
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1954 Session of
2015

INTRODUCED BY ROSS, TAYLOR, D. COSTA, ROZZI, SCHLOSSBERG,
HARHART, JAMES, WATSON, MASSER, MILLARD, LEWIS, STAATS,
A. HARRIS, GIBBONS, HARHAI AND MILNE, APRIL 5, 2016

REFERRED TO COMMITTEE ON URBAN AFFAIRS, APRIL 5, 2016

AN ACT

1 Providing for the certification of mortgaged property as vacant
2 and abandoned in an action for mortgage foreclosure,
3 possession, quiet title or similar action to enforce an
4 obligation in a mortgaged property, for effect of
5 certification and for additional sheriffs' fees.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Vacant and
10 Abandoned Real Estate Foreclosure Act.

11 Section 2. Legislative findings and purpose.

12 The General Assembly finds and declares that:

13 (1) Vacant and abandoned real estate, coupled with a
14 default in the obligation to make mortgage payments secured
15 by that real estate, presents a danger to the health, safety
16 and welfare of a community.

17 (2) Vacant and abandoned real estate often is not
18 repaired, restored and returned to productive use until
19 either a creditor or municipality acquires title to the real

1 estate.

2 (3) An accelerated procedure is needed to maintain the
3 due process rights of owners of real estate and to reduce
4 unnecessary delays in an action of mortgage foreclosure or an
5 action for possession or similar actions to recover real
6 estate that is vacant and abandoned.

7 Section 3. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Action for possession." An action in ejectment initiated by
12 a purchaser to take control of mortgaged property.

13 "Action to quiet title." An action to resolve claims to
14 title to a mortgaged property initiated by a creditor or
15 purchaser.

16 "Creditor." A person authorized to enforce an obligation
17 secured by a mortgage or an authorized agent of the creditor,
18 including a servicer.

19 "Foreclosure action." An action initiated by a creditor to
20 enforce a mortgage obligation.

21 "Mortgage." A consensual interest in real property that
22 secures an obligation.

23 "Mortgaged property." Real property that is subject to a
24 mortgage and improved with buildings or structures intended for
25 any type of human occupancy, including a formerly mortgaged
26 property conveyed to a purchaser at a sheriff's sale or pursuant
27 to a deed in lieu of foreclosure.

28 "Municipal board of appeals." The body designated to review
29 decisions of a municipal code enforcement officer pursuant to
30 the act of November 10, 1999 (P.L.491, No.45), known as the

1 Pennsylvania Construction Code Act.

2 "Municipal code enforcement officer." The official
3 designated to administer and enforce building codes in a
4 municipality designated pursuant to section 501 of the act of
5 November 10, 1999 (P.L.491, No.45), known as the Pennsylvania
6 Construction Code Act.

7 "Municipality." A city, borough, township or incorporated
8 town.

9 "Obligation." A debt or other duty or liability of an
10 obligor secured by a mortgage.

11 "Obligor." A person that:

12 (1) owes payment or performance of an obligation;

13 (2) has signed a mortgage agreement with respect to
14 mortgaged property; or

15 (3) is otherwise accountable in whole or in part for
16 payment or performance of an obligation.

17 "Proceeding." A foreclosure action, an action for possession
18 or an action to quiet title.

19 "Property address." The address of a mortgaged property or
20 any other address provided by the owner or obligor in mortgage
21 documents or in subsequent correspondence sent by the owner or
22 obligor to change the address for notification specified for use
23 in mortgage documents.

24 "Purchaser." Any of the following:

25 (1) a person that acquires title to a mortgaged property
26 at a sheriff's sale conducted pursuant to a foreclosure or
27 similar action;

28 (2) an assignee of a purchaser who has paid settlement
29 funds and delivered required documentation to the sheriff to
30 obtain a sheriff's deed or the owner of a property under a

1 recorded sheriff's deed to the property; or

2 (3) a person that takes title to a mortgage property
3 pursuant to a deed in lieu of foreclosure.

