporarily to include the procedures and rules outlined herein; including the pre-registration requirement for all potential bidders.

The amended procedures and rules shall take precedence over the March 15, 2013, Conditions of Sale until further notice.

SHERIFF OF DELAWARE COUNTY
MEDIA, PENNSYLVANIA 19063

PHONE 610-891-4296 - FACSIMILE 610-891-1765

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Michael Donohue
Chief Deputy

For the July 16, 2021 Sheriff Sale of Real Estate and for sales in the future, registration of third party bidders is required in addition to several changes in the way that the sale will be conducted. Attached to this packet is the court order issued by the Delaware County Court of Common Pleas that authorizes and orders the changes outlined within the order.

Regarding the registration of third party bidders, the attached documents are required to be filled out and turned into the Sheriff's Department with your $1,000.00 registration fee. If your registration is accepted, you will receive your entry pass in the mail. If your registration is denied, you will receive your deposit and the reason for denial back in the mail.

The following should be turned into the Sheriff's Real Estate Department, located at Delaware County Sheriff's Office Attn: Real Estate Department 201 West Front Street, Media PA 19063:

- Sale registration form
- COVID-19 assessment form
- Filled out and signed realty transfer tax statement (PA Department of Revenue form REV-183)
- Copy of a driver's license or other valid government issued identification
- $1,000.00 Money order (or certified bank check) payable to Delaware County Sheriff

You can contact us with any questions regarding the registration process via email at:
clarkeg@co.delaware.pa.us

We thank you in advance for your cooperation.

Counsel for the Plaintiff-

1. Cases will be grouped together by the representing attorney/law firm.

2. Properties will not be sold in the usual numbered order as in the past.

    a. July sales will be at the same time as the sales continued from previous sales.

    b. Continued sales will be announced first, followed by the properties newly scheduled for July 16, 2021.

3. Sale will then proceed as follows:

    a. Attorneys/law firms with single properties will start the sale.

    b. The sale will then proceed with the attorneys having the lowest number of sales concluding with the attorney that has the greatest number of sales.

    c. When an attorney is finished, they will be required to leave the sale area.

4. If an attorney is going to be bidding as a third party, or representing another party with an interest in a property (such as lienholders) they will be permitted into the sale and permitted to stay until the sale(s) property or properties they are handling come up.

Potential Property Buyers (Public and Attorneys)

1. Buyers must register to attend the physical sale. To register the buyers must provide:

    a. Sale registration Form, specifying properties in which they are interested in and a COVID-19 assessment form.

    b. Completed and sign realty transfer tax statement (PA Department of Revenue form REV-183) Section 1 Grantt(s)/Lessee(s) this is the name that will appear on the Sheriff's deed

    c. Copy of their valid driver's license or other valid government issued identification.

    d. $1,000.00 Certified Bank Check or Money order payable to Delaware County Sheriff.

    e. Dates for pre-registration TBA

    f. Buyers may be denied registration and /or entry based on Delaware County's Covid-19 screening standards as the time of the registration.

    g. Buyers must follow all of the COVID-19 guidelines while attending the sale, (masks and social distancing.)

2. Registered buyers will receive an entry pass with an identification number. Only one person is allowed per pass.

3. The buyer's registration fee will be used as part of the deposit if the buyer successfully purchases a property. The registration fee will be refunded if the buyer is unsuccessful.

    a. Successful buyers must pay the Hand Money at the time of the sale.

    b. Any remaining balance must be paid within 10 calendar days after the sale date. Please contact the Sheriff's Office for the exact amount.

    c. All payments must be Certified Bank Check or Money order and payable to Delaware County Sheriff. CASH WILL NOT BE ACCEPTED and there are no provisions for credit/debit.

4. Buyers are expected to leave the room after the sale of the property that they are interested in has occurred.

    a. Buyers are asked to make the Sheriff's department aware of the properties they are interested in, especially if there are multiple properties of interest.

5. Payments and/or questions regarding the sale will be taken at the Sheriff's Office. Social distancing and masks while waiting are required.

SHERIFF OF DELAWARE COUNTY
MEDIA, PENNSYLVANIA 19063

PHONE 610-891-4296 - FACSIMILE 610-891-1765

Jerry L. Sanders, Jr.
Sheriff

Michael Donohue
Chief Deputy

Delaware County Sheriff's Office
Third Party Bidder Registration Form

Bidder's Last Name	
Bidder's First Name	
Company or Business	
Address	
City	
State, Zip Code	
Phone Number	
Alternate Phone Number	
Email	
Driver's License State	
Driver's License Number	
Attorney (if applicable)	
Attorney Phone	

Potential properties interested in bidding on (this information is for the Sheriff's use only and WILL NOT be shared):
Please identify by sale and/or case number (example: 256/2019, 1906-24)

Signature _____ Date _____

SHERIFF OF DELAWARE COUNTY
MEDIA, PENNSYLVANIA 19063

PHONE 610-891-4296 - FACSIMILE 610-891-1765

Jerry L. Sanders, Jr.
Sheriff

Michael Donohue
Chief Deputy

Delaware County Sheriff's Office
Bidder Entry Pass
(Only one person permitted to enter per pass.)

Holder of pass must present state issued identification that matches the below information.

Bidder Name:	
Company or Business:	
ID State and Number:	
Email:	
Money Order/Check #:	
Bidder Number:	

If the person listed above is unable to attend, this pass in non-transferrable.

SHERIFF OF DELAWARE COUNTY
MEDIA, PENNSYLVANIA 19063

PHONE 610-891-4296 - FACSIMILE 610-891-1765

Jerry L. Sanders, Jr.
Sheriff

Michael Donohue
Chief Deputy

Sheriff Sale Bidder's Acknowledgement

(ALL BIDDERS MUST FILL OUT & SIGN)

I, _____, do hereby acknowledge the following:

1. I agree to comply with all requirements set by the Delaware County Sheriff to comply with the CDC and PA Department of Health to prevent the transmission of COVID-19.

2. The Delaware County Sheriff is selling the listed properties without any guarantee or warranty whatever, either as to title, liens, structure or lack of structure upon the land, or any other matter or thing whatsoever.

3. I have conducted or will conduct my own research prior to the sale, which may also include obtaining an independent title search and/or speaking with an attorney regarding the procedures that may be necessary to obtain clear title to any property upon which I may bid at any Sheriff Sale; or, alternatively, I am electing to move forward without a title search and will assume all risks therefrom.

4. All efforts have been made by the Sheriff's Department to keep the Sheriff Sale proceedings free from error; however, it makes no guarantees of any kind.

5. I further understand that the sale may be challenged in court by the owner and/or a lienholder, which may lead to lengthy legal proceedings, a delay in receiving the deed to the property, and/or an overturning of the Sheriff Sale by the court.
    a. In the event of such a challenge, if I choose to participate in any legal proceedings, I am responsible for my own legal representation.
    b. In the event that the sale is overturned by the court, I understand that I will receive a refund of the purchase price.

6. In the event I choose to enter the property or take possession of the property without receiving the deed to the property, I am doing so at my own peril. Furthermore, I understand that in no event shall the Sheriff's Department be liable to me for any fees or expenses, including but not limited to repairs, improvements or law suits, I may incur as a result of any actions I may take with respect to the property prior to obtaining marketable title to the property, which is my sole responsibility.

7. I understand that the property purchased may be occupied by the defendants or other tenants and the Sheriff's Department is not responsible for the proceedings to remove these individuals from the property.

8. I acknowledge the following payment schedule:
    a. $1,000.00 deposit for sale registration will be applied to one (1) property upon successful purchase. Multiple properties will require additional deposits to be made per property.
    b. The Hand Money listed for the sale will be required at the time of the sale. Certified check or money order only payable to Delaware County Sheriff. CASH WILL NOT BE ACCEPTED and there are not provisions for credit/debit.
    c. Any remaining balance must be paid in full within 10 calendar days of the sale date. Please call the Sheriff's office for your balance.
    d. Payments shall be made in the form of certified check or money order payable to Delaware County Sheriff. CASH WILL NOT BE ACCEPTED and there are not provisions for credit/debit.
    e. Any bidder who fails to pay in accordance with the schedule as described above, will forfeit any and all deposits to the Sheriff, will be prohibited from bidding at any future Sheriff Sales, and may face legal action to recover the difference between the original sale and the amount received at re-sale.

9. In consideration of the acceptance of the submission of this form by Delaware County, I release and discharge Delaware County from any and all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity, which against Delaware County, I ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this document and to all claims, demands, actions, causes of action, liabilities, obligations, losses, damages, penalties, costs, and expenses, of whatever nature which arise out of or are in any way connected with the Sheriff's sale and/or any other dealings among the parties.

_____ _____

Signature Date

For Sheriff Use Only:

- ☐ Sale Registration Form
- ☐ COVID-19 assessment form
- ☐ Filled out and signed realty transfer tax statement (PA Department of Revenue form REV-183)
- ☐ Copy of a driver's license or other valid government issued identification
- ☐ $1,000 Money order (or certified bank check) #_____

☐ Registration Accepted- Assigned Bidder # _____ ☐Registration Denied

SHERIFF OF DELAWARE COUNTY
MEDIA, PENNSYLVANIA 19063

PHONE 610-891-4296 - FACSIMILE 610-891-1765

Jerry L. Sanders, Jr.
Sheriff

Michael Donohue
Chief Deputy

Sheriff's Sale Registration
COVID-19 Assessment Form

(Person attending the sale must fill out with registration)

Name: _____

1- Do you have any of these symptoms that are not caused by another condition?
Fever or chills, Cough, Shortness of breath or difficulty breathing, Fatigue, Muscle or body aches, Headache, Recent loss of taste or smell, Sore throat, Congestion, Nausea or vomiting, Diarrhea
☐YES ☐NO

2- Within the past 14 days, have you had contact with anyone that you know had COVID-19 or COVID-like symptoms? Contact is being 6 feet (2 meters) or closer for more than 15 minutes with a person, or having direct contact with fluids from a person with COVID-19 (for example, being coughed or sneezed on).
☐YES ☐NO

3- Have you had a positive COVID-19 test for active virus in the past 10 days?
☐YES ☐NO

4- Within the past 14 days, has a public health or medical professional told you to self-monitor, self-isolate, or self-quarantine because of concerns about COVID-19 infection?
☐YES ☐NO

5- Have you traveled (in the past 14 days) or will you be travelling to any of the states listed below. (Subject to change based upon the PA Dept. of Health's recommendations):
Alabama, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas
☐YES ☐NO

_____ _____
Signature Date

pennsylvania
DEPARTMENT OF REVENUE

(EX) MOD 06-19 (FI)

REV-183

BUREAU OF INDIVIDUAL TAXES
PO BOX 280603
HARRISBURG, PA 17128-0603

1830019105

REALTY TRANSFER TAX STATEMENT OF VALUE

COMPLETE EACH SECTION

RECORDER'S USE ONLY

State Tax Paid:

Book: | Page:

Instrument Number:

Date Recorded:

SECTION I TRANSFER DATA

Date of Acceptance of Document			
Grantor(s)/Lessor(s) SHERIFF OF DELAWARE COUNTY	Telephone Number	Grantee(s)/Lessee(s)	Telephone Number
Mailing Address 201 WEST FRONT STREET		Mailing Address	
City MEDIA	State PA / ZIP Code 19061	City	State / ZIP Code

SECTION II REAL ESTATE LOCATION

Street Address	City, Township, Borough
County	School District / Tax Parcel Number

SECTION III VALUATION DATA

Was transaction part of an assignment or relocation? ⬭ YES ⬭ NO

1. Actual Cash Consideration	2. Other Consideration +	3. Total Consideration =
4. County Assessed Value	5. Common Level Ratio Factor X	6. Computed Value =

SECTION IV EXEMPTION DATA - Refer to instructions for exemption status.

1a. Amount of Exemption Claimed $	1b. Percentage of Grantor's Interest in Real Estate %	1c. Percentage of Grantor's Interest Conveyed %

2. Fill in the Appropriate Oval Below for Exemption Claimed.

⬭ Will or intestate succession. _____
(Name of Decedent) (Estate File Number)

⬭ Transfer to a trust. (Attach complete copy of trust agreement and all amendments.)

⬭ Transfer from a trust. (Attach complete copy of trust agreement and all amendments.)

⬭ Transfer between principal and agent/straw party. (Attach complete copy of agency/straw party agreement.)

⬭ Transfers to the commonwealth, the U.S. and instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (If condemnation or in lieu of condemnation, attach copy of resolution.)

⬭ Transfer from mortgagor to a holder of a mortgage in default. (Attach copy of mortgage and note/assignment.)

⬭ Corrective or confirmatory deed. (Attach complete copy of the deed to be corrected or confirmed.)

⬭ Statutory corporate consolidation, merger or division. (Attach copy of articles.)

⬭ Other (Provide a detailed explanation of exemption claimed. If more space is needed attach additional sheets.)

SECTION V CORRESPONDENT INFORMATION - All inquiries may be directed to the following person:

Name	Telephone Number
Mailing Address / City	State / ZIP Code

Under penalties of law, I declare that I have examined this statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Correspondent or Responsible Party	Date

FAILURE TO COMPLETE THIS FORM PROPERLY OR ATTACH REQUESTED DOCUMENTATION MAY RESULT IN THE RECORDER'S REFUSAL TO RECORD THE DEED.

1830019105

1830019105

pennsylvania
DEPARTMENT OF REVENUE

Pennsylvania Department of Revenue

Instructions for REV-183

Realty Transfer Tax Statement of Value

REV-183 IN (EX) 06-19

GENERAL INFORMATION

Complete each section and file in duplicate with the Recorder of Deeds when (1) the full value/consideration is not set forth in the deed, (2) the deed is without consideration or by gift, or (3) a tax exemption is claimed. If more space is needed, please attach additional sheets. A Statement of Value (SOV) is not required if the transfer is wholly exempt from tax based on family relationship or public utility easement. However, it is recommended that a SOV accompany all documents filed for recording.

LINE INSTRUCTIONS

SECTION I

Date of Acceptance – Enter the date the document was delivered to and accepted by the grantee/lessee.

Enter the full names and addresses of all grantor(s)/lessor(s) and all grantee(s)/lessee(s). Attach additional sheets if necessary.

SECTION II

This section identifies the real estate to be transferred. Complete fully, including the tax parcel number where applicable and the county where the statement is to be filed.

SECTION III

Indicate by filling in YES or NO, whether the document represents two or more transactions accomplished by an assignment of the agreement of sale or by the use of a relocation arrangement. Complete for all transactions:

1. **Actual Cash Consideration** – Enter the amount of cash or cash equivalent that the grantor received for the transfer of the real estate.
2. **Other Consideration** – Enter the total amount of noncash consideration that the grantor received for the transfer of the real estate, such as property and securities. Include mortgages and liens existing before the transfer and not removed thereby, and the agreed consideration for the construction of improvements.
3. **Total Consideration** – Enter the sum of Lines 1 and 2. This will be the total consideration for the purchase of the real estate.
4. **County Assessed Value** – Enter the actual assessed value of the entire real estate, per records of the county assessment office. Do not reduce the assessed value by the grantor's fractional interest in the real estate.
5. **Common Level Ratio Factor** – Enter the common level ratio factor for the county in which the real estate is located. An explanation of this factor is provided below.
6. **Computed Value** – Enter the product of Lines 4 and 5.

SECTION IV

Complete only for transactions claiming an exemption. For exemptions refer to Title 61 §91.193 of the Pennsylvania Code.

1a. **Amount of Exemption Claimed** – Enter the dollar amount of the value claimed as exempt.

1b. **Percentage of Grantor's Interest in Real Estate** – Enter the percentage of grantor's ownership interest in the real estate listed in Section II.

1c. **Percentage of Grantor's Interest Conveyed** – Enter the fraction or percentage of grantor's interest in the real estate on Line 1b that the grantor conveyed to the grantee. For example, if you indicated on Line 1b that grantor owns a 50 percent tenant-in-common interest in the real estate and grantor is conveying his entire 50 percent interest to the grantee, then you would enter 100 percent on this line.

2. **Fill in the Appropriate Oval for Exemption Claimed** – Ovals are provided for the most common Pennsylvania realty exemptions. Each is explained in order of appearance on the Realty Transfer Statement of Value form.

Will or Intestate Succession – A transfer by will for no or nominal consideration, or under the intestate succession laws, is exempt from tax. Provide the name of the decedent and estate file number in the space provided.

Transfer to a Trust – A transfer for no or nominal consideration to a trust is exempt from tax when the transfer of the same property would be exempt from tax if the transfer were made directly by the grantor to all the possible (including contingent) beneficiaries. Attach a complete copy of the trust agreement and identify the grantor's relationship to each beneficiary.

Transfer from a Trust – Attach a complete copy of the original trust and all amendments to the trust.

Transfer Between Principal and Agent/Straw Party – A transfer between an agent/straw party and principal for no or nominal consideration is exempt. Attach a complete copy of the agency/straw party agreement.

Transfer to the Commonwealth, the U.S. and Instrumentalities by Gift, Dedication, Condemnation or in Lieu of Condemnation – If the transfer is by condemnation or in lieu of condemnation, attach a copy of the resolution.

Transfer from Mortgagor to Holder of a Mortgage in Default – A transfer from a mortgagor to a holder of a mortgage in default, whether pursuant to a foreclosure or in lieu thereof, is exempt. Provide a copy of the mortgage and note, and any documentation evidencing the assignment thereof.

Corrective or Confirmatory Deed – A deed for no or nominal consideration that corrects or confirms a previously recorded deed but does not extend or limit the title or interest under the prior deed is exempt from tax. Attach a complete copy of the prior deed being corrected or confirmed.

Statutory Corporate Consolidation, Merger or Division – A document that evidences the transfer of real estate pursuant to the statutory consolidation or merger of two or more corporations (15 Pa. C.S. §1921-1932 or 15 Pa. C.S. §5921-5930) – or the statutory division of a nonprofit corporation (15 Pa. C.S. §5951-5957) – is exempt from tax. Attach a copy of the articles of consolidation, merger or division.

Other – When claiming an exemption other than those listed, you must specify what exemption is claimed. When possible, provide the applicable statutory and regulatory citation. Attach additional pages, if necessary. Attach a copy of supporting documentation.

SECTION V

Enter the name, address and telephone number of party completing this form.

COMMON LEVEL RATIO FACTOR

This is a property valuation factor provided by the PA Department of Revenue by which the county assessed value is multiplied to determine the taxable value of real estate for all non-arm's-length transactions, leases and acquired companies. The factor is based on the common level ratio established by the State Tax Equalization Board. The common level ratio is a ratio of assessed values to current fair market values as reflected by actual sales of real estate in each county. A statewide list of the factors is available at the Recorder of Deeds' office in each county and on the department's website at www.revenue.pa.gov

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THIS STATEMENT MUST BE SIGNED BY A RESPONSIBLE PERSON CONNECTED WITH THE TRANSACTION.

Sheriff Sale

The Erie County Sheriff's Office Real Estate Division is responsible for documenting all fees received by the Sheriff's Office for services performed. Funds are deposited with the Erie County Treasury at the end of each month. These fees are used to offset the operating cost of the Sheriff's Office. This division has the responsibility of preparing all paperwork to list a property for a sheriff's sale, distributing the proceeds, and preparing a deed once a sale has taken place. Generating the calendar schedule for the upcoming year and notifying the attorneys and the court of filing dates and dates of sale is also a duty of the Real Estate Division.

Erie County has real estate sales every month except December. The properties that are to be sold each month are advertised in the Erie Times-News and Erie County Legal Journal three successive Fridays prior to the date of sale. Each property has a writ number, which is listed in the advertisement. This number, together with the mortgage's name, is used at the time the property is auctioned. The sheriff or the sheriff's representative conducts the sale. The sales are normally held on a Friday at 10:00 a.m. in Central Court, Erie County Courthouse, 140 West Sixth Street, Erie, PA 16501-1077.

Contact the Real Estate Division at 814-451-6006 or 814-451-6008.

Want to Learn More?

- Sheriff Sale Listing
- 2020 Sheriff Sale Schedule (PDF)
- Real Estate Sale Forms (PDF)
- Directions For Emailing Legal Descriptions (PDF)

SHERIFF'S OFFICE

About the Sheriff's Office
Functions
Divisions
Forms, Permits and Fees
Most Wanted
Law Enforcement Contacts
Project Blue Light
Sheriff's Office News
Sheriff Sale

CONTACT INFORMATION

Sheriff's Office

Erie County Courthouse
140 W Sixth Street
Room 400
Erie, PA 16501

814-451-7012
Departmental Directory

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Sheriff Sales – Lackawanna County

Sheriff's Office | Warrants | 2021 Sheriff Sale Schedule | 2022 Sheriff Sale Schedule

Properties sold by the Sheriff are mortgage and judgment defaults, not tax delinquent properties. The Lackawanna County Tax Claim office conducts tax sales. The Sheriff sales are normally held at 10:00 A.M. in the Lackawanna County Courthouse, 200 North Washington Avenue, Scranton, PA.

EXPLANATION FOR REAL ESTATE SALES

1. Sales are conducted by open bidding and you will be bidding against the bank.
2. The bank has a predetermined amount that they will bid to. This is called the "upset price". Only the bank, on day of sale, knows what this amount will be. It may be more or less than the judgment amount.
3. A deposit of 10% of the bid price is to be paid in cash, cashier's check or certified check immediately to the sheriff at the time of the bid. In the event that 10% is not paid immediately, the property will be sold again at the end of the current sale. Said deposit will be forfeited in the event the balance of the bid price is not paid by 2 o'clock on the afternoon of said date. Full compliance of the total amount is due by two o'clock on the afternoon of the said date.
4. The debtors own the properties until they are sold on the day of the sale.
5. The Sheriff does not have physical access to the properties listed for sale.
6. Properties are sold "AS IS" and the Sheriff is not responsible for a clear title.
7. The Sheriff's office does not search records for debts or liens prior to the sale.
8. Professional assistance in searching properties may be obtained through attorneys or title searchers to determine possible liens for which the buyer may be responsible.
9. Cost sheets containing an itemized list of the Sheriff's fees, taxes and the amount of the debt owed to the executing creditor are available at the office approximately one week prior to the sale.
10. A schedule of distribution of the proceeds from the sale will be prepared within thirty days.
11. Money collected by the Sheriff is paid in priority order to creditors unless objections to the schedule are timely filed.
12. If you have additional questions concerning the purchase of property at Sheriff's sale or the filing of any legal pleadings, please contact your attorney.

ANNOUNCEMENTS CONCERNING SHERIFF SALE REVISED AS OF JANUARY 2020

1. A DEPOSIT OF 10% OF THE BID SHALL BE IMMEDIATELY PAID TO THE SHERIFF AFTERTHE BID IS MADE. IN THE EVENT THAT 10% IS NOT PAID IMMEDIATELY, THE SALE WILL BE CONSIDERED NULL AND VOID AND SHALL CAUSE THE PROPERTY TO BE SOLD AGAIN AT THE END OF THE CURRENT SALE. PHOTO IDENTIFICATIONIS REQUIRED WHEN THE 10% DOWN PAYMENT IS MADE.

2. DOWN MONEY MUST BE PAID IN CASH, CASHIER'S CHECK OR BY CERTIFIED CHECK.

3. ONE DOLLAR ($1.00) BIDS WILL NOT BE ACCEPTED. A BID SHALL BE IN AN AMOUNT SUFFICIENT TO PAY ALL OF THE SHERIFF'S COSTS, ALL MUNICIPAL CLAIMS, IF ANY, AND ALL OTHER ITEMS SHOWN ON THE SHERIFF'S COST SHEET, INCLUDING TRANSFER TAXES WHERE APPLICABLE.

4. THE BALANCE OWED BY THE SUCCESSFUL BIDDER MUST BE PAID BY CASH, CASHIER'S CHECK OR CERTIFIED FUNDS TO THE SHERIFF BEFORE 2:00 P.M. TODAY, THE DAY OF THE SALE; WITHOUT FURTHER DEMAND.

5. IF FULL PAYMENT IS NOT RECEIVED FROM THE HIGH BIDDER BY 2:00 P.M. ON THE DAY OF THE SALE, ALL MONIES PAID WILL BE FOREFEITED, NOTWITHSTANDING ANY OTHER BIDS, AND THE PROPERTY MAY BE RESOLD AT 10:00 A.M. ON THE NEXT SALE DATE, THE _____ DAY OF 20___, AT WHICH TIME THE FULL PURCHASE PRICE SHALL BE PAID IN FULL. FORFEITED MONIES WILL BE ADDED TO AND DISTRIBUTED AS PART OF THE PROCEEDS IN THE NEXT SALE.

6. (a) IF THE EXECUTING CREDITOR IS THE SUCCESSFUL BIDDER, THE SHERIFF'S OFFICE WILL NOT BE COLLECTING AND DISTRIBUTING FOR DELINQUENT TAXES OR MUNICIPAL CLAIMS (OTHER THAN FOR DELINQUENT TAXES FORWARDED BY THE LACKAWANNA COUNTY TAX C.LAIM BUREAU TO THE SHERIFF PRIOR TO THE SALE).

   (b) IN THE EVENT THAT THERE IS A THIRD PARTY BIDDER, THE SHERIFF'S OFFICE WILL BE MAKING DISTIBUTION FROM THE FUNDS AS FOLLOWS:

      (i) COSTS RELAT1NG TO THE SALE; INCLUDING POUNDAGE.

(ii) TAXES ASSESSED AGAINST THE PROPERTY, INCLUDING CURRENT YEARS TAXES IF REQUIRED UNDER 53 P.S. 7102.

(iii) ALL MUNICIPAL CLAIMSAS REQUIRED UNDER 53.P.S. 7106.

(iv) ANY OTHER CLAIMS.

THEREFORE, IT IS IMPERATIVE THAT THE HOLDER OF ANY OF THESE CLAIMS SO NOTIFY THE SHERIFF WITHIN THIRTY (30) DAYS OF THE SALE.

7. ALL BIDDERS SHALL BE AWARE THAT THE CURRENT YEARS TAXES AND/OR MUNICIPAL LIENS, AND DELINQUENT TAXES WHERE A SALE IS CONTINUED FROM ONE YEAR TO THE NEXT, MAY NOT BE LISTED ON THE COST SHEET. IF THE EXECUTING CREDITOR IS THE SUCCESSFUL BIDDER, THESE ITEMS BECOME THEIR RESPONSIBILITY TO PAY AND THESE ITEMS SHALL BE OBTAINED DIRECTLY FROM THE TAXING BODIES OR THEIR AGENT.

