

No. 1998-144

AN ACT

SB 1262

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

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

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

§ 5522. Six months limitation.

* * *

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

* * *

(2) A petition for the establishment of a deficiency judgment following **[sale of the collateral of the debtor under] *execution and delivery of the sheriff's deed for the property sold in connection with the execution proceedings referenced in*** the provisions of section 8103 (relating to deficiency judgments).

* * *

§ 8103. Deficiency judgments.

(a) General rule.—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.

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

(c) Action on petition.—

(1) If no answer is filed within the time prescribed by general rule, or if an answer is filed which does not controvert the allegation of the fair market value of the property as averred in the petition, the court shall determine and fix as the fair market value of the property sold the amount thereof alleged in the petition to be the fair market value.

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

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

(4) If an answer [**shall be**] *is* filed and testimony produced setting forth that the fair market value of the property is more than the value stated in the petition, the court shall *hear evidence of and* determine and fix the fair market value of the property[, **which shall in no event exceed the amount of the debt, interest, costs, taxes and municipal claims**] *sold*.

(5) After the hearing, *if any*, and the determination by the court *under paragraph (1), (2) or (4)* of the fair market value of the property sold, *then, except as otherwise provided in subsection (f)*, the debtor, obligor, guarantor and any other person liable directly or indirectly to the judgment creditor for the payment of the debt shall be released and discharged of such liability to the judgment creditor to the extent of the fair market value of said property [**as previously agreed to by the judgment creditor or**] determined by the court, less the amount of all prior liens, costs, taxes and municipal claims not discharged by the sale, and also less the amount of any such items paid at the distribution on the sale, and shall also be released and discharged of such liability to the extent of any amount by which the sale price, less such prior liens, costs, taxes and municipal claims, exceeds the fair market value as agreed to by the judgment creditor or fixed and determined by the court as provided in this subsection, and

thereupon the judgment creditor may proceed by appropriate proceedings to collect the balance of the debt.

(d) **Action in absence of petition.**—If the judgment creditor shall fail to present a petition to fix the fair market value of the real property sold within the time after the sale of such real property provided by section 5522 (relating to six months limitation), the debtor, obligor, guarantor or any other person liable directly or indirectly to the judgment creditor for the payment of the debt, or any person interested in any real estate which would, except for the provisions of this section, be bound by the judgment, may file a petition, as a supplementary proceeding in the matter in which the judgment was entered, in the court having jurisdiction, setting forth the fact of the sale, and that no petition has been filed within the time limited by [statute after the sale] **section 5522** to fix the fair market value of the property sold, whereupon the court, after notice as prescribed by general rule, and being satisfied of such facts, shall direct the clerk to mark the judgment satisfied, released and discharged.

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

(f) **Certain special allocations.**—*Notwithstanding the provisions of subsection (c)(5), if the judgment creditor is a nonconsumer judgment creditor and:*

(1) if the judgment has been entered with respect to a partial recourse obligation, the fair market value of the property determined as provided in subsection (c) will be applied first to discharge, as provided in subsection (c)(5), all liability for the nonrecourse portion of the obligation before any portion of such value is applied to discharge any liability for the recourse portion of the obligation; and

(2) if the judgment has been entered with respect to an obligation of which only a portion is guaranteed, the fair market value of the property determined as provided in subsection (c) will be applied first to discharge, as provided in subsection (c), all liability for the portion of the obligation which is not guaranteed before any portion of such value is applied to discharge any liability for the portion of such obligation which is guaranteed.

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

“Consumer credit transaction.” *A credit transaction in which the party to whom credit is offered or extended is a natural person and the money, property or services which are the subject of the transaction are primarily for personal, family or household purposes.*

“Judgment.” *The judgment which was enforced by the execution proceedings referred to in subsection (a), whether that judgment is a judgment in personam such as a judgment requiring the payment of money*

or a judgment de terris or in rem such as a judgment entered in an action of mortgage foreclosure or a judgment entered in an action or proceeding upon a mechanic's lien, a municipal claim, a tax lien or a charge on land.

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

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

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

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

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

Section 2. This act shall apply to all actions and proceedings pending on the effective date of this act.

Section 3. This act shall take effect immediately.

APPROVED—The 21st day of December, A.D. 1998.

THOMAS J. RIDGE