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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1191 Session of  
2015

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INTRODUCED BY BLAKE, ARGALL, EICHELBERGER, TEPLITZ, FONTANA,  
COSTA, YUDICHAK, RAFFERTY, SCHWANK AND MENSCH, JUNE 6, 2016

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REFERRED TO BANKING AND INSURANCE, JUNE 6, 2016

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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.