

Date Printed: 02/05/2009

JTS Box Number: IFES_51
Tab Number: 19
Document Title: PURDON S PENNSYLVANIA STATUTES ANNOTATED
Document Date: 1998
Document Country: USA
Document Language: ENG
IFES ID: EL00662



* 6 5 1 0 0 F 9 A - 3 6 7 1 - 4 3 4 2 - 9 C 2 2 - A A 6 E B E 3 C 8 0 B F *

**PURDON'S
PENNSYLVANIA STATUTES
ANNOTATED**

**Titles 21 to 23
Deeds and Mortgages
to
Divorce**

**PENNSYLVANIA CONSOLIDATED
STATUTES ANNOTATED**

**Title 22 Appendix. Detectives and
Private Police**

**1998
Cumulative Annual Pocket Part**

For Use In 1998-1999

Replacing 1997 pocket part
supplementing 1955 main volume

**Includes Acts through the
1997 Regular Session**

**See, also, Separate Volume
Purdon's Pennsylvania
Consolidated Statutes Annotated
Title 23 Domestic Relations**

R. Clifton White Resource Center
International Foundation
for Election Systems
1101 15th Street, NW
Washington, DC 20005

West Group
St. Paul, Minn.

7/18

DO YOU RECYCLE POCKET PARTS?

West pocket parts are printed on recyclable paper and can be collected and recycled with newspapers. Staples do not have to be removed because recycling companies use magnets to extract staples during the recycling process.

COPYRIGHT © 1998

By

WEST GROUP

All rights reserved

PURDON'S PENNSYLVANIA STATUTES ANNOTATED and
PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED
are trademarks used herein under license

WESTLAW is a registered trademark used herein under license.
Registered in U.S. Patent and Trademark Office.

**A Clifton White Resource Center
International Foundation
for Election Systems
1101 15th Street, NW
Washington DC 20005**

PREFACE

These 1998 Cumulative Annual Pocket Parts and Supplementary Pamphlets contain laws of a general and permanent nature through Act No. 1997-66, the last law of the 1997 Regular Session of the General Assembly.

The laws are classified to Purdon's Pennsylvania Statutes Annotated and/or to Purdon's Pennsylvania Consolidated Statutes.

Citations following the text of sections to official P.L. numbers are to local page numbers, i.e., the page on which the text actually begins, through 1973 legislation. Beginning with 1974 legislation, and continuing to date, P.L. numbers are to the first page of an act.

The annotations from the decisions of the State and Federal Courts construing the laws close with cases published as of February 21, 1998, reported in:

Atlantic Reporter, Second Series-----	704 A.2d 221
Pennsylvania Reports-----	548 Pa.
Pennsylvania Superior Court Reports-----	456 Pa.Super.
Lower Court Reports-----	Current Vols.
Supreme Court Reporter-----	118 S.Ct. 902
United States Reports-----	515 U.S. (part)
Lawyers' Edition, Second Series-----	139 L.Ed.2d (part)
Federal Reporter, Third Series-----	132 F.3d 1462
Federal Supplement-----	983 F.Supp. 196
Federal Rules Decisions-----	175 F.R.D. 588
Bankruptcy Reporter-----	215 B.R. 637
Federal Claims Reporter-----	39 Fed.Cl. 304
Opinions of the Attorney General-----	Op.Atty.Gen. 1996, No. 97-1
Other Standard Reports	

For subsequent judicial constructions, pending the publication of the next supplementary service, see Table of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Library References to Key Number Digests, to Corpus Juris Secundum and to Pennsylvania Law Encyclopedia are included as a convenient aid to research.

Later laws and annotations will be cumulated in subsequent pocket parts and annotated pamphlets. For advance copies of laws enacted at subsequent sessions of the Legislature, see the Pennsylvania Session Law Service or the WESTLAW PA-LEGIS Database.

*

COORDINATED RESEARCH IN PENNSYLVANIA FROM WEST GROUP

GOODRICH-AMRAM 2D

STANDARD PENNSYLVANIA PRACTICE 2D

SUMMARY OF PENNSYLVANIA JURISPRUDENCE 2D

PENNSYLVANIA PRACTICE SERIES

Pennsylvania Evidence

Leonard Packel and Anne Bowen Poulin

**Pennsylvania Criminal Procedure—Forms
and Commentary**

David Rudovsky and Leonard Sosnov

Pennsylvania Torts: Law and Advocacy

S. Gerald Litvin and Gerald A. McHugh, Jr.

Pennsylvania Discovery Practice

Charles R. Gibbons

WEST'S PENNSYLVANIA FORMS

Civil Procedure

Gibbons, Kraut, Edgar and Frenkel

Domestic Relations

David Hofstein and Judith Widman

Estate Administration

James Kozloff

Business Organizations

Kathleen O'Brien and David Shechtman

Estate Planning

Christopher Gadsden

Debtor/Creditor

Robert Simons and William Schorling

**Purdon's Pennsylvania Statutes and Consolidated
Statutes Annotated**

Pennsylvania Reporter

West's Pennsylvania Digest, 2d

COORDINATED RESEARCH IN PENNSYLVANIA FROM WEST

Pennsylvania Rules of Court
State and Federal
Pennsylvania Criminal Justice Pamphlet
Pennsylvania Family Law Pamphlet
Pennsylvania School Laws and Rules
Pennsylvania Law Finder