8. THE SHERIFF IS NOT LIABLE FOR LOSS OR DAMAGE TO THE PREMISES SOLD RESULTING FROM ANY CAUSE WHATSOEVER, AND MAKES NO REPRESENTATION OR WARRANTY REGARDING THE CONDITION OF THE PREMISES OR TITLE.

9. IF THE JUDGMENT CREDITOR HAS ASSIGNED THEIR INTEREST PRIOR TO THE SALE, THE SHERIFF MUST RECEIVE A COPY OF THE ASSIGNMENT BEFORE THE SALE, PROPERLY NOTARIZED AND RECORDED WITH THE RECORDER OF DEEDS. IF THERE IS AN ASSIGNMENT OF BID AFTER THE SALE, THIS MUST BE FILED WITH THE CLERK OF JUDICIAL RECORDS AND A TIME STAMPED COPY OF THE ASSIGNMENT OF BID AND A REVISED AFFIDAVIT OF VALUE GIVEN TO THE SHERIFF'S OFFICE. KEEP IN MIND THAT DUE TO THE ASSIGNMENTOF BID AFTER THE SALE, THE ASSIGNEE MAY BE RESPONSBILE FOR TRANSFER TAX.

10. TO ALLOW AN ORDERLY PROCEEDING WITH REGARD TO THE SALES ON BEHALF OF THE SHERIFF'S OFFICE, I AM REQUESTING THAT ALL CELL PHONES OR OTHER LIKE DEVICES BE TURNED OFF FOR THE ENTIRE PERIOD OF THE SALE. IF INTERESTED PARTIES OR JUDGMENT CREDITORS' REPRESENTATIVES MUST USE THEIR CELL PHONES, THEY MUST LEAVE THE ROOM ACCORDINGLY.

11. AS A REMINDER, TWO (2) COPIES OF ANY AND ALL MORTGAGES AND ASSIGNMENTS OF MORTGAGE THAT ARE REQUIRED OT BE ATTACHED TO AND RECORDED WITH THE DEED ARE REQUIRED BY THE LACKAWANNA

COUNTY OFFICE OF THE RECORDER OF DEEDS AND PENNSYLVANIA TRANSFER TAX DIVISION OF THE DEPARTMENT OF REVENUE SHOULD BE FOWARDED TO THE SHERIFF'S OFFICE IMMEDIATELY FOLLOWING THE SHERIFF'S SALE IF NOT PREVIOSULY PROVIDED.

12. WITH RESPECT TO A BANKRUPTCY FILING, AND THE BANKRUPTCY STAY IS APPLICBLE, NO ACTION SHALL BE TAKEN BY THE SHERIFF'S OFFICE OTHER THAN GRANTING ONE (1) CONTINUANCE TO THE NEXT SALE. DEVOID OF FURTHER INSTRUCTIONS FROM THE CREDITOR'S ATTORNEY, THE SALE SHALL THEN BE STAYED AND THE WRIT RETURNED.

13. I MAY MAKE SOME ADDITIONAL ANNOUNCEMENTS THAT RELATE TO SPECIFIC SALES. THOSE ANNOUNCEMENTS WILL BE MADE PRIOR TO OFFERING THAT PARTICULAR PROPERTY FOR SALE.

14. PLEASE NOTE THAT THE COST SHEETS PREPARED FOR THE SALES ARE JUST A GUIDE-SUBJECT TO VERIFICATION AFTER THE SALE.

Lancaster County attorney's check. The Sheriff's Office will NOT accept any other form of payment.

In order to expedite the sale, the Sheriff's Office encourages, but does not require, plaintiffs to announce an "upset" price, which is the least amount the plaintiff will accept for a property. Any bidding above the plaintiff's opening costs bid for such property will begin at that stated upset price. Subsequent bids shall be in no less than $1000 increments. Plaintiffs may withdraw a property from sale any time before the property is struck off as sold to the highest bidder.

Immediately upon a property being struck off to the highest bidder, the buyer must state the buyer's name (unless buying the property on behalf of the plaintiff for costs only) and come forward to settle with the clerks. The buyer must present a legal picture identification acceptable to the Sheriff's Office, such as a driver's license, and immediately pay 20% of their bid as a down payment to the Sheriff's Office. The buyer must subsequently pay the balance of their bid within 30 days after the sale date.

Each buyer shall file a properly completed and signed Pennsylvania Realty Transfer Tax Statement of Value in duplicate with the Sheriff's Office within 15 days after the sale date. All applicable realty transfer taxes will be fully paid from the sale proceeds by the Sheriff's Office. If the proceeds are insufficient to pay all the sale costs, realty transfer taxes, and priority liens, then the buyer shall pay the balance of such amounts to the Sheriff's Office within 30 days after the sale date.
If no petition has been filed to set aside a property sale, the Sheriff will execute and record a deed 20 days or more after filing a proposed Schedule of Distribution with the Prothonotary's Office, conveying all the real estate rights, title, & interests of the defendants in the property. Distribution of the sale proceeds will be made per the proposed Schedule of Distribution 11 or more days after the filing of such Schedule, provided no exceptions are filed regarding the proposed distribution.

The Sheriff's Office may hold agents responsible for their winning bids if their principal fails to comply with these Conditions of Sale, unless the agent has a notarized agency agreement and presents same to the Sheriff's Office prior to the beginning of the sale.

If a buyer breaches or otherwise fails to comply with these Conditions of Sale, the buyer shall forfeit their down payment to the Sheriff's Office in its entirety as liquidated damages, and the buyer also shall be liable to the Sheriff's Office for all costs, expenses, losses, and damages (including, without limitation, attorney fees) suffered or incurred by the Sheriff's Office (1) to resell the property or (2) above and beyond such down payment amount, or both of the foregoing.

The Sheriff's Office reserves the right to alter or modify these conditions of sale during or before each sale, or on a case by case basis. The Sheriff's Office decision shall be final regarding all sale issues and disputes.

Christopher Leppler,
Sheriff of Lancaster County
Michael D Hess, Esquire,
Solicitor

REAL ESTATE SALES

All Sheriff's Real Estate Sales will be conducted in Courtroom A at the Lancaster County Courthouse at 10:00 AM on the dates listed under:

SHERIFF'S SALES OF REAL ESTATE LISTING

MORTGAGE FORECLOSURE SURPLUS LISTINGS

EXCESS PROCEEDS

EFFECTIVE JULY 1, 2020
THE COMMON LEVEL RATIO IS: 1.20

SHERIFF SALES WILL BE CONDUCTED AT 10:00 AM BEGINNING IN 2020.
Make sure when filing for sales on/after July 18th, 2019 your notice of sales have the correct time.

Ads for Sheriff's Sales of Real Properties can now be found at the following locations:

In the Lancaster Law Review

In the Lancaster Newspaper

IMPORTANT NOTE: The Proposed Schedule of Distribution of the sale proceeds (PSOD) will no longer be mailed to anyone. Rather, per Pa. Rule of Civil Procedure 3136, the PSOD will be filed in the Prothonotary's Office once it is available.

If you disagree with anything that is in or missing from the PSOD, you must object & explain your reasons in detail by filing written "Exceptions to the Proposed Schedule of Distribution" with the Sheriff's Office no later than ten (10) days after the PSOD is filed; otherwise, you will be deemed to have waived such objections & you will be bound by the PSOD as filed by the Sheriff's Office.

REALTY TRANSFER TAX STATEMENT OF VALUE CAN BE FOUND HERE.

Main County Contact Information
Lancaster County Government Center
150 N Queen St.
Lancaster, Pennsylvania 17603
Ph: 717-299-8000
Hours: Monday - Friday 8:30 a.m. - 5 p.m.
2021 Holiday Schedule

Audio and Video Devices Are Prohibited in Court Facilities

Beginning January 1, 2017, the taking or recording of pictures, photographs, videos, or audio recordings; and the use or possession of audio or video broadcast or recording equipment, or any other device capable of capturing or transmitting sound or images (including, without limitation, cameras and cell phones); in a courtroom, hearing room, or their respective environs during the progress of or in connection with any action, whether or not court is actually in session, is prohibited in compliance with L.C.R. Crim.P. No. 112.

CONDITIONS OF SALE

The Sheriff's Office reserves the right to accept or to reject any one or more bids, and to sell the properties in any order or combination, as determined by the Sheriff's Office. The sale of any property may, at the discretion of the Sheriff's Office, be stayed or continued in whole or in part.

If any irregularities, defects, or failures to comply with these Conditions of Sale occur during the sale, properties may be placed back up for sale at any time prior to the conclusion of the sale.

All properties are sold "AS IS", with NO expressed or implied warranties or guarantees whatsoever. In other words, the Sheriff's Office does not guarantee or warrant, in any way, the real estate upon which you are bidding. The Sheriff's Office is merely following the requests of the plaintiffs and selling whatever interests the defendants may have in the properties. It is up to you or your attorney to determine what those interests are, before you buy. The defendants might not own the properties at all, other persons may own the properties, or there might be mortgages or other liens against the properties that you may have to pay before you obtain clear title to a property. All of these factors are for you alone to determine. The Sheriff's Office will not make these determinations for you. Once you make a bid, which is accepted as the highest bid, you have bought whatever interests the defendants have, if any, in that property and you must pay that sum of money to the Sheriff's Office regardless of what you later find out about the title. You must know what you are bidding on before you bid and NOT after. All sales are FINAL after the property has been struck off to you as the highest bidder, and no adjustments will be made thereafter.

Payment for properties must be in the form of lawful money of the United States, a certified or cashier's check from a Pennsylvania Bank, or a

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION – LAW

Plaintiff,	)	
vs.	)	EXECUTION
	)	MORTGAGE FORECLOSURE
Defendant.	)	

CONDITIONS OF SALE

The conditions of this Sheriff's Sale held on Friday, _____

at 10:00 o'clock A.M. at the Court House, 455 W. Hamilton Street in the City of Allentown, County of Lehigh, PA, of the following described real estate, to wit:

Seized and taken in execution as the property of _____

the named defendant(s), is/are as follows, to wit:

First: - The highest and best bidder shall be deemed to be the purchaser, but if a dispute arises between two or more bidders, then the property shall be immediately put up again for sale.

Second: - The purchaser shall pay by check the higher of either ten per cent of the amount of the bid or the full amount of the costs as soon as the property is sold. Issuing a bad check may be criminally prosecuted. Purchaser shall sign an agreement to pay any remainder of the bid price within thirty (30) days by bank, cashier's check, or certified check or attorney's check acceptable to the Sheriff and payable to the Sheriff. The Sheriff will pay from the bid price any unpaid fees and costs, realty transfer taxes and poundage and all unpaid real estate taxes and municipal claims assessed as of the date of the sale and returned to the Sheriff timely.

Third: - Upon the failure to comply with these conditions of sale, any money paid on account by the purchaser may be forfeited and applied to pay the costs of the sale and the costs of any subsequent sale, but nothing herein shall relieve the purchaser from liability for all the costs and damages arising out of such noncompliance. If any unsuccessful bidder registers its highest bid and the purchaser defaults, then the registered bid accompanied by the required deposit shall be accepted as the successful bid, otherwise the executing creditor shall be deemed to be the purchaser for its opening bid of costs.

Fourth: - A fully completed Realty Transfer Tax form, including the name and address of the Grantee to be inserted on the sheriff's deed, must be furnished to the Sheriff within thirty (30) days of this sheriff sale or the sheriff's deed may be recorded in the name of the purchaser.

Fifth: - Upon these conditions being complied with, a deed shall be delivered to the purchaser in accordance with the Pennsylvania Rules of Civil Procedure.

_____

JOSEPH N. HANNA, SHERIFF

I do hereby acknowledge and agree that I have this day purchased the property above described, for which I promise to pay the sum of

$_____

within thirty (30) days, subject and according to the above conditions of sale.

SIGNED AND ACCEPTED BY:

_____

☐ on behalf of Plaintiff

☐ on behalf of Third Party Purchaser _____

(PRINT NAME AND ADDRESS OF THIRD PARTY PURCHASER)

Luzerne County
Pennsylvania • Established 1786

Sheriff Sale Overview

Properties sold for mortgage and judgment defaults are processed through the Sheriff's Office. The sheriff's sales are held on the first (1st) Friday of every other month at 10:30 a.m. in the Luzerne County Courthouse (unless otherwise changed).

It is recommended that interested parties consult with an attorney prior to participating in a Sheriff's Sale. Members of the Luzerne County Sheriff's Department are unable to offer any legal advice.

Notice of Sales

- A listing of the properties being sold can be obtained on the Sheriff's Office website.
- Sales are advertised in the Citizen's Voice and Luzerne Legal Register on three Friday's before the sale date.
- Sheriff Handbills are posted on the property and in the Sheriff's Office at least 30 days prior to the sale date.
- A property may be removed from the list or the sale adjourned by the executing creditor any point up to the actual time of the sale.

Access to Properties for Sale

- The Sheriff's Office does not have access to properties listed for sale.
  Inquiries about properties should be directed to the attorney whose name appears below the property description.
- The Sheriff's Office does not search records for debts or liens prior to the sale.
- Properties are sold "AS IS" and the Sheriff is not responsible for a clear title.
- Professional assistance in searching properties may be obtained through attorneys or title searchers to determine possible liens for which the purchaser may be responsible.

Bidding

- You will be bidding against the moving creditor (In most cases the Bank)
- Bidding starts at "Real Estate Taxes and Costs" (The total amount of taxes and fees owed in addition to the Sheriff's cost of putting on the sale)
- The bank has a predetermined amount that they will bid to. This is called the "upset price." Only the bank or their representative knows what this amount will be. It may be more or less than the judgment amount owed to the bank. The upset price may or may not be announced, it is not required to be announced.
- The property is sold to the highest bidder.

- If you are the successful bidder, 10% of the purchase price must be paid to the sheriff by noon on the day of the sale. Failure to pay the deposit will result in the property being resold immediately. The sheriff may institute legal action against the defaulting bidder if the property is resold for a lesser amount.
- The remaining balance must be paid within ten days from the sale. Failure to pay the balance **will** result in you losing your deposit, and the property being resold at the next regularly scheduled Sheriff Sale.
- Payments must be in the form of money order, attorney's or certified bank check. Special arrangements can be made for electronic fund transfers when large sums of money are involved. There are no provisions for personal checks or credit/debit cards.

Completion of Sale

- Exceptions to a sale of property can be filed within ten (10) days after the sale.
- After all money is paid and if no exceptions are filed, the sheriff's deed may be recorded in the name of the purchaser.
- Deed processing may take up to 60 days.
- A schedule of distribution of the proceeds from the bid sale will be prepared within thirty (30) days.
- Money collected by the sheriff is paid in priority order to creditors unless objections to the schedule are timely filed.

The Sheriff's Office does not conduct the Luzerne County Tax Sales; therefore we have no information on tax sales. Questions about tax sales be answered by Northeast Revenue (at 570-825-1512) or by following this link: http://luzernecountytaxclaim.com/

DISCLAIMER: Information that appears on this website is provided as a courtesy to the public. Changes may occur before this information is updated and you are advised not to rely upon the information posted without verifying its accuracy with other court dockets or by contacting the Sheriff's Office or consulting an attorney.

CONDITIONS OF SALE – REAL PROPERTY
Monroe County, PA (rev. 5/05/21)

Prospective bidder must complete the Bid4Assets on-line registration process to participate in the auction. All bidders must submit a seven hundred and fifty dollar ($750.00) deposit plus a thirty five dollar ($35.00) processing fee for a total of seven hundred and eighty-five dollars ($785.00) to Bid4Assets before the start of the auction. This single deposit will be associated with a particular auction date and allows a bidder to bid on all of the auctions that close on that particular date. If the prospective bidder is not a winning bidder seven hundred and fifty dollars ($750.00) will be reimbursed.

The plaintiff's attorney may submit their "reserve price" to Bid4Assets prior to the start of the auction. The "reserve price" is the least amount the plaintiff will accept for a property but it will not become the new minimum bid for the auction.

Sheriff sales shall begin at 10:00 a.m. The first bid made on each property put up for sale shall be a sum sufficient to pay all the Sheriff's costs, including the advertising, all taxes, water rents, and municipal claims, if submitted to the Sheriff for inclusion in costs. The high bidder on each property must pay as down money ten percent (10%) of purchase price or Sheriff's costs, whichever is higher, between the conclusion of the Sheriff's sales or no later than 4:00 p.m. on the date after the sale. Payment shall be made to Bid4Assets by wire transfer or by cashier's check made payable to Bid4Assets, except in the case of attorneys for the execution creditor that are the successful bidder. Attorneys for the execution creditor shall pay the Monroe County Sheriff directly no later than 3 business days from the date of sale by cashier's check, made payable to ***Sheriff of Monroe County,*** or for members of the Monroe County Bar a business check will be accepted. If not paid, the property may be put up again for sale at the next succeeding sale. In no case shall the down money be less than sufficient to cover the Sheriff's fees and costs of advertising. The second highest bid, to be binding if the first bidder defaults, must be accompanied by the required down money. In the event of the first bidders default, Bid4Assets may contact the second highest bidder that has met the "reserve price". The second bidders down money must be received no later than 4:00 p.m. on the date after original contact by Bid4Assets.

The balance of the purchase money, together with the transfer tax, poundage, cost of preparing the deed and such other costs as are by law imposed upon the purchaser, must be paid by wire transfer or cashier's check to Bid4Assets within eleven (11) days after the sale without further demand. In default thereof, the Sheriff may settle with the second bidder who has made the required deposit and registered the bid in writing, upon receipt of the highest sum bid and the aforesaid costs, less both deposits already made, within ten (10) days after the first bidder's failure to settle. In case no second bid is registered or no settlement made, the property may be sold again at the risk of the defaulting bidder and in case of any deficiency on such resale the defaulting bidder shall make good the same to any persons injured thereby even though the down money required to be paid at the later sale shall have been increased by any change in the conditions of sale.

The deposit or down money paid by any bidder who fails to comply with any of the above conditions shall be forfeited and applied on the purchase by any second bidder, or if the property is resold, to costs or any liens or equitable claims on the property discharged thereby, but not satisfied out of the proceeds of the sale including the right of the real owner to have the highest bid first made realized.

All properties are sold "AS IS," with NO expressed or implied warranties OR guarantees whatsoever. The Sheriff and Bid4Assets shall not be liable for any loss or damage to the premises sold resulting from any cause whatsoever. It is the responsibility of the bidder to investigate any and all liens, encumbrances and/or additional mortgages that may be held against the property and which may not be satisfied by the post-sale distribution. In anticipation of participating in this auction and purchasing a property the bidder assumes all responsibility for "due diligence."

Winning bidder shall comply with all post-sale instructions required by the Sheriff's Office and Bid4Assets. Buyer shall be responsible for the cost of preparing the deed and such other costs that are imposed by the law. Payment extensions are not permitted except by Court Order.

In the event an overpayment is received of the balance due such overpayment will be refunded.

The Plaintiff can cancel the sale at any time prior to the auction of a specific property being completed for any reason that may arise.

ALL TIMES IN THESE CONDITIONS ARE OF THE ESSENCE FOR ALL BIDDERS.

_____

Sheriff Ken Morris

Our office web site address is: http://www.monroecountypa.gov

MONROE COUNTY BAR ASSOCIATION
LAWYER REFERRAL SERVICE
913 Main Street
Stroudsburg, PA 18360
Phone: (570) 424-7288

NORTH PENN LEGAL SERVICES
10 N. 10th Street
Stroudsburg, PA 18360
Phone: (570) 424-5338

SHERIFF SALES

*****IMPORTANT SALE INFORMATION*****

ATTORNEYS' LAST DATE TO FILE: **SEPT. 1, 2021**

Please visit: **https://www.bid4assets.com/MontcoPASheriff** and review this **video** for more information on online sheriff sales.

NOTE: If website or video is unavailable, please refresh and/or accept cookies.

See the attached court order for additional information.

SHERIFF'S SALE ON: **DEC. 1, 2021**

NOTE

The move to online sheriff's sales is in accordance with enhanced public safety measures designed to safeguard participants and staff.

Please direct all inquiries to sheriffoffice@montcopa.org
Additional information will be published on this website as it becomes available.

NOTE FOR ATTORNEYS:
The Real Estate Division has established a cut-off time of 11:00 a.m., for processing individual case disposition/status changes on Sheriff Sale day. As the volume of cases increase, sufficient time is needed to process information. This change will allow time to compile the reports necessary to begin the sale promptly without straining our resources. Any changes that occur after that time will be amended during the sale by the plaintiff's attorney, through Bid4Assets.

NEW - NOTE TO BIDDERS:

Montgomery County's sheriff sales are conducted online via Bid4Assets. Registration is required and can be completed by accessing https://www.bid4assets.com/mvc/registration/signup/step1.
Please read the Conditions of Sale.

SALE DAY REPORT:

A Sale Day Report will be available one week before each sale date and will list the Law Reporter number, docket numbers, status, plaintiff, defendant, sale address, parcel number, attorney, and debt amount.

View Sheriff Sale listings here. The pull-down menu will give you easy access to monthly real estate listings. Searches can be sorted by defendant, city, Sheriff number, plaintiff, and address without changing screens.

View upcoming Sheriff Sale dates, Sale Day Reports and Supplements here.

View Frequently Asked Questions here. Forms and fees are located here.

How to save your home from foreclosure.

SHERIFF SALE POSTERS ARE AVAILABLE IN THE SHERIFF'S OFFICE AT:

Montgomery County Sheriff's Office
Montgomery County Courthouse
Swede & Airy Streets, First Floor
Norristown, PA 19404

Correspondence related to Sheriff Sales should be emailed to
RealEstateTeamMCSO@montcopa.org

Sheriff Sale handbills should be emailed to SheriffRealEstateDivision@montcopa.org in Word.doc format.

CONDITIONS OF SALE

CONTACT US

Sheriff's Office

Email

Montgomery County

Court House

First Floor

P.O. Box 311

MONTGOMERY COUNTY SHERIFF'S OFFICE - REAL ESTATE DIVISION

CONDITIONS OF SALE

All properties are sold "AS IS," with NO expressed or implied warranties OR guarantees whatsoever. The Sheriff and Bid4Assets shall not be liable for any loss or damage to the premises sold resulting from any cause whatsoever. In anticipation of participating in this auction and purchasing a property the bidder assumes all responsibility for "due diligence."

Prospective bidder must complete the Bid4Assets on-line registration process to participate in the auction. All bidders must submit a $10,000 deposit (plus a $35.00 processing fee) to Bid4Assets before the start of the auction. This single deposit will be associated with a particular auction date and allows a bidder to bid on all of the auctions that close on that particular date.

The plaintiff's attorney may submit their "upset price" to Bid4Assets prior to the start of the auction. The "upset price" is the least amount the plaintiff will accept for a property and it will become the new minimum bid for the auction.

The successful bidder shall pay the exact amount of the remaining balance within **12 calendar days** of the sale. If the payment falls on a federal holiday, the payment deadline shall be the close of business the first day after that date. Payment shall be made to Bid4Assets. **Failure to pay the balance by the due date will result in a default and the forfeiture of the deposit. You will also be banned from participating in future auctions.** In the event of a default the next highest bidder may be notified by Bid4Assets. Sheriff may settle with the second bidder who has complied with all of the conditions of sale. The defaulting party shall be liable to the plaintiff and/or the Sheriff for any and all costs incurred for the resale of the property.

Winning bidder shall comply with all post-sale instructions required by the Sheriff's Office and Bid4Assets. Buyer shall be responsible for the cost of preparing the deed poll and such other costs that are imposed by law. Payment extensions are uncommon. If one is necessary the decision will be made by the plaintiff's attorney once the Sheriff's Office is notified and provides consent.
In the event an overpayment is received, of the balance due, no funds less than $15 will be refunded.

The Plaintiff, at the discretion of the Sheriff's Office, can at any time cancel the sale after the auction closes for reasons of bankruptcy and any other reason that may arise.

It is the responsibility of the bidder to investigate any and all liens, encumbrances and/or additional mortgages that may be held against the property and may not be satisfied by the post-sale Schedule "A" distribution. The bidder assumes all responsibility for "due diligence" in anticipation of participating in this auction and purchasing a property.

The Schedule "A" distribution will be completed, within approximately 30 days after the sale by the sheriff's title company, for all properties sold to third party bidders.

The Schedule "A" distribution directs how the purchase price of the property will be disbursed and which liens will be satisfied. Disbursement payments are listed in priority order. Our title company follows the Pennsylvania Rules of Civil Procedure when determining these payments.

Once we receive and review the distribution we will email a copy to the third party bidder and all parties involved.

The Schedule "A" Distribution is available for 10 days at the Sheriff's Office. It is also posted on the website https://www.montcopa.org/397/Sheriff's-Office and is made part of the case history at the Prothonotary's office.

Distribution payments will be made in accordance with the proposed Schedule "A" unless exceptions are filed on or before the tenth day of the distribution date. Pending litigation will delay processing the distribution and deed.

The sheriff's deed is the last step in the distribution process.

Deed processing will begin approximately 15 days after the distribution date, provided no legal actions are pending against the purchase.

Winning bidder must comply with all post-sale instructions required by Bid4Assets and the Sheriff's Office. The Sheriff's office must receive your vesting instructions, to process your deed, along with two completed and signed Pennsylvania Realty Transfer Tax Statement of Value forms, with original signatures on both. The deed cannot be emailed to you. Our office must receive a self-addressed standard business envelope with approximately .75 postage to mail one recorded deed.

