

## **COMMITTEE BILL ANALYSIS**

**Bill:** Senate Bill 84

**Printer's No.:** 49

**Sponsor:** Senator Greenleaf

**Prepared by:** Gregg Warner

**Synopsis:** This bill reenacts provisions of sections 5522 and 8103 of the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, relating to deficiency judgments, to address a problem that occurs when the real property collateral securing the same loan is located in more than one county.

### **Summary:**

#### **Deficiency Judgment Act**

This bill amends the Deficiency Judgment Act, section 8103 of the Judicial Code, to address a problem that occurs when the real property collateral securing the same loan is located in more than one county in Pennsylvania. This legislation designates the court in one of the counties as the "deficiency court."

The court for the county in which the collateral real property of the highest adjusted value (assessed value times applicable common level ratio) is located is designated as the deficiency court. This court is the venue for the fair market valuation of all of the collateral real property located in Pennsylvania. The judgment creditor petitions the deficiency court to determine and fix the fair market value of all of the real property collateral.

The real property collateral is valued before rather than after any sheriff's sale but is subject to redetermination at the request of either party to protect against changes in value. A petition for redetermination of the fair market value following a sheriff's sale must be brought within six months.

The deficiency court does not have the power to fix the fair market value of property located outside of Pennsylvania and may not take into account the value of that property in deciding whether a deficiency exists.

The legislation does not apply to consumer loans.

#### **Statute of limitations**

A conforming amendment is made to section 5522 of the Judicial Code, relating to the six months statute of limitations.

**Retroactive application**

The reenactment of the provisions relating to deficiency judgments shall apply retroactively to January 24, 2005.

**Effective date**

This act takes effect immediately.

**Background:**

**Reasoning**

The Deficiency Judgment Act (42 Pa.C.S. §8103) establishes a procedure for a judgment creditor to petition a court to fix the fair market value of real property sold at a sheriff's sale. Whenever any real property is sold, directly or indirectly, to a judgment creditor in execution proceedings and the price for which the property 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 the judgment, interest and costs, the judgment creditor must petition the court of common pleas in the county where the real property is located to fix the fair market value of the real property sold.

This procedure creates a problem that arises if there is real property securing the same obligation in more than one county. The court must determine the fair market value of the real property acquired by the judgment creditor at a sheriff's sale before the creditor may proceed to collect a deficiency from the debtor. If the court determines that the value of the property acquired at the sale by the creditor is equal to or greater than the amount of the judgment, then the creditor has no deficiency to enforce.

This process requires the judgment creditor to go from county to county in order to allow the court in county A to make a determination of fair market value, and thereby establish whether there is a deficiency, before proceeding with the sale in county B, and so on through any additional counties. The delays built into this process impose significant additional losses on a lender because of the time value of money.

**PBA report**

At the recommendation of its Real Property Probate and Trust Law Section, the Pennsylvania Bar Association (PBA) adopted a resolution urging the General Assembly to amend the Deficiency Judgment Act to correct this problem. The PBA report indicates that this problem occurs primarily in the context of large syndicated loans to borrowers with multiple properties, such as restaurants, retail outlets or motels. Rather than requiring a separate valuation in each county court where a sheriff's sale is held, the PBA proposal designates the court in one of the counties as the "deficiency court" for the valuation of all of the property.

**Commonwealth v. Neiman**

The General Assembly enacted Senate Bill 92 as 2004 Act 152 making several changes to Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure). As originally introduced, Senate Bill 92 amended the Judicial Code to address a problem with deficiency judgments but amendments were added as Senate Bill 92 progressed through the legislative process. In the case of Commonwealth v. Neiman, 5 A.3d 353 (Pa. Super. 2010) the Superior Court held that Act 152 violated the multi-subject rule and struck down as unconstitutional certain provisions of the legislation.

Among the provisions declared unconstitutional were the provisions relating to deficiency judgments (ironically, the original purpose for and content of Senate Bill 92). Senate Bill 84 reenacts the deficiency judgment provisions of 2004 Act 152 retroactively to when those provisions of Act 152 took effect.

On August 10, 2011, the State Supreme Court issued a *per curiam* order granting an allowance of appeal limited to (1) whether Act 152 violates the single-subject rule of the Pennsylvania Constitution and (2) whether, if Act 152 violates the single-subject rule, Megan's Law can be sustained by severance of the remaining portions of Act 152 (Commonwealth v. Neiman, 27 A. 3d 984 (Pa. 2011)).

**Legislative history**

During the 2011-2012 session, this legislation was introduced as Senate Bill 1373. The Senate Judiciary Committee reported Senate Bill 1373 from committee and the Senate passed the bill by a 47 to 0 vote. The House of Representatives did not take any action on Senate Bill 1373.