WESTLAW

WESTCheck® and WESTMATE®

WIN®

WESTfax®

West CD-ROM Libraries™

WESTLAW, WEST BOOKS and
West CD-ROM Libraries™
The Ultimate Research System

To order any of these Pennsylvania practice tools, call your West representative or 1-800-328-9352.

NEED RESEARCH HELP?

If you have research questions concerning WESTLAW or West Publications, call West Reference Attorneys at 1-800-733-2889.

Internet Access

Contact the West Editorial Department directly with your questions and suggestions by e-mail at

editor@westgroup.com.

Visit West's home page on the World Wide Web at

<http://www.westgroup.com>

April, 1998

WESTLAW ELECTRONIC RESEARCH GUIDE

WESTLAW, Computer Assisted Legal Research

WESTLAW is part of the research system provided by West Group. With WESTLAW, you find the same quality and integrity that you have come to expect from West books. For the most current and comprehensive legal research, combine the strengths of West books and WESTLAW.

WESTLAW Adds to Your Library

Whether you wish to expand or update your research, WESTLAW can help. For instance, WESTLAW is the most current source for case law, including slip opinions and unreported decisions. In addition to case law, the online availability of statutes, statutory indexes, legislation, court rules and orders, administrative materials, looseleaf publications, texts, periodicals, news and business information makes WESTLAW an important asset to any library. Check the online WESTLAW Directory or the print *WESTLAW Database Directory* for a list of available databases and services. Following is a brief description of some of the capabilities that WESTLAW offers.

Natural Language Searching

You can now search most WESTLAW databases using WIN[®], the revolutionary Natural Language search method. As an alternative to formulating a query using terms and connectors, WIN allows you to simply enter a description of your research issue in plain English:

What is the government's obligation to warn military personnel of the danger of past exposure to radiation?

WESTLAW then retrieves the set of documents that have the highest statistical likelihood of matching your description.

Retrieving a Specific Document

When you know the citation to a case or statute that is not in your library, use the Find service to retrieve the document on WESTLAW. Access Find and type a citation like the following:

find 42 pa.c.s.a. 7302
find 40 p.s. 1008.3
find 289 pa super 248
find 495 pa 177

Updating Your Research

You can use WESTLAW to update your research in many ways:

- Retrieve cases citing a particular statute.
- Update a state statute by accessing the Update service from the displayed statute using the jump marker.

WESTLAW GUIDE

- Retrieve newly enacted legislation by searching in the appropriate legislative service database.
- Retrieve cases not yet reported by searching in case law databases.
- Read the latest U.S. Supreme Court opinions within an hour of their release.
- Update West digests by searching with topic and key numbers.

Determining Case History and Retrieving Citing Cases

KeyCiteSM, the new citation research service developed by West Group and made available through the WESTLAW computer-assisted legal research service, integrates all the case law on WESTLAW, giving you the power to

- trace the history of a case;
- retrieve a list of all cases on WESTLAW that cite a case; and
- track legal issues in a case.

Citing references from the extensive library of secondary sources on WESTLAW, such as ALR[®] annotations and law review articles, are covered by KeyCite as well. You can use these citing references to find case discussions by legal experts.

Now, in this one service on WESTLAW, you receive

- the case-verification functions of Insta-Cite[®];
- the case-citing functions of Shepard's[®] and Shepard's PreView[®]; and
- the currentness of QuickCite[®].

In addition, KeyCite is completely integrated with West's Key Number System so that it provides the tools for navigating the case law databases on WESTLAW. Only KeyCite combines the up-to-the-minute case-verification functions of an online citator service with the case-finding tools needed to find relevant case law.

Additional Information

For more detailed information or assistance, contact your WESTLAW Account Representative or call 1-800-REF-ATTY (1-800-733-2889).

WESTfax[®]

Call 1-800-562-2FAX to order full text cases by fax. Pricing: \$7.00 per case plus \$1.50 per page (\$1.00 per page after 10 pages) and applicable tax. Mail and overnight delivery also available. Cases include current history (reversed, overruled, etc.). Hours: 8:00 a.m.-6:00 p.m., central time, Monday through Friday. Available only in U.S.A. Order subject to approval of vendor. Price subject to change without notice.