Important points to remember:

- The Sheriff's Office highly recommends that you seek the advice of an attorney to review the pros and cons of a Sheriff Sale purchase.
- The Sheriff's Office does not guarantee clear tile to any property being sold.
- The winning bidder may be responsible for additional liens; your due diligence is required.
- The winning bidder may be responsible for completing an eviction. Seek legal advice for all matters related to the eviction process.
- The Sheriff's Office and Bid4Assets do not have keys to any of the properties.
- Prospective bidders cannot inspect the interior of any property listed for sale.
- Each purchase is unique; situations and issues will vary from case to case.
- The Sheriff's Office complies with the Pennsylvania Rules of Civil Procedure.
- The Montgomery Bar Association, *Law Reporter,* publishes an on-line list of properties being offered for sale. Visit their website or subscribe at www.montgomerybar.org
- Properties are advertised in the local newspaper or the Philadelphia Inquirer bi-monthly.
- Handbills are posted on each property and also posted outside of the Sheriff's Office at the Montgomery County Courthouse.
- The full listing of properties is available on the Sheriff's website under Real Estate Sheriff's Sales www.montcopa.org/397/Sheriff's-Office or you can also stay up-to-date by downloading the Montgomery County PA Sheriff App in the iOS App store or in Android's Goggle Play Store.
- Sales are typically scheduled for the last Wednesday of every month. A calendar of dates is published on the sheriff's office website.
- The sales are open to the public via an on-line format at www.Bid4Assets.com/MontcoPASheriff - registration is required.
- Deeding instruction packet for properties Sold for Costs to the Plaintiff must include;
    - The law firms cover letter stating plaintiffs vesting instructions.
    - Two completed Pennsylvania Realty Transfer Tax Statement of Value forms with original signatures on both.
    - One copy of the complete mortgage and assignment of mortgage; both should include the official county cover page or the commissioner's registry stamp.
    - A 6x9 self-addressed stamped envelope for the return of the recorded deed.
    - Open invoices must be paid prior to the recording of the deed.
    - Case refunds will be mailed with the cost sheet after the deed has been recorded.

If you wish to participate in the auction and do not have access to a computer one is available for public use at the front counter of the sheriff's office. However, the Bid4Assets website can be accessed on mobile devices and tablets. An "offline" bid packet can be obtained by contacting Bid4Assets.

Terms and conditions are subject to change by the Sheriff and Bid4Assets.

Updated 7-1-2021

SHERIFF'S DEPARTMENT

Sheriff's Sales

Dates for Sheriff Sales

Conditions of Sale

Real Estate Sales FAQ Booklet

Conditions of Sale

In the Court of Common Pleas of Northampton County

The Conditions of Sale of real estate situated in the County of Northampton, and State of Pennsylvania, with the appurtenances and to be sold by the Sheriff of said County, by virtue of the above-mentioned process, are as follows, to wit:

1. CAVEAT EMPTOR ("BUYER BEWARE"). A buyer at a judicial sale takes only what title there is to sell and the doctrine of Caveat Emptor applies. The Sheriff and his representatives, employees, and Solicitor make no representation of warranties to any prospective purchasers as to the state of the title. The buyer takes the property "as is" and subject to any liens or charges which are not discharged by the sale.

2. BIDDING. Bidding during the sale will be conducted in open auction manner with each bid offered being a minimum of $500.00 above the previous bid. The highest and best bidder to be the buyer. For all sales with competitive bidding, the execution plaintiff's highest recorded bid is automatically registered.

3. SALE TO 3RD PARTY. The buyer has two options for payment of his bid amount: 1) the full purchase price may be paid at the conclusion of the sale; or 2) a deposit representing either 10% of the bid amount or the total amount of the Sheriff's costs, whichever is higher, shall be paid at the conclusion of the sale. Acceptable forms of payment for the deposit include cash, money order, personal check, business check or certified check from a financial lending institution. At the time of deposit, the buyer will sign an agreement for the payment of the remainder on or before the twenty-first (21st) calendar day following the sale. The balance may be paid by any of the forms previously listed with the exception of personal check. No extension of the time for payment will be granted.

4. FAILURE TO MAKE PAYMENT. If the buyer fails to make the required deposit at the conclusion of the sale, or fails to pay the balance by the close of business on the twenty-first (21st) calendar day following the sale, the purchase will be voided and any money paid on account will be forfeited and applied to the costs of the Sheriff's Sale. The purchase of the property will revert to the execution plaintiff at its registered bid amount.

5. DISBURSEMENT OF SALE FUNDS. For all sales to 3rd-party buyers, a Schedule of Proposed Distribution will be issued by the Sheriff approximately thirty (30) days after the sale. Payment of all tax liens, municipal liens and claims of record filed as of the date of the sale and that are required by statute to be collected and paid by the Sheriff, as well as all municipal claims certified to the Sheriff prior to the issuance of the Schedule of Distribution, will be made from sale proceeds before distribution of any overage to the execution debtor. Otherwise, payment of such liens and claims are the responsibility of the buyer. In accordance with Pennsylvania statute, the Sheriff will pay out of the proceeds of the sale first, after costs, all delinquent taxes and municipal claims certified to the Sheriff prior to distribution.

6. DEED. The precise name and address of the new Grantee must be furnished to the Sheriff no later than thirty (30) calendar days after the date of the execution sale. The Deed will be issued no later than forty (40) calendar days after either the filing of the Schedule of Distribution or the date of the execution sale if no Schedule need be filed. If the buyer fails to furnish the precise name and address of the new Grantee as required, the name and address of the buyer on file with the Sheriff shall be used for the Deed, and same shall be recorded as stipulated above.

7. SALE TO PLAINTIFF. Payment of any outstanding costs must be received before a Deed will be delivered to the Recorder of Deed's Office for recordation. In addition, if the Sheriff's proper fees and costs are not paid promptly upon demand, the sale will be voided and the levy abandoned pursuant to the Pennsylvania Rules of Civil Procedure.

Revised Jan/2020 and Mar/2020. Effective Apr/2020.

Conditions of Sale for Mortgage Foreclosure – Philadelphia County

NOTE THE FOLLOWING CONDITIONS OF SALE FOR MORTGAGE FORECLOSURE SALES:

1. Based on the health and safety recommendations of the Centers for Disease Control and Prevention ("CDC") and Pennsylvania Department of Health ("Department of Health") due to the COVID-19 pandemic, the scheduled sale shall be conducted virtually at Bid4Assets.com ("Bid4Assets").

2. YOU MUST BE EIGHTEEN (18) YEARS OF AGE OR OLDER TO BID.

3. All bidders must complete the Bid4Assets online registration process to participate in the auction ("Auction"). All bidders must submit a Ten Thousand Dollars ($10,000.00) deposit ("Deposit") plus a Thirty-Five Dollars ($35.00) non-refundable processing fee to Bid4Assets before the start of the Auction. Such single Deposit shall be associated with the Auction held as of this date ("Auction Date") and shall allow a bidder to bid on all of the properties that are listed on the Auction Date. The Deposit will be applied to the 10% down payment required for all purchased properties. If the Deposit exceeds the 10% down payment required for all purchased properties, the excess will be applied towards the total balance due. If the 10% down payment required for all purchased properties is greater than the

$10,000.00 Deposit, the balance due to reach the 10% down payment amount is due by 5:00 PM on the next business day after the auction date.

4. All properties are sold "AS IS" with NO expressed or implied warranties or guarantees whatsoever. The Sheriff and Bid4Assets shall not be liable as a result of any cause whatsoever for any loss or damage to the properties sold. In anticipation of participating in the Auction and purchasing a property, the bidder assumes all responsibility for due diligence. It is the responsibility of the bidder to investigate any and all liens, encumbrances and/or mortgages held against the property which may not be satisfied by the post-sale Schedule of Proposed Distribution under Pa. R.C.P. 3136 ("Schedule of Proposed Distribution").

5. The plaintiff's attorney shall submit the plaintiff's upset price ("Upset Price") to Bid4Assets, via the attorney online portal, at least one (1) hour prior to the start of the Auction. The Upset Price is the least amount the plaintiff will accept for a property. The Sheriff's costs will be added to the Upset Price to determine the reserve price for the auction. The reserve price is the minimum dollar amount the Sheriff will accept for the sale to go to a third-party bidder. Bidders will not know what the reserve price is, but they will see when the reserve price has been met.

6. The sale of the property will not be stopped unless The Sheriff's Office is contacted by the Attorney on the Writ, by Court Order or at the discretion of the Sheriff.

7. If the reserve price is met, the highest bidder shall be the purchaser. By close of business the next business day after the auction, the purchaser is responsible for 10% of the purchase price for each property purchased plus a buyer's premium of 1.5% of the total purchase price of each property purchased. The purchaser shall pay the balance of 90% of the purchase price for each property purchased plus a $35 processing fee by 5:00PM EST on the fifteenth (15th) calendar

day following the Auction Date unless that day falls on a holiday or weekend day, then the balance is due on the next business day by 5:00 PM EST. Payments are due as stated above, NO EXTENSIONS AND NO EXCEPTIONS.

8. Failure to comply with the Conditions of Sale including, but not limited to, the failure to pay the remaining balance by any due date (the 10% down payment due date is the day following the auction; the 90% balance due date is 15 days after the auction date) and complying with all post-sale instructions required by the Sheriff and Bid4Assets, shall result in a default ("Default") and the down payment shall be forfeited by the bidder.

9. If a bidder wins multiple properties and does not comply with the conditions of sale for each property he is deemed in Default and all of the consequences of a Default will apply.

10. The highest bidder shall be responsible for any and all post sale costs that are imposed by law, which are incurred by the Sheriff. Please be advised that the Realty Transfer Taxes have been calculated and included in the bid amounts.

11. On any auction that results in a third-party sale, the bidder who was directly outbid by the highest bidder will be given the option to register as a second bidder. If the second bidder accepts this option, he/she agrees to purchase the property for the same price as the highest bidder. The second bidder shall deposit 10% of the purchase price by 5:00 PM EST on the first (1st) business day following the auction date. On that date the second bidder will be apprised of the status of the winning bidder's deposit, and shall be told his/her 10% will be kept on deposit. The second bidder shall also be told he/she is liable for the 90% balance fifteen (15) calendar days from this date, if the highest bidder does not comply. If the highest bidder did not complete the sale, second bidder will have five (5) calendar days to complete the sale. If that 5th day falls on a holiday or weekend day, then the balance is due on the next business day by 5:00PM EST. If the second bidder is non-compliant he/she will forfeit his/her deposit to Sheriff. If the highest bidder completes the transaction, the second bidder will get his/her deposit refunded within 10 business days.

12. The Sheriff's Office, in its sole discretion, may cancel the sale after the auction closes for any reason.

13. The Plaintiff shall submit any pre-sale postponements or stays to the Philadelphia Sheriff's Office prior to 3:00PM the day before the auction.

14. The Plaintiff's attorney shall enter any auction day postponements or stays on his/her Bid4Assets attorney portal. This includes any postponement or stay that was not submitted to the Philadelphia Sheriff's Office prior to the 3:00PM deadline the day before and any postponement or stay that occurs during the auction.

15. The Plaintiff, pursuant to Court Order, may cancel the sale after the auction closes for any reason.

16. All bidding after the minimum bid, as described in Paragraph 4., shall be in increments of at least One Thousand Dollars ($1,000.00)

17. If the Sheriff's grantee is to be anyone other than the purchaser registered with Bid4Assets, a notarized written assignment of bid must be filed with the Sheriff's Office of Philadelphia.

18. The Sheriff will not acknowledge a deed poll to any individual or entity using an unregistered fictitious name and may, at the discretion of the Sheriff, require proof of identity of the purchaser or the registration of fictitious names. The bid of an unregistered fictitious name shall be forfeited as if the bidder failed to meet the terms of sale.

19. The Sheriff reserves the right to refuse purchase from bidders who have failed to enter deposits, failed to make settlement or for any other reason at Sheriff's sole discretion and further reserves the right to deny access to future sales for a period of time as determined by the Sheriff.

20. The Sheriff will file in the Prothonotary's office a Schedule of Distribution Thirty (30) Days from the date of sale of Real Estate. Distribution will be made in accordance with the Schedule unless exceptions are filed thereto within Ten (10) days thereafter. Any balance exceeding the payouts per the Schedule of Distribution and Exceptions thereto, shall be paid to the homeowner at the time of sale.

21. When the Sheriff's Deed Poll is issued to the winning bidder, he/she becomes the official new owner of the property. If the property is occupied, the new owner must start a judicial procedure for ejectment to have the occupant removed.

22. All auctions are conducted pursuant to Pennsylvania Rules of Civil Procedure and the local rules of the City and County of Philadelphia.

WARNING: All Sheriff's Sales are strictly monitored for any and all suspicious and fraudulent activity (Including but not limited to Computer, Identity, Bank, Wire, etc.). If the Sheriff's office detects any suspicious and/or fraudulent activity during any sale, at the Sheriff's discretion, the bidder's account shall be suspended for whatever action deemed appropriate. Furthermore, those individuals face both criminal and civil liability and will be prosecuted to the fullest extent of the law.

EFF: 4/9/2021

Conditions of Sale for Tax Sales – Philadelphia County

NOTE FOR PHILADELPHIA COUNTY TAX DELINQUENT & TAX LIENS CONDITIONS OF SALE

1.Based on the health and safety recommendations of the Centers for Disease Control and Prevention ("CDC") and Pennsylvania Department of Health ("Department of Health") due to the COVID-19 pandemic, the scheduled sale shall be conducted virtually at Bid4Assets.com ("Bid4Assets").

2.YOU MUST BE EIGHTEEN (18) YEARS OF AGE OR OLDER TO BID.

3. All bidders must complete the Bid4Assets online registration process to participate in the auction ("Auction"). All bidders must submit a One Thousand Five Hundred Dollars ($1,500.00) deposit ("Deposit") plus a Thirty-Five Dollars ($35.00) processing fee to Bid4Assets before the start of the Auction. Such single Deposit shall be associated with the Auction held as of this date ("Auction Date") and shall allow a bidder to bid on all of the properties that are listed on the Auction Date.

4. All properties are sold "AS IS" with NO expressed or implied warranties or guarantees whatsoever. The Sheriff and Bid4Assets shall not be liable as a result of any cause whatsoever for any loss or damage to the properties sold. In anticipation of participating in the Auction and purchasing a property, the bidder assumes all responsibility for due diligence. It is the responsibility of the bidder to investigate any and all liens, encumbrances and/or mortgages held against the property which may not be satisfied by the post-sale Schedule of Proposed Distribution under Pa. R.C.P. 3136 ("Schedule of Proposed Distribution").

5. The opening bid for all tax delinquent properties will be One Thousand Six Hundred Dollars ($1,600.00). The opening bid for tax lien auctions will vary (see auctions for details). By close of business the day after the auction, the purchaser is responsible for 10% of the purchase price for each property purchased or $600 whichever is greater. Plus a buyer's premium of 10% of the total purchase price of each property purchased. The purchaser shall pay the balance of 90% of the purchase price for each property purchased plus a $35 processing fee by 5:00 PM EST on the fifteenth (15th) calendar day following the Auction Date unless that day falls on a holiday or weekend day, then the balance is due on the next business day by 5:00 PM EST. Payments are due as stated above, NO EXTENSIONS AND NO EXCEPTIONS.

6. Failure to comply with the Conditions of Sale including, but not limited to, the failure to pay the remaining balance by any due date (the 10% down payment due date is the day following the auction; the 90% balance due date is 15 days after the auction date) and complying with all post-sale instructions required by the Sheriff and Bid4Assets, shall result in a default ("Default") and the down payment shall be forfeited by the bidder.

7. The highest bidder shall be responsible for any and all post-sale costs that are imposed by law, which are incurred by the Sheriff. Please be advised that Realty Transfer Taxes have been calculated and included in the bid amount.

8. On any auction that results in a third-party sale, the bidder who was directly outbid by the highest bidder will be given the option to register as a second bidder. If the second bidder accepts this option, he/she agrees to purchase the property for the same price as the highest bidder. The second bidder shall deposit 10% of the purchase price by 5:00 PM EST on the first (1st) business day following the auction date. On that date, the second bidder will be apprised of the status of the winning bidder's deposit and shall be told his/her 10% will be kept on deposit. The second bidder shall also be told he/she is liable for the 90% balance fifteen (15) calendar days from this date if the highest bidder does not comply. If the highest bidder did not complete the sale, the second bidder will have five (5) calendar days to complete the sale. If that 5th day falls on a holiday or weekend day, then the balance is due on the next business day by 5:00 PM EST. If the second bidder is non-compliant he/she will forfeit his/her deposit to Sheriff. If the highest bidder completes the transaction, the second bidder will get his/her deposit refunded within 10 business days.

9. If a bidder wins multiple properties and does not comply with the conditions of sale for each property he is deemed in Default and all of the consequences of a Default will apply.

10. The Sheriff's Office, in its sole discretion, may cancel the sale after the auction closes for any

11. The Plaintiff, pursuant to Court Order, may cancel the sale after the auction closes for any reason.

12. The tax servicer, pursuant to Court Order, may cancel the sale after the auction closes for any reason.

13. All bidding after the minimum bid, as described in Paragraph 4., shall be in increments of at least One Hundred Dollars ($100.00).

14. The winning bidder must file a certificate of compliance with the Philadelphia Sheriff's Office. If the Sheriff's grantee is to be anyone other than the winning bidder registered with Bid4Assets, a notarized written assignment must be filed with the Sheriff's Office of Philadelphia. Both the bidder and the assignee must file a certificate of compliance with the Philadelphia Sheriff's Office. Failure of either the bidder or the assignee to obtain a certificate of compliance will be treated as a failure to meet the conditions of sale and result in the forfeiture of the 10% deposit.

15. The Sheriff will not acknowledge a deed poll to any individual or entity using an unregistered fictitious name and may, at the discretion of the Sheriff, require proof of identity of the purchaser or the registration of fictitious names. The bid of an unregistered fictitious name shall be forfeited as if the bidder failed to meet the terms of sale.

16. The Sheriff reserves the right to refuse purchase from bidders who have failed to enter deposits, failed to make settlement or for any other reason at Sheriff's sole discretion and further reserves the right to deny access to future sales for a period of time as determined by the Sheriff.

17. The Sheriff will file in the Prothonotary's office a Schedule of Distribution Thirty (30) Days from the date of sale of Real Estate. Distribution will be made in accordance with the Schedule unless exceptions are filed thereto within Ten (10) days thereafter. Any balance exceeding the

payouts per the Schedule of Distribution and Exceptions thereto, shall be paid to the homeowner at the time of sale.

18. The properties at today's sale may be subject to a right of redemption, meaning the property owner or other parties of legal interest in the property may file a petition to get the property back after the sale. Generally there are 9 months to redeem the property from the date the Sheriff's office acknowledges the deed for non-vacant properties. We cannot provide any advice as to whether a right to redeem exists on a specific property. If you have questions regarding redemption and protecting your rights we advise that you speak to an attorney.

19. The Philadelphia Land Bank will be bidding on certain properties that have been identified on the Sheriff Sale list. The Land Bank's bids are known as "priority bids," which are authorized by the Commonwealth's Land Bank Act. The properties the Land Bank will be bidding on are being offered for sale at the City's opening bid. However, because the Land Bank has the exclusive right to acquire these properties, no bids other than the Land Bank bids will be accepted.

20. When the Sheriff's Deed Poll is issued to the winning bidder, he/she becomes the official new owner of the property. If the property is occupied, the new owner must start a judicial procedure for ejectment to have the occupant removed.

21. All auctions are conducted pursuant to Pennsylvania Rules of Civil Procedure and the local rules of the City and County of Philadelphia.

WARNING: All Sheriff's Sales are strictly monitored for any and all suspicious and fraudulent activity (Including but not limited to Computer, Identity, Bank, Wire, etc.). If the Sheriff's office detects any suspicious and/or fraudulent activity during any sale, at the Sheriff's discretion, the bidder's account shall be suspended for whatever action deemed appropriate. Furthermore, those individuals face both criminal and civil liability and will be prosecuted to the fullest extent of the law.

EFF 4/9/2021

Sheriff's Office of York County

Richard P. Keuerleber
Sheriff

Steven K. Diehl
Chief Deputy, Operations

Christopher A. Ferro
Solicitor

Richard E. Rice II
Chief Deputy, Administration

York County Judicial Center
45 North George St.
York, Pennsylvania 17401
717-771-9601

CONDITIONS OF SALE

The Sheriff sells the properties listed for sale pursuant to Court Order and the Pennsylvania Rules of Civil Procedure. This is a judicial sale and not a public auction. The Sheriff's office reserves the right to accept or to reject any and all bids. The Plaintiff may withdraw or continue any property being bid up to the time the property being struck down as sold. The Sheriff does not guarantee or warrant, in any way, the real estate upon which you are bidding today. He is merely following the requests of the Plaintiff and selling whatever interest the Defendants might have in the various properties. It is for you to determine what that interest is, if any, before you buy, not after.

Once you make a bid here today, you have bought whatever interest the Defendant has, if any, and you must pay that sum of money to the Sheriff regardless of what you later find out about the title.

All bids are subject to State and Municipal transfer taxes, and poundage, if applicable. Transfer taxes shall have priority and be paid out of proceeds, if any. If there are no proceeds, buyer shall pay these transfer taxes, in addition to the announced bid.

If you wish to have announcements made, they must be submitted to and approved by the Sheriff prior to the sale and will be made by the Sheriff. This does not include a suggestion by counsel that their lien is a second mortgage

The highest bidder shall be declared the buyer. This buyer shall be the person, persons, or entity provided to our office today. You will not be permitted to change or substitute the name of the buyer at a later date. The buyer shall file Affidavits of Value with the Sheriff within 10 business days of this sale. Within 30 days of today's date, the Sheriff's office will post a proposed schedule of distribution. If no petition to set aside the sale or objections to distribution are filed within 10 days of posting, the Sheriff will prepare and record a deed transferring the property to the successful bidder. The aforementioned timeline is based upon the Pennsylvania Rules of Civil Procedure and will not be altered or expedited by contacts or calls with our office.

In order to assure that Sherriff's sales conducted in York County are safe and efficient, all sales, effective immediately, will be conducted online. The following special conditions are now applicable to all sales:

1. All bidders must complete the Realauction on-line registration process at https://york.pa.realforeclose.com/ to participate in the auction. All bidders must place a

deposit equal to 10% of your estimated successful final bid(s) for each property purchased to Realauction via wire transfer or ACH.

NOTE: All Wire Deposits must be received by 5 p.m. (Eastern Time) ***two (2) business days before the auction***. **All wire transfers must reference the bidder number or they will be refused/rejected. If a wire transfer is refused/rejected, the bidder may not be able to participate in the upcoming auction**

NOTE: All ACH Debit Deposits must be initiated by 4 p.m. (Eastern Time) ***five (5) business days before the auction***. All ACH transactions must be initiated through the official county auction website Deposit Wizard, any ACH micro-transactions under $100 received transmitted outside the auction website Deposit Wizard will not be returned.

NOTE: Please take into account bank holidays with the above deadlines. It is the responsibility of the bidder to plan ahead and allow enough time for their bidding deposits to be received and processed within the timeframes described above. **A bidder will not be able to participate in an auction until funds have been verified and added to the bidder's available balance.**

2. All properties are sold "AS IS" with NO expressed or implied warranties or guarantees whatsoever. The Sheriff and Realauction shall not be liable as a result of any cause whatsoever for any loss or damage to the properties sold. In anticipation of participating in the Auction and purchasing a property, the bidder assumes all responsibility for due diligence. It is the responsibility of the bidder to investigate any and all liens, encumbrances and/or mortgages held against the property which may not be satisfied by the post-sale Schedule of Proposed Distribution under Pa.R.C.P. 3136 ("Schedule of Proposed Distribution").

3. The plaintiff's attorney shall record the plaintiff's upset price ("Upset Price") on Realauction's site prior to the start of the Auction. The Upset Price is the least amount, or minimum bid the plaintiff will accept for a property. The Sheriff's Costs will be added to the Upset Price to determine the minimum bid for the auction.

4. All bidding after the opening bid shall be in increments of at least Five Hundred and 00/100 Dollars ($500.00). Any bids placed with less than (30) seconds remaining on the auction clock will automatically extend the bidding period by an additional (60) seconds.

5. The highest bidder shall be the buyer. Upon the auction's close, buyer shall have (10) business days to pay the remaining balance. Payments shall be made to the York County Sheriff's Office via cashier's check. **No Cash will be Accepted.**

6. Failure to comply with the Conditions of Sale, including but not limited to the failure to so pay the remaining balance by the Due Date and complying with all post-sale instructions required by the Sheriff and Realauction, shall result in a default ("Default") and the down payment shall be forfeited by the highest bidder to pay the costs of sale.

7. In the event of a Default by the highest bidder, the next highest bidder may be notified by Realauction. The Sheriff may choose at their discretion to settle with the next highest bidder who has complied with all of the Conditions of Sale.

8. A 2% poundage fee will be paid on the final sale price up to $250,000.00. Any amount exceeding the first $250,000.00 will be calculated at .5%.

Chapter Three

Post-Sheriff's Sale Procedures, Proceeds, Possession & More

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Post-Sheriff's Sale Procedures, Proceeds, Possession & More

As with all steps in these proceedings, please be sure to double check the local policies and procedures of each jurisdiction.

I. First Things First – Payment of the Bid

a. Timing. Depending on the County or other venue, the successful bidder will be required to tender either all or a portion of the bid price at the time of sale, with the remainder due within an allotted time.

i. In most cases where only a deposit is initially due, the balance on sale will be due within ten (10) or thirty (30) days.

ii. Forms of payment may vary. The Sheriff of Philadelphia instituted a rule prohibiting payment of deposits at sale with cash and Delaware County will not accept more than $9,000.00, combined, from any single bidder during the course of the sale. Only certified funds or attorney's checks are acceptable forms of payment.

iii Extensions of time to pay the balance of the bid price may be granted at the Sheriff's discretion and typically require good cause to be shown and consent of the foreclosing party – get it in writing.

iv. As discussed herein, the successful bidder may also seek a Court order granting an extension of payment or to extend the payment requirement to the Sheriff.

b. Credit Bidding. Pa.R.C.P. 3133 permits a plaintiff who purchases the Property at sale to get a credit for the amount of its debt to offset the purchase price; essentially allowing the lien holder purchaser to get credit for the amount of its lien. Pa.R.C.P. 3133.

i. This is exclusive of payment of Sheriff's costs and taxes distributable from the proceeds of the sale. Pa.R.C.P. 3133.

ii. A junior lienholder who purchases the property, will be entitled to a partial refund of the purchase price to the extent it was entitled to surplus funds from the distribution of sale proceeds

iii. Third-party purchasers generally only have to pay the amount of the successful bid, without additional costs or fees as these are typically built into the opening bid/upset price. The Superior Court recently overturned the trial court's ruling allowing a Sheriff to add realty transfer tax to the successful bid amount. *Northwest Sav. Bank v. Knapp*, 2016 Pa. Super. 218, 149 A.3d 95. *See also Keller v. Bank of NY Mellon*, 212 A.3d 52 (Pa. Super.

