



# DEFICIENCY JUDGMENTS

[Revised]

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**By**

**LISA STEFANONI, ESQ.**

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## § 1. IN GENERAL

A creditor who obtains a judgment may force the sale of certain real property belonging to defendant in execution proceedings. Initially, a creditor who purchased at his execution sale was required to credit on the judgment only the purchase price—however nominal—and was then permitted to issue additional executions to recover the balance of the judgment. The Deficiency Judgment Act (42 Pa.C.S. § 8103), passed in the 1940's,<sup>1</sup> provided relief to judgment debtors by reducing the creditor's judgment by the *fair market value* of the property, rather than by the *actual sale price*.<sup>2</sup>

Under the Act, a judgment creditor who purchases real property in execution—either directly or indirectly—for a sum less than the amount of the judgment (interest and costs), may, within six months of purchase, petition the court to fix the fair market value of the property. All parties affected must be given notice of the proceeding.

The Act applies to judgments in personam, de terris, or in rem, and those entered upon a mechanic's lien, a municipal claim, a tax lien, or a charge on land.

The Act does not apply when property is sold to a third party. Judgment creditor's remedy for a "deficiency," if any, would be an action to enforce the personal liability of the party.

Provisions of the Act may not be waived.

See **EXECUTION**, Binder 4.

### *Sources*

**Deficiency Judgment Act, 42 Pa.C.S. § 8103  
Proceedings Under Section 8103(A) to Fix Fair Market Value of Real  
Property Sold, 42 Pa.C.S. § 3281 et seq.  
Pennsylvania Handbook of State and Federal Practice, Bisel (2015 Ed.)**

### **Legal Considerations**

- ▼ The Deficiency Judgment Act was passed on July 16, 1941, during the latter part of the depression, to deal with the inequity that an execution creditor could effect by purchasing real estate for a nominal amount at forced sale and still retain the full amount of his judgment against debtor. *Philip Green & Son, Inc. v. Kimwyd, Inc.*, 189 A.2d 231, 232–3 (Pa. 1963).
- ▼ Purchase of real property at execution by professional associates or employees of judgment creditor's attorney constituted an indirect sale to judgment creditor. *First Federal Sav. & Loan Ass'n of Carnegie v. Keisling*, 746 A.2d 1150 (Pa. Super. 2000)(*first impression*).
- ▼ Indirect sale occurred where attorney conducted the purchase, even if s/he attempted to circumvent the Act by titling property to a third party. *Western Flour Co. v. Alosi*, 264 A.2d 413 (Pa. Super. 1970).

### **Case Reference**

*Bank Leumi: Le-Isreal v. Zimmerman*, 578 A.2d 967 (Pa. Super. 1990)(Deficiency Act does not apply when third party purchases property at execution)

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## **§ 2. STATUTE OF LIMITATIONS**

Judgment creditor must petition the court to fix fair market value within six months of the date of purchase. After six months, an irrebuttable presumption arises that judgment was paid in full. Debtor (or the other person affected) may file a petition naming judgment creditor as respondent and setting forth, inter alia, the fact of sale and that no petition has been filed within the six-month period. (For form of petition, *see* RCP 3288). The petition must include a notice to defend and must be served pursuant to Rule 440. Proof of service must be filed pursuant to Rule 405. (*See* RCP 3289). The court may direct the clerk to mark the judgment satisfied, released and discharged if: (1) no answer is timely filed and notice has been given as provided by Rule 237.1 et seq. (relating to judgment by default or admission); or (2) an answer does not deny allegations that judgment creditor has purchased, directly or indirectly, real property sold in an execution sale and has failed to file a timely petition to fix fair market value. (*See* RCP 3290).

If an answer denies allegations in the petition, trial will be without a jury in accordance with

Rule 1038.

*Note:* Rules 206.4 through 206.7, governing petitions and answers, do not apply to a petition subject to these rules. (*See* Rule 3291).

*See* **SERVICE OF PROCESS**, Binder 7; **DEFAULT JUDGMENT**, this Binder.