TITLES OF PURDON'S PENNSYLVANIA STATUTES AND PURDON'S PENNSYLVANIA CONSOLIDATED STATUTES

Title	Purdon's Statutes	Purdon's Consolidated Statutes
1	Adoption [Repealed]-----	General Provisions
2	Aeronautics-----	Administrative Law and Procedure
3	Agriculture -----	Agriculture Code
4	Amusements -----	Amusements
5	Arbitration [Repealed] -----	Athletics and Sports
6	Bailees and Factors -----	Bailees and Factors
7	Banks and Banking -----	Banks and Banking
8	Bonds and Recognizances -----	Boroughs and Incorporated Towns
9	Burial Grounds -----	Burial Grounds
10	Charities and Welfare -----	Charities
11	Children -----	Cities
12	Civil and Equitable Remedies and Procedure [Repealed]-----	Commerce and Trade
12A	Uniform Commercial Code [Repealed]	
13	Constables -----	Commercial Code
14	Cooperative Associations -----	Community Affairs
15	Corporations and Unincorporated Associations-----	Corporations and Unincorporated Associations
16	Counties -----	Counties
17	Courts [Repealed]-----	Credit Unions
18	Crimes and Offenses [Repealed] -	Crimes and Offenses
19	Criminal Procedure [Repealed] --	(Reserved)
20	Decedents' and Trust Estates [Repealed] -----	Decedents, Estates and Fiduciaries
21	Deeds and Mortgages-----	(Reserved)
22	Detectives-----	Detectives and Private Police
23	Divorce-----	Domestic Relations
24	Education -----	Education
25	Elections and Electoral Districts -	Elections
26	Eminent Domain -----	Eminent Domain
27	Escheats -----	Environmental Resources
28	Evidence and Witnesses [Repealed] -----	Escheats
29	Fences-----	Federal Relations
30	Fish [Repealed] -----	Fish

TITLES OF PENNSYLVANIA STATUTES

Title	Purdon's Statutes	Purdon's Consolidated Statutes
31	Food-----	Food
32	Forests, Waters and State Parks-	Forests, Waters and State Parks
33	Frauds, Statute of-----	Frauds, Statute of
34	Game [Repealed]-----	Game
35	Health and Safety-----	Health and Safety
36	Highways and Bridges-----	Highways and Bridges
37	Hotels and Lodging Houses-----	Historical and Museums
38	Industrial Police-----	Holidays and Observances
39	Insolvency and Assignments-----	Insolvency and Assignments
40	Insurance-----	Insurance
41	Interest-----	(Reserved)
42	Justices of the Peace, Aldermen and Magistrates [Repealed]-----	Judiciary and Judicial Procedure
43	Labor-----	Labor
44	Legal Holidays and Observances-	Law and Justice
45	Legal Notices and Advertisements-----	Legal Notices
46	Legislature and Statutes-----	Legislature
47	Liquor-----	Liquor
48	Marriage-----	Lodging and Housing
49	Mechanics' Liens-----	Mechanics' Liens
50	Mental Health-----	Mental Health
51	Military Affairs [Repealed]-----	Military Affairs
52	Mines and Mining-----	Mines and Mining
53	Municipal and Quasi-Municipal Corporations-----	Municipalities Generally
54	Names [Repealed]-----	Names
55	Navigation-----	(Reserved)
56	Negotiable Instruments-----	(Reserved)
57	Notaries Public-----	Notaries Public
58	Oil and Gas-----	Oil and Gas
59	Partnerships-----	(Reserved)
60	Peddlers-----	Peddlers
61	Penal and Correctional Institutions-----	Penal and Correctional Institutions
62	Poor Persons and Public Welfare-	Procurement
63	Professions and Occupations (State Licensed)-----	Professions and Occupations (State Licensed)
64	Public Lands-----	Public Authorities and Quasi- Public Corporations
65	Public Officers-----	Public Officers
66	Public Service Companies [Repealed]-----	Public Utilities
67	Railroads, Railways and Canals. <i>See Title 15</i> -----	Public Welfare
68	Real and Personal Property-----	Real and Personal Property
69	Sales-----	Savings Associations
70	Securities-----	Securities
71	State Government-----	State Government

TITLES OF PENNSYLVANIA STATUTES

Title	Purdon's Statutes	Purdon's Consolidated Statutes
72	Taxation and Fiscal Affairs-----	Taxation and Fiscal Affairs
73	Trade and Commerce -----	Townships
74	United States -----	Transportation
75	Vehicles [Repealed]-----	Vehicles
76	Weights, Measures and Standards [Transferred to Title 31, Food; Title 68, Real and Personal Property; Title 73, Trade and Commerce] -----	Weights, Measures and Standards
77	Workmen's Compensation -----	Workmen's Compensation
78		Zoning and Planning
79		Supplementary Provisions

