



What Does the Pennsylvania Superior Court's Decision on Act 91 Notices Mean to Banks, Servicing Companies and Financial Institutions?

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The recently reported three (3) panel decision in *Vukman v. Beneficial Consumer Discount Company* brings into play the validity of using the Uniform Act 91 Notice that was adopted on June 5, 1999 by the Pennsylvania Housing Finance Agency ("PHFA") and was in effect until September 8, 2008. The Court held that the judgment and subsequent sheriff's sale were null and void because, in the Court's view, the Act 91 Notice did not inform the mortgagor of a right to have a face-to-face meeting with the lender/mortgagee. In the view of the Court, the mortgagor raising the issue of a defective Act 91 Notice divested the Common Pleas Courts of subject matter jurisdiction thus preventing the Common Pleas Courts from hearing requests for judgments or sheriff's sales. Effective September 8, 2008, the Pennsylvania General Assembly amended Act 91 to delete the reference to a mortgagor potentially having a right to meet with the lender/mortgagee. As such, judgments and sheriff sales that relied on the PHFA's Uniform Act 91 Notice on or after September 8, 2008 are not impacted by this decision.

In Pittsburgh, plaintiff's attorneys and consumer groups are already requesting the Allegheny County Sheriff to suspend sheriff sales. The Sheriff has refused to suspend sheriff sales as requests by counsel for Beneficial Consumer Discount Company and two (2) other mortgagee lenders in non companion cases for rehearing by the entire Superior Court are pending. Plaintiff's counsel estimates there may be 100,000 judgments and sheriff's sales that potentially may be set aside because of this Court opinion. While this may be puffing, until a court reverses these rulings, judgments and sheriff's sales that were based on the use of the PHFA Uniform Act 91 Notice may be open to judicial challenge. We can expect such challenges to be made statewide, as this

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decision becomes more widely known. This ruling may have an impact on foreclosures or sheriff's sales that are pending and properties currently in OREO that were acquired by a judicial procedure using an alleged defect Act 91 Notice. In addition, in the event that a bank made a mortgage loan to a mortgagor who acquired the title through a sheriff's sale predicated on an allegedly defective Act 91 Notice, this may bring into question legal title issues. As such, subsequent sales of such mortgages into the secondary market may raise issues involving representations and warranties to the purchaser of those mortgages.

A Petition for Rehearing En Banc has been filed by each homeowner/mortgagor and all are pending. The Court has until April 13th to decide if the request for a rehearing by the entire Court will be granted. In the event the Court grants that request and allows briefs to be filed, the PACB has decided to file an Amicus Brief. PACB intends to argue that the PHFA Uniform Act 91 Notice in question was properly adopted by the PHFA consistent with Act 91 provisions and the inequity of penalizing PACB members who were required by statute to use the Notice. PACB along with other industries affected by this decision intend to explore a legislative fix to the matter. In the alternative, PACB will argue that the use of a Uniform Act 91 Notice is not subject jurisdiction matter, but only a potential procedural defect, that can either be waived or at least requires a finding of actual prejudice.

In the event your institution has this Act 91 issue raised in any judicial proceeding, the sale of OREO property or concerning representations to the secondary market, please contact [Paul A. Adams](#) at [Shumaker Williams, P.C.](#) for a confidential consultation regarding what legal options are available.

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