2019) wherein the Superior Court held that while a purchaser cannot participate in the fund created by the Sheriff's Sale as a means to recover for damages, the purchaser is entitled to file exceptions to correct an erroneous distribution of funds.

c. Assignment of the Bid

i. It is becoming more and more prevalent for a successful bidder, whether it be the plaintiff or a third-party, to assign its bid, with the right to complete the terms of sale.

II. Now What Do I Have – Title & Rights

a. The Purchaser

i. **Equitable Title**. Immediately after a sheriff sale, the successful bidder acquires equitable title, which becomes complete legal title when the purchaser complies with the terms of the sale and the sheriff s deed is recorded. *In re Bradley,* 2008 Bankr. LEXIS 4241 (Bankr. E.D.Pa. 2008). The sheriff s deed, delivered when the terms of the sale have been fully complied with, is merely evidence of the title that the purchaser received when the hammer fell. The title received at the sale is **inchoate**; upon delivery the deed **relates back to the date of the sale.** *In re Davis,* 281 B.R 626, 633-34 (Bankr. W.D. Pa. 2002), *citing In re Pulcini,* 261 B.R. 836, 840 (Bankr. W.D.Pa. 2001).

ii. **A Contract.** A sheriff s sale creates a contract between the sheriff and the winning bidder under Pennsylvania law. *Butterline v. Bank of N Y. Mellon Trust Co.,* 2016 U.S. Dist. LEXIS 44426 (E.D. Pa. 2016). *See also In re Townsville,* 268 B.R. 95, 119 (Bankr. E.D. Pa. 2001) ("At the time of the sale, the purchaser assumes an obligation to comply with the terms of sale."); *Pa. Co. for Insurances on Lives & Granting Annuities ex rel. Jefferson Med Coll. of Phila v. Broad St. Hosp.,* 47 A.2d 281, 283 (Pa. 1946) (holding when the sheriff accepts a bid, "the purchaser acquire[s] a right to a deed on complying with the terms of sale and assume[s] the obligation of complying with those terms"); *Calhoun v. Commercial Credit Corp.,* 30 A.2d 735, 736 (Pa. Super. Ct. 1943) (characterizing the sheriff as making a "contract of sale" with the winning bidder at a sheriff s sale); *Fed Farm Mortg. Corp. v. Howard,* 47 Pa. D. & C. 64, 66, 35 Berks County Law Journal 155 (Pa. Ct. Com. Pl. 1942) ("The purchaser at a sheriff s sale contracts with the sheriff to purchase and thereby becomes liable to the sheriff for his default in paying the amount of his bid at the time specified.").

1. In Pennsylvania, the purchaser takes all the risk in purchasing properties and does so without warranty. ***Caveat emptor***, buyer beware, applies to all sales, in full force, and is not restricted to the

physical condition of the property or title. *See CSS Corp. v. Sheriff of Chester County*, 507 A.2d 870, 872 (Pa. Super. 1986).

i. **Intervention**. The successful bid and subsequent sheriff's deed each create a legally enforceable interest for which purchasers may seek to intervene and participate in the adjudication of post-sale motions and petitions pursuant to Pa.R.C.P. 2327(2) and (4). Service of post-sale motions and petitions that pertain to the sale should be served upon the purchaser and allow a response to be filed. Whether or not a formal petition to intervene is required, it is prudent to move for intervention at some point during the lower Court proceedings in order to properly participate at the appellate level.

ii. **Benefit of the Bargain**. There is a benefit of the bargain that is often afforded at sheriff's sales of distressed properties. Such benefit of the bargain is expected and anticipated by both third party purchasers and judgment creditors that have listed properties for sale. The purchaser at a sheriff's sale assumes some risk concerning the property's future value and courts have declined to deprive the purchaser of the reward it receives for assuming that risk. *Bank of America, N.A. v. Estate of Hood*, 47 A.3d 1208, 1213, *citing Blue Bell Nat'l Bank v. Balmer*, 810 A.2d 164, 168 (Pa. Super. 2002).

b. Mortgagor, Borrower, Debtor. Once a property is sold at a sheriff's sale in Pennsylvania, the mortgagor and borrower immediately retain only bare legal title to the property and a mere possessory interest. *In re Bradley,* 2008 Bankr. LEXIS 4241 (Bankr. E.D.Pa. 2008). *See also In re Davis,* 281 B.R 626, 633 (Bankr. W.D.Pa. 2002); *In re Townsville,* 268 B.R. 95, 118 (Bankr. E.D.Pa. 2001).

i. **Redemption.**

1. There is no right of redemption after the sheriff's sale for a mortgagor or borrower following a foreclosure. *See Pennsylvania Company for Insurances v. Broad Street Hospital,* 47 A.2d 281 (Pa. 1946).

2. 28. U.S.C. 2410 permits the federal government to redeem a property on which it held a lien. The time period for redemption is one (1) year from the date of sale, except that with respect to a lien arising under the internal revenue laws the period shall be 120 days

3. Properties sold for the collection of municipal taxes may be eligible for redemption by the former owner or other parties in interest.

c. Title Insurance – Currently, underwriters will insure title to properties bought and sold through sheriff's sales in mortgage foreclosure, but underwriters are hesitant

to immediately insure properties sold pursuant to tax claims. Many underwriters require a seasoning period of approximately one (1) year, or sooner if action is taken to satisfy the underwriter's concerns, before title may become insurable.

III. I Finally Have My Deed – Sheriff's Deeds

a. Effect of Sheriff's Deed. The filing of sheriff s deed is critical since its delivery and recording generally cuts off most defenses that may be raised by the debtor or third parties. Pa.R.C.P. 3132 states that "Upon Petition … before delivery … of the sheriff's deed …, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances."

i. After the delivery of the sheriff s deed, a debtor will not be permitted to attack a sheriff s sale unless the debtor can establish fraud or a lack of authority to make the sale. *E.g.*, *Deutsche Bank Nat'l Trust Co. v. Colon,* 120 A.3d 371 (Pa.Super. 2015) (non-precedential)(2 weeks after deed recording is too late); *Mortgage Elec. Registration Sys. v. Ralich,* 982 A.2d 77 (Pa. Super. 2009)(3 weeks after deed recording is too late); *Vend-a-matic, Inc. v. Frankford Trust Co.,* 442 A.2d 1158, 1162 (Pa. Super. 1982).

Practice Point: It is important to review the cases as "fraud" and "lack of authority" have very specific legal definitions and standards in this area of law"

ii. In addition, both the dates of acknowledgement and recording can trigger timelines and deadlines of a party's rights and obligations, e.g. challenges to the sale, rights of redemption,

1. 53 P.S. 7193.3 - time for contesting validity of sale – w/n 3 months of acknowledgement of the sheriff's deed.

2. 53 P.S. 7293 – a Petition for Redemption must be filed within nine (9) months of the date of acknowledgement of the sheriff's deed.

3. 42 Pa.C.S. §8103 – Deficiency Judgments – petition to fix fair market value and deficiency action must be filed within six (6) months of the deed

b. Timing of the Sheriff's Deed. Pa.R.C.P. 3135(a) – When real property is sold in execution and no petition to set aside the sale has been filed, the sheriff, at the expiration of twenty days but not later than 40 days after either the filing of the schedule of distributions or the execution sale if no schedule of distribution need be filed, shall execute and acknowledge … a deed to the property sold.

i. Sheriff's will typically (and should) hold-off on acknowledging and recording the sheriff's deed if/when notified of a pending set aside. **As mentioned above, a purchaser may seek to stay or delay the payment of the bid price pending adjudication of a set aside.**

<u>Practice Point</u>: whether you are the movant or respondent, you should notify the Sheriff of any Motion to Set Aside Sheriff's Sale. If the Motion is filed before the deed is acknowledged, most Judges will not deny the Motion simply because the Deed was recorded while litigation was pending. If the Motion is granted, despite the Deed being recorded, you will need to obtain an order striking the deed which order will have to be recorded with the local Recorder of Deeds.

c. <u>Errors and Corrections</u>. Upon petition of a purchaser or his successors in title, a Court may correct a defective return of execution or a defective deed (including erroneous descriptions of real property), or may order that a new return or deed be executed. Pa.R.C.P. 3135(b). Most, if not all, Sheriffs will require a court order.

d. <u>Lack of Notice to Junior Lien Holders – Nondivestiture</u>. If a junior lienholder is not properly notified of the sheriff's sale, then its lien is not divested and the property is inadvertently sold subject to. Pa.R.C.P. 3135(c) provides specific remedies by allowing a plaintiff, its assigns, or the purchaser of a property at a prior sheriff s sale to petition the court with a rule to show cause requesting (1) that the lien of the junior lienholder be divested, or (2) that another sheriffs sale be held at which the junior lienholder specified in the petition may be the only bidder other than the senior lienholder who acquired the property at the original sale, or (3) that other appropriate relief be granted by the court. Pa.R.C.P. 3135(c).

IV. Where Does the Money Go – Distribution of Proceeds

a. <u>Pa.R.C.P. 3136</u>

i. **Timing**. Not later than thirty (30) days after the sale of real property and not later than five (5) days after the sale of personal property, the sheriff shall prepare a schedule of proposed distribution of the proceeds of sale, which **s**chedule shall be filed in the prothonotary's office. No schedule of distribution or list of liens need be filed when the property is sold to the plaintiff for costs only. Pa.R.C.P. 3136(a).

ii. **Credit Bid**. When a receipt of the plaintiff or other lien creditor has been accepted on account of the purchase price the schedule shall set forth the name and address of the plaintiff or lien creditor, the amount of the judgment or lien, identifying it, and the amount of credit claimed and allowed upon the purchase price. Pa.R.C.P. 3136(b). *See also*, Rule 3133.

iii. **Certified Liens**. In sales of real property the sheriff shall attach to the schedule a list of liens upon the property sold as certified from the record by the property officers or a guaranteed search from any title company authorized to do business within the county. Pa.R.C.P. 3136(c). The cost is deducted as an expense.

iv. **Exceptions**. The sheriff shall distribute the proceeds of sale in accordance with the proposed schedule of distribution, unless written exceptions are filed with the sheriff not later than ten (10) days after the filing of the proposed schedule. Pa.R.C.P. 3136(d).

v. **Processing Exceptions**. Upon the filing of exceptions, the sheriff shall transmit them to the prothonotary together with a copy of the proposed schedule of distribution. Pa.R.C.P. 3136(e). ***Practice Note – Pa.R.C.P. 3136(d) requires the exceptions be filed with the Sheriff's Office, but in order to have them adjudicated, they have to be filed with the Prothonotary. Confirm with the Sheriff that they will transmit them to the Sheriff, or arrange to file them with both the Sheriff and Prothonotary.***

vi. **Determination**. The court shall determine the exceptions, and for this purpose may receive evidence by deposition or otherwise or may appoint an auditor to hear the evidence and report to the court. Pa R.C.P. 3136(f).

vii. **Proceeds Pending Determination**. The proceeds of the sale need not be paid into court by the sheriff but upon petition of the sheriff or any party in interest, the court may order the proceeds to be paid into court to await distribution or may order the sheriff to invest the fund for distribution pending final distribution of the exceptions or an appeal therefrom. Pa.R.C.P. 3136(g).

b. Who can Challenge? "[I]n order to participate in the fund created by a sheriff's sale, it is necessary that creditors have a lien on the fund as of the date of the sale because, on the date of the sale, the title to the property passes to the purchaser." *Mortgage Elec. Registration Sys. Inc., v. Anastasio,* No. 3: CV-04-2691, 2006 U.S. Dist. LEXIS 40086, 22-23 (M.D. Pa. Jun. 16, 2006), *quoting Community Federal Sav. & Loan Asso. v. Luckenbach*, 436 Pa. 472, 475 (Pa. 1970).

i. **Lienholders** have the ability to challenge the priority or amounts due on any other creditor's liens by filing exceptions. Pa.R.C.P. 3136. *E.g.*, *Metro Bank v. Kessler,* 430 B.R. 155 (M.D. Pa. 2010).

1. This requires the priority creditor to justify the legitimacy of its claimed distribution in order to safeguard the rights of junior lienholders. *State Street Bank v. Petrey,* 819 A.2d 581, 584 (Pa. Super. 2003), *See Extraco Mortg. V. Williams*, 805 A.2d 543, 546 (Pa. Super. 2002).

ii. **Purchasers**. A buyer who was not a creditor as of the date of the sale cannot participate in the fund created by the Sheriff's Sale as a means to recover for damages. *See Comm. Fed. Sav. & Loan Assoc., v. Luckenbach*, 261 A,3d 327 (Pa. 1970). However, the purchaser is entitled to file exceptions if they believe the Sheriff is incorrectly distributing funds. *See Keller v. Bank of NY Mellon*, 212 A.3d 52 (Pa. Super. 2019); *Northwest Sav. Bank v. Knapp*, 149 A.3d 95, (Pa. Super. 2016).

iii. **Former Owner**. When a foreclosure sale generates proceeds in excess of existing costs, tax liens, and all other liens, the excess proceeds shall be distributed to the former property owner after approximately 40 days in cases of real property sales. *In re Sheriff's Excess Proceeds Litig.,* 98 A.3d 706 (Pa. Commw. 2014). *See also Thorton v. City of Philadelphia*, No. 16-554, 2017 U.S. Dist. LEXIS 134844 (E.D. Pa. Aug. 23 2017) (acknowledging the implication of a property interest protected by the Fourteenth Amendment and finding that the former owner could avail herself of Pa.R.C.P. 3136 to challenge the distribution).

c. Get to it Before the Sale**.** "Though uncommon, Pennsylvania precedent establishes the use of declaratory judgment proceedings for lien priority determinations." *Commerce Bank/Harrisburg, N.A. v. Kessler,* 46 A.3d 724 (Pa. Super. 2012). *See a/so Grambo et a/, v. South Side Bank & Trust Co.,* 14 A.2d 925, 926-927 (Pa. Super. 1940) (approving of use of declaratory judgment proceedings to resolve the dispute of lien priority over two competing mortgages prior to the judgment execution sale). Orders in foreclosure actions establishing lien priority are generally not final until after the sheriff's sale has occurred. *Commerce Bank/Harrisburg, N.A. v. Kessler,* 46 A.3d 724 (Pa. Super. 2012)

V. Challenges – Setting Aside Sheriff's Sales

a. Who? Any party "in interest" may petition to set aside a sheriff s sale upon proper cause shown." Pa.R.C.P. 3132. May include third party bidders, as well as the defendant property owner, mortgagor, or debtors. Notably, because third party purchasers buy properties at sale under the doctrine of *caveat emptor*, the basis for setting aside sales are limited.

b. When? Such petition must be filed prior to the actual delivery of personal property or prior to the delivery of the sheriff's deed for real property. Pa.R.C.P. 3132. *See also North Phila. Trust Co. v. Hammond,* 17 A.2d 881 (Pa. 1941); *Nationstar Mortgage v. Lark,* 73 A.3d 1265 (Pa. Super. 2013); *Mtg. Elect. Reg. Sys. v. Ralich,* 982 A.2d 77 (Pa. Super 2009). After delivery of the deed-Only fraud that vitiates the transaction or lack of authority to make sale may be raised. *Workingmen's Savings & Loan Association of Dellwood Corporation v. Kestner,* 652 A.2d 327, 328 (Pa. Super. 1994)

c. How? The petition to set aside is an appeal to the equitable power of the court, which may exercise judicial discretion to grant the petition. *First Fed. Sav. Bank of Del. v. CPM Energy Svs. Corp.,* 619 A.2d 371, 373 (Pa. Super. 1993).

i. **Burden of Proof**. The petitioner has the burden of showing sufficient facts, legal grounds, or other proper cause to support setting aside a sheriff's sale. The burden of proving facts and evidence warranting the exercise of the court's equitable powers is on the petitioner. *Bornman v. Gordon,* 527 A.2d 109, 111 (Pa. Super. 1987).

ii. **Standard**. A set aside may be refused because of the insufficiency of proof to support the material allegations of the application, which are generally required to be established by clear evidence**.** *E.g., Greater Pittsburgh Business Dev. Corp. v. Braunstein,* 568 A.2d 1261 (Pa. Super. 1989). Pennsylvania courts generally require that material allegations in petitions to set aside a sheriff s sale must be proven "through either 'clear evidence' or 'clear and convincing evidence' ". *Everbank v. McKnight,* 2015 Phila. Ct. Com. Pl. LEXIS 7 (2015). The standard of review governing motions to strike were applied to a motion to set aside a sheriff s sale when the petitioner only alleged fatal defects on the face of the record. Wells *Fargo Bank, N.A. v Gilroy,* 125 A.3d 457 (Pa. Super. 2015).

d. Why? – Proper Causes. Although Pa.R.C.P. 3132 does not provide what constitutes "proper cause", the relevant case law describes many "proper causes" to set aside sheriff sales as follows. "Sheriff's sales have been set aside where the validity of the sale proceedings is challenged, a deficiency pertaining to the notice of the sale exists, or where misconduct occurs in the bidding process." *Irwin Union Nat. Bank and Trust Co. v. Famous,* 4 A.3d 1099 (Pa. Super 2010), *citing Blue Ball National Bank v. Balmer,* 810 A.2d 164, 167 (Pa. Super. 2002), *appeal denied,* 820 A.2d 702 (Pa. 2003).

i. **Improper Notice**. When real property is sold at a sheriff s sale, the creditor must file an affidavit with the sheriff setting forth the filing date of the praecipe for the writ of execution and the current names and addresses of the owner of the property, the defendant debtor, all record lienholders, all persons with a record interest, and any other person "who may have an interest in the property". Pa.R.C.P. 3129.1. The sheriff may serve written sale notice to the defendants and the creditor shall serve all other interested individuals listed in the 3129 affidavit. Service and posting handbills containing a description of the property must be complete at least thirty days in advance of the day of the sale. Pa.R.C.P. 3129.2. In the case of any person who does not have a record interest, a plaintiff-creditor is required to provide notice only if the person without record interest may be affected by the sale and the plaintiff-creditor has knowledge of the person's interest. *Kaib v. Smith,* 684 A.2d 630 (Pa. Super. 1996). An example may be a tenant residing at the mortgaged premises. New notice requirements are waived when a sale is "stayed, continued, postponed or adjourned" to a date

within one hundred and thirty days) of the original date of the sale (effectively 4 months), if notice was properly given pursuant to Pa.R.C.P. 3129.2 and public announcement is made at the adjourned sale. Pa.R.C.P. 3129.3(b). [NOTE: This case was decided prior to the new amendments to Pa.R.C.P. 3129.3 requiring timely filing of certificates of continuation notice as discussed elsewhere in this manual, although new Pa.R.C.P. 3129.3(b)(2)(ii) now states that noncompliance with these new requirements "is not a basis for setting aside the sheriff s sale unless raised prior to the delivery of the sheriff s deed" AND the petitioner can show prejudice.]

1. **Notices of continuances** - Judicial tax sale set aside when public announcement of the sale continuation did not include the new date of sale as required by Pa.R.C.P. 3129.3(b) and landowner was not served with new notice of continued sale when there was a historic flooding. *City of Reading v. Zeiber,* 62 A.3d 481 (Pa. Commw. 2013). This also must be docketed.

2. Courts have held that notice is adequate even where the defendants did not actually receive notice. For example, in *Vend-A-Matic, Inc. v. Frankford Trust Co.,* 442 A.2d 1158, 1162 (Pa. Super. 1982), the court held the creditor properly relied on information provided by the debtor to Pennsylvania's Corporation Bureau when the creditor mailed a letter to the debtor's listed corporate address (in the case the letter was certified) that was returned marked "unclaimed." Even where an officer of the corporation had been dealing with the creditor, the court reasoned that the officer knew of the imminent foreclosure proceedings, yet still failed to check the mail at the property or notify the post office of the forwarding address. Furthermore all sales are publically advertised and a creditor defending a petition may wish to bring this to the court's attention

3. Under the Municipal Claims and Tax Liens Act (MCTLA), service of the underlying tax claim petition is given by regular and certified mail and posting. 53 P.S. 7193.2(a). Notice of the sale is only required to be given by first class mail. 53 P.S. 7193.2(c). No party whose interest did not appear on the title search, title policy, or Tax Information Certificate or who failed to register their interest shall have standing to complain of improper notice. 53 P.S. 7193.2(b).

ii. **Fraud and Sale Defects**. Defects or fraud in the sheriff s sale proceedings can constitute "proper cause". *See, e. g., Provident Nat'l Bank v. Song,* 832 A.2d 1077 (Pa. Super. 2003) (noting petitioners failed to articulate any irregularities in the sheriff's sale); *Equity One, Inc. v. Mangan,* Pa. D.&C Dec. LEXIS 233 (Pa. Com. Pl. 2006) (noting appellants failed to provide any evidence of fraud in the sheriff's sale), *aff'd without opinion,* 918 A.2d

794 (Pa. Super. 2006). *See also Allegheny County v. Golf Resort Inc.*, 947 A.2d 1242, 1246 (Pa Commw. 2009).

iii. **Indispensable Party**. The sheriff lacks authority to sell a property when an indispensable party such as the real owner of the property was not a party to the mortgage foreclosure proceedings, thus rendering the judgment a nullity and constituting grounds to set aside the sale. *1400 Mkt. St., LLC v. Fox Funding, LLC,* 2015 Pa. Super. Unpub. LEXIS 2920 (Pa. Super. 2015)(non-precedential).

1. Under the MCTLA, any interested party who is not of record must register a notice of interest with the City in order to be entitled to notice. 53 P.S. 7193.1(a).

2. Failure to notify all known legal heirs under Pa.R.C.P. 1144(a)(2) deprives the court of jurisdiction to enter judgment. Accordingly, if there is a known legal heir, s/he must be named a party. *PNC Bank, N.A. v. Unknown Heirs* 929 A.2d 219 (Pa. Super. 2007)

iv. **Incorrect Property and Legal Descriptions**. A misdescription of the property may also provide proper cause to set aside a sheriff's sale where the misdescription was so vague to constitute a material misdescription that may have detracted bidders at the sale. *Greater Pittsburgh Business Dev. Corp. v. Braunstein,* 390 Pa. Super. 454 (Pa. Super. 1989). *See also Damar Real Estate, Inc. v. US Bank, NA,* 88 A.3d 1099 (Pa. Commw. 2014). Judicial tax sale set aside when description of the properties to be sold was conflicting and, thus, court lacked authority to sell additional lots with the main lot to be sold.)

v. **Defects in Notices of Default**. Such defects MUST be raised before delivery of the sheriff's deed. *Nationstar Mortgage v. Lark,* 73 A.3d 1265 (Pa. Super. 2013). A mortgagee's failure to comply with statutory notice requirements applicable to foreclosure actions does not deprive the courts from jurisdiction to hear the matter. *Beneficial Consumer Discount Co. v. Vukman,* 77 A.3d 547 (Pa. 2013).

vi. **Chilling**. The lack of competitive bidding by agreement.

vii. **Gross Inadequacy of the Sale Price**. Pennsylvania law is clear that the mere inadequacy of sale price is not a sufficient basis upon which to set-aside a sheriff's sale, rather, only gross inadequacy of price is the basis for setting aside such a sale. E.g., *Blue Ball Nat'l Bank v. Balmer,* 810 A.2d 164, 166-67 (Pa. Super. 2001). There is a presumption that the price received at the public sale is the highest and best obtainable. *Bank of America v. Estate of Hood,* 47 A.3d 1208 (Pa. Super. 2012).

1. Clear evidence of a grossly inadequate sale price may support the exercise of the Court's equitable powers to set aside. *EMC Mortgage Corp. v. Marshall L. Williams*, 2013 Phila. Ct. Com. Pl. LEXIS 152, *8 (2013), *citing S & T Bank by Dalessio v. Dalessio*, 632 A.2d 566, 569 (Pa. Super. 1993). Absent such evidence, the court cannot properly make a determination as to whether gross inadequacy of sale price exists. Mere assertions, however, as to the value of the property are insufficient and petitions that have asserted nothing more than bald allegations of the property's value have been routinely rejected by the court. *See, e.g., Provident Bank, N.A. v. Song,* 832 A.2d 1077, 1082 (Pa. Super. 2003) (affirming denial of petition to set aside where petitioner failed to present any evidence of inadequate price). The petitioner must provide evidence to the court of the property's value through expert witnesses and credible testimony.

2. "Pennsylvania courts have concluded that a sheriff's sale price is grossly inadequate where a sale price was a small percentage – roughly ten percent or less – of the established market value". *Bank of America, N.A., et al. v. The Estate of Robert Hood, et al.,* 47 A.3d 1208, 1212 (Pa. Super. 2011).

3. Where the price is grossly inadequate, the courts seize hold of any irregularity, misapprehension, or circumstances connected with the sale which may tend to diminish the value of the property, or to prevent competition among bidders, and which, together with the inadequacy, will make a sufficient reason for a sale." (emphasis added). *Ritter v. Getz*, 29 A. 112 (Pa. 1894).

4. Petitioners who have made unilateral mistakes of fact or law prior to or up to the sale cannot thereafter maintain a petition to set aside a sale for gross inadequacy in price. See *Nat'l Penn Bank v. Shaffer*, 671 A.2d 326, 331 (Pa. Super. 1996) (citing *First Fed. Sav. & Loan Ass'n of Lancaster v. Swift*, 321 A.2d 895 (Pa. 1974) (holding that equity will not grant relief where bank failed to attend tax sale due to error caused by its own ignorance or carelessness).