*



ABBREVIATIONS

A. -----	Atlantic Reporter
A.2d -----	Atlantic Reporter, Second Series
Abb. -----	Abbott's Circuit Court Reports, U.S.
Abb.Adm. -----	Abbott's Admiralty Reports, U.S.
Adams L.J. -----	Adams County Legal Journal
Add. -----	Addison's Reports
Am.Dec. -----	American Decisions
Am.J.L. & Med. -----	American Journal of Law & Medicine
Am.J.Trial Advoc. -----	American Journal of Trial Advocacy
Am.L.J.,N.S. -----	American Law Journal, New Series
Am.L.J.,O.S. -----	American Law Journal, Hall's
Am.L.Reg.,N.S. -----	American Law Register, New Series
Am.L.Reg.,O.S. -----	American Law Register, Old Series
Am.Rep. -----	American Reports
Am.St.Rep. -----	American State Reports
Am.U.L.Rev. -----	American University Law Review
Anml L. -----	Animal Law
Ann.Cas. -----	American & English Annotated Cases
Ashm. -----	Ashmead's Reports
Baldw. -----	Baldwin's Reports, U.S.
Beaver -----	Beaver County Legal Journal
Ben. -----	Benedict's Reports, U.S.
Berkely Women's L.J. -----	Berkeley Women's Law Journal
Berks -----	Berks County Law Journal
Binn. -----	Binney's Reports
Binns' Just. -----	Binns' Justice
Biss. -----	Bissell's Reports, U.S.
Black -----	Black's United States Supreme Court Reports
Blair -----	Blair County Law Reports
Blatchf.C.C. -----	Blatchford's Reports, U.S.
Bond -----	Bond's Reports, U.S.
B.R. -----	Bankruptcy reports
Bright.E.C. -----	Brightly's Election Cases
Bright.N.P. -----	Brightly's Nisi Prius Reports
Brooklyn L.Rev. -----	Brooklyn Law Review
Browne -----	P. A. Browne's reports
Brock. -----	Brockenbrough's Reports, U.S.
Bucks -----	Bucks County Law Reporter
Buff.L.Rev. -----	Buffalo Law Review
B.U.L.Rev. -----	Boston University Law Review
B.Y.U.L.Rev. -----	Brigham Young University Law Review
C.A. -----	United States Court of Appeals
C.C.A. -----	United States Circuit Court of Appeals
Cambria -----	Cambria County Legal Journal
Cambria C.R. -----	Cambria County Reports
Camp. -----	Campbell's Legal Gazette Reports

ABBREVIATIONS

Cardoza L.Rev. -----	Cardozo Law Review
Case W.Res.L.Rev. -----	Case Western Reserve Law Review
Cath. U.L.Rev. -----	Catholic University Law Review
Cent. -----	Central Reporter
C.C. (see Pa.C.C.) -----	County Court Reports
Chest. -----	Chester County Reports
C.J. -----	Corpus Juris
C.J.S. -----	Corpus Juris Secundum
Cl.Ct. -----	Claims Court Reporter
Clark -----	Clark's Pennsylvania Law Journal Reports
Cliff. -----	Clifford's Reports, U.S.
Colum.Hum.Rts.L.Rev. ---	Columbia Human Rights Law Review
Colum.J. Gender & L. ----	Columbia Journal of Gender and Law
Colum.J.L. & Soc.Probs. --	Columbia Journal of Law & Social Problems
Com. -----	Commonwealth
Const. -----	Constitution
Cont.Elect.Case -----	Contested Election Cases, U.S.
Cornell L.Rev. -----	Cornell Law Review
Corp. -----	Pennsylvania Corporation Reporter
C.P.Rep. -----	Common Pleas Reporter
Crabbe -----	Crabbe's Reports, U.S.
Cranch -----	Cranch's United States Supreme Court Reports
Cranch C.C. -----	Cranch's Circuit Court Reports, U.S.
Cl.Ct. -----	Claims Court Reporter
Cumb. -----	Cumberland Law Journal
Curt.C.C. -----	Curtis' Reports, U.S.
Daily L.N. -----	Daily Legal News
Daily L.R. -----	Daily Legal Record
Dall. -----	Dallas' United States Supreme Court Reports
Dauph. -----	Dauphin County Reports
D.C. -----	United States District Court
Deady -----	Deady's Reports, U.S.
Del. -----	Delaware County Reports
Del.Co.L.J. -----	Delaware County Legal Journal
Denv.U.L.Rev. -----	Denver University Law Review
DePaul L.Rev. -----	DePaul Law Review
Dick.L.Rev. -----	Dickinson Law Review
Dill. -----	Dillon's Reports, U.S.
Dist. -----	Pennsylvania District Reports
D. & C. -----	Pennsylvania District & County reports
D. & C.2d -----	District & County Reports, Second Series
Docket -----	The Docket
Duq.L.Rev. -----	Duquesne University Law Review
East. -----	Eastern Reporter
Elder L.J. -----	Elder Law Journal
Emory L.J. -----	Emory Law Journal
Erie -----	Erie County Law Journal
F. -----	Federal Reporter
F.2d -----	Federal Reporter, Second Series
F.3d -----	Federal Reporter, Third Series
Fay.L.J. -----	Fayette Legal Journal
Fed.Cas.No. -----	Federal Cases
Fed.Cl. -----	Federal Claims Reporter

