No. 1996-1

AN ACT

HB 1076

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," providing for attorney fees in actions involving municipal claims; and authorizing certified mail to notify property owners of petitions or rules.

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

Section 1. Section 3(a) of the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, amended December 19, 1990 (P.L.1092, No.199), is amended and the section is amended by adding subsections to read:

Section 3. (a) All municipal claims which may hereafter be lawfully imposed or assessed on any property in this Commonwealth, and all such claims heretofore lawfully imposed or assessed within six months before the passage of this act and not yet liened, in the manner and to the extent hereinafter set forth, shall be and they are hereby declared to be a lien on said property, together with all charges, expenses, and fees ***incurred in the collection of any delinquent account, including reasonable attorney fees under subsection (a.1),*** added thereto for failure to pay promptly; and said liens shall arise when lawfully imposed and assessed and shall have priority to and be fully paid and satisfied out of the proceeds of any judicial sale of said property, before any other obligation, judgment, claim, lien, or estate with which the said property may become charged, or for which it may become liable, save and except only the costs of the sale and of the writ upon which it is made, and the taxes imposed or assessed upon said property.

***(a.1) It is not the intent of this subsection to require owners to pay, or municipalities to sanction, inappropriate or unreasonable attorney fees, charges or expenses for routine functions. Attorney fees incurred in the collection of any delinquent account shall be in an amount sufficient to compensate attorneys undertaking collection and representation of a municipality in actions involving claims arising under this act. A municipality by ordinance, or by resolution if the municipality is of a class***

*which does not have the power to enact an ordinance, shall adopt the schedule of attorney fees. Where attorney fees are sought to be collected in connection with the collection of a delinquent account, the owner may petition the court of common pleas in the county where the property subject to the municipal claim and lien is located to adjudicate the reasonableness of the attorney fees imposed. In the event that there is a challenge to the reasonableness of the attorney fees imposed in accordance with this section, the court shall consider, but not be limited to, the following:*

*(1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to properly undertake collection and representation of a municipality in actions arising under subsection (a).*

*(2) The customary charges of the members of the bar for similar services.*

*(3) The amount of the delinquent account collected and the benefit to the municipality from the services.*

*(4) The contingency or the certainty of the compensation.*

*(a.2) Any time attorney fees are awarded pursuant to any provision of law, the municipality shall not be entitled to duplicate recovery of attorney fees under this section.*

*(a.3) (1) At least thirty days prior to assessing or imposing attorney fees in connection with the collection of a delinquent account, a municipality shall, by United States certified mail, return receipt requested, postage prepaid, mail to the owner the notice required by this subsection.*

*(2) If within thirty days of mailing the notice in accordance with clause (1) the certified mail is refused or unclaimed or the return receipt is not received, then at least ten days prior to assessing or imposing attorney fees in connection with the collection of a delinquent account, a municipality shall, by United States first class mail, mail to the owner the notice required by this subsection.*

*(3) The notice required by this subsection shall be mailed to the ~~owner's~~ last known post office address by virtue of the knowledge and information possessed by the municipality and by the county office responsible for assessments and revisions of taxes. It shall be the duty of the municipality to determine the owner's last post office address known to said collector and county assessment office.*

*(4) The notice to the owner shall include the following:*

*(i) A statement of the municipality's intent to impose or assess attorney fees within thirty days of mailing the notice pursuant to clause (1) or within ten days of the mailing of the notice pursuant to clause (2).*

*(ii) The manner in which the imposition or assessment of attorney fees may be avoided by payment of the delinquent account.*

* * *

Section 2. Sections 19 and 20 of the act are amended to read:

Section 19. If no affidavit of defense be filed within the time designated, judgment may be entered and damages assessed by the prothonotary by default, for want thereof. Such assessment shall include a **[five per cent]** fee for collection to plaintiff's attorney ***in accordance with section 3.***

If an affidavit of defense be filed, a rule may be taken for judgment for want of sufficient affidavit of defense, or for so much of the claim as is insufficiently denied, with leave to proceed for the residue.

The defendant may, by rule, require the plaintiff to reply, under oath or affirmation, to the statements set forth in the affidavit of defense, and after the replication has been filed may move for judgment on the whole record.

Section 20. Tax claims and municipal claims shall be prima facie evidence of the facts averred therein in all cases; and the averments in both tax and municipal claims shall be conclusive evidence of the facts averred therein, except in the particulars in which those averments shall be specifically denied by the affidavit of defense, or amendment thereof duly allowed. A compulsory nonsuit, upon trial, shall be equivalent to a verdict for defendant, whether the plaintiff appeared or not. If plaintiff recovers a verdict, upon trial, in excess of the amount admitted by the defendant in his affidavit of defense or pleadings, he shall be entitled to **[an attorney's fee]** ***attorney fees*** for collection**[, equal to five per centum of such excess, but not exceeding fifty dollars]** ***in accordance with section 3.***

Section 3. Section 39.2 of the act, added December 14, 1992 (P.L.859, No.135), is amended to read:

Section 39.2. (a) In cities of the first class, 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 shall mail by first class mail and **[by]** ***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.

The city 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 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 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.***

(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 shall file an affidavit of service of these notices prior to the date of the sale.

Section 4. (a) This act shall apply as follows:

(1) Except as provided in paragraph (2), this act shall apply retroactively to all claims filed on or after December 19, 1990.

(2) Paragraph (1) shall not apply to the addition of section 3(a.1) of the act pertaining to municipal adoption of the schedule or to the addition of section 3(a.3) of the act.

(3) No municipality shall be liable to any attorney for the amount of any attorney fees found to be unreasonable by the court in connection with the addition of section 3(a.1) of the act.

(b) In the event a delinquent property owner files a challenge over the amount of the attorney fees incurred during the retroactivity period, the court shall consider, but not be limited to, the provisions of section 3(a.1)(1), (2), (3) and (4) of the act.

Section 5. This act shall take effect in 60 days.

APPROVED—The 7th day of February, A.D. 1996.

THOMAS J. RIDGE