VI. What Else? Related Matters.

a. Petition to Return Writ of Possession. When a purchaser has failed to comply with the terms of sale, i.e., non-payment of the bid price, the sheriff may have the prothonotary mark the docket to reflect that the terms have not been complied with. The purchaser may seek to intervene and move for the Court to order the

prothonotary to return the writ of possession to the sheriff in order to permit the purchaser to complete the terms of sale *nunc pro tunc*.

b. Petition to Stay Pending Set Aside/Redemption. Stay the purchaser's requirement to tender the bid price until the adjudication of a pending motion to set aside, petition to redeem, or other challenge. Purchasers do not want to tie up their funds, Sheriff's do not want to have to undo any distributions or striking sheriff's deeds.

c. Petition to Change Grantee. For use if there was an assignment effective prior to the sale, but not finalized or formally recorded in time.

d. Petition for Redistribution. For use where a lien creditor has assigned its rights to distribution proceeds. The necessity of this is dependent upon the sheriff's willingness to accept proof of the assignment itself without court order.

e. Petition for Corrective Deed (as discussed above). For use to correct legal descriptions, or other *de minimis* errors in a legal description when advertised or by sheriff's scrivener error. Be sure to include a request that the corrective deed be recorded without cost. Simply recording a corrective deed without court order may cause future title issues.

f. Petition to Relist for Sale. Some sheriffs will relist a property without a court order where a purchaser fails to complete the terms of sale. Others require court approval.

g. Miscellaneous Actions by Mortgagors, Borrowers, and Debtors. Petitions concerning the constitutionality of the executions procedures, the actions of the sheriff, and even counsel for the plaintiff are examples of the frivolous claims raised.

VII. Possession – Ejectments under Pa.R.C.P. 1051-1058 and 3160-3165.

In order to obtain possession of real property, if the debtor/owner or other occupant is still in possession and refuses to vacate, an action in ejectment is required. In practice, purchasers should use common sense when determining if a property is vacant. Take pictures! Removal of personal property can subject the purchaser to criminal theft or civil conversion claims.

a. Cause of Action. An action in ejectment is "possessory" and will succeed only when the creditor is out of possession and has a present right to immediate possession. *Wells Fargo Bank v. Long,* 934 A.2d 76 (Pa. Super. 2007) *(citing Breenan v. Shore Brother, Inc.,* 380 Pa. 283 (1955). Thus, in order to prevail on an action in ejectment, the creditor must be able to establish that he has an immediate right to take possession and that he is out of possession by a defendant who is in possession. *Soffer v. Beech,* 409 A.2d 337 (Pa 1979).

i. **Sheriff's deed must be recorded before ejectment suit can be commenced**. *See Wells Fargo Bank v. Long, 934 A. 2d 76 (2007).* Purchasers cannot legally take possession or assert any right to possession until the sheriff's deed is recorded. Entering a property prior to the recording of the sheriff's deed can be a violation of the terms of sale, and can subject a party to both civil and criminal trespass charges.

ii. **Inchoate Title**. Where the statutory right of redemption exists and has not expired, Courts may not grant judgment for possession until its expiration.

iii. **Absent a lease contract and formal landlord-tenant relationship, cannot proceed under the Landlord and Tenant Act in magisterial district court.** *See Assouline v. Reynolds*, 219 A.3d 1131 (Pa. 2019). *See* Pa.R.C.P. Rules 1051, et seq. for alternate procedure

b. **Successful Bidder/Post-Sale Owner Entitled to Summary Judgment in Ejectment Actions.** *See PrimeLending v. Rosally,* Case No. 18-961 (C.C.P. Monroe, 7/31/18, Williamson, J.) – lender/successful bidder entitled to summary relief in ejectment; *Deutsche Bank Nat'l Trust Co. v. Tassinari,* Case No. 18-820 (C.C.P. Monroe, 6/29/18, Williamson, J.) – (same).

c. Additional Claims. In addition to seeking possession, a plaintiff can set forth a count for profits, rents, or other damages, e.g., lienable utility usage, that arise from defendant's possession. Pa.R.C.P. 1055. However, these claims create questions of fact and require additional evidence that may be impractical given the likelihood of collecting monetary damages from occupants.

d. Procedure. The complaint in ejectment must be served in accordance with the Rules of Civil Procedure. Alternative service will likely be required. Any additional parties served must be joined by praecipe, indexed.

i. Judgment for possession may be obtained by default.

ii. In Philadelphia, a plaintiff must provide the court with a certified copy of their deed and file a Motion for Writ of Possession after the entry of default judgment.

iii. Execution is by Writ of Possession, which must be served by the sheriff. Stays of execution may be granted on any legal or equitable grounds.

e. Move-out. Unlike landlord-tenant matters where the locks may be changed and the occupant afforded a reasonable time to remove belongings, most sheriffs treat ejectments as "move-outs"; which require the plaintiff to bring licensed and bonded locksmith and movers on the date of the move-out. The plaintiff will have to have the movers store the personal property of the occupant for approximately one (1) month and provide the occupant with the location of their belongings. If the

occupants have special medical needs or aggressive animals, the sheriff may unilaterally grant additional time for arrangements to be made.

f. Defenses – When, not if… With post sheriff's sale ejectments, the question is not really if plaintiff will get possession, but rather when. Defendants offer a multitude of defenses, all of which are basically stall tactics.

i. **Collateral Attack.** For some defendants, this is purportedly the first time they learn that their property has been sold. So naturally they assert defenses that are related to the underlying foreclosure or tax claim action. It is well settled that an attack on a Sheriff's Sale cannot be made in a collateral proceeding such as an ejectment action. *Dime Savings Bank v. Greene*, 813 A.2d 893, 895 (Pa. Super. 2002); *See also*, *Fannie Mae v. Citano*, 834 A.2d 645, 648 (Pa. Super. 2003) (wherein the Superior Court of Pennsylvania held that a collateral attack on a mortgage foreclosure action as a means of defending an ejectment action is not proper, does not constitute a meritorious defense to ejectment, and that neglecting to pursue the procedural remedies to challenge a Sheriff's Sale constitutes a waiver of any such challenge in a collateral action.); *See also*, *Keystones Colleries v. Mudge*, 100 A.2d 526 (Pa. 1917)(wherein the Supreme Court of Pennsylvania held that a judgment debtor who failed to challenge the Sheriff's Sale directly was barred from challenging the Sale in a collateral action, noting that, had judgment debtor "assailed it directly, at the proper time and in the proper way [he may have challenged the Sale in the lower court]; but what he could have done directly and which he neglected to do, he may not now do indirectly in a wholly collateral proceeding.").

However, there is recent authority that holds that an ejectment defendant may collaterally attack a foreclosure judgment as *void*. Specifically, if the ejectment defendants claim that the judgment was void and that the resulting sale was a nullity, with defective service or a similar constitutional defense, the foreclosure may be collaterally attacked in the ejectment action. *See* Tolerico v. Munley, 242 A.3d 402 (Pa. Super. 2020).

ii. **Stay Pending Set Aside.** Defendants also attempt to stay ejectment proceedings pending the adjudication of a set aside or appeal of a set aside denial. The granting of a stay is appropriate where: (1) the Petitioner makes a strong showing that it is likely to prevail on the merits; (2) the Petitioner has shown that without the requested relief it will suffer irreparable injury; (3) the issuance of a stay will not substantially harm other interested parties in the proceedings; and (4) the issuance of a stay will not adversely affect the public interest. *Pennsylvania Pub. Utilities Comm'n v. Process Gas Consumer Group*, 467 A.2d 805, 808-809 (Pa. 1983). These criteria require the Court to balance the interest of all parties, and the public where

applicable. It is also prudent to request a security bond since the plaintiff will be responsible for accruing liens and liability.

g. Alternatives.

i. Enter into a lease. An owner can now avail themselves of the Landlord-Tenant court procedures.

ii. Cash-for-keys. Be sure to document this and have the occupant sign over possession when the funds are exchanged.

h. Effective April 1, 2019, Pa.R.C.P. 1007 [Commencement of Action], 1018 [Caption], 1033 [Amendment], and 2252 [Right to Join Additional Defendants] will be amended to account for the addition of new Pa.R.C.P. 2005 [Unknown Defendant. Doe Designation]. Pa.R.C.P. 2005 only applies to in personam actions, and, therefore, is inapplicable to mortgage foreclosure actions. Pa.R.C.P. 2005 does, however, potentially impact the costs and timelines to complete an action in ejectment in certain situations where an unknown defendant is known to Plaintiff at the referral stage or discovered during the ejectment action.

Rule 2005 requires, inter alia, that if a Doe is designated in the Complaint, the naming must be because: (i) the actual name is unknown after a reasonable search with due diligence; (ii) the Doe designation is fictitious; (iii) a factual description of the unknown defendant is averred with sufficient particularity for identification; and (iv) a reasonable search to determine the actual name has been conducted. Prior to the enactment of this Rule, naming John Doe as a defendant in an ejectment action following a mortgage foreclosure sale in addition to "Tenants/Occupants" was common practice. Now, only Tenants/Occupants may be named at the outset of an ejectment action unless the ejectment referral can reasonably identify the occupants of the property specifically or with sufficient information to name a John or Jane Doe.

The frequently occurring issue that may impact the cost and timeline concerning an ejectment action is when a process server attempts to serve the Complaint or Writ of Possession upon the occupants and discovers that there is an occupant that refuses to identify him-/herself. In this fact scenario, now under Rule 2005 the Complaint must be amended to designate the unknown defendant as a John or Jane Doe, along with the requisite investigative information set forth above. This will require (i) the foreclosure firm to obtain a professional search along with (ii) additional time and expense to amend the Complaint. The time required to complete an amendment from motion to filing is county-specific but generally varies between 30-120 days. An affidavit attached to the motion to amend must be attached describing the nature and extent of the investigation. Prior to this Rule, Courts permitted an ejectment plaintiff to index a defendant with identifying information such as Doe from the service return without amendment or delay.

VIII. Quiet Title Actions.

a. Used when a party is in possession of real property and is seeking to extinguish some or all claims to title.

b. A complaint must name all parties whose interests are sought to be extinguished.

c. A default judgment must be sought by means of a motion.

d. Title companies may require the purchaser to bring an action to quiet title and obtain an order for same prior to issuing a title insurance policy.

e. *See* Pennsylvania Rules of Civil Procedure 1061-1068

Chapter Four

Tax Foreclosure Sales

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Tax Foreclosure Sales

Pennsylvania law provides several different variations for Municipalities to collect delinquent real estate taxes and municipal claims. The Real Estate Tax Sale Law of 1947, 72 P.S. §5860.101, *et seq.* ("RETSL") governs real estate tax collection in all Pennsylvania counties other than Allegheny and Philadelphia and the Cities of Scranton and Pittsburgh. The Cities of Scranton (52 P.S. 30901 *et seq.*) and Pittsburgh (72 P.S. §27101 *et seq.)* have separate sale remedies. The Municipal Claim and Tax Lien Law of 1923, 53 P.S. §7101, *et seq*. ("MCTLL") governs delinquent real estate tax collection in Philadelphia, Allegheny County, and the municipalities and school districts therein. The MCTLL also governs municipal claim collection, other than real estate taxes throughout the entire Commonwealth of Pennsylvania.

Section 39.5 of Act 20 of 2003, 53 P.S. § 7193.5 allows tax claim bureaus to adopt and use the procedures set forth in the MCTLL in addition to the procedures set forth in RETSL. *See* City of *Allentown vs. Kauth*, 874 A.2d 164 (Pa. Cmwlth. 2005), *appeal denied*, 912 A.2d 839 (Pa. 2006) and *Pennsylvania Land Title Association and Fidelity Home Abstract, Inc. v. East Stroudsburg School District, et al.*, 913 A.2d 961 (Pa. Cmwlth. 2006).

Taxes and municipal claims have the same characteristics as mortgages and notes. Both tax and municipal claims create liens against real estate which can be foreclosed upon and the property subject to the lien listed for public sale to satisfy the delinquency. Statutory provisions also permit the recovery of tax and municipal claims by personal lawsuits (generally within 5-6 years) in assumpsit against the person owning the real estate subject to the tax or municipal claim at the time that the obligation first became due and payable. *See* 72 P.S. § 5511.21. *See also*, 53 P.S. § 7251.

I. The Municipal Claims and Tax Liens Act

A. Taxes and municipal claims are first liens against real estate in Pennsylvania. 53 P.S. § 7103 and 53 P.S. § 7106; 72 P.S. § 5860.301.

1. Taxes. 53 P.S. §7102 provides that all taxes imposed or assessed on any real property are "hereby declared to be a first lien on such real property (but subordinate to the lien of taxes imposed by the Commonwealth), and every such lien shall date from the day on which the millage or tax rate is fixed by the proper authority of any such political subdivision, except where such taxes are imposed and assessed prior to the commencement of the fiscal year for which the same are imposed as assessed, in which case the lien of such taxes shall date from the first day of the fiscal year for which such taxes are imposed or assessed." Pursuant to 53 P.S. § 7103, tax liens have priority after-sale costs and are to be fully paid and satisfied out of the proceeds of any judicial sale before other claims and judgments. See also 72 P.S. 5860.301.

2. Municipal Claims. 53 P.S. § 7106(a) provides that municipal claims, municipal liens, taxes, tax claims and tax liens imposed or assessed on any property are liens upon a property, together with "all charges, expenses, and fees in the collection of any delinquent account, including reasonable attorney fees…added thereto for failure to pay promptly; and municipal claims and municipal liens shall arise when lawfully imposed and assessed…" Municipal claims and liens have priority at a judicial sale after costs and tax liens are satisfied

B. Important Definitions. 53 P.S. § 7101, as amended by Act 20 of 2003 and Act 83 of 2004.

1. Taxes. "The word 'taxes,' as used in this act, means any county, city, borough, incorporated town, township, school, bridge, road, or poor taxes, together with and including all penalties, interest, costs, charges, expenses and fees, including reasonable attorney fees, as allowed by this act and all other applicable laws."

a. Real Estate Taxes are levied annually with the millage rate set by municipalities. Taxpayers are entitled to a discount of 2% of the face amount within 2 months after the date of the tax notice. A penalty of up to 10% of the face amount is added to the tax after the fourth month of the date of the tax notices. 72 P.S. §5511.10. The specific penalty differs by municipality.

b. Interest, penalty, lien filing costs, charges, fees and expenses: are part of the tax and are collectible and distributable as part of the tax due. 53 P.S. § 7103, § 7104, § 7105, § 7200, § 7231, § 7279 and § 7281.

2. Charges, expenses and fees. "The words 'charges, expenses, and fees," as used in this act, include all sums paid or incurred by a municipality to file, preserve and collect unpaid taxes, tax claims, tax liens, municipal claim and municipal liens, including, but not limited to, prothonotary and sheriff fees, postage expenses, and title search expenses. A county, city, borough, incorporated town, township, school district or municipal authority, may also recover as 'charges, expenses, and fees' the charges, expenses, commissions and fees of third-party collectors retained by the county, city, borough, incorporated town, township, school district or municipal authority, provided that the charges, expenses, commission and fees of such third-party collectors are approved by legislative action of the county, city, borough, incorporated town, township, school district or municipal authority which levies the unpaid taxes, tax claims, tax liens, municipal claims and municipal liens."

a. Servicing/Collecting. Typically includes all matters undertaken by or on behalf of the municipality to collect delinquent taxes and municipal

claims but does not include legal proceedings. Servicing includes, but is not limited to, responding to real estate closings, responding to third-party foreclosure sales, responding to bankruptcy filings, providing collection notices, negotiating installment payment agreements, record keeping, banking and reporting and providing all pre-foreclosure notices. In addition, the municipality's servicer can also support legal counsel in any legal actions which are initiated to collect delinquent taxes and municipal claims.

b. Charges, expenses and fees added to tax and municipal claim for failure to pay promptly. 53 P.S. § 7103 and § 7106.

c. MCTLL provides for the recovery of all costs, charges, expenses and fees and attorney fees as part of the unpaid tax and/or municipal claim.

3. Attorney Fees. 53 P.S. § 7106(a) provides for "reasonable attorney fees." Subsection (a.1) further defines the scope of reasonable attorney fees: "Attorney fees incurred in the collection of any delinquent account, including municipal claims, municipal liens, taxes, tax claims and tax liens, shall be in an amount sufficient to compensate attorneys undertaking collection and representation of a municipality or its assignee in any actions in law or equity involving claims arising under this act."

a. Under 53 P.S. § 7106(a.1), a municipality must adopt a schedule of attorney fees. For municipalities that do not have the authority to adopt ordinances, the adoption must be done through a resolution.

b. A taxpayer may challenge the reasonableness of attorney fees upon petition and adjudication of the court of common pleas in the county where the subject property is located. 53 P.S. § 7106(a.1). The parameters are found in 53 P.S. § 7106(a.1)(1-4). The "Act 20 Notice", *infra*, and the manner of service of the Notice are described.

c. ACT 20 Notice must be provided to the delinquent property owner before attorney fees can be assessed. 53 P.S. §7106

i. 30-Day Notice ("Act 20 Notice"). Statement of intent to assess attorney fees. Describes manner in which assessment of attorney fees may be avoided by payment of the debt; sent certified mail, return receipt requested.

ii. 10-Day Notice. Sent via First Class Mail to all addresses found in search of municipal records and County Assessment Department records.

4. Municipality. "The word 'municipality,' as used in this act, means any county, city, borough, incorporated town, township, school district, or a body politic and corporate create as a Municipal Authority pursuant to law and any assignees thereof."

5. Municipal Claim. "The words 'municipal claim,' as used in this act…mean and include (1) the claim arising out of, or resulting from, a tax assessed, service supplied, work done, or improvement authorized and undertaken, by a municipality, although the among thereof be not at the time definitely ascertained by the authority authorized to determine the same, and a lien therefore be not filed, but becomes fileable within the period and in the manner herein provided, (2) the claim filed to recover for the grading, guttering, curbing, recurbing, paving, repaving, constructing, or repairing the footways thereof; for laying water pipes, gas pipes, culverts, sewers, breach sewers, or sewer connections therein; for assessments for benefits in the opening, widening or vacation thereof; or in the changing of water-courses or the construction of sewers through private lands; or in highways of townships of the first class; or in the acquisition of sewers and drains constructed and owned by individuals or corporations, and of rights in and to use the same; for the removal of nuisances; or for water rates; lighting rates; or sewer rates, and (3) the claim filed to recover for work, material, and services rendered or furnished in the construction, improvement, maintenance, and operation of a project or projects of a body politic or corporate created as a Municipal Authority pursuant to law. A municipal claim shall be together with and shall include all penalties, interest, costs, fines, charges, expenses and fees, including reasonable attorney fees, as allowed by this act and all other applicable laws."

C. Delinquent and Liened Real Estate Taxes.

1. Unliened delinquent taxes. No clear statutory definition. Unpaid taxes are generally considered delinquent when the elected tax collector settles his or her duplicate with the taxing body.

2. Liened delinquent taxes.

a. Time for filing lien: the lien for local real estate taxes must be perfected (i.e., filed) within 3 years of the end of the calendar year for which the tax was due. 53 P.S. §7143.

b. Pursuant to the MCTLL, real estate tax liens are filed in the tax lien dockets of the Prothonotary/Department of Court Records of the County in which the real estate is situated. 53 P.S. §§ 7194, 7195 and 7196.

c. Pursuant to the MCTLL, unfiled or misfiled liens can be filed after the three-year limitation period or refiled to correct a mistake under certain circumstances pursuant to validating acts. 53 P.S. § 7431, *et. seq*.

d. Liens are valid for a period of 20 years from the date of filing. Liens must be revived within 20 years of the date of filing to retain its priority. Revivals must be cross-indexed in the judgment index and locality index. 53 P.S. § 7183;

e. Interest.

i. Liened delinquent real estate taxes shall bear interest at a rate not to exceed 10% per annum on the face amount of the tax from the date the lien is filed. 53 P.S. § 7143.

ii. In Second Class County jurisdictions, the interest rate is 12% per annum from the time the taxes become delinquent. 72 P.S. § 5648.

II. City of Philadelphia Tax Sale Procedures

A. Selection of Properties

1. Unlike the Real Estate Tax Sale Law, where properties with delinquent taxes must be exposed for Sheriff Sale unless the tax claim is satisfied or under payment agreement, the Municipal Claims Act does not require the municipality to Sheriff Sale a delinquent property. Therefore, the City of Philadelphia is allowed to exercise policy considerations in determining the type and the number of properties sold.

a. Generally, the City's Revenue Department selects the properties to be sold at Sheriff Sale.

The City's Tax Sale process to acquire vacant, scattered site properties for the Philadelphia Landbank under authority granted to the Landbank under state law.

B. Current Foreclosure Process used by The City of Philadelphia

1. 53 P.S. Section 7283 – Provision of the Act that authorizes the City to initiate foreclosure on tax delinquent properties. Under Section 7283, the City would file its Petition to Sell Free and Clear of All Encumbrances with the Court of Common Pleas.

a. Requirements of Petition – Must be accompanied by a title search or title insurance policy showing the names and addresses of all interested parties, including record owners, mortgagees, ground rents, or any other charges on, or estates in the land. The title insurance policy is also called a Tax Information Certificate.

b. Rule to Show Cause – When the City files the petition, the Court grants a Rule to Show Cause why the premises should not be sold free and clear of all encumbrances.

c. Service of Petition and Rule – Under §7193.2, the City currently serves interested parties in the following manner.

    i. By posting a true and correct copy of the Petition and Rule on the most public part of the property;

    ii. By certified and first-class mail.

d. Answer to Petition and Rule – Any interested party wishing to enter a defense to the City's petition must file an answer within 15 days of the last act of service. The answer must comply with all of the requirements of Philadelphia local rules.

    i. Hearing – In Philadelphia, a Rule to Show Cause hearing is scheduled before the Court of Common Pleas within 2-4 months after the Petition is filed.

e. Decree – If, after a hearing, it is determined that the real estate taxes are outstanding, that the Tax Sale Petition has been properly posted, and that proper notice has been given to all parties, the Court will issue a decree approving the property for sale.

f. Service of decree –The City's decree be served by first class mail on all parties served with the Petition and Rule, on any parties whose interest appeared of record after the filing of the petition but before the Court's decree, and on any creditor who has obtained judgment against the owner of the premises prior to the date of the decree. The City must also file an affidavit of service of these notices prior to the date of sale.

g. Creation of Revenue Department Registry – 53 P.S. Section 7193.1 requires an owner, mortgagee, or any other interested party in a property to register a notice of interest with the Revenue Department stating their name, residence and mailing address and a description in which the person has an interest. However, this registration shall not be required for any mortgage or interest properly recorded in the

Office of the Recorder of Deeds. The City is required to serve any interested parties who have registered their interest with its Petition and Rule to the registered address.

i. Penalties for failure to register – Under Section 7193.4, no party whose interest did not appear on a title search or who failed to accurately register his interest and address with the Department of Revenue shall have standing to complain of improper notice if the City complied with the requirements of Section 7193.2.

h. Statute of limitations – Section 7193.3 requires any party wishing to contest the validity of a City Tax Sale to file a Petition with the Court within three months from the date of the acknowledgment of the Sheriff's deed.

2. Notice of Sale – Under Section 7283, the City is only obligated to notify interested parties of a Tax Sale by advertisement. However, the City attempts to ensure that all interested parties receive notice of the sale prior to the sale. City also purchases an updated tax information certificate, or bringdown, to identify any new interested parties. Sheriff also posts premises with handbill similar to those required by the Pa. Rules of Civil Procedure for private foreclosures.

C. Sheriff Sales

1. Tax Sales are conducted by the City's Law Department and are conducted the third Wednesday morning of every month. Tax Sales conducted by outside counsel on behalf of the City are conducted on the third Tuesday and third Thursday of every month.

2. Conditions of sale are set by the Sheriff of Philadelphia County and are published once a week for three consecutive weeks along with the list of properties to be sold. The publication is made in one paper of general circulation (Daily News or Philadelphia Tribune) and in the Legal Intelligencer.

3. Opening bids generally start at the amounts due for City for real estate taxes plus costs, fees and commissions. The City may establish opening bids as low as $1,500.00. Bidding begins in increments of $100.00; however, the Sheriff has recently amended its Conditions of Tax Sale to require bidding increments in higher amounts after bidding has reached certain thresholds.

4. High bidder at sale purchases free and clear of all encumbrances, except for certain tax liens of the Commonwealth of Pennsylvania, even if the bid price is insufficient to satisfy the municipal claims against the premises.

5. Purchaser must place a deposit of $500.00, or 10% of the high bid, whichever is higher, with the Sheriff at the time of sale. The deposit must be in the form of a certified check, attorney's check or money order. Cash is not accepted.

6. Purchaser must settle with the Sheriff within 30 days from the date of the sale. Extensions to settle may only be granted by the Sheriff, upon request in writing. Sheriff prepares the deed poll to the premises for an additional $85.00.

7. If there is no bidding on the property at the initial Sheriff sale, the property is postponed for one month. If there is no bidding at the second listing, the writ may be marked stayed by the Sheriff, and the property remains in the name of the tax delinquent owner.

8. Properties are sold in "as is" condition.

D. Use of outside Co-Counsel in collection

1. The City currently uses two outside collection firms to assist in real estate tax collection for the City:

a. Linebarger, Goggan, Blair and Sampson – 215-790-1117

b. Goehring, Rutter and Boehm – 215-735-1910

III. County of Allegheny Sheriff's Sale Procedures

A. Municipal Claim and Tax Lien Law. A Sheriff's Sale action is brought pursuant to the MCTLL and is a proceeding in rem only. 53 P.S §7101 et seq.

1. Action commenced by filing a Praecipe for Writ of Scire Facias Sur Tax Lien and Statement. Pleadings contain a notice to defend, verification and 20 days to plead as required under the Pennsylvania Rules of Civil Procedure.

a. Action commenced on filed tax claims only. (53 P.S. §7101) However, additional tax claims, including unfiled taxes will ultimately be part of the Upset Price if the property proceeds to Sheriff's Sale.

b. Action filed in the Court of Common Pleas, Civil Division with the Writ issued by the Office of Court Records or Prothonotary.

2. Personal service is required to be served by the Sheriff, or an acceptance of service in accordance with Pa R.C.P 400 et seq. *See also* 53 P.S. §7186.

3. Important Notice of Default Judgment sent pursuant to Pa. R.C.P. 237.1 if no Affidavit of Defense (Answer) is filed.

4. Judgment Entered. Includes all penalties, interest, lien filing costs, costs of suits, charges, expenses and attorney fees.

   a. Pursuant to Act 93 of 2013, which amended 53 P.S. § 7106, real estate tax liens that have been reduced to judgment now attach to all real estate owned by the delinquent taxpayer in the county there the property is located and attach to property owned by the delinquent taxpayer in other counties in the same manner as a general judgment.

   b. Additional Notices, which may not be required by law may be sent upon the Entry of a Judgment as an effort to collect the Balance owed prior to listing the Property for Sheriff's Sale.