ABBREVIATIONS

Fed.Comm.L.J. -----	Federal Communications Law Journal
F.R.D. -----	Federal Rules Decisions
F.Supp. -----	Federal Supplement
Fiduciary -----	Fiduciary Reporter
Fisher -----	Fisher's Prize Cases, U.S.
Fla.St.U.L.Rev. -----	Florida State University Law Review
Flip. -----	Flippin's Reports, U.S.
Fordham L.Rev. -----	Fordham Law Review
Foster -----	Foster's Legal Chronicle Reports
Gall. -----	Gallison's Reports, U.S.
Gilp. -----	Gilpin's Reports, U.S.
Grant -----	Grant's Cases
Hall's Am.L.J. -----	Hall's American Law Journal
Hastings Const.L.Q. -----	Hastings Constitutional Law Quarterly
Haz.Pa.Reg. -----	Hazard's Register of Pennsylvania
Haz.U.S.Reg. -----	Hazard's United States Register
Hempst. -----	Hempstead's Reports, U.S.
Holmes -----	Holmes' Reports, U.S.
Hopk.Adm. -----	Hopkinson's Admiralty Cases
Hopk.Wks. -----	Hopkinson's Works
Hous.L.Rev. -----	Houston Law Review
How. -----	Howard's United States Supreme Court Reports
Id. -----	Idem. The same
Idaho L.Rev. -----	Idaho Law Review
Jour.Law -----	Journal of Law
J.L. & Com. -----	Journal of Law and Commerce
J.Marshall L.Rev. -----	John Marshall Law Review
J.P. -----	Justice of the Peace
Just. -----	Justice's Law Reporter
Key (☞) -----	American Digest Key Number System
Kulp -----	Kulp's Report, Luzerne Legal Register Reports
L.Ed. -----	United States Supreme Court Reports, Lawyers' Edition
L.Ed.2d -----	United States Supreme Court Reports, Lawyers' Edition, Second Series
Lack.Bar -----	Lackawanna Bar
Lack.Bar R. -----	Lackawanna Bar Reports
Lack.Co.Rep. -----	See Wilcox
Lack.Jur. -----	Lackawanna Jurist
Lack.L.N. -----	Lackawanna Legal News
Lack.L.R. -----	Lackawanna Legal Record
Lanc.Bar -----	Lancaster Bar
Lanc.Rev. -----	Lancaster Law Review
Law.L.J. -----	Lawrence Law Journal
Law Times, N.S. -----	Law Times, New Series
Law Times, O.S. -----	Law Times, Old Series, Luzerne
Lebanon -----	Lebanon County Legal Journal
Leg. Chron. -----	See Foster
Leg.Gaz. -----	Legal Gazette
Leg.Gaz.Rep. -----	See Camp
Leg.Op. -----	Legal Opinion
Leg.Rec. -----	Legal Record Reports
Leg. & Ins.Rep. -----	Legal and Insurance Reporter, Pa.

ABBREVIATIONS

Leh.L.J. -----	Lehigh County Law Journal
Lehigh -----	Lehigh Valley Law Reporter
L. & Sexuality -----	Journal of Law & Sexuality
L.I. -----	Legal Intelligencer
Low. -----	Lowell's Reports, U.S.
Loy.U.Chi.L.J. -----	Loyola University of Chicago Law Journal
L.R.A. -----	Lawyers' Reports Annotated
L.R.A., N.S. -----	Lawyers' Reports Annotated, New Series
Luz.L.J. -----	Luzerne Law Journal
Luz.L.O. -----	Luzerne Legal Observer
Luz.L.Reg. -----	Luzerne Legal Register
Luz.L.Reg.Rep. -----	Luzerne Legal Register Reports, Continuation of Kulp
Luz.L.T.,N.S. -----	Luzerne Law Times, New Series
Luz.L.T.,O.S. -----	Luzerne Law Times, Old Series
Lycoming -----	Lycoming Reporter
McAll. -----	McAllister's Reports, U.S.
McCrary -----	McCrary's Reports, U.S.
McLean -----	McLean's Reports, U.S.
Mag. & Con. -----	Magistrate and Constable
Maryland L.Rev. -----	Maryland Law Review
Mason -----	Mason's Reports, U.S.
Mercer L.Rev. -----	Mercer Law Review
Miles -----	Miles' Reports
Mo.L.Rev. -----	Missouri Law Review
Mona. -----	Monaghan's Reports
Monroe L.R. -----	Monroe Legal Reporter
Montg. -----	Montgomery County Law Reporter
Mun. -----	Municipal Law Reporter
Nat.Bank.Reg. (or N.B.R.) -----	National Bankruptcy Register Reports, U.S.
Nat.Resources & Env't -----	Natural Resources & Environment
Newb.Adm. -----	Newberry's Admiralty Reports, U.S.
New Eng. J. on Crim. & Civ. Confinement -----	New England Journal on Criminal and Civil Confinement
Niles Reg. -----	Niles' Register
North. -----	Northampton County Reports
Northumb.Co. -----	Northumberland County Legal News
Northumb.L.J. -----	Northumberland Legal Journal
N.C.L.Rev. -----	North Carolina Law Review
N.D.L.Rev. -----	North Dakota Law Review
N.Y.U.L.Rev. -----	New York University Law Review
N.Y.U.Rev.L. & Loc. Change -----	New York University Review of Law and Social Change
Olcott -----	Olcott's Admiralty Reports, U.S.
O.L.J. -----	Olwines Law Journal
Op.Atty.Gen. -----	Opinions of the Attorney General
Or.L.Rev. -----	Oregon Law Review
Pa. -----	Pennsylvania State Reports
Pa.B.A.Q. -----	Pennsylvania Bar Association Quarterly
Pa.Bk.Cas. -----	Pennsylvania Bank Cases
Pa.C.C. -----	Pennsylvania County Court Reports
Pa.C.S.A. -----	Pennsylvania Consolidated Statutes Annotated