### **Legal Considerations**

- ❖ Section 8103(d) gives rise to the conclusive legal presumption that property sold was worth at least the full amount of the judgment debt and automatically gives credit which satisfies judgment in full. *Sophia Wilkes Bldg. & Loan Ass'n v. Rudloff*, 35 A.2d 278, 279 (Pa. 1944).
- ❖ Creditor has six months after sheriff's delivery of deed to file a petition to fix fair market value. *Berkshire Bank v. Aulenbach*, No. 1108 MDA 2013 (Pa. Super. May 23, 2013).
- ❖ Only way for judgment creditor to escape satisfaction of its deficiency judgment six months after purchase is to show that it did not purchase the property either directly or indirectly. *First Federal Sav. & Loan Ass'n of Carnegie v. Keisling*, 746 A.2d 1150 (Pa. Super. 2000).
- ❖ Six months from purchase at execution an irrebuttable presumption arises that judgment was paid in full. *Citicorp Mortg., Inc. v. Morrisville*, 690 A.2d 723 (Pa. Super. 1997).

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## **§ 3. PETITION TO FIX FAIR MARKET VALUE**

### ***Form of Petition***

A petition to fix fair market value is filed as a supplementary proceeding. It must begin with a notice to defend (*see* 42 Pa. C.S. § 3282(b)), and set forth:

- (1) The name and address of judgment creditor;
- (2) The name and last known address of each respondent;
- (3) A statement that the petition is filed pursuant to § 8103(a) of the Judicial Code;
- (4) The court and number of the execution proceedings, the original judgment and any judgment obtained by transfer;
- (5) The date the property was struck down to the successful bidder and the date the sheriff's deed was delivered;
- (6) A description of the real property and its location;
- (7) The fair market value of the real property;
- (8) A description of all prior lien amounts—i.e., the amounts of any prior liens, costs, taxes and municipal claims not discharged by the sale, and the amount of any such items paid at distribution on the sale—if the petitioner desires credit for such amounts;

(9) If the petition requests a special allocation, a statement that the judgment creditor is a nonconsumer judgment creditor;

(10) Any special allocation required by § 8103(f) of the Judicial Code;<sup>3</sup> and

(11) A request that the court fix the fair market value of the real property and determine any prior lien amounts (*see* RCP 3277) and any special allocation as set forth in the petition.

### **Legal Consideration**

- ▼ Regarding requirement that petition be filed in supplemental proceeding and for historical examination of execution of deficiency judgment proceedings in mortgage foreclosure actions, *see Home Sav. & Loan Co. v. Irongate Ventures, LLC*, 19 A.3d 1074 (Pa. Super. 2011)(petition to fix fair market value filed in confession action could not be transferred to foreclosure action after statute of limitations had run).

### **Notice**

Plaintiff may file the petition within the required time and yet fail to notice the proper parties. If plaintiff does not name a party in the petition, or does not serve a party with a copy of the petition or a notice of its filing, that party will be discharged from all personal liability to plaintiff on the debt and may petition to mark the judgment satisfied. (*See* RCP 3281; 42, 8103(c)).

The petition to fix fair market value requires two types of notice: first, as noted above, the petition must include a notice to defend; second, notice also must be given pursuant to Rule 237.1 et seq. (relating to judgment upon default or admission).

*See* **DEFAULT JUDGMENT**, this Binder.

### **Service**

The petition must be served upon the attorney of record by personal delivery, by leaving a copy at the attorney's address, or by facsimile transmission. If there is no attorney of record, the petition must be served:

- (i) by the sheriff or a competent adult in the manner of original process (*see* Rule 402(a));
- (ii) by mailing a copy in the manner prescribed by Rule 403; or
- (iii) if service cannot be made as provided above, pursuant to special order of the court (*see* Rule 430).

*See* **SERVICE OF PROCESS**, Binder 4.

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## **§ 4. PROCEEDINGS**

### ***Uncontested Petition***

Where the petition is uncontested and all respondents are properly named and served, the prothonary will, on praecipe of petitioner and without further notice or hearing, enter an order determining fair market value, prior lien amounts and any special allocation to be that alleged in the petition.<sup>4</sup>

### ***Contested Petition***

If the petition is contested, the court will hold a hearing. If debtor files an answer but produces no testimony to support denial, the court will fix fair market value as alleged in the petition.

If an answer alleges that fair market value is greater than alleged in the petition, the judgment creditor may agree to accept respondent's valuation and file a stipulation releasing all persons directly or indirectly liable to the extent of the fair market value (less any liens, costs, taxes, etc.). If testimony establishes that fair market value is greater than that stated in the petition, the court will hear evidence and fix fair market value.

