

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1373 Session of
2012

INTRODUCED BY GREENLEAF, BOSCOLA, EARLL, PILEGGI, BROWNE AND
FERLO, JANUARY 9, 2012

REFERRED TO JUDICIARY, JANUARY 9, 2012

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for six
3 months limitation and for deficiency judgments.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Sections 5522(b)(2) and (6) and 8103(a), (b), (c)
7 (3) and (5), (e), (f.1), (f.2) and (g) of Title 42 of the
8 Pennsylvania Consolidated Statutes, amended or added by the act
9 of November 24, 2004 (P.L.1243, No.152), amendment declared
10 unconstitutional, 5 A.3d 353 (Pa. Superior 2010), stay granted
11 retroactively to September 8, 2010 (Pa. Superior 2010), limited
12 petition for allowance of appeal granted, 937 MAL 2010 (Pa.
13 2011), are reenacted to read:

14 § 5522. Six months limitation.

15 * * *

16 (b) Commencement of action required.--The following actions
17 and proceedings must be commenced within six months:

18 * * *

1 (2) A petition for the establishment of a deficiency
2 judgment following execution and delivery of the sheriff's
3 deed for the property sold in connection with the execution
4 proceedings referenced in the provisions of section 8103(a)
5 (relating to deficiency judgments).

6 * * *

7 (6) A petition for redetermination of fair market value
8 pursuant to section 8103(f.1)(4) following execution and
9 delivery of the sheriff's deed for the property sold in
10 connection with the execution proceedings referenced under
11 section 8103.

12 § 8103. Deficiency judgments.

13 (a) General rule.--Whenever any real property is sold,
14 directly or indirectly, to the judgment creditor in execution
15 proceedings and the price for which such property has been sold
16 is not sufficient to satisfy the amount of the judgment,
17 interest and costs and the judgment creditor seeks to collect
18 the balance due on said judgment, interest and costs, the
19 judgment creditor shall petition the court to fix the fair
20 market value of the real property sold. The petition shall be
21 filed as a supplementary proceeding in the matter in which the
22 judgment was entered. If the judgment was transferred from the
23 county in which it was entered to the county where the execution
24 sale was held, the judgment shall be deemed entered in the
25 county in which the sale took place.

26 (b) Effect of failure to give notice.--Any debtor and any
27 owner of the property affected thereby, who is neither named in
28 the petition nor served with a copy thereof or notice of the
29 filing thereof as prescribed by general rule, shall be deemed to
30 be discharged from all personal liability to the judgment

1 creditor on the debt, interest and costs, but any such failure
2 to name such person in the petition or to serve the petition or
3 notice of the filing thereof shall not prevent proceedings
4 against any respondent named and served.

5 (c) Action on petition.--

6 * * *

7 (3) If an answer is filed alleging as the fair market
8 value an amount in excess of the fair market value of the
9 property as averred in the petition, the judgment creditor
10 may agree to accept as the fair market value of the property
11 the value set up in the answer and in such case may file a
12 stipulation releasing the debtors and the owners of the
13 property affected thereby, from personal liability to the
14 judgment creditor to the extent of the fair market value as
15 averred in the answer, less the amount of any prior liens,
16 costs, taxes and municipal claims not discharged by the sale,
17 and also less the amount of any such items paid at
18 distribution on the sale.

19 * * *

20 (5) After the hearing, if any, and the determination by
21 the court under paragraph (1), (2) or (4) of the fair market
22 value of the property sold, then, except as otherwise
23 provided in subsection (f), the debtor shall be released and
24 discharged of such liability to the judgment creditor to the
25 extent of the fair market value of said property determined
26 by the court, less the amount of all prior liens, costs,
27 taxes and municipal claims not discharged by the sale, and
28 also less the amount of any such items paid at the
29 distribution on the sale, and shall also be released and
30 discharged of such liability to the extent of any amount by

1 which the sale price, less such prior liens, costs, taxes and
2 municipal claims, exceeds the fair market value as agreed to
3 by the judgment creditor or fixed and determined by the court
4 as provided in this subsection, and thereupon the judgment
5 creditor may proceed by appropriate proceedings to collect
6 the balance of the debt.

7 * * *

8 (e) Waiver of benefit of section prohibited.--Any agreement
9 made by any debtor at any time, either before or after or at the
10 time of incurring any obligation, to waive the benefits of this
11 section or to release any obligee from compliance with the
12 provisions hereof shall be void.

13 * * *

14 (f.1) Collateral located in more than one county.--

15 (1) If the real property collateral is located in more
16 than one county in this Commonwealth, a judgment creditor may
17 elect not to file a valuation petition in the court in each
18 of such counties as provided under subsection (a) and shall
19 not be subject to the penalties for failure to file the
20 petition under subsection (d) if the judgment creditor is a
21 nonconsumer judgment creditor and the provisions of
22 paragraphs (2) and (3) are satisfied.