ABBREVIATIONS

Paine -----	Paine's Report, U.S.
Pa.L.J. -----	Pennsylvania Law Journal
Pa.L.M. -----	Pennsylvania Law Magazine
Pa.L.S. -----	Pennsylvania Law Series
Pa.L.Rec. -----	Pennsylvania Law Record
Pa.O.C. -----	Orphans' Court
Pa.R.Admis. -----	Bar Admission Rules
Pa.R.A.P. -----	Rules of Appellate Procedure
Pa.R.CJC -----	Code of Judicial Conduct
Pa.R.C.L.E. -----	Rules for Continuing Legal Education
Pa.R.C.P. -----	Rules of Civil Procedure
Pa.R.C.P.D.J. -----	Rules of Conduct, Office of Standards and Civil Procedure for District Judges
Pa.R.Crim.P. -----	Rules of Criminal Procedure
Pa.R.D.E. -----	Rules of Disciplinary Enforcement
Pa.R.J.A. -----	Rules of Judicial Administration
Pa.R.J.Disc.Int. -----	Court of Judicial Discipline Interim Rule
Pa.R.Phila.Mun.Ct.RCP -----	Philadelphia Municipal Court Rules of Civil Procedure
Pars. -----	Parson's Select Equity Cases
Pa.Super. -----	Pennsylvania Superior Court Reports
Pears. -----	Pearson's Reports
PEB -----	Permanent Editorial Board for the Uniform Commercial Code
Penny. -----	Pennypacker's Supreme Court Reports
Penny.Col.Cas. -----	Pennypacker Colonial Cases
Pet. -----	Peters' United States Supreme Court Reports
Pet.Adm. -----	Peters' Admiralty Reports, U.S.
Pet.C.C. -----	Peters' Circuit Court Reports, U.S.
P.F.S. -----	P. F. Smith
Phila. -----	Philadelphia Reports
Pitts. -----	Pittsburgh Reports
P.L. -----	Pamphlet Laws
P.L.E. -----	Pennsylvania Law Encyclopedia
P.L.J. -----	Pittsburgh Legal Journal
P.S. -----	Purdon's Pennsylvania Statutes Annotated
P. & W. -----	Penrose and Watts' Reports
Rawle -----	Rawle's Reports
Sadler -----	Sadler's Pennsylvania Supreme Court Cases
Santa Clara L.Rev. -----	Santa Clara Law Review
Sawy. -----	Sawyer's Reports, U.S.
Sch.L.R. -----	Schuylkill Legal Record
Sch.Reg. -----	Schuylkill Register
Seton Hall J.Sport L. -----	Seton Hall Journal of Sport Law
Seton Hall Legis.J. -----	Seton Hall Legislative Journal
Shingle -----	Shingle
Singers -----	Singers Probate Cases
S.Ct. -----	United States Supreme Court Reporter
S.Ill.U.L.J. -----	Southern Illinois University Law Review
SMU L.Rev. -----	Southern Methodist University Law Review
Som. -----	Somerset Legal Journal
Sprague -----	Sprague's Reports, U.S.
St.Mary's L.J. -----	St. Mary's Law Journal