4 "Record." As a noun, the term means information that is
5 inscribed on a tangible medium or is stored in an electronic or
6 other medium and is retrievable in perceivable form.

7 "Residential mortgaged property." A mortgaged property
8 located within this Commonwealth containing two or fewer
9 residential units or on which two or fewer residential units are
10 to be constructed, including a residential condominium unit.

11 "Servicer." A person that is responsible for servicing an
12 obligation, including a person that holds or owns an obligation
13 or originates a mortgage loan if the person also services the
14 obligation.

15 "Vacant and abandoned property." Property that meets the
16 requirements for certification as provided in section 5.

17 "Vacant property." Mortgaged property with respect to which
18 the owner and all persons claiming through the owner, including
19 tenants, have relinquished possession. The term does not include
20 unoccupied mortgaged property that is:

21 (1) undergoing construction, renovation or
22 rehabilitation and that is proceeding with reasonable
23 diligence to completion;

24 (2) physically secured and used or held for use by the
25 homeowner as a vacation or seasonal home; or

26 (3) physically secured and the subject of a probate
27 action or other litigation in which ownership is contested.

28 Section 4. Certification of vacant and abandoned mortgaged
29 property.

30 (a) General rule.--After a creditor gives notice to an

1 obligor of a delinquency or other default with respect to an
2 obligation secured by a mortgage or initiates a foreclosure
3 action or action for possession or to quiet title, a mortgaged
4 property for which the notice is given or proceedings are
5 initiated shall be certified as vacant and abandoned if:

6 (1) a creditor or purchaser has been designated as a
7 conservator of the mortgaged property under section 5 of the
8 act of November 26, 2008 (P.L.1672, No.135), known as the
9 Abandoned and Blighted Property Conservatorship Act;

10 (2) the mortgaged property is certified as vacant and
11 abandoned by the municipality in which the mortgaged property
12 is located in the manner provided by subsection (b); or

13 (3) the mortgaged property is certified as vacant and
14 abandoned in a proceeding in the manner provided by
15 subsection (c).

16 (b) Municipal certification.--A mortgaged property shall be
17 deemed vacant and abandoned by the municipality in which the
18 mortgaged property is located if:

19 (1) A creditor requests that the municipal code
20 enforcement officer for the municipality make a determination
21 that the mortgaged property is vacant and abandoned.

22 (2) The municipal code enforcement officer inspects the
23 mortgaged property, determines that the mortgaged property is
24 vacant and abandoned pursuant to the requirements of section
25 5 and gives notice of any such determination in the manner
26 otherwise provided by law for the giving notice of municipal
27 code violations.

28 (3) The creditor pays or agrees to pay a fee not to
29 exceed 110% of the reasonable costs for the municipal code
30 inspection officer to conduct an inspection of the mortgaged

1 property, to prepare a report of the inspection, to give
2 notice of the results of the inspection to the creditor and
3 the obligor and to participate in any appeals of a
4 determination that the mortgaged property is vacant and
5 abandoned.

6 (4) The owner of the mortgaged property fails to seek
7 review of a determination that the mortgaged property is
8 vacant and abandoned by the municipal board of appeals within
9 30 days or, if a timely request for review is filed, a final
10 determination is made that the mortgaged property is vacant
11 and abandoned.

12 (c) Judicial certification.--A mortgaged property shall be
13 deemed certified in a proceeding as follows:

14 (1) In a proceeding, a creditor or purchaser may file a
15 request with the prothonotary to issue a rule to show cause
16 why the mortgaged property should not be certified as vacant
17 and abandoned by submitting an affidavit:

18 (i) supported as appropriate by images or other
19 appropriate evidence, alleging that the mortgaged
20 property qualifies for certification as vacant and
21 abandoned pursuant to the requirements of section 5; and

22 (ii) submitted subject to the penalties for false
23 swearing under 18 Pa.C.S. § 4903 (relating to false
24 swearing).