B. Execution Upon the Judgment. Filed in accordance with the Pennsylvania Rules of Civil Procedure pertaining to the execution against real Property.

1. The Allegheny County Sheriff conducts a Sheriff's Sale on the first Monday of each Month, with the exception of September where the sale falls on the Tuesday following Labor Day, where all Sheriff's Sales of real estate, i.e., Mortgages, judgments, tax or municipal claim sales, are conducted at the same time.

   a. The Sale is conducted at 9:00 a.m. in the Gold Room on the 4th Floor of the Allegheny County Courthouse. The Sheriff begins the sale with the 1st Sale listed in the current month and after completing all sales in the current month, proceeds with the oldest continued sale until all sales have been called.

   b. Purchaser is required to have 10% of the Purchase Price available in cash, money order or certified check immediately upon the sale of the Property.

   c. The Sheriff provides an announcement at the beginning of the sale detailing any rules and procedures of the Sheriff's Office, including bidding increments.

2. Documents may vary from County to County pursuant to local rules, Sheriff's conditions of sale and / or customs and practices. The documents required in Allegheny County are:

a. Original Writ of Execution which is issued by the Department of Court Records upon Praecipe but is available in the Allegheny County Sheriff's Office.

b. Affidavit of all Interested Parties in accordance with Pa.RCP. 3129.1

c. Affidavit of Last Known Mailing Address of Defendant

d. Notice of Sheriff's Sale

e. All Caps – for the Sheriff's Posting of the Handbill

f. Long Description of the Property for the Sheriff's preparation of a Sheriff's Deed in the event of a sale.

g. Sheriff's Form 56 containing a Short Description of the Property for Newspaper Advertisement.

h. Allegheny County Assessment Web Page printout to show the general property information.

i. Direction forms for the Sheriff to Post the Handbill and to personally serve each Defendant with the Notice of Sheriff's Sale if required.

j. Payment in the amount of $2,000

3. Service of the Writ of Execution and Notice of Sheriff's Sale is made in accordance with Pa. RCP 3129.2.

a. Advertisement of the sale is made once a week for three successive weeks in at least one newspaper of general circulation in the County and the legal publication designated by the court. (Pittsburgh Legal Journal) Pa.RCP 3129.2(d)

b. Handbills are posted in the Sheriff's Office and Upon the Property at least 30 days prior to the sale. Pa. RCP 3129.2(b)

c. Written Notice shall be provided to all parties identified in the 3129.1 Affidavit by ordinary mail and by Certificate of Mailing. Service is complete upon mailing. A verification of the mailing is required to be filed with the Sheriff prior to the proposed sale date.

d. Personal Service shall be made upon the Defendant in the Action and the Owner of the Property in accordance with Pa RCP 3129.2(c) at least 30 days prior to the sale.

4. UPSET PRICE is the minimum bid, absent court order, for which a property can be exposed at Sheriff's Sale for taxes or municipal claims. The Upset Price is defined as all municipal liens, claims and taxes plus the costs of suit. 53 P.S. §7279

   a. Municipalities which are not a party to the lawsuit are provided notice of the sale and should file claims with the Sheriff's Office prior to the sale. These claims will be included in the Upset Price

   b. Additional Tax years due to the Plaintiff in the action which were not due and liened at the time of filing the Writ of Scire Facias should be included in a claim filed by the Plaintiff to establish the Upset Price.

   c. In addition to the costs of the sale, the Upset Price includes all State and Local Realty Transfer Taxes based upon the current Assessed Value of the Property.

   d. If there are no bidders at the Sheriff Sale for the Upset Price, the Municipality may purchase the Property for the costs thereon, subject to the lien of all taxes and municipal claims, and liens not otherwise discharged by the sale. 53 P.S. §7279.

5. FREE AND CLEAR SALES are permitted under 53 P.S. §7281 and §7282 in the event the Upset Price is too high to attract bidders or there are additional liens, claims and encumbrances (i.e., Mortgage) which are an impediment to a third-party purchaser obtaining clean title to the Property.

   a. A Petition is filed with the Court of Common Pleas and a Rule is issued to show cause why the Property Should not be Sold Free and Clear

      i. The Rule is served upon all Interested Parties by Posting the Property and by mail in accordance with the MCTLL and Pennsylvania Rules of Civil Procedure, see 53 PS. 7193.2.

      ii. A Hearing is then conducted to resolve any responses to said Petition. In practice there are very few contested Petitions, as Interested Parties that wish to preserve their interest can pay the taxes due to stop the sale or appear and bid upon the property at the Sheriff's Sale in an effort to obtain the property or increase the sales price.

b. Free and Clear Sales may be pursued under 53 P.S. 7282 prior to the first listing of the Property for Sheriff's Sale. This is typically done if the Plaintiff is aware of the need for a Free and Clear Petition to effectuate collection of the taxes or attract bidders for a Property whose value is significantly less than the Upset Price.

6. POSTPONEMENTS of a Sheriff's Sale are permitted to any regularly scheduled future Sheriff's Sale. The Postponement must be announced at the sale and notice to all parties must be given in accordance with Pa.RCP 3129.3, which includes written notice of the continuance filed with the Department of Court Records at least 15 days prior to the continued sale date and a Certificate of Filing provided to the Sheriff.

   a. Any postponement requested beyond 130 days from the date of the original sale will require original notice of the sale to be provided again under Pa.RCP 3129.2 unless an order of court stating otherwise is obtained.

   b. The Original Sale number assigned to account when the Property is listed for Sheriff's Sale is maintained for any continuances.

7. DISTRIBUTIONS of the proceeds of the sale are prepared by the Sheriff's Office following the Sale of the Property. 53 P.S. § 7281 describes the order of payment of tax claims at a judicial sale of property. Costs, charges, and fees, including reasonable attorney fees, expenses of the sale and of the writ paid first. Thereafter, the following order of payment is applied: "[F]irst, the oldest tax having priority; and municipal claims shall be paid next, the oldest in point of lien having priority. Mortgages, ground-rents, and other charges on or estates in the property which were recorded, or created where recording is not required…"

8. DEEDS are prepared, acknowledged and recorded by the Allegheny County Sheriff following the Sale of Real Property if a Petition to Set Aside Sheriff's Sale has not been filed. The Sheriff requires the purchaser to provide the applicable recording fee at the time of purchase to facilitate the recording of the Deed when prepared.

9. PETITION TO SET ASIDE SHERIFF SALE may be filed by any party in interest before the delivery of the Sheriff's Deed to the property. The court may set aside the sale, order a resale, or enter any other order which may be just. Pa. R.C.P. 3132.

10. Pa. RCP 3135 permits a Petition to be filed if a junior lienholder was not given proper notice of the Sheriff's Sale and thus was not divested of its

interest. The amendment allows for a plaintiff, its assigns, or the purchaser at the previously held sheriff's sale to file a petition with a rule to show cause requesting that (1) the lien held by the junior lienholder be divested, (2) another sheriff's sale be held in which only the junior lienholder specified in the petition may be the only other bidder allowed other than the senior lienholder who acquired the property at the previously held sheriff's sale, or (3) other relief approved by the court.

IV. Amendment to Municipal Claim and Tax Lien Law effective 9/3/2023

A. One July 5, 2023, the Municipal Claim and Tax Lien Law was amended to permit taxing authorities in second class counties (generally counties with a population over 500,000) upon Petition to sell real property free and clear.

B. This amendment permits second class counties to bypass the "upset" tax sales (sold subject to a secured, senior mortgage) and petition the Court to go straight to a judicial or "free and clear" sale, divesting "all tax and municipal claims, liens, mortgages, ground rents or other charges on, or estates in, the land."

C. Allegheny, Bucks, Delaware, Lancaster and Montgomery are currently second-class counties.

V. Redemption (Applicable to all MCTLL Jurisdictions)

REDEMPTION of Properties sold at Sheriff's Sale is available under the MCTLL to the owner, his assignees, or any other party whose lien or estate has been discharged by the sale. **53 P.S. §7293.** Redemption is not permitted under RETSL.

A. Redemption is permitted for any property which is not vacant, which requires that the property was "continuously occupied by the same individual or basic family unit as a residence for at least ninety days prior to the date of the sale and continues to be so occupied on the date of the acknowledgement of the sheriff's deed." 53 P.S §7293. The Petition to redeem must be filed within nine months of the acknowledgement of Purchaser's deed by the Sheriff.

1. In *Paul J. Dooling Tire Co. v. City of Philadelphia,* 569 Pa. 712, 789 A. 2d 364, the Commonwealth Court reversed a decision of the Court of Common Pleas granting a Petition to Redeem for a tax delinquent commercial property and held that the language of the redemption statute was unambiguous and limits redemption to non-vacant property occupied as a residence.

2. In *City v. Taylor*, 473 A. 2d 1386, 326 Pa. Super. 353 (1984), where the purchaser failed to supply the financial information necessary to allow the

former owner to complete the acts necessary for redemption, the Court granted the former owner's petition to redeem, even though the redemption was finalized after the one-year time period had expired

3. In *City of Philadelphia v. F.A. Realty Investors Corp*., 95 A.3d 377 (Pa. Commw. 2014), where the Property owner attempted to redeem prior to the acknowledgment of the Deed, the Court extended the right of redemption to all properties if the Petition to Redeem is filed prior to the Acknowledgment of the Deed.

B. Petition for redemption. Petition must allege the source of the petitioner's right to redeem, the date of the acknowledgment of the Sheriff's deed, and the petitioner's readiness to pay the redemption price. The redemption price includes:

1. The amount the purchaser bid at sale;

2. The cost of drawing and recording the deed;

3. The cost of any municipal claim paid by the purchaser;

4. The cost of fire and casualty insurance;

5. The cost of other charges and necessary expenses that are actually paid by the purchaser;

   a. The purchaser of property may recover from redeeming property owner amounts expended to make the property habitable; purchaser is not limited to recovery only of costs necessary to keep property in the same condition in which it existed at the time when it was purchased at Sheriff Sale. *City of Philadelphia v. King Kai Chin*, 511 A. 2d 214, 354 Pa. Super. 115 (1986)

   b. In *City of Philadelphia v. Watkins*, 494 A. 2d 1135, 343 Pa. Super. 380 (1985), the Court has also determined that the cost of items such as carpeting were "necessary expenses" under the statute.

6. Ten percent interest per annum from the day the purchaser buys the property.

***Practice Note*: While the redemptor may be entitled to credit for any rents received by the purchaser during the redemption period. The purchaser may not recover the costs of title insurance.**

VI. Pennsylvania Land Bank Act

A. The Pennsylvania Land Bank Act was enacted as Act 153 of 2012 and codified at 68 Pa. C.S. §2101 et seq. in an effort to allow Land Banks to return vacant, abandoned and tax-delinquent properties to productive use.

B. A Land Bank may become an assigned of delinquent real estate taxes pursuant to 68 Pa. C.S. §2117(d)(1).

C. The Land Bank and Taxing Bodies may enter into an agreement for the Land Bank to purchase a property at Sheriff's Sale for the minimum amount described in 53 PS §7279 in the event there is no bid tendered for a higher amount. Liens, claims and subordinate encumbrances shall be discharged by the sale. 68 Pa. C.S. §2117(d)(2).

> Note – In Allegheny County, a land bank may not (1) purchase a property for less than the Upset Price or (2) alter the form, substance or timing of the sales price absent an agreement with the taxing bodies whose claims comprise the upset sales price. 68 Pa. C.S. §2117(e.1)

D. Land Banks are also provided the ability to acquire properties at Sheriff's Sale through a "priority bid"

1. Process defined in 68 Pa. C.S. §2117(4):

> Notwithstanding sections 31.1 and 31.2 of the Municipal Claim and Tax Lien Law and sections 4 and 6 of the act of March 1, 1956 (1955 P.L. 1196, No. 372) … all of the following apply:
>
> (i) The land bank may tender a bid at the sale in an amount equal to the total amount of all municipal claims and liens which were the basis for the judgment. Upon tender under this subparagraph, the property shall be deemed sold to the land bank regardless of bids by other parties.
>
> (ii) The bid of the land bank shall be paid as to its form, substance and timing according to an agreement that is mutually acceptable to the plaintiff and the land bank. The obligation of the land bank to perform in accordance with the agreement shall be deemed to be in full satisfaction of the tax or municipal claim which was the basis for the judgment.
>
> (iii) The land bank, as purchaser at the sale, shall have an absolute title to the property sold, free and discharged of tax

and municipal claims, liens, mortgages, ground rents, charges and estates.

(iv) The deed to the land bank shall be executed, acknowledged and delivered within 30 days of the sale.

2. See also In re: Greensburg Storage and Transfer Company, No. 2233 of 2014 (Westmoreland Ct. Com Pl. Nov. 1, 2016). At a June 2016 Westmoreland County Tax Claim Bureau Judicial Sale, prior to bidding, it was announced that two properties were being acquired by the Land Bank and via its priority bid, and as a result, no other bids would be accepted. The prior owner and a potential bidder moved to have the transfers to the Land Bank set aside. The issues that they raised included (1) that the Land Bank did not publicly bid on the properties, (2) that a potential higher bidder was not provided an opportunity to bid, and (3) that the prior owner would have benefited from a bid in excesses of the taxes against the properties. The Common Pleas Court recognized the potential bidder's standing in the matter, but the Court went on to deny the motion to set aside. The Court held that the sale was consistent with the stated Legislative Findings and Purpose and the Construction, Intent and Scope sections of the Land Bank Law. *See* 68 Pa. C.S. § 2102, 2116.

Chapter Four

Appendix: Municipal Claim and Tax Lien Law-Omnibus Amendments - Act 4 of July 5, 2023

MUNICIPAL CLAIM AND TAX LIEN LAW - OMNIBUS AMENDMENTS

Act of Jul. 5, 2023, P.L. 22, No. 4 **Cl. 53**

Session of 2023
No. 2023-4

SB 202

AN ACT

Amending the act of May 16, 1923 (P.L.207, No.153), entitled "An act providing when, how, upon what property, and to what extent, liens shall be allowed for taxes and for municipal improvements, for the removal of nuisances, and for water rents or rates, sewer rates, and lighting rates; for the procedure upon claims filed therefor; the methods for preserving such liens and enforcing payment of such claims; the effect of judicial sales of the properties liened; the distribution of the proceeds of such sales, and the redemption of the property therefrom; for the lien and collection of certain taxes heretofore assessed, and of claims for municipal improvements made and nuisances removed, within six months before the passage of this act; and for the procedure on tax and municipal claims filed under other and prior acts of Assembly," further providing for municipal claims first lien, cities of first class, docketing, judgment and execution, for cities of the first class, recovery of judgment and sale free from claims, for redemption and for rule to show cause, decree, service and notice and providing for disposition of property in cities of the second class.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 3(b), 31.2(a), (b.1) and (b.2)(1), 32(a) and 39.2(a), (a.1), (b), (b.1) and (c) of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, are amended to read:

Section 3. * * *

(b) With the exception of those claims which have been assigned, any municipal claim, municipal lien, tax, tax claim or tax lien, including interest, penalty and costs, imposed by a city of the first [class,] **or second class or by a county of the second class or by a municipality therein**, shall be a judgment only against the said property when the lien has been docketed by the prothonotary. The docketing of the lien shall be given the effect of a judgment against the said property only with respect to which the claim is filed as a lien. The prothonotary shall maintain an in rem index, the form and location of which shall be within the prothonotary's discretion. All tax claims, water rents or rates, lighting rates, power rates and sewer rates heretofore filed are hereby ratified, confirmed and made valid subsisting liens as of the date of their original filing.

* * *

Section 31.2. (a) In addition to the remedies prescribed in sections [28,] 31 and 31.1 of this act, in cities of the first [class,] **or second class and counties of the second class and any municipalities therein**, whenever a claimant has filed its tax or municipal claim in accordance with the requirements of this act, it may file its petition in the court in which the proceeding is pending, setting forth the facts necessary to show the right to sell, together with searches or a title insurance policy, showing the state of record and the ownership of the property, and of all tax and municipal claims, **liens**, mortgages, ground rents or other charges on, or estates in, the land, as shown by the official records of the city or county, or the political subdivision in which the real estate is situate, and thereupon the court shall grant a rule upon all parties thus shown to be interested, to appear and show cause why a decree should not be made that the property be sold, freed and cleared of their respective claims, **liens**, mortgages, ground rents, charges and estates. If upon a hearing, the court is satisfied that service had been made of the rule upon the parties respondent in the manner provided in [this act for the service of writs of scire facias to obtain judgments upon tax and municipal claims, and that contemporaneously with the service of the rule on the parties respondent notice of the rule has been published by the claimant in at least one newspaper of general circulation in the county, and in a legal periodical published therein, if any,] **section 39.2** and that the facts stated in the petition be true, it shall order and decree that the property be sold at a subsequent sheriff's sale at a time to be fixed thereafter by the claimant, clear of all claims, liens, mortgages, ground rents, charges and estates, to the highest bidder at such sale and after payment of the tax or municipal lien the balance of the proceeds realized therefrom, shall be distributed in accordance with the priority of the remaining claims, liens, mortgages, ground rents, charges and estates, and the purchaser at such sale shall take and forever thereafter have, an absolute title to the property sold, free and discharged of all tax and municipal claims, liens, mortgages, ground rents, charges and estates of whatsoever kind, subject only to the right of redemption as provided by law. The date of the sale shall be advertised in at least one newspaper of general circulation in the county **in which the property is located** and in the legal periodical published therein.

* * *

(b.1) A city of the first **or second** class may, within thirty days of any sale held under this section, petition the court of common pleas to prohibit the transfer of any deed for any property exposed for any sale under this act which is located in that city to any purchaser who is proven to meet any of the criteria set forth in subsection (b.2).

(b.2) (1) The petition of a city of the first **or second** class shall allege that the purchaser has over the three years preceding the filing of the petition exhibited a course of conduct which demonstrates that a purchaser permitted an uncorrected housing code violation to continue unabated after being convicted of such violation and:

(i) failed to maintain property owned by the purchaser in a reasonable manner such that it posed a threat to health, safety or property; or

(ii) permitted the use of property in an unsafe, illegal or unsanitary manner such that it posed a threat to health, safety or property.

* * *

Section 32. (a) The owner of any property sold under a tax or municipal claim, or his assignees, or any party whose lien or estate has been discharged thereby, may, except as provided in subsection (c) of this section, redeem the same **if the property is not located in a city of the second class or a county of the second class or a municipality therein** at any time within nine months from the date of the acknowledgment of the sheriff's deed [therefor,] **and if the property is located in a city of the second class or a county of the second class or a municipality therein at any time within three months from the date of the acknowledgment of the sheriff's deed therefor**, upon payment of the amount bid at such sale; the cost of drawing, acknowledging, and recording the sheriff's deed; the amount of all taxes and municipal claims, whether not entered as liens, if actually paid; the principal and interest of estates and encumbrances, not discharged by the sale and actually paid; the insurance upon the property, and other charges and necessary expenses of the property, actually paid, less rents or other income therefrom, and a sum equal to interest at the rate of ten per centum per annum thereon, from the time of each of such payments. If both owner and creditor desire to redeem, the owner shall have the right so to do only in case he pays the creditor's claim in full. If more than one creditor desires to redeem, the one who was lowest in lien at the time of sale shall have the prior right, upon payment in full of the claim of the one higher in lien. Within nine months **if the property is not located in a city of the second class or a county of the second class or a municipality therein or within three months if the property is located in a city of the second class or a county of the second class or a municipality therein**, one who was lower in lien may redeem from one higher in lien who has already redeemed, and the owner may redeem from him; and so on throughout, in each case by paying the claim of the one whose right was higher; and one higher in lien may redeem from one lower in lien, unless his claim is paid; but in each case the right must be exercised within [nine months] **the time specified in this section.**

* * *

Section 39.2. (a) In cities of the first [class,] **or second class and counties of the second class and municipalities therein**, notice of a rule to show cause why a property should not be sold free and clear of all encumbrances issued by a court pursuant to a petition filed by a claimant under section 31.2 of this act shall be served by the claimant upon owners, mortgagees, holders of ground rents, liens and charges or estates of whatsoever kind as follows:

(1) By posting a true and correct copy of the petition and rule on the most public part of the property;

(2) By mailing by first class mail to the address registered by any interested party pursuant to section 39.1 of this act a

true and correct copy of the petition and rule; and

(3) By reviewing a title search, title insurance policy or tax information certificate that identifies interested parties of record who have not registered their addresses pursuant to section 39.1 of this act, the [city] **claimant** shall mail by first class mail and either by certified mail, return receipt requested, or by registered mail to such addresses as appear on the respective records relating to the premises a true and correct copy of the petition and rule.

Service of notice pursuant to this section shall be deemed accomplished on the date of mailing. The [city] **claimant** shall file an affidavit of service with the court prior to seeking a decree ordering the sale of the premises.

(a.1) In counties of the second class and municipalities therein, notice of a rule to show cause why a property should not be sold free and clear of all liens and encumbrances issued by a court pursuant to a petition filed by a claimant under sections [28] **31** and 31.1 of this act shall be served by the claimant upon owners, mortgagees, holders of ground rents, liens and charges or estates of whatsoever kind as follows:

(1) By posting a true and correct copy of the petition and rule on the most public part of the property.

(2) By reviewing a title search, title insurance policy or tax information certificate that identifies interested parties of record, the county or municipality shall mail by first class mail and either by certified mail, return receipt requested, or by certificate of mailing to such addresses as appear on the respective records relating to the premises a true and correct copy of the petition and rule. Notice pursuant to this section shall be deemed accomplished on the date of mailing. The [county or municipality] **claimant** shall file an affidavit of service with the court prior to seeking a decree ordering the sale of the premises.

(b) No party whose interest did not appear on a title search, title insurance policy or tax information certificate or who failed to accurately register his interest and address pursuant to section 39.1 of this act shall have standing to complain of improper notice if the [city] **claimant** shall have complied with subsection (a) of this section. This provision shall not apply if the mortgage or interest was otherwise properly recorded in the Office of the Recorder of Deeds **or the Department of Real Estate, as applicable,** and the document contains a current address sufficient to satisfy the notice requirements of this section. Notwithstanding any other requirement set forth in this act or any other law to the contrary, the notice required by subsection (a) of this section shall constitute the only notice required before a court may enter a decree ordering a tax sale.

(b.1) No party whose interest did not appear on a title search or title insurance policy, because of the party's failure to record or properly record its interest, shall have standing to complain of improper notice if the county or municipality shall have complied with subsection (a.1). This provision shall not apply if the mortgage or interest was otherwise properly recorded in the Office of the Recorder of Deeds **or the Department of Real Estate, as applicable,** and the document contains a current address

sufficient to satisfy the notice requirements of this section. Notwithstanding any other requirement set forth by subsection (a.1), notice thereunder shall constitute the only notice required before a court may enter a decree ordering a tax sale free and clear of liens.

(c) Notice of the court's decree ordering a tax sale, together with the time, place and date of the sale, shall be served by first class mail on all parties served with the petition and rule, on any parties whose interest appeared of record after the filing of the petition but before the court's decree and on any creditor who has obtained judgment against the owner of the premises prior to the date of the decree. The [city] **claimant** shall file an affidavit of service of these notices prior to the date of the sale.

* * *

Section 2. The act is amended by adding a section to read:

Section 39.6. The mayor of a city of the second class may designate an agency for the acquisition, administration, maintenance and disposition of property acquired by the city of the second class at a sheriff's sale. The city of the second class, or its agent, may act as an agent for a taxing authority having a claim against property under this section, pursuant to a locally negotiated agreement that positively affirms the consent by each taxing authority to allow the city of a second class to act as an agent on each taxing authority's behalf. A city of the second class acting as an agent for a taxing authority under this section may take any actions necessary to protect and defend a taxing authority's rights and obligations under this act.

Section 3. The amendment of section 32(a) of the act shall apply to a sheriff's sale conducted on or after the effective date of this section.

Section 4. This act shall take effect in 60 days.

APPROVED--The 5th day of July, A.D. 2023.

JOSH SHAPIRO

Chapter Five

Effect of Sheriff Sales on Real Estate Liens and Distributions

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Effect of Sheriff Sales on Real Estate Liens and Distributions

I. Divestiture of Liens at Sheriff's Sale

A. Discharge. A sheriff's sale of property discharges all liens which are not satisfied of record at the time of sale unless the lien is otherwise preserved by statute. *Public Federal Sav. & Loan Ass'n. v. Neumann*, 334 Pa. Super. 389, 392-393, 483 A.2d 505, 507 (1984); *Liss v. Medary Homes, Inc.*, 338 Pa. 139, 130 A.2d 137 (1957).

B. Preserved Liens:

1. Mortgages "if the lien of the Mortgage is or shall be prior to all other liens upon the same property" except for:

2. Other Mortgages (42 Pa.C.S. §8152(a)(1));

3. Ground rents and purchase money due to the Commonwealth (42 Pa.C.S 8152(a)(1)

4. Taxes and municipal claims (42 Pa.C.S. §8152 (a)(2))

5. For purposes of determining whether a mortgage is "prior to all other liens" the public record is examined as of the date of the Sheriff's Sale. 13 Standard Pennsylvania Practice 2d §75:80 (citing, *Charles v. Stanley*, 10 Pa. 472 (1849)).

6. Not all Commonwealth claims or liens are preserved. *See, Carson Consumer Discount Company v. Stuble*, 501 A.2d 1150 (Pa. Super. 1985) (Lien recorded by Department of Public Welfare discharged after mortgage foreclosure sale).

7. A portion of condominium or homeowner association assessments are also preserved (68 Pa. C.S. §3315(b) and 5315(b)).

Query: Is a second mortgage "prior to all other liens" since association liens are accorded a second priority pursuant to 68 Pa. C.S. §3315(b) or §5315(b)?

C. Practice points.

1. Our Superior Court has held that a mortgage recorded after judgment liens, even if the judgments were paid, is not protected from divestiture by operation of Section 8152 of the Judicial Code. *Public Federal Sav. & Loan Ass'n. v. Neumann*, supra. 483 A.2d at 507.

2. Thus, a Sheriff's sale will divest a mortgage with the same priority (e.g., a first mortgage is "discharged" by a Sheriff's sale scheduled by the co-first mortgagee). 13 Standard Pennsylvania Practice, 2d §75:80 (citing, *Liss v. Medary Homes*, supra.).