If an answer denies allegations as to fair market value, the prior lien amounts, or petitioner's right to any special allocation, trial will be limited to those issues that will be heard by a judge sitting without a jury.

Once the court fixes the value, debtors are released and discharged from liability up to the amount so determined (less liens, costs, taxes, etc.), and judgment creditor may initiate appropriate proceedings to collect the balance of the debt, if any. (*See* 42 Pa.C.S. § 8103(c)).

### ***Real Property Collateral Located in More Than One County***

A judgment creditor who seeks real property collateral located in more than one county may file a valuation petition in each county. Or, the creditor may file only one in the county where the highest adjusted valued land is located and request the court to fix and determine the fair market value of all real property collateral on a parcel-by-parcel basis. However, fair market value must be determined *before* an execution sale is held with regard to any of the real property. Unless redetermined (*see* discussion below), the fair market value as determined by the court will be the fair market value for all purposes. (*See* 42 Pa.C.S. § 8103(f.1)(1) through (3)).

If a judgment creditor purchases one such parcel on execution sale, either the judgment creditor or the debtor may petition the deficiency court for a re-determination of the fair market value within six months from the date the deed is delivered. Procedure is the same as in pre-sale valuation cases. This re-determined value will be the fair market value for all purposes. Note that, even when a re-determination petition is filed, the judgment creditor retains the right to execute on the real property collateral. However, where the debtor alleges in its petition that an appropriate re-determination of value with respect to property already sold to the judgment creditor would sufficiently satisfy the judgment in full, the deficiency court may stay further

proceedings pending its ruling. (*See* 42 Pa.C.S. § 8103(f.1)(4)).

The debtor is released and discharged from liability for the payment of the debt to the extent of: (1) the fair market value determined by the deficiency court of all real property collateral purchased by the judgment creditor in execution proceedings on the judgment (less the standard deductible items); and (2) the amount distributed to the judgment creditor as a result of the sale of the real property collateral purchased in the proceedings by third parties. (*See* 42 Pa.C.S. § 8103(f.1)(5)).

Deficiency courts have no jurisdiction to fix the fair market value of real property located outside Pennsylvania, and may not take into account the value of such foreign collateral in considering whether or not a deficiency exists under § 8103. (*See* 42 Pa.C.S. § 8103 (f.2)).

#### **Footnotes for Deficiency Judgments**

1. The General Assembly reenacted the law March 14, 2014, retroactive to Jan. 24, 2005, as the result of *Commonwealth v. Neiman*. In *Neiman*, the superior court struck down, inter alia, portions of the Deficiency Act (specifically 42 Pa.C.S. § 8103(f.1)(collateral located in more than one county), (f.2)(foreign collateral), and 42 Pa.C.S. § 5522(b)(6)(6-month statute of limitations for petition for redetermination of fair market value) as having been unconstitutionally enacted in violation of the single subject rule in S.B. 92 (2004-152)("Act 152"), which primarily focused on Megan's Law. Nevertheless, the court severed and upheld those provisions, while striking down portions of Act 152 that did not address the registration of sexual predators. *See Commonwealth v. Neiman*, 5 A.3d 353 (2010).  
On December 16, 2013, the Pennsylvania Supreme Court reversed. (*Commonwealth v. Neiman*, J-83-2012, No. 74 MAP 2011). While the Court agreed that Act 152 violated the single subject rule, it ruled that severance of the provisions was inappropriate, struck down Act 152 in its entirety, and granted a 90-day stay for the General Assembly to consider remedial measures for those who acted in reliance on the invalid provisions.
2. The term "debtor" includes a debtor, obligor, guarantor, surety, and any other person liable, directly or indirectly, to a judgment creditor for the payment of a debt. *See* 42 Pa.C.S. § 8103(g).
3. Special allocations apply to a nonconsumer judgment creditor when partial recourse and nonrecourse obligations are involved. *See* 42 Pa.C.S. § 8103(f) and (g).
4. *See* RCP 3284, shifting to prothonotary the responsibility for entering judgment upon praecipe (the responsibility of the court prior to 2010. The prothonotary must ensure that service and notice requirements were met, that no answer contesting the allegations was filed, and that allegations in the petition justify the amount of judgment petitioner seeks. *See id.*, Explanatory Comment.