25 The request may be filed together with the original complaint
26 in the proceeding or at any time during the course of the
27 proceeding.

28 (2) The affidavit that the mortgaged property is vacant
29 and abandoned may be provided by a municipal code enforcement
30 officer, the creditor or purchaser or by any competent adult

1 who has personal knowledge of the condition of the mortgaged
2 property, including a property inspector or agent retained by
3 a creditor.

4 (3) A request for a rule to show cause need not be
5 served on the owner of the mortgaged property or any obligor
6 other than the owner, but the rule issued by the prothonotary
7 shall be served on the owner or obligor in the manner
8 provided by paragraph (5).

9 (4) Within 10 business days of receipt of the request
10 for a rule to show cause, the prothonotary shall provide a
11 rule to show cause to the creditor or purchaser if the
12 affidavit contains assertions of fact that comply with the
13 requirements for certification as vacant and abandoned as
14 provided by section 5.

15 (5) The rule to show cause shall be served on the owner
16 and any obligor other than the owner by the creditor or
17 purchaser as follows:

18 (i) If the owner or any obligor other than the owner
19 is represented by counsel in a proceeding in which the
20 rule to show cause is issued, the rule may be served by
21 delivery of the rule to show cause to counsel for the
22 owner or obligor.

23 (ii) If the owner or any obligor other than the
24 owner is not represented by counsel in the proceeding,
25 the creditor shall make at least two attempts to
26 personally serve the rule to show cause. Attempts at
27 personal service may occur at the property address and
28 the address specified in the county tax assessor's office
29 for the delivery of property tax bills for the mortgaged
30 property. The attempts shall be at least 72 hours apart

1 at reasonable times. If the creditor cannot complete
2 personal service on any party, service may be completed
3 by delivery of notice by first class mail to the
4 addresses at which personal service may be made and by
5 posting of the property in a conspicuous manner.

6 (iii) A rule to show cause may be served on the
7 owner or any obligor other than the owner in the manner
8 provided by this paragraph regardless of whether service
9 of a complaint in a proceeding has been completed.

10 (6) A copy of the rule to show cause shall be delivered
11 by the creditor or purchaser by first class mail to the
12 municipal code enforcement officer for the municipality in
13 which the mortgaged property is located.

14 (7) If a response to the rule to show cause is not filed
15 within 20 days, the court shall render an order certifying
16 the mortgaged property as vacant and abandoned.

17 (8) If a timely response to the rule to show cause is
18 filed, the court shall schedule a hearing to determine if
19 credible evidence exists to certify the mortgaged property as
20 vacant and abandoned within not fewer than 20 nor more than
21 30 days after proof of service of the rule to show cause in
22 the manner provided by paragraph (5).

23 Section 5. Requirements to certify mortgaged property as vacant
24 and abandoned.

25 (a) General rule.--A mortgaged property may be certified as
26 vacant and abandoned by a municipal code enforcement officer
27 under section 4(b) or in a judicial proceeding under section
28 4(c) if the mortgaged property is vacant and satisfies at least
29 two of following indicia of abandonment:

30 (1) Multiple windows, doors or entrances on the property

1 are boarded up, unhinged, closed off, smashed in or are
2 continuously unlocked.

3 (2) The mortgaged property has been stripped of copper
4 or other metals.

5 (3) Interior furnishings, personal items, appliances or
6 fixtures have been removed from the mortgaged property,
7 including window treatments, such as blinds, curtains or
8 shutters.

9 (4) Gas, electric, water or sewer utility services have
10 been terminated to the mortgaged property or are established
11 in the name of the creditor to preserve the mortgaged
12 property.

13 (5) Newspapers, circulars, flyers or mail have
14 accumulated on the mortgaged property or the United States
15 Postal Service has discontinued delivery to the mortgaged
16 property.

17 (6) Rubbish, trash, debris, neglected vegetation or
18 natural overgrowth has accumulated on the mortgaged property.

