

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1262 Session of
1998

INTRODUCED BY GREENLEAF, HOLL, HART, LEMMOND, WILLIAMS AND
HELFRICK, JANUARY 26, 1998

REFERRED TO JUDICIARY, JANUARY 26, 1998

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 actions that must be commenced within six months and for
4 deficiency judgments.

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

7 Section 1. Sections 5522(b)(2) and 8103 of Title 42 of the
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 5522. Six months limitation.

10 * * *

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

13 * * *

14 (2) A petition for the establishment of a deficiency
15 judgment following [sale of the collateral of the debtor
16 under] conclusion of the auction at which the property is
17 sold in connection with the execution proceedings referenced
18 in the provisions of section 8103 (relating to deficiency

1 judgments).

2 * * *

3 § 8103. Deficiency judgments.

4 (a) General rule.--Whenever any real property is sold,
5 directly or indirectly, to the judgment creditor in execution
6 proceedings and the price for which such property has been sold
7 is not sufficient to satisfy the amount of the judgment,
8 interest and costs and the judgment creditor seeks to collect
9 the balance due on said judgment, interest and costs, the
10 judgment creditor shall petition the court [having jurisdiction]
11 to fix the fair market value of the real property sold. The
12 petition shall be filed as a supplementary proceeding in the
13 matter in which the judgment was entered.

14 (b) Effect of failure to give notice.--Any debtor, obligor,
15 guarantor, mortgagor, and any other person directly or
16 indirectly liable to the judgment creditor for the payment of
17 the debt, and any owner of the property affected thereby, who is
18 neither named in the petition nor served with a copy thereof or
19 notice of the filing thereof as prescribed by general rule,
20 shall be deemed to be discharged from all personal liability to
21 the judgment creditor on the debt, interest and costs, but any
22 such failure to name such person in the petition or to serve the
23 petition or notice of the filing thereof shall not prevent
24 proceedings against any respondent named and served.

25 (c) Action on petition.--

26 (1) If no answer is filed within the time prescribed by
27 general rule, or if an answer is filed which does not
28 controvert the allegation of the fair market value of the
29 property as averred in the petition, the court shall
30 determine and fix as the fair market value of the property

1 sold the amount thereof alleged in the petition to be the
2 fair market value.

3 (2) If an answer is filed controverting the averment in
4 the petition as to the fair market value of the property, but
5 no testimony is produced at the hearing supporting such
6 denial of the fair market value, the court shall determine
7 and fix as the fair market value of the property sold the
8 amount thereof alleged in the petition to be the fair market
9 value[, and thereupon enter a decree directing the judgment
10 creditor to file release of the debtors, obligors, guarantors
11 or any other persons directly or indirectly liable for the
12 debts, to the extent of the fair value so fixed, whereupon
13 execution may be issued for the balance of the debt].

14 (3) If an answer is filed alleging as the fair market
15 value an amount in excess of the fair market value of the
16 property as averred in the petition, the judgment creditor
17 may agree to accept as the fair market value of the property
18 the value set up in the answer and in such case may file a
19 stipulation releasing the debtors, obligors and guarantors,
20 and any other persons liable directly or indirectly for the
21 debt, and the owners of the property affected thereby, from
22 personal liability to the judgment creditor to the extent of
23 the fair market value as averred in the answer, less the
24 amount of any prior liens, costs, taxes and municipal claims
25 not discharged by the sale, and also less the amount of any
26 such items paid at distribution on the sale.

27 (4) If an answer [shall be] is filed and testimony
28 produced setting forth that the fair market value of the
29 property is more than the value stated in the petition, the
30 court shall hear evidence of, and determine and fix the fair

1 market value of the property[, which shall in no event exceed
2 the amount of the debt, interest, costs, taxes and municipal
3 claims] sold.

4 (5) After the hearing, if any, and the determination by
5 the court under paragraphs (1), (2) or (4) of the fair market
6 value of the property sold, then, except as otherwise
7 provided in subsection (f), the debtor, obligor, guarantor
8 and any other person liable directly or indirectly to the
9 judgment creditor for the payment of the debt shall be
10 released and discharged of such liability to the judgment
11 creditor to the extent of the fair market value of said
12 property [as previously agreed to by the judgment creditor
13 or] determined by the court, less the amount of all prior
14 liens, costs, taxes and municipal claims not discharged by
15 the sale, and also less the amount of any such items paid at
16 the distribution on the sale, and shall also be released and
17 discharged of such liability to the extent of any amount by
18 which the sale price, less such prior liens, costs, taxes and
19 municipal claims, exceeds the fair market value as agreed to
20 by the judgment creditor or fixed and determined by the court
21 as provided in this subsection, and thereupon the judgment
22 creditor may proceed by appropriate proceedings to collect
23 the balance of the debt.

24 (d) Action in absence of petition.--If the judgment creditor
25 shall fail to present a petition to fix the fair market value of
26 the real property sold within the time after the sale of such
27 real property provided by section 5522 (relating to six months
28 limitation), the debtor, obligor, guarantor or any other person
29 liable directly or indirectly to the judgment creditor for the
30 payment of the debt, or any person interested in any real estate

1 which would, except for the provisions of this section, be bound
2 by the judgment, may file a petition, as a supplementary
3 proceeding in the matter in which the judgment was entered, in
4 the court having jurisdiction, setting forth the fact of the
5 sale, and that no petition has been filed within the time
6 limited by [statute after the sale] section 5522 to fix the fair
7 market value of the property sold, whereupon the court, after
8 notice as prescribed by general rule, and being satisfied of
9 such facts, shall direct the clerk to mark the judgment
10 satisfied, released and discharged.

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

17 (f) Certain special allocations.--Notwithstanding the
18 provisions of subsection (c)(5), if the judgment creditor is a
19 nonconsumer judgment creditor and:

20 (1) if the judgment has been entered with respect to a
21 partial recourse obligation, the fair market value of the
22 property, determined as provided in subsection (c), will be
23 applied first to discharge, as provided in subsection (c)(4),
24 all liability for the nonrecourse portion of the obligation
25 before any portion of such value is applied to discharge any
26 liability for the recourse portion of the obligation; and

27 (2) if the judgment has been entered with respect to an
28 obligation of which only a portion is guaranteed, the fair
29 market value of the property, determined as provided in
30 subsection (c), will be applied first to discharge, as

1 provided in subsection (c), all liability for the portion of
2 the obligation which is not guaranteed, before any portion of
3 such value is applied to discharge any liability for the
4 portion of such obligation which is guaranteed.

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

8 "Consumer credit transaction." A credit transaction in which
9 the party to whom credit is offered or extended is a natural
10 person and the money, property or services which are the subject
11 of the transaction are primarily for personal, family or
12 household purposes.

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

20 "Judgment creditor." The holder of the judgment which was
21 enforced by the execution proceedings.

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

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

29 "Partial recourse obligation." An obligation which includes
30 both a nonrecourse portion and a recourse portion.

1 "Recourse portion of the obligation." All of the obligation
2 except the nonrecourse portion thereof.
3 Section 2. This act shall take effect in 60 days.