3. A sale by any junior lienholder may divest senior judgment liens and mortgages recorded after a judgment or other lien.

4. It is incumbent upon holders of non-preserved senior liens to appear at sale and bid to generate distribution proceeds. Many Sheriffs do not require the attorney on the Writ to deliver any funds which may create a circumstance where Exceptions must be filed to recover on a senior divested lien. *See* Pa.R.C.P. 3133.

5. Agreement by parties that a lien will be preserved at Sheriff's sale is enforceable, especially if advertised "subject to" one or more liens. *Ashmead v. McCarthur*, 67 Pa. 326 (1871); *Stackpole v. Glassford*, 16 Sargent and Rowle 163 (1827).

6. Holders of liens or other interests not served with written notice of Sheriff's sale thirty days prior to sale date may retain liens or other rights after sale. Pa. R.C.P. No. 3129.2(c)(3), Note, (*citing, In re: Tax Claim Bureau of Lehigh County, Appeal of Hass*, 96 Pa. Cmwlth. 452, 507 A.2d 1294 (1986)). However, the 2014 amendments to Rule 3135 provide a remedy for plaintiffs who fail to properly serve a notice of Sheriff's sale on lienholders and other interested parties. Specifically, Rule 3135(c) permits a plaintiff to file a petition requesting that:

"(1) the lien held by the junior lienholder be divested, or (2) if the plaintiff, or its assigns, is the purchaser at the sheriff's sale, another sheriff's sale be held in which only the junior lienholder specified in the petition may be the only bidder allowed other than the senior lienholder who acquired the property at the sheriff's sale, or (3) such relief as may be approved by order of court."

II. Distribution Issues

A. Rules of Civil Procedure.

1. **Rule 3133**. Permits lien creditors to credit bid "up to the amount of the proceeds to which the purchaser is entitled. The sheriff may require payment in cash of all legal costs distributable from the proceeds of the sale. Notwithstanding the foregoing rule, most sheriffs do not permit any party except counsel for the party who scheduled the sheriff's sale (the "attorney on the writ") to credit bid.

2. **Rule 3135**. Unless a petition to set aside has been filed, the sheriff must execute and acknowledge the deed to the real property sold and deliver same for recording after expiration of 20 days but no later than 40 days after either the filing of the schedule of distribution or the sheriff's sale (if no schedule of distribution is needed). A sheriff's sale purchaser or its successor in title may petition to correct errors in a sheriff's deed or require issuance of a new deed (Rule 3135(b)).

3. **Rule 3136**. Governs distribution of proceeds and provides:

   a. The sheriff must prepare a schedule of proposed distribution no later than "thirty days after the sale of real property." However, it is not necessary to prepare a schedule of distribution "when the property is sold to the plaintiff for costs only." The schedule shall be filed in the prothonotary's office.

   b. When a receipt of the plaintiff or other lien creditor has been accepted on account of the purchase price, the schedule shall set forth the name and address of the plaintiff or lien creditor, the amount of the judgment or lien, and the amount of credit claimed and allowed upon the purchase price.

   c. The sheriff's schedule must include a list of liens upon the property sold "as certified from the record by the proper officers or a guaranteed search from any title company authorized to do business within the county." The cost of such title search is included in the sheriff's costs.

   d. The sheriff must file the schedule of proposed distribution with the Prothonotary for a period of ten (10) days within which time interested parties may file exceptions with the sheriff. Absent exceptions, distributions must be made in accordance with the schedule. *See* Pa.R.C.P. 3136(a)

   e. Upon receipt of exceptions, the sheriff is to file same with the prothonotary together with the proposed schedule of distribution.

   f. The court determines the validity of exceptions filed and may receive evidence by deposition, hearing or otherwise, and may appoint an auditor to hear the evidence and report to the court.

4. **Rule 3181(a)**. Distribution of proceeds from a mortgage foreclosure must be in accordance with the rules governing distribution and enforcement of money judgments.

B. Distribution Principles.

1. Generally, it is the sheriff's duty to make distribution of sale proceeds in accordance with the order of those entitled to share in the proceeds and the amounts due to each. *Knoell v. Carey,* 285 Pa. 498, 132 A. 702 (1926). The rights of claimants to sheriff's sale proceeds are determined by the status shown by the record at the time of the sale. *Colonial Trust Co. v. Lincoln Drive Apartments Corp.*, 299 Pa. 117, 149 A. 165 (1930).

2. "A mortgage foreclosure sale regulates all lien creditors to the fund realized in the foreclosure proceeding. However, a lienholder normally is entitled to a share of the proceeds of a mortgage foreclosure sale only when the sale has divested the lien, and it is only where the lien will fail to survive such a sale that there exists a right to assert a claim against the proceeds for distribution. Thus, estates and liens not divested by the sheriff's foreclosure sale have no claim against the fund. Also, in an action of mortgage foreclosure where a lienholder buys the subject property from the mortgagors, his or her liens merge into the title and his or her status as a lienholder for purposes of the schedule of distribution of the proceeds of the foreclosure sale is defeated." Standard Pennsylvania Practice, 2d §121:125 pp. 527-528.

   Thus, for example, a first mortgage holder is not entitled to proceeds of a sheriff's sale by a junior lienholder.

3. Any proceeds remaining after distribution to all parties entitled to receive sale proceeds are distributed to the mortgagor/owner. In re: Evergreen Memorial Park Association, 308 F.2d 65 (3d Cir. 1962).

C. Distribution of Sales Proceeds. Some Sheriffs Accept Equivalent of Payoff Letter from Attorney on the Writ to Determine Distribution

1. *Extraco Mortgage f/k/a First Bankers Mortgage Co. v. Williams*, 2002 Pa. Super 246, 805 A.2d 543 (2002).

   a. First mortgage holder filed foreclosure Complaint seeking Judgment in the amount of $61,000. Prior to obtaining Judgment, Extraco paid nearly $30,000 in delinquent real estate taxes and hazard insurance premiums, but did not amend Complaint. Default Judgment entered for $63,374.14 and Writ issued in that amount.

   b. The Property sold at Sheriff's sale for $100,500. At Extraco's request, Sheriff proposed to distribute $91,446.56 which included taxes and insurance costs to Extraco and only $652.54 to Fulton

Bank, holder of second mortgage. Fulton filed exceptions to the proposed distribution, which the trial court denied.

c. On appeal, Superior Court discussed whether Extraco waived any entitlement to recover from the proceeds of the Sheriff's Sale any amounts for voluntary advances in connection with the mortgage by not seeking such amounts during the action. The Superior Court answered, "no."

d. Court analyzed Fulton's arguments on equitable basis and determined that fist mortgagee's failure to amend Complaint resulted in no harm to Fulton. Rather payment of back taxes and arguably hazard insurance premiums benefitted Fulton by preventing tax sale and protecting collateral.

e. Court rejected Fulton's argument that allowing recovery of sums not included in Complaint harmed bidding process and allowed Extraco to recover hidden sums. Court observed that Fulton did not bid at sale, thus assuring that its interests would not be protected.

f. To the contrary, the Court found a dangerous precedent would be set by not permitting a first mortgage holder to recover for sums expended to protect its interests while pursuing its contractual remedy.

QUERY: How is junior lien holder to determine bidding strategy or participation at sale if amount of senior liens not known? Frequently, upset price not provided until day before Sheriff's sale, if at all.

Practice Note: Junior creditor is entitled to an accounting from foreclosing creditor which it can demand by filing exceptions. State Street Bank v. Petrey, 2003 Pa. Super 98, 819 A.2d 581 (2003). That being said, if junior fails to bid and senior properly documents its debt, what is the actual relief afforded to the junior creditor by filing exceptions?

Chapter Six

Ethical Considerations in Foreclosure

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Ethical Considerations in Foreclosure

"The purpose of our system of professional responsibility and disciplinary enforcement is to protect the public, the profession and the courts from unfit attorneys." *See District Office of Disciplinary Counsel v. Surrick*, 561 Pa. 167, 181-182 (2000).

I. Attorney's Affirmative Duties in Foreclosure

Mortgage foreclosure is a highly-specialized area of the law that requires attorneys possess a solid understanding of contract and consumer protection law, as well as any state or federal regulations. Rule 1.1 addressing Competence states that, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Attorneys representing creditors or debtors in mortgage foreclosure actions, as well as attorneys representing parties bidding at sheriff sales, must be well-versed in the intricacies of this area of the law.

Creditors' and debtors' counsel should be familiar with the requirements of Act 6, Act 91 and the Pennsylvania Rules of Civil Procedure governing foreclosure actions (Pa. R.C.P. 1141 et seq.) and executions, as well as the Consumer Financial Protection Bureau's Mortgage Servicing Rules, which are found in Regulation X and Regulation Z (12 CFR 1024 and 1026) and the Faird Debt Collection Practices Act (FDCPA). Furthermore, in this technologically savvy age, they should understand the importance of properly securing the non-public personal information of defendants through proper redaction techniques. Attorneys representing purchasers at sheriff sale should have a firm understanding of real estate law and lien priority law when counseling individuals on what exactly they will be responsible for if they are the successful purchaser at a sale.

As with representation in any type of matter, attorneys handling mortgage foreclosure actions, or representing real estate investors, are tasked with keeping their clients well-informed as to the status of their case. This starts with maintaining good communication with your clients, either by phone, email, letter or even text messaging. Today's clients are savvy and digitally connected, and they expect the same of their counsel. Attorneys should be sure to establish a pattern and practice for how communications with any given client will be handled during the course of the representation. For guidance in this area, attorneys are commonly pointed to Rules of Professional Conduct 1.3 and 1.4 regarding diligence and communication.

Rule of Professional Conduct 1.3 states that, "A lawyer shall act with reasonable diligence and promptness in representing a client." This Rule goes hand-in-hand with the Professional Rules regarding communication. Rule of Professional Conduct 1.4 addresses communication and provides, in pertinent part:

> (a) A lawyer shall:
>
> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule l.O(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation....

Pa.R.P.C. 1.4. *See Office of Disciplinary Counsel v. Geisler,* 614 A.2d 1134.

Another affirmative duty of counsel in representing either creditors or debtors in mortgage foreclosure actions is the strict adherence to rules regarding confidentiality. Confidentiality when handling mortgage foreclosure actions extends beyond the general concept of not revealing information gained in the course of representing a client without the informed consent of the client. During the course of representing either a homeowner or a bank in a mortgage foreclosure action, counsel will likely be made privy to sensitive financial information, including, but not limited to social security numbers and bank account numbers. In this modern age of identity theft, it is this information that must be safe guarded by counsel, in addition to the traditional duty of confidentiality.

Rule 1.6 of the Professional Rules of Conduct states:

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another;

(3) to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; or

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to secure legal advice about the lawyer's compliance with these Rules; or

(6) to effectuate the sale of a law practice consistent with Rule 1.17.

(d) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

Pa.R.C.P. 1.6.

In the last ten years, the single most significant change to the mortgage foreclosure landscape has been the evolution and rapid development of loss mitigation options. Any attorney representing a bank has been faced with the daunting task of collecting loss mitigation packages from borrowers, and ensuring all necessary information has been provided. While any attorney representing borrowers has likely been faced with the onerous task of preparing a loss mitigation package, and ensuring that every document sought by the bank has been gathered and included. It is challenging work on both sides of the equation. When considering the work at hand in dealing with loss mitigation applications, attorneys should be cognizant of Rules of Professional Conduct addressing truthfulness in statements to others and communications with a person represented by counsel. Issues involving both of these rules often crop up during the course of a mortgage foreclosure action, but never is it more apparent than in the context of loss mitigation.

Pennsylvania Rule of Professional Conduct 4.1 states that, “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid aiding and abetting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.” Loss mitigation is a daily process that for attorneys on both side, it can seem endless. Banks require a significant amount of detail regarding the financial standing of borrowers when completing a review. Since so many loans are federally-backed, in one form or another, loss mitigation applications and the representations contained therein are treated with significant scrutiny. Attorneys assisting in the completion of loss mitigation packages should ensure no false statements or misrepresentation of financial data are made in the packages.

Furthermore, as a part of the daily back and forth between borrowers and lenders, there is often a need for direct communication between the parties. When both parties are represented, the parties are typically governed by the Rule governing communications with a represented party. Rule of Professional Conduct 4.2 states, "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the lawyer or is authorized to do so by law or a court order." The constant need for information to be exchanged when completing loss mitigation can be taxing, especially on solo practitioners. Counsel for both the bank and the borrower should strongly consider what role they will play in this exchange, and if appropriate, consent to direct communication for the limited purpose of facilitating loss mitigation. Counsel for borrowers should instruct their clients to discuss and provide documentation relevant to the loss mitigation application only, while counsel for the bank should caution bank employees on limiting the scope of their conversations with borrowers.

For attorneys representing banks, the issue of communication with the borrower is significantly more difficult if the borrower does not have an attorney. Counsel are guided by Rule of Professional Conduct 4.3, which requires significantly more of the lawyer when communicating with the borrower. The Rule requires counsel to not state or imply that he or she is disinterested in a matter when speaking with an unrepresented party. Further, the lawyer shall not give advice to the unrepresented party, other than the advice to secure counsel. Finally, if the lawyer believes the unrepresented party misunderstands the lawyer's role in the matter, the lawyer shall affirmatively make reasonable efforts to correct the misunderstanding. Attorneys representing banks or executing creditors should always be prepared to recommend borrowers seek out counsel and remind them that he or she cannot provide legal advice with respect to the matter. In the context of loss mitigation, this can be difficult since the parties' interests may be aligned in trying to find a resolution to the underlying dispute. Attorneys should clearly draw lines for borrowers who choose not to obtain representation.

II. Conflicts of Interest

The role of conflicts of interest in mortgage foreclosures is a careful consideration for attorneys for representing either banks or borrowers. For bank attorneys, due to the rise of national mortgage lenders and servicing agents, attorneys generally have a series of pre-determined rules for what does and does not constitute a conflict of interest and what conflicts, if any, can be waived. Law firms representing banks in residential mortgage foreclosure actions typically limit their client-base to mortgage lenders and servicers, and thus can more readily avoid conflicts, or at least, more efficiently manage them.

As for counsel representing borrowers, the important of conflicts cannot be overstated. Mortgage foreclosures are commonly the result of one of a number of factors, but two of the most common reasons are job loss and divorce. Due to the strain a mortgage foreclosure can put on any relationship, counsel engaged to represent borrowers needs to be in tune with respect to the goals of his clients, as well as whether an inherent conflict might arise in their representation.

Attorneys should familiarize themselves with Rules 1.7, 1.8 and 1.9 of the Pennsylvania Rules of Professional Conduct. Rule 1.7 outlines conflicts of interests as they pertain to current

clients. Generally, a lawyer should not represent a client if there is a concurrent conflict of interest. Rule 1.8 delves into more specific rules regarding conflicts of interest and current clients. Specific rules discuss lawyers entering into business transactions with clients, soliciting gifts from clients, the negotiation of literary or media rights prior to the conclusion of representation of a client, and providing financial assistance to a client. Finally, Rule 1.9 address the duties of counsel to former clients. Generally, a lawyer may not represent another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of a former client without informed consent from the prior client.

III. Wrongful Foreclosure, Abuse of Process and Frivolous Litigation

The Pennsylvania Rules of Professional Conduct are clear regarding meritorious claims and contentions. Rule 3.1 states, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established."

Mortgage foreclosure actions are generally document-driven civil actions informed by a set of well-articulated rules of civil procedure. Foreclosure complaints generally look the same from attorney to attorney, law firm to law firm. The elements of a successful case in mortgage foreclosure are straightforward. Attorneys preparing foreclosure complaints are not often tasked with making judgment calls with respect to the creditors' rights to foreclose. However, foreclosure complaints and borrowers' defensive efforts in foreclosure actions are not immune from challenges to the notion that a claim contained therein may or may not be meritorious.

In considering the issue of frivolous litigation within a foreclosure action, the Pennsylvania Superior Court tackled the "delay tactic" litigation filed by a pro se litigant. *See generally First Union Mortgage Corp. v. Frempong*, 1999 PA Super. 343; 744 A.2d 327 (1999). The First Union court explained:

> Courts should not tolerate legal maneuvers undertaken solely for improper purposes. Hein v. Hein, 717 A.2d 1053, 1056 (Pa. Super. 1998) (where a party's action disrupts the fair and orderly process of the action, a court acts appropriately in imposing even severe sanctions if necessary to take control of the situation), Winpenny v. Winpenny, 434 Pa. Super. 348, 643 A.2d 677, 679 (Pa. Super. 1994) ('Abuse of the court system, whether by seasoned attorneys or by *pro se* parties, cannot be tolerated.').
>
> We specifically find that [Appellant's] behavior in bringing this appeal was dilatory, obdurate, and vexatious, that the issues stated are frivolous, and that he took this appeal solely to delay repayment of the money he owes First Union. As we stated in 1994:

> By filing the present appeal seeking review of frivolous issues, Appellant has caused this court to waste precious judicial resources. Appellant's total disregard for the court system as a whole began in the trial court and has carried over to this court. We admonish Appellant for necessitating review of these claims and direct [his] attention to the many sincere appellants who seek review before this court.

Commonwealth v. Appel, 438 Pa. Super. 214, 652 A.2d 341, 343 (Pa. Super. 1994). Id. at r 46-47, 744 A.2d at 338.

Moreover, the court continued:

> Therefore, we have no hesitation whatsoever in awarding attorneys' fees to [Appellee Bank] pursuant to Pa.R.A.P. 2744. That rule allows an award of attorneys' fees after a determination 'that an appeal is frivolous or taken solely for delay or that the conduct of the participant against whom costs are to be imposed is dilatory, obdurate or vexatious.' *Township of South Strabane v. Piecknick*, 546 Pa. 551, 686 A.2d 1297 (1996). Upon remand, we direct the trial court to determine First Union's attorneys' fees and costs in taking this appeal, and to add this amount to the judgment. Further delay should not be tolerated.

Id. at 48, 744 A.2d at 338. Needless to say, the court's position on frivolous litigation is clear. *See also*, Pa.R.C.P. 233.1.

Public Access Policy in Pennsylvania and Confidential Information

The records of trial courts and appellate courts in Pennsylvania contain a plethora of publicly available documents that often contain substantial information, some of which might be considered confidential. In 2013, the Administrative Office of the Pennsylvania Courts embarked on the development of statewide policies governing access to court records. These efforts were informed by the growing use of e-filing systems and on-line records system, coupled with the uncoordinated efforts to embrace this technology on a county-by-county basis. As a result, accessibility to these public records varied, as did the amount and types of information available for inspection. As result of these efforts, the Administrative Office of Pennsylvania Courts (the "AOPC") submitted the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (the "Policy") to the Supreme Court of Pennsylvania for adoption, which happened by Court Order dated January 6, 2017. The new Policy went into effect on January 6, 2018 and fundamentally changed how attorneys and their clients must deal with confidential information. For more information on the Policy, visit www.pacourts.us/public-records/public-records-policies.

The Policy consists of twelve (12) Sections, of which two (2) are vitally important to attorneys handling mortgage foreclosure actions and mortgage foreclosure defense cases. As previously outlined in the above materials, attorneys in mortgage foreclosure actions often find

themselves in possession of non-public personal information for borrowers. If litigating a foreclosure action, certain documents may be filed as exhibits or introduced at trial, which will become part of the public record for that case. Pursuant to the Policy, attorneys must be prepared to deal with both confidential information (Section 7.0) and confidential documents (Section 8.0).

Section 7.0 of the Policy provides that the following information will be considered confidential and should not be included in any document filed with the court, except on a Confidential Information Form ("CIF") filed contemporaneously with the document: 1) Social Security Numbers; 2) Financial Account Numbers; 3) Driver License Numbers; 4) State Identification Numbers; 5) Minors' names and dates of birth; and 6) Abuse victim's address and other contact information. The AOPC was charged with designing and publishing the CIF. It can be located on-line at http://www.pacourts.us/assets/files/page-1089/file-6574.pdf. In the alternative, a court may adopt a rule or order permitting the filing of any document in two versions, a "Redacted Version" and "Unredacted Version". Each pleading filed shall include a certification indicating compliance with this Policy. Failure to comply with the above requirements may result the imposition of sanctions by the Court upon the offending party and/or attorney.

Section 8.0 of the Policy provides that the following documents are confidential and shall be filed with the court under a cover sheet designated "Confidential Documents Form" ("CDF"): 1) Financial Source Documents; 2) Minors' educational records; 3) Medical/Psychological Records; 4) Children and Youth Services' records; 5) Marital Property Inventory and Pre-trial Statements; 6) Income and Expense Statements; and 7) Agreements between the parties as used in 23 Pa.C.S. 3105. The AOPC was charged with designing and publishing the CDF. It can be located on-line at http://www.pacourts.us/assets/files/page-1089/file-6575.pdf. Each pleading filed shall include a certification indicating compliance with this Policy. Failure to comply with the above requirements may result the imposition of sanctions by the Court upon the offending party and/or attorney.

Attorneys representing banks should be cognizant of the above-rules and ensure their complaints do not include any of the above information. Further, they must insure each filing as the required certification or risk rejection of the document by the prothonotary. Attorneys representing borrowers should also practice caution when filing responsive answers or other pleadings. Attorneys should not include references to bank account numbers or other personally identifiable information listed above. If attaching documents, both bank and borrowers' counsel should be wary of references to account numbers and social security numbers. Specifically, if attaching bank statements or cancelled checks, borrowers' counsel should be using the CDF. The same logic would apply to payment histories provided by mortgage lenders or servicers, which might include non-public personally identifying information, such as a social security number.

Appendices:

Section 7.0 Confidential Information

A. Unless required by applicable authority or as provided in Subsection C, the following information is confidential and shall be not included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document:

1. Social Security Numbers;
2. Financial Account Numbers, except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified;
3. Driver License Numbers;
4. State Identification (SID) Numbers;
5. Minors' names and dates of birth except when a minor is charged as a defendant in a criminal matter (see 42 Pa.C.S. § 6355); and
6. Abuse victim's address and other contact information, including employer's name, address and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Information Form.

C. Instead of using the Confidential Information Form, a court of record may adopt a rule or order permitting the filing of any document in two versions, a "Redacted Version" and "Unredacted Version." The "Redacted Version" shall not include any information set forth in Subsection A, while the "Unredacted Version" shall include the information. Redactions must be made in a manner that is visibly evident to the reader. This Subsection is not applicable to filings in a magisterial district court.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents."

E. A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply

with this section shall not affect access to case records that are otherwise accessible.

F. If a filed document fails to comply with the requirements of this section, a court of record may, upon motion or its own initiative, with or without a hearing order the filed document sealed, redacted, amended or any combination thereof. A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing order the filed document redacted, amended or both.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

COMMENTARY

There is authority requiring information listed in Subsection A to appear on certain documents. For example, Pa.R.C.P. No. 1910.27 provides for inclusion of the plaintiff's and defendant's social security number on a complaint for support.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, for example, cases filed under the Juvenile Act that are already protected by 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

While Pa.R.C.P. No. 1931 is suspended in most judicial districts, the reference to the rule is merely for definitional purposes.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

Whether using a Confidential Information Form or filing a redacted and unredacted version of a document in a court of record, the drafter shall indicate where in the document confidential information has been omitted. For example, the drafter could insert minors' initials in the document, while listing full names on the Confidential Information Form. If more than one child has the same initials, a different moniker should be used (e.g., child one, child two, etc.).

The option to file a redacted and unredacted version of a document does not apply to filings in a magisterial district court. Most filings in magisterial district courts are completed on statewide forms designed by the Administrative Office of Pennsylvania Courts. Safeguarding the information set forth in this Section for magisterial district courts is achieved through the use of a Confidential Information Form (see Subsection A) in tandem with other administrative protocols (e.g., instituting a public access copy page to the citation form set).

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system. Moreover, the certification is required on every document filed with a court or custodian regardless of whether the filing contains "confidential information" requiring safeguarding under this policy.

With regard to Subsection E, a court or custodian is not required to review or redact documents filed by a party or attorney for compliance with this section. However, such activities are not prohibited.

With regard to Subsection F any party may make a motion to the court of record to cure any defect(s) in any filed document that does not comport with this section**.**

With regard to Subsection G, any party may file a request form designed and published by the Administrative Office of Pennsylvania Courts with a magisterial district court when there is an allegation that a filing was made with that court that does not comply with this policy.

Section 8.0 Confidential Documents

A. Unless required by applicable authority, the following documents are confidential and shall be filed with a court or custodian under a cover sheet designated "Confidential Document Form":

1. Financial Source Documents;
2. Minors' educational records;
3. Medical/Psychological records;
4. Children and Youth Services' records;
5. Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33;
6. Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c); and
7. Agreements between the parties as used in 23 Pa.C.S. §3105.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Document Form.

C. Confidential documents submitted with the Confidential Document Form shall not be accessible to the public, except as ordered by a court. However, the Confidential Document Form or a copy of it shall be accessible to the public.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents."

E. A court or custodian is not required to review any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If confidential documents are not submitted with the Confidential Document Form, a court of record may, upon motion or its own initiative, with or without a hearing, order that any such documents be sealed. A court of record may also impose appropriate sanctions for failing to comply with this section.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing order that any such documents be sealed.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

COMMENTARY

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, such as Juvenile Act cases pursuant to 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from attaching confidential documents to court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

Examples of "agreements between the parties" as used in Subsection (A)(7) include marital settlement agreements, post-nuptial, pre-nuptial, ante-nuptial, marital settlement, and property settlement. See 23 Pa.C.S. §3105 for more information about agreements between parties.

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system. Moreover, the certification is required on every document filed with a court or custodian regardless of whether the filing contains a "confidential document" requiring safeguarding under this policy.

With regard to Subsection E, if the party or party's attorney fails to use a cover sheet designated "Confidential Document Form" when filing a document deemed confidential pursuant to this section, the document may be released to the public.

With regard to Subsection F any party may make a motion to the court of record to cure any defect(s) in any filed document that does not comport with this section.

With regard to Subsection G, any party may file a request form designed and published by the Administrative Office of Pennsylvania Courts with a magisterial district court when there is an allegation that a filing was made with that court that does not comply with this policy.

CONFIDENTIAL INFORMATION FORM

APPELLATE/TRIAL COURT CASE RECORDS

Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts
204 Pa. Code § 213.81
www.pacourts.us/public-records

_____ (Party name as displayed in case caption)

_____ Docket/Case No.

Vs.