19 (7) Multiple municipal building or housing code
20 violations exist for the mortgaged property, which violations
21 have been documented as being uncorrected during the
22 preceding year.

23 (8) Written and signed statements have been issued by
24 the mortgaged property's adjoining neighbors, adjacent
25 neighbors, delivery persons or a municipal code enforcement
26 officer indicating that the mortgaged property is vacant and
27 abandoned.

28 (9) Hazardous, noxious or unhealthy substances or
29 materials have accumulated on the mortgaged property.

30 (10) Other credible evidence exists indicating the

1 intent of the owner or obligor to vacate and abandon the
2 mortgaged property.

3 (b) Determining vacancy.--Any competent evidence may be
4 relied on to determine that a mortgaged property is vacant,
5 including evidence that:

6 (1) The mortgaged property was found to be vacant at the
7 time of two inspections occurring at least 30 days apart.

8 (2) After the first inspection the mortgaged property
9 was posted with a notice advising any occupant of the
10 mortgaged property to immediately contact the person who
11 conducted the inspection and advising that failure to do so
12 may have adverse legal consequences.

13 (3) There was no response to the notice posted after the
14 first inspection was received from a person legally entitled
15 to occupy the mortgaged property prior to the second
16 inspection.

17 (c) Corrective action by creditor or purchaser.--The
18 remediation of conditions that provide evidence of abandonment
19 under subsection (b) by the creditor or purchaser or corrective
20 action taken by a municipality or other person to protect the
21 public health and welfare shall not prevent a mortgaged property
22 from meeting the requirements to be certified as vacant and
23 abandoned.

24 Section 6. Effect of certification of vacancy and abandonment.

25 (a) Foreclosure action.--In a foreclosure action, a
26 mortgaged property certified as vacant and abandoned shall not
27 be subject to mediation, conciliation, diversion or other
28 program established by a local court to encourage resolution of
29 owner-occupied residential mortgage foreclosures.

30 (b) Service and notification.--Following a certification

1 that a mortgaged property is vacant and abandoned, any
2 subsequent documents required to be served on and any notices
3 required to be delivered to the owner and any obligor other than
4 the owner may be exclusively served and delivered by first class
5 mail to an address specified by the owner or obligor for the
6 receipt of communications relating to the property or, if no
7 such address is specified, by delivery to the address of the
8 mortgaged property and by posting of notice in a conspicuous
9 location on the mortgaged property.

10 (c) Scheduling of sheriff's sale.--

11 (1) If a mortgaged property is certified as vacant and
12 abandoned, the sheriff on receipt of an accelerated sale fee
13 of \$500 shall schedule a sale of the mortgaged property
14 within 60 days following the filing of the writ of execution
15 and the sheriff's deed must be recorded no later than 30 days
16 following the sale.

17 (2) The accelerated sale fee shall be payable at the
18 time of the filing of the writ of execution and shall be
19 immediately refunded if:

20 (i) the time frames specified in this subsection are
21 not complied with; or

22 (ii) if the expedited sale date is postponed or
23 continued by any party other than the creditor.

24 (d) Scheduling of execution of writ of possession.--

25 (1) If a mortgaged property is certified as vacant and
26 abandoned, the sheriff on the receipt of an additional fee of
27 \$250 shall accelerate the scheduling of execution of a writ
28 of possession.

29 (2) In order to impose the additional fee, the sheriff
30 must schedule the removal of a former owner's personal

1 property from the mortgaged property and the securing of the
2 personal property within 30 days or less following the filing
3 of the writ of execution.

4 (3) The additional fee shall be immediately refunded if:

5 (i) the time frames set forth above are not complied
6 with; or

7 (ii) the expedited execution is postponed or
8 continued by any party other than the purchaser.