23 (2) The judgment creditor shall petition the deficiency
24 court to determine and fix the fair market value of all of
25 the real property collateral as provided under subsection (c)
26 (1), (2), (3) and (4). The value shall be determined on a
27 parcel-by-parcel basis, and the amount so fixed for each
28 parcel comprising the real property collateral shall be the
29 fair market value for the parcel for all purposes under this
30 subsection unless redetermined as provided in paragraph (4).

1 (3) The determination of the fair market value of the
2 real property collateral by the deficiency court as provided
3 in paragraph (2) shall be made before an execution sale is
4 held with respect to any of the real property collateral.

5 (4) (i) If the execution sale of a parcel of real
6 property is concluded and the judgment creditor is the
7 purchaser of the parcel at the sale, then either the judgment
8 creditor or the debtor may file a petition with the
9 deficiency court seeking a redetermination of the fair market
10 value of the parcel provided the petition is filed within the
11 six-month period established under section 5522(b)(6).

12 (ii) If the petition is filed in a timely manner,
13 the deficiency court shall redetermine the fair market
14 value of the parcel in the manner provided in subsection
15 (c)(1), (2), (3) and (4). The redetermined value shall be
16 the fair market value of the parcel for all purposes
17 under this subsection.

18 (iii) The filing of the petition for the
19 redetermination shall not limit or affect the judgment
20 creditor's ability to execute on the real property
21 collateral unless and until the value is redetermined by
22 the court. However, where the debtor alleges in its
23 petition that an appropriate redetermination of value by
24 the court with respect to property that has already been
25 sold to the judgment creditor at an execution sale would
26 be sufficient to satisfy the judgment in full, the
27 deficiency court may issue a stay of further execution
28 proceedings pending the court's ruling on the petition
29 for redetermination of value.

30 (5) In cases subject to this subsection, the debtor

1 shall be released and discharged from liability for the
2 payment of the debt in the manner provided in subsection (c)
3 (5) to the extent of:

4 (i) the fair market value determined by the
5 deficiency court of all real property collateral
6 purchased by the judgment creditor in execution
7 proceedings on the judgment less the deductible items
8 described in subsection (c) (5); and

9 (ii) the amount distributed to the judgment creditor
10 as a result of the sale of the real property collateral
11 purchased in the proceedings by third parties.

12 (f.2) Foreign collateral.--

13 (1) No deficiency court shall have the power to fix the
14 fair market value of real property located outside this
15 Commonwealth and may not take into account the value of that
16 property in considering whether or not a deficiency exists
17 under this section.

18 (2) This section shall not apply to the sale of any real
19 property located outside this Commonwealth.

20 (g) Definitions.--As used in this section, the following
21 words and phrases shall have the meanings given to them in this
22 subsection:

23 "Adjusted value." The assessed value of a parcel of real
24 property collateral determined for real estate tax purposes
25 times the applicable common level ratio factor published by the
26 State Tax Equalization Board.

27 "Consumer credit transaction." A credit transaction in which
28 the party to whom credit is offered or extended is a natural
29 person and the money, property or services which are the subject
30 of the transaction are primarily for personal, family or

1 household purposes.

2 "Debtor." A debtor, obligor, guarantor, surety and any other
3 person liable directly or indirectly to a judgment creditor for
4 the payment of a debt.

5 "Deficiency court." With respect to cases covered by
6 subsection (f.1), the court of common pleas located in the
7 county where the highest adjusted value land is located.

8 "Highest adjusted value land." The real property collateral
9 located in a county that has a higher aggregate adjusted value
10 than real property collateral located in any other county.

11 "Judgment." The judgment which was enforced by the execution
12 proceedings referred to in subsection (a), whether that judgment
13 is a judgment in personam such as a judgment requiring the
14 payment of money or a judgment de terris or in rem such as a
15 judgment entered in an action of mortgage foreclosure or a
16 judgment entered in an action or proceeding upon a mechanic's
17 lien, a municipal claim, a tax lien or a charge on land.

18 "Judgment creditor." The holder of the judgment which was
19 enforced by the execution proceedings.

20 "Nonconsumer judgment creditor." Any judgment creditor
21 except a judgment creditor whose judgment was entered with
22 respect to a consumer credit transaction.

23 "Nonrecourse portion of the obligation." The portion as to
24 which the judgment creditor's recourse is limited to the
25 mortgaged property or other specified assets of the debtor which
26 are less than all of such assets.

27 "Partial recourse obligation." An obligation which includes
28 both a nonrecourse portion and a recourse portion.

29 "Real property collateral." All of the real property subject
30 to a lien securing the obligation evidenced by the judgment and

1 located within this Commonwealth.

2 "Recourse portion of the obligation." All of the obligation
3 except the nonrecourse portion thereof.

4 "Valuation petition." A petition to fix the fair market
5 value of real property sold as required by subsection (a).

6 Section 2. The reenactment of sections 5522(b)(2) and (6)
7 and 8103(a), (b), (c)(3) and (5), (e), (f.1), (f.2) and (g) of
8 Title 42 of the Pennsylvania Consolidated Statutes shall apply
9 retroactively to January 2, 2005.

10 Section 3. This act shall take effect immediately.