_____ (Party name as displayed in case caption)

_____ Court

This form is associated with the pleading titled _____, dated_____.

Pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, the Confidential Information Form shall accompany a filing where confidential information is **required by law, ordered by the court, or otherwise necessary to effect the disposition of a matter**. This form, and any additional pages, shall remain confidential, except that it shall be available to the parties, counsel of record, the court, and the custodian. This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

This Information Pertains to:	Confidential Information:	References in Filing:
_____ (full name of adult) OR This information pertains to a minor with the initials of ____ and the full name of _____ (full name of minor) and date of birth: _____	Social Security Number (SSN): _____ Financial Account Number (FAN): _____ Driver's License Number (DLN): _____ State of Issuance: _____ State Identification Number (SID): _____	Alternative Reference: SSN 1 Alternative Reference: FAN 1 Alternative Reference: DLN 1 Alternative Reference: SID 1
_____ (full name of adult) OR This information pertains to a minor with the initials of ____ and the full name of _____ (full name of minor) and date of birth: _____	Social Security Number (SSN): _____ Financial Account Number (FAN): _____ Driver's License Number (DLN): _____ State of Issuance: _____ State Identification Number (SID): _____	Alternative Reference: SSN 2 Alternative Reference: FAN 2 Alternative Reference: DLN 2 Alternative Reference: SID 2

CONFIDENTIAL INFORMATION FORM



APPELLATE/TRIAL COURT CASE RECORDS

Additional page(s) attached. _____ total pages are attached to this filing.

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

_____ _____

Signature of Attorney or Unrepresented Party Date

Name: _____ Attorney Number: (if applicable)_____

Address: _____ Telephone: _____

_____ Email: _____

***NOTE:* Parties and attorney of record in a case will have access to this Confidential Information Form. Confidentiality of this information must be maintained.**

CONFIDENTIAL INFORMATION FORM



APPELLATE/TRIAL COURT CASE RECORDS

Additional page (if necessary)

This Information Pertains to:	Confidential Information:	References in Filing:
_____ (full name of adult) OR This information pertains to a minor with the initials of ____ and the full name of _____ (full name of minor) and date of birth: _____	Social Security Number (SSN): _____ Financial Account Number (FAN): _____ Driver's License Number (DLN): _____ State of Issuance: _____ State Identification Number (SID): _____	Alternative Reference: SSN ___ Alternative Reference: FAN ___ Alternative Reference: DLN ___ Alternative Reference: SID ___
_____ (full name of adult) OR This information pertains to a minor with the initials of ____ and the full name of _____ (full name of minor) and date of birth: _____	Social Security Number (SSN): _____ Financial Account Number (FAN): _____ Driver's License Number (DLN): _____ State of Issuance: _____ State Identification Number (SID): _____	Alternative Reference: SSN ___ Alternative Reference: FAN ___ Alternative Reference: DLN ___ Alternative Reference: SID ___

CONFIDENTIAL INFORMATION FORM



APPELLATE/TRIAL COURT CASE RECORDS

Instructions for Completing the Confidential Information Form

The following information is confidential and shall not be included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document:

1. Social Security Numbers

2. Financial Account Numbers, except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified. "Financial Account Numbers" include financial institution account numbers, debit and credit card numbers, and methods of authentication used to secure accounts such as personal identification numbers, user names and passwords.

3. Driver License Numbers

4. State Identification (SID) Numbers

5. Minors' names and dates of birth except when a minor is charged as a defendant in a criminal matter (see 42 Pa.C.S. § 6355). "Minor" is a person under the age of eighteen.

6. Abuse victim's address and other contact information, including employer's name, address and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name. "Abuse Victim" is a person for whom a protection order has been granted by a court pursuant to Pa.R.C.P. No. 1901 et seq. and 23 Pa.C.S. § 6101 et seq. or Pa.R.C.P. No. 1951 et seq. and 42 Pa.C.S § 62A01 et seq. **If necessary, this information must be provided on the separate Abuse Victim Addendum. Please note there are separate instructions for the completion of the Addendum located on the form.**

Please note this form does not need to be filed in types of cases that are sealed or exempted from public access pursuant to applicable authority (e.g. juvenile, adoption, etc.).

- **The best way to protect confidential information is not to provide it to the court. Therefore, only provide confidential information to the court when it is required by law, ordered by the court or is otherwise necessary to effect the disposition of a matter.**
- Do not include confidential information in any other document filed with the court under this docket.
- If you need to refer to a piece of confidential information in a document, use the alternate references. If you need to attach additional pages, sequentially number each alternate reference – i.e. SSN 3, SSN 4, etc.
- This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

A court or custodian is not required to review or redact any filed document for compliance with *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

If a filed document fails to comply with the requirements of the above referenced policy, a court may, upon motion or its own initiative, with or without a hearing, order the filed document sealed, redacted, amended or any combination thereof. A court may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

CONFIDENTIAL INFORMATION FORM



APPELLATE/TRIAL COURT CASE RECORDS

Abuse Victim Addendum

Instructions for Completing the Abuse Victim Addendum: The Abuse Victim Addendum shall accompany a filing where confidential information is being provided by an abuse victim, as defined in this policy, **in family court actions** (see Pa.R.C.P. No. 1931(a)), **as required by law, ordered by the court, or otherwise necessary to effect the disposition of a matter.** This addendum, and any additional pages, shall only be provided to the court and shall remain confidential.The best way to protect confidential information is not to provide it to the court. Therefore, only provide confidential information to the court when it is required by law, ordered by the court or is otherwise necessary to effect the disposition of a matter.

Type of Family Court Action

☐ Divorce, Annulment, Dissolution of Marriage ☐ Child Custody

☐ Support ☐ Paternity ☐ Protection from Abuse

This Information Pertains to:	Confidential Information:	References in Filing:
_____ (full name of abuse victim)	AV Address:	Alternative Reference: AV 1 Address
	AV Employer's Name & Address:	Alternative Reference: AV 1 Employer's Name & Address
_____ Docket/Case No. of Protection Order	AV Work Schedule:	Alternative Reference: AV 1 Work Schedule
_____ Court/County	AV Other contact information:	Alternative Reference: AV 1 Other contact information

Attach additional page(s) if necessary.

CONFIDENTIAL INFORMATION FORM



APPELLATE/TRIAL COURT CASE RECORDS

Abuse Victim Addendum

Additional page (if necessary)

Type of Family Court Action

☐ Divorce, Annulment, Dissolution of Marriage ☐ Child Custody

☐ Support ☐ Paternity ☐ Protection from Abuse

This Information Pertains to:	Confidential Information:	References in Filing:
_____ (full name of abuse victim)	AV Address: _____	Alternative Reference: AV __ Address
	AV Employer's Name & Address: _____	Alternative Reference: AV __ Employer's Name & Address
_____ Docket/Case No. of Protection Order	AV Work Schedule: _____	Alternative Reference: AV __Work Schedule
_____ Court/County	AV Other contact information:	Alternative Reference: AV __ Other contact information

Type of Family Court Action

☐ Divorce, Annulment, Dissolution of Marriage ☐ Child Custody

☐ Support ☐ Paternity ☐ Protection from Abuse

This Information Pertains to:	Confidential Information:	References in Filing:
_____ (full name of abuse victim)	AV Address: _____	Alternative Reference: AV __ Address
	AV Employer's Name & Address: _____	Alternative Reference: AV __ Employer's Name & Address
_____ Docket/Case No. of Protection Order	AV Work Schedule: _____	Alternative Reference: AV __Work Schedule
_____ Court/County	AV Other contact information:	Alternative Reference: AV __ Other contact information

CONFIDENTIAL DOCUMENT FORM



APPELLATE/TRIAL COURT CASE RECORDS

Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts
204 Pa. Code § 213.81
www.pacourts.us/public-records

_____ (Party name as displayed in case caption)

_____ Docket/Case No.

Vs.

_____ (Party name as displayed in case caption)

_____ Court

This form is associated with the pleading titled _____, dated _____, _____.

Pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, the Confidential Document Form shall accompany a filing where a confidential document is required by law, ordered by the court, or is otherwise necessary to effect the disposition of a matter. This form shall be accessible to the public, however the documents attached will not be publicly accessible, except as ordered by a court. The documents attached will be available to the parties, counsel of record, the court, and the custodian. **Please only attach documents necessary for the purposes of this case.** Complete the entire form and check all that apply. This form and any additional pages must be served on all unrepresented parties and counsel of record.

Type of Confidential Document	Paragraph, page, etc. where the confidential document is referenced in the filing:
☐ Financial Source Documents ☐ Tax Returns and schedules	
☐ W-2 forms and schedules including 1099 forms or similar documents	
☐ Wage stubs, earning statements, or other similar documents	
☐ Credit card statements	
☐ Financial institution statements (e.g., investment/bank statements)	
☐ Check registers	
☐ Checks or equivalent	
☐ Loan application documents	
☐ Minors' educational records	
☐ Medical/Psychological records	
☐ Children and Youth Services' records	
☐ Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33	
☐ Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)	
☐ Agreements between the parties as used in 23 Pa.C.S. §3105	

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

_____ Signature of Attorney or Unrepresented Party

_____ Date

Name: _____

Attorney Number: (if applicable) _____

Address: _____

Telephone: _____

_____

Email: _____

CONFIDENTIAL DOCUMENT FORM



APPELLATE/TRIAL COURT CASE RECORDS

Instructions for Completing the Confidential Document Form

The following documents are confidential and shall be filed with a court or custodian with the "Confidential Document Form":

1. Financial Source Documents as listed on the form
2. Minors' educational records
3. Medical/Psychological records are defined as "records relating to the past, present, or future physical or mental health or condition of an individual"
4. Children and Youth Services' records
5. Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33
6. Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)
7. Agreements between the parties as used in 23 Pa.C.S. §3105

For each confidential document, list the paragraph, page, etc. where the document is referenced in the filing. Please note, this form does not need to be filed in types of cases that are sealed or exempted from public access pursuant to applicable authority (e.g. juvenile, adoption, etc.)

- **Please only attach documents necessary for the purposes of this case.**
- Complete the entire form and check all that apply.
- This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

A court or custodian is not required to review or redact any filed document for compliance with the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. A party's or attorney's failure to comply shall not affect access to case records that are otherwise accessible.

If a filed document fails to comply with the above referenced policy, a court may, upon motion or its own initiative, with or without a hearing, order the filed document sealed, redacted, amended or any combination thereof. A court may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.



Protecting Confidential Information - Here's How

Case Records Public Access Policy of the Unified Judicial System of Pennsylvania
Section 7.0 Confidential Information Form

Unless required by applicable authority, the following information is confidential and shall not be included in any document filed with the court or custodian, except on a Confidential Information Form filed contemporaneously with the document.

What information is confidential?

- Social Security Numbers
- Financial Account Numbers except the last four digits when the financial account is the subject of the case and cannot otherwise be identified
- Driver License Numbers
- State Identification (SID) Numbers
- Minors' Names and Dates of Birth (except when minor is charged as a defendant in a criminal matter)
- Abuse Victim's Address and Other Contact Information in family court actions (including: employer's name, address and work schedule)

How do I file with a Confidential Information Form?

The Confidential Information Form and detailed filing instructions can be found on the website or QR Code at the bottom of this page. The Confidential Information Form is not required in cases (e.g. juvenile, adoption) that are sealed or exempted from public access pursuant to applicable authority.

Parties and their attorneys shall be solely responsible for complying with the provisions of the policy and shall certify their compliance to the court. A certification is included on the Confidential Information Form, stating: "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents."

What else do I need to know?

- A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.
- If a filed document fails to comply with the requirements of the above referenced policy, a court of record may, upon motion or its own initiative, with or without a hearing, order the filed document sealed, redacted, amended or any combination thereof; a magisterial district court may, upon request or its own initiative, redact, amend or both.
- A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

Section 7.0 shall apply to all documents for any case filed by a party or their attorney with a court or custodian.

For more information: Visit http://www.pacourts.us/public-record-policies.



Protecting Confidential Information - Here's How

Case Records Public Access Policy of The Unified Judicial System Of Pennsylvania
Section 7.0 Redacted And Unredacted Filings

Unless required by applicable authority, two versions of every document must be filed with the court – a "Redacted Version" (not including the items listed below) and an "Unredacted Version" (shall include the items listed below). Redactions must be made in a manner that is visibly evident to the reader. **Only the redacted version will be accessible to the public.**

Parties and their attorneys shall be solely responsible for complying with the provisions of the policy and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the *Case Records Public Access Policy Of The Unified Judicial System Of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents."

A sample certification form can be found on the website or QR code at the bottom of this page.

Filing a "Redacted Version" and "Unredacted Version" is not required in cases (e.g. juvenile, adoption) that are sealed or exempted from public access pursuant to applicable authority.

What information is confidential and should be redacted?

- Social Security Numbers
- Financial Account Numbers except the last four digits when the financial account is the subject of the case and cannot otherwise be identified
- Driver License Numbers
- State Identification (SID) Numbers
- Minors' Names and Dates of Birth (except when minor is charged as a defendant in a criminal matter)
- Abuse Victim's Address and Other Contact Information in family court actions (including: employer's name, address and work schedule)

What else do I need to know?

- A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.
- If a filed document fails to comply with the above referenced policy, a court of record may, upon motion or its own initiative, with or without hearing, order the filed document sealed; a magisterial district court may do so upon request or its own initiative.
- A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

Section 7.0 shall apply to all documents for any case filed by a party or their attorney with a court or custodian.

For more information: Visit http://www.pacourts.us/public-record-policies.



Protecting Confidential Documents - Here's How

Case Records Public Access Policy of the Unified Judicial System of Pennsylvania
Section 8.0 Confidential Document Form

Unless required by applicable authority, the following documents are confidential and shall be filed with a court or custodian with the Confidential Document Form.

What documents are confidential?

- Financial Source Documents
- Minors' Educational Records
- Medical/Psychological Records
- Children and Youth Services Records
- Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33
- Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)
- Agreements between Parties as used in 23 Pa.C.S. § 3105

How do I file with a Confidential Document Form?

The Confidential Document Form and detailed filing instructions can be found on the website or QR Code at the bottom of this page. The Confidential Document Form is not required in cases (e.g. juvenile, adoption) that are sealed or exempted from public access pursuant to applicable authority.

Parties and their attorneys shall be solely responsible for complying with the provisions of the policy and shall certify their compliance to the court. A certification is included on the Confidential Document Form, stating: "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents."

Confidential documents submitted with the Confidential Document Form shall not be accessible to the public, except as ordered by a court. However, the Confidential Document Form or a copy of it shall be accessible to the public.

What else do I need to know?

- A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.
- If a filed document fails to comply with the above referenced policy, a court of record may, upon motion or its own initiative, with or without a hearing, order the filed document sealed; a magisterial district court may do so upon request or its own initiative.
- A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

Section 8.0 shall apply to all documents for any case filed by a party or their attorney with a court or custodian.

For more information: Visit http://www.pacourts.us/public-record-policies.

Protecting Confidential Information - Here's How

A certification shall accompany each filing in accordance with the policy. A court or custodian is not required to review any filed document for compliance with this policy. Failure to comply may lead to imposed sanctions.

Confidential Information

Unless required by applicable authority, the following information shall not be included in any document filed with a court or custodian, except on a *"Confidential Information Form"* filed contemporaneously with the document.

1. **Social Security Numbers**

2. **Financial Account Numbers** except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified

3. **Driver License Numbers**

4. **State Identification (SID) Numbers**

5. **Minors' Names and Dates of Birth** except when a minor is charged as defendant in a criminal matter (see 42 Pa.C.S. §6355)

6. **Abuse Victim's Address and other Contact Information** including employer's name, address, and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name

Confidential Documents

Unless required by applicable authority, the following documents shall be filed with a court or custodian with the "*Confidential Document Form*."

1. **Financial Source Documents**

2. **Minors' Educational Records**

3. **Medical/Psychological Records**

4. **Children and Youth Services' Records**

5. **Marital Property Inventory and Pre-Trial Statement** as provided in Pa.R.C.P. No. 1920.33

6. **Income and Expense Statement** as provided in Pa.R.C.P. No. 1910.27(c)

7. **Agreements between the Parties** as used in 23 Pa.C.S. §3105

These requirements do not apply to case types (e.g. juvenile, adoption) that are sealed or exempted from public access pursuant to applicable authority.

For forms and more information, reference the *Case Records Public Access Policy Of The Unified Judicial System Of Pennsylvania* at the website below.

Please visit:
http://www.pacourts.us/public-records/public-records-policies

CONFIDENTIAL DOCUMENT FORM

Case Records Public Access Policy of the Unified Judicial System of Pennsylvania
204 Pa. Code § 213.81
www.pacourts.us/public-records

_____ (Party name as displayed in case caption)

_____ Docket/Case No.

Vs.

_____ (Party name as displayed in case caption)

_____ Court

This form is associated with the pleading titled _____, dated _____, _____.

Pursuant to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, the Confidential Document Form shall accompany a filing where a confidential document is required by law, ordered by the court, or is otherwise necessary to effect the disposition of a matter. This form shall be accessible to the public, however the documents attached shall not be publicly accessible, except as ordered by a court. The documents attached will be available to the parties, counsel of record, the court, and the custodian. **Please only attach documents necessary for the purposes of this case**. Complete the entire form and check all that apply. This form and any additional pages must be served on all unrepresented parties and counsel of record.

Type of Confidential Document	**Paragraph, page, etc. where the confidential document is referenced in the filing:**
☐ Financial Source Documents ☐ Tax Returns and schedules	
☐ W-2 forms and schedules including 1099 forms or similar documents	
☐ Wage stubs, earning statements, or other similar documents	
☐ Credit card statements	
☐ Financial institution statements (e.g., investment/bank statements)	
☐ Check registers	
☐ Checks or equivalent	
☐ Loan application documents	
☐ Minors' educational records	
☐ Medical/Psychological records	
☐ Children and Youth Services' records	
☐ Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33	
☐ Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)	
☐ Agreements between the parties as used in 23 Pa.C.S. §3105	

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

_____ Signature of Attorney or Unrepresented Party

_____ Date

Name: _____

Attorney Number: (if applicable) _____

Address: _____

Telephone: _____

_____

Email: _____

CONFIDENTIAL
DOCUMENT FORM

Instructions for Completing the Confidential Document Form

The following documents are confidential and shall be filed with a court or custodian with the "Confidential Document Form":

1. Financial Source Documents as listed on the form
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3. Medical/Psychological records are defined as "records relating to the past, present, or future physical or mental health or condition of an individual"
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6. Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c)
7. Agreements between the parties as used in 23 Pa.C.S. § 3105

For each confidential document, list the paragraph, page, etc. where the document is referenced in the filing. Please note, this form does not need to be filed in types of cases that are sealed or exempted from public access pursuant to applicable authority (e.g. juvenile, adoption, etc.)

- **Please only attach documents necessary for the purposes of this case**.
- Complete the entire form and check all that apply.
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If a filed document fails to comply with the above referenced policy, a court of record may, upon motion or its own initiative, with or without a hearing, order the filed document sealed; a magisterial district court may do so upon request or its own initiative. A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

PBI Urges You to Join PBA!

The Pennsylvania Bar Institute is the continuing legal education arm of the Pennsylvania Bar Association. Together, the two organizations work to serve you, the practicing Pennsylvania lawyer. By joining PBA, you'll get great discounts on PBI publications and courses—not to mention other member benefits such as malpractice insurance and discounts on magazines, office equipment, and Casemaker.

You'll want to also join one of PBA's 18 Sections on nearly every area of the law to stay current on changing rules and to network with other attorneys who practice in the same area as you do. So don't delay. Join PBA today and start receiving your benefits right away. For a complete packet of information on PBA, call 1-800-932-0311, or 717-238-6715.

To join, complete the following application (see the reverse for information on dues and Sections) and mail to:

PBA Member Records
P.O. Box 186, Harrisburg, PA 17108

Full Name of Applicant_____ Supreme Court I.D. #_____

Firm or Office Address_____ State_____ Zip_____

Firm or Office Telephone_____ FAX #_____ E-mail_____

Home Address _____ City _____

State_____ Zip_____ County_____ Date of Birth_____

❑ I am an attorney employed full time by a local, state, or federal government agency or a nonprofit legal services office, as opposed to an independent contractor. Your Signature_____

Type of Practice ❑ Private ❑ Government ❑ Corporate

Area(s) of Specialization _____

Date Admitted to Supreme Court of Pennsylvania _____

(or) Date Admitted _____ in County of _____

Earliest Date Admitted in Any State _____ State_____

Have you ever been a member of this association? ❑ Yes ❑ No

Other State or Local Bar Memberships_____

_____

Please enroll me in the Association and any Sections checked on the reverse!

Applicant's signature_____

❑ Payment Enclosed (Make checks payable to the **PA Bar Association**)

Charge my: ❑ VISA ❑ MasterCard ❑ DISCOVER ❑

Card #_____ Exp. Date_____

Billing Address_____ City_____ State_____ Zip_____

Please send all PBA mailings to my: ❑ Home ❑ Office

❑ Check here if you do **NOT** want your FAX number to appear in PBA publications. *PBI Book—Rev. 1/18*

For More Information Call PBA:
800-932-0311 or 717-238-6715

2020 Schedule of Dues

EARLIEST ADMIT DATE TO ANY STATE BAR	PRORATED SCHEDULE	DUES	GOV'T ATTY.*
On or before 9/19/16	Nov.–March	$335.00	$268.00
	April–June	252.00	201.00
	July–Sept.	168.00	134.00
	Oct.–Dec.	84.00	67.00
9/20/16 thru 9/19/17	Nov.–March	$268.00	$215.00
	April–June	201.00	162.00
	July–Sept.	134.00	108.00
	Oct.–Dec.	67.00	54.00
9/20/17 thru 9/19/18	Nov.–March	$201.00	$161.00
	April–June	151.00	121.00
	July–Sept.	101.00	81.00
	Oct.–Dec.	51.00	41.00
9/20/18 thru 9/19/19	Nov.–March	$134.00	$108.00
	April–June	101.00	81.00
	July–Sept.	67.00	54.00
	Oct.–Dec.	34.00	27.00
On or after 9/20/19	FREE		

LAWYERS NOT ADMITTED TO PRACTICE IN PA (ASSOCIATE MEMBERSHIP)

Not Admitted to PA Bar	Nov.–May	$175.00	N/A
	June–Dec.	88.00	N/A

**A government attorney is defined as an attorney who is employed full time by a local, state, or federal government agency or a nonprofit legal services agency, as opposed to an independent contractor.*

If you are a private practitioner in one of the counties listed, you must first be a member of a local bar assn. before joining the PBA. If you have any questions or need a referral to a local bar assn., please call 800-932-0311 or 717-238-6715.

Adams, Armstrong, Beaver, Bedford, Berks, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Crawford, Cumberland, Dauphin, Elk, Erie, Fayette, Franklin, Fulton, Greene, Huntingdon, Jefferson, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Lycoming, Mercer, Mifflin, Montgomery, Northampton, Northumberland, Pike, Potter, Schuylkill, Somerset, Susquehanna, Tioga, Union/Snyder, Venango, Wayne, Westmoreland, Wyoming/Sullivan, York.

Important Tax Information—Your dues payment will not be deductible as a charitable contribution but will, in general, be deductible for most members as a business expense, except to the extent provided in the next sentence. Pursuant to the Revenue Reconciliation Act of 1993, PBA estimates that 4% of your dues payment will not be deductible as an ordinary and necessary business expense because of PBA's lobbying activities on behalf of its members.

Section Registration Request Form*

- ❑ Administrative Law $25.00
- ❑ Aeronautical & Space Law $20.00
- ❑ Business Law $40.00
- ❑ Civil Litigation $45.00
- ❑ Criminal Justice $35.00
- ❑ Education Law $15.00
- ❑ Elder Law $45.00
- ❑ Environmental & Energy Law $25.00
- ❑ Family Law $65.00
- ❑ Intellectual Property Law $45.00
- ❑ International & Comparative Law $15.00
- ❑ Labor & Employment Law $40.00
- ❑ Municipal Law $15.00
- ❑ Public Utility Law $35.00
- ❑ Real Property, Probate & Trust Law. $35.00
- ❑ Solo & Small Firm Practice $40.00
- ❑ Tax Law $15.00
- ❑ Workers' Compensation Law $30.00

❑ Check here if you are a new section member or you have not belonged to the selected section for five years or longer. You will receive a free, one-year section membership! (Limited to one free section membership.)

**Current as of Jan. 1, 2020; dues fees in effect until Dec. 31, 2020. Call PBA at 800-932-0311 or 717-238-6715 for current information.*

PBA Working Rules of Professionalism



The practice of law is a profession, a genuine calling inspirited with service to the system of justice, not a common business enterprise. The quality of the profession is only as worthy as the character of the people who practice it.

Self-esteem, shared respect for each other, the clients we serve, the judges and the officers with whom we work, are essential to it.

Civility is a virtue, not a shortcoming. Willingness to temper zeal with respect for society's interest in preserving responsible judicial process will help to preserve it.

Unwritten rules of professional courtesy have long sustained us. Since they are sometimes forgotten, we should set them down again and conscientiously observe them.

1 Treat with civility the lawyers, clients, opposing parties, the Court, and all the officials with whom we work. Professional courtesy is compatible with vigorous advocacy and zealous representation.

2 Communications are lifelines. Keep the lines open. Telephone calls and correspondence are a two-way channel; respond to them promptly.

3 Respect other lawyers' schedules as your own. Seek agreement on meetings, depositions, hearings and trial dates. A reasonable request for a scheduling accommodation should never be unreasonably refused.

4 Be punctual in appointments, communications and in honoring scheduled appearances. Neglect and tardiness are demeaning to others and the judicial system.

5 Procedural rules are necessary to judicial order and decorum. Be mindful that pleadings, discovery processes and motions cost time and money. They should not be heedlessly used. If an adversary is entitled to something, provide it without unnecessary formalities.

6 Grant extensions of time when they are reasonable and when they will not have a material, adverse effect on your client's interest.

7 Resolve differences through negotiation, expeditiously and without needless expense.

8 Enjoy what you are doing and the company you keep. You and the world will be better for it.

Beyond all this, the respect of our peers and the society which we serve is the ultimate measure of responsible professional conduct.