9 (e) Possession of mortgaged property pending foreclosure.--

10 If a mortgaged property is certified as vacant and abandoned or
11 with the consent of the owner or any obligor other than the
12 owner, the creditor may enter the mortgaged property peacefully
13 for the purpose of inspecting, maintaining and repairing the
14 mortgaged property and shall not be liable to the owner for
15 trespass or for damage to the property resulting from a cause
16 other than the creditor's gross negligence or willful
17 misconduct.

18 (f) Property maintenance.--

19 (1) The maintenance obligations of a creditor that
20 exercises the right to possession pending foreclosure are
21 limited to compliance with property maintenance requirements
22 of the Federal Housing Administration for loans insured by
23 the administration or of Federal National Mortgage
24 Association or the Federal Home Loan Mortgage Corporation for
25 mortgages held by either respective entity.

26 (2) For other creditors, the mortgaged property
27 maintenance obligations of a creditor that exercises its
28 right to possession pending foreclosure shall be limited to:

29 (i) Care for the yard and exterior of a building on
30 vacant and abandoned mortgaged property, including

1 removing excessive foliage growth that diminishes the
2 value of surrounding properties.

3 (ii) Measures reasonably necessary to prevent
4 trespassers from remaining on the mortgaged property.

5 (iii) Preventing mosquito larvae from growing in
6 standing water on the mortgaged property and infestations
7 by other vermin and insects.

8 (iv) Taking other actions needed to prevent
9 conditions on the mortgaged property that create a
10 serious and imminent hazard to public health or safety.

11 Section 7. Post-sheriff's sale possessory action, effect of
12 certification of vacancy and abandonment in action
13 for possession and disposition of abandoned personal
14 property.

15 (a) Removal of personal property by former owner.--

16 (1) When a former owner relinquishes possession of
17 mortgaged property certified as vacant and abandoned, the
18 former owner shall remove from the mortgaged property all
19 items of personal property.

20 (2) For the purposes of this section, a former owner
21 shall be deemed to have relinquished possession when the
22 former owner has:

23 (i) physically vacated the premises;

24 (ii) removed substantially all of the former owner's
25 personal property; or

26 (iii) provided a forwarding address or written
27 notice stating that the former owner has vacated the
28 premises or otherwise communicated to the creditor that
29 the former owner has relinquished possession of the
30 mortgaged property.

1 (b) Removal of personal property by purchaser.--If the
2 former owner fails to remove personal property from mortgaged
3 property certified as vacant and abandoned after delivery of a
4 sheriff's deed or a deed in lieu of foreclosure, concurrent with
5 the filing of an action for possession or at any time after the
6 action is filed, the purchaser may remove the remaining personal
7 property of the former owner in the following manner:

8 (1) The purchaser shall serve notice of intent to remove
9 personal property from the mortgaged property on the owner in
10 the manner provided by section 6(b).

11 (2) The purchaser shall conspicuously post a personal
12 property removal notice that includes:

13 (i) the date the notice was posted;

14 (ii) the address of the mortgaged property;

15 (iii) the date of the sheriff's sale or the date the
16 title was acquired by the purchaser;

17 (iv) a notice that personal property that remains on
18 the mortgaged property must be retrieved by the former
19 owner;

20 (v) a statement that:

21 (A) The former owner has 10 days from the date
22 of the notice to notify the purchaser that the former
23 owner will be retrieving the personal property.

24 (B) If the intent to retrieve is conveyed to the
25 purchaser, the personal property shall be retained by
26 the purchaser at the mortgaged property or a site of
27 the purchaser's choosing for 30 days from the date of
28 the notice.

29 (C) If no communication is made to purchaser
30 within 10 days, the personal property may be disposed

1 of at the discretion of the purchaser; and
2 (vi) a telephone number, e-mail or facsimile number
3 and address for the purchaser or its agent where they can
4 be contacted and the location where the personal property
5 can be retrieved, if not at the mortgaged property, and a
6 statement that retrieval of the personal property after
7 10 days will require the former owner to pay for costs
8 related to the storage of the personal property.