ABBREVIATIONS

Stetson L.Rev.-----	Stetson Law Review
Story -----	Story's Reports, U.S.
Sumn. -----	Sumner's Reports, U.S.
Super.Ct.Rep. -----	See Pa.Super.
Susq.L.Chron. -----	Susquehanna Legal Chronicle
Syracuse L.Rev. -----	Syracuse Law Review
S. & R. -----	Sergeant & Rawle's Reports
Taney -----	Taney's Reports, U.S.
Temp.L.Q. -----	Temple Law Quarterly
Temp.L.Rev. -----	Temple Law Review
Tort & Ins.L.J. -----	Tort & Insurance Law Journal
Trial -----	Trial
U.Chi.L.Rev. -----	University of Chicago Law Review
U.Cin.L.Rev. -----	University of Cincinnati Law Review
U.Colo.L.Rev.-----	University of Colorado Law Review
U.Ill.L.Rev. -----	University of Illinois Law Review
U.Pa.L.Rev. -----	University of Pennsylvania Law Review
U.Pitt.L.Rev. -----	University of Pittsburgh Law Review
U.Pitt.J.L. & Comm. -----	The Journal of Law and Commerce
U.S. -----	United States Supreme Court Reports
U.S.C.A. -----	United States Code Annotated
Vand.L.Rev.-----	Vanderbilt Law Review
Vaux -----	Vaux Recorder's Decisions
Vill.L.Rev. -----	Villanova Law Review
W. -----	Watts' Reports
W. & S. -----	Watts' & Sergeant's Reports
Walk. -----	Walker's Pennsylvania Supreme Court Cases
Wall. -----	Wallace's United States Supreme Court Reports
Wall.C.C. -----	Wallace, Sr.'s, Reports, U.S.
Wall.Jr.C.C. -----	Wallace, Jr.'s, Reports, U.S.
War.Op. (or Warwick's Op.) -----	Warwick's Opinions, City Solicitor of Philadelphia
Ware -----	Ware's Reports, U.S.
Wash. -----	Washington County Reports
Wash.U.L.Q. -----	Washington University Law Quarterly
Watts -----	Watts' Reports
Watts & S. -----	Watts' & Sergeant's Reports
West. -----	Westmoreland County Law Journal
West's Op. -----	West's Opinions, City Solicitor of Philadelphia
Wh. -----	Wharton's Reports
Wheat. -----	Wheaton's United States Supreme Court Reports
Widener J.Pub.L. -----	Widener Journal of Public Law
Wilcox -----	Wilcox's Lackawanna County Reports
Wis.L.Rev. -----	Wisconsin Law Review
Wm. & Mary L.Rev. -----	William & Mary Law Review
W.N.C. -----	Weekly Notes of Cases
Woodb. & M. -----	Woodbury & Minot's Reports, U.S.
Woods -----	Woods' Reports, U.S.
Woodw. -----	Woodward's Decisions
Woolw.Rep. -----	Woolworth's Reports, U.S.

ABBREVIATIONS

Work.Comp. -----	Workmen's Compensation Law of Pennsylvania
Y. -----	Yeates' Reports
Yale J.L. & Feminism ----	Yale Journal of Law and Feminism
Yeates -----	Yeates' Reports
York -----	York Legal Record

*

EFFECTIVE DATES OF ACTS

Section 1701 of Title 1, General Provisions, of Purdon's Pennsylvania Consolidated Statutes provides:

"(a) General rule.—Except as otherwise provided in this chapter all statutes enacted finally at any regular session of the General Assembly not containing a specified effective date shall be effective on the date specified by that one of the following rules of construction in effect on the date of final enactment of the statute:

"(1) Final enactment before May 18, 1929.—immediately upon final enactment.

"(2) Final enactment on or after May 18, 1929 and before August 25, 1951.—on the first day of September next following their final enactment.

"(3) Final enactment on or after August 25, 1951 and before January 10, 1960.—on the first day of September next following their final enactment, or if finally enacted after the first day of September of the year of the regular session, immediately upon final enactment.

"(4) Final enactment on or after January 10, 1960 and before June 6, 1969.—on the first day of September next following their final enactment, or if finally enacted after the first day of July of the year of the regular session, 60 days after final enactment.

"(5) Final enactment on or after June 6, 1969.—60 days after final enactment.

"(b) Statutes enacted after effective date therein specified.—Except as otherwise provided in this chapter all statutes enacted finally at any regular session of the General Assembly after the effective date therein specified shall be effective on the date specified by that one of the following rules of construction in effect on the date of final enactment of the statute:

"(1) Final enactment before January 10, 1960.—immediately upon final enactment.

"(2) Final enactment on or after January 10, 1960.—60 days after final enactment."

1972, Dec. 6, P.L. 1339, No. 290, § 3, imd. effective.

A bill passed notwithstanding the objections of the Governor becomes law on the day of the vote to override the veto in the second house. Const. Art. 4, § 15. O.A.G. No. 76-9, March 24, 1976.

For special effective dates of statutes making appropriations, statutes affecting the budget of political subdivisions and statutes enacted at a special session, see 1 Pa.C.S.A. §§ 1702 to 1704.

*

CITE THIS BOOK

Purdon's Statutes:

____ P.S. § ____

Pennsylvania Consolidated Statutes Annotated:

____ Pa.C.S.A. § ____

*

PURDON'S PENNSYLVANIA STATUTES ANNOTATED

C

TITLE 21

DEEDS AND MORTGAGES

Acts 1970, No. 230, approved November 25, 1970, as amended, establishes the structure of the Pennsylvania Consolidated Statutes by listing the titles thereof which will be implemented from time to time in the future. For text of the Act including the list of titles, see Title 1, Pa.C.S.A.

Title 21 of the Pennsylvania Consolidated Statutes appears as Appendix following this title.

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Cross References

Aliens, capacity to take, hold and dispose of realty, see 68 P.S. § 22 et seq.

Fraudulent destruction, removal or concealment of of recordable instruments, see 18 Pa. C.S.A. § 4103.

Theft by unlawful taking or disposition, see 18 Pa.C.S.A. § 3921.

Perpetuities, see 20 Pa.C.S.A. § 6104.

Real estate registry in boroughs, see 53 P.S. § 48001 et seq.

Testamentary powers of sale, see 20 Pa.C.S.A. §§ 3354, 5144, 7141.

DEEDS AND MORTGAGES

CHAPTER 1

DEEDS AND GENERAL PROVISIONS

FORM AND CONSTRUCTION

Section

- 10.1. Uniform parcel identifier; conveyances, mortgages, releases, and other instruments.
- 14. Repealed.

EXECUTION, PROBATE AND ACKNOWLEDGMENT

GENERAL PROVISIONS

- 50. Repealed.
- 52. Repealed.
- 52.1, 52.2. Repealed.
- 57. Repealed.

AUTHORITY TO TAKE ACKNOWLEDGMENTS

- 142. Repealed.
- 145. Repealed.
- 146. Repealed.
- 147. Repealed.
- 148. Repealed.
- 154. Repealed.
- 155, 156. Repealed.
- 181. Repealed.
- 182. Repealed.
- 183. Repealed.
- 191. Repealed.
- 221. Repealed.

VALIDATION OF CERTAIN ACKNOWLEDGMENTS AND CONVEYANCES

- 253. Repealed.
- 255. Repealed.
- 257. Repealed.
- 258. Repealed.
- 277.2. Repealed.
- 281.1. Defective acknowledgments prior to 1996.
- 283.3. County treasurers deeds prior to December 31, 1965 validated; no proof of service filed, etc.
- 287. Deed or transfer without certificate showing residence.
- 289. Records of legal instruments having defective acknowledgments.

UNIFORM ACKNOWLEDGMENT ACT

- 291.3. Acknowledgment within the United States.
- 291.7. Forms of certificates.
- 291.8. Execution of certificate.
- 291.9. Authentication of acknowledgments.
- 291.10. Acknowledgments under laws of other states.

Section

- 291.10a. Acknowledgment by persons serving in or with the armed forces of the United States or their dependents within or without the United States.

REGISTRATION AND RECORDING

REGISTRATION IN GENERAL

- 329. City of Philadelphia, maintenance of day book by commissioner of records.
- 330. City of Philadelphia, issuance of receipts by commissioner of records.

UNIFORM PARCEL IDENTIFIER LAW

- 331. Short title.
- 332. Definitions.
- 333. Ordinance requiring permanency of county maps.
- 334. Assigning uniform parcel identifiers.
- 335. Recording procedures.
- 336. Fees.
- 337. Home rule charter and optional plan counties.

NECESSITY OF RECORDING AND COMPULSORY RECORDING

- 352, 353. Repealed.
- 354. Repealed.
- 355. Repealed.

INSTRUMENTS SUBJECT TO RECORD

- 381. Deeds, etc., duly executed and acknowledged out of the state, may be recorded.
- 392 to 394. Repealed.
- 395 to 397. Repealed.
- 398. Repealed.
- 403. Wills probated outside state; exemplified copies.
- 404. Lease or sublease or agreement to lease or sublease.
- 405. Memorandum of lease, sublease or agreement.
- 406. Indexing of lease, sublease or agreement.
- 407. Effect of recording lease, sublease, agreement or memorandum.
- 408. Construction of act regarding lease, sublease or agreement.
- 409. Effect of recording memorandum of lease, sublease or agreement.
- 410. Application of act regarding lease, sublease or agreement.

Section

RECORDING OF AFFIDAVITS

451. Recording of affidavits; admissibility into evidence.
452. Contents of affidavit.
453. Requirements of affidavit; certification; index.

REPRODUCTION OF MAPS, PLATS, OR PLANS

481. Court direction; process; originals preserved.
482. Expense.

PROOF OF LOST DEED AND PLANS

- 491, 492. Repealed.

Section

493. Repealed.
494. Repealed.
495. Repealed.

RESULTING TRUSTS

602. Repealed.

USE REGISTRATION PERMITS

611. Legislative findings.
612. Definitions.
613. Certificates.
613.1. Agreements of sale.
614. Non-conforming uses.
615. Penalties.

FORM AND CONSTRUCTION

§ 1. Form of deed

Library References

P.L.E. Deeds § 4.

Notes of Decisions

1. Construction and application

Grantor is estopped to assert anything in derogation of his deed, as against grantee. *Daley v. Hornbaker*, 472 A.2d 703, 325 Pa.Super. 172, Super.1984.

3. Language of instrument

Fact that one of boundary lines could have been better