9 (3) At all times between posting of the personal
10 property removal notice and the expiration of the 10-day
11 period, the purchaser shall exercise ordinary care with
12 regard to any personal property that the former owner left in
13 or on the mortgaged property.

14 (4) At the expiration of the 10-day period, the
15 purchaser shall owe no duty to the former owner with regard
16 to caring for the personal property and may, in the
17 purchaser's discretion, dispose of the personal property
18 subject to the following:

19 (i) If the personal property is sold and proceeds
20 exceed any outstanding obligations owed to the owner or
21 obligor, the proceeds shall be forwarded to the former
22 owner by certified mail.

23 (ii) If no forwarding address has been provided to
24 the purchaser by the former owner, the owner shall hold
25 the proceeds for 30 days and, if unclaimed, may retain
26 the proceeds.

27 (5) If the purchaser has issued a personal property
28 removal notice to the former owner, the purchaser may store
29 the former owner's personal property at another location
30 within reasonable proximity to the mortgaged property subject

1 to the following:

2 (i) If the purchaser stores the personal property at
3 another location, the purchaser may remove the personal
4 property from the mortgaged property by any means
5 reasonably calculated to safeguard the personal property
6 for the time period required under this section.

7 (ii) A former owner shall not be required to pay any
8 costs related to the removal or storage of personal
9 property by the purchaser if the former owner retrieves
10 the personal property within 10 days of the date of the
11 notice.

12 (6) If the former owner or occupant retrieves the
13 personal property after 10 days of the date of the notice but
14 before 30 days, the former owner shall pay any reasonable and
15 actual costs related to the removal or storage of the
16 personal property by the purchaser for that time period.

17 Section 8. Sheriff's commission and creditor's attorney fees.

18 (a) When commission payable.--

19 (1) With respect to a mortgaged property, the commission
20 payable to the sheriff provided by section 4(b) of the act of
21 July 6, 1984 (P.L.614, No.127), known as the Sheriff Fee Act,
22 shall not be due unless the mortgaged property is sold at the
23 execution sale conducted by the sheriff.

24 (2) If the execution sale of the property is stayed,
25 canceled, withdrawn or postponed due to bankruptcy,
26 reinstatement of the loan, payoff of the loan, a loan
27 modification or other resolution or for any other reason, the
28 sheriff shall not be entitled to the commission.

29 (b) Limitation on creditor's attorney fees.--

30 (1) A creditor that incurs attorney fees related to a

1 delinquency or event of default may include the amount of the
2 attorney fees in the mortgage obligations, provided the fees:

3 (i) Are reasonable and do not exceed 0.3% of the
4 amount of the "base figure" as provided by section 101 of
5 the act of January 30, 1974 (P.L.13, No.6), referred to
6 as the Loan Interest and Protection Law.

7 (ii) Are not incurred prior to the 30-day notice
8 period provided in section 403 of the Loan Interest
9 Protection Law.

10 (2) The attorney fee limitation provided in this
11 subsection shall be adjusted annually as the base figure is
12 adjusted by the Department of Banking and Securities under
13 section 101 of the Loan Interest and Protection Act and the
14 resulting limitation shall be published as a notice in the
15 Pennsylvania Bulletin by the Department of Banking and
16 Securities.

17 Section 9. Construction.

18 Nothing in this act shall be construed to limit or restrict
19 in any manner any other remedies available at law or in equity
20 to a creditor or purchaser in a proceeding.

21 Section 10. Inconsistent repeals.

22 The following parts of acts are repealed to the extent of any
23 inconsistency with this act:

24 (1) Section 406(3) of the act of January 30, 1974
25 (P.L.13, No.6), referred to as the Loan Interest and
26 Protection Law.

27 (2) Section 7 of the act of July 6, 1984 (P.L.614,
28 No.127), known as the Sheriff Fee Act.

29 Section 11. Applicability.

30 This act shall apply to proceedings commenced before, on or

- 1 after the effective date of this section.
- 2 Section 12. Effective date.
- 3 This act shall take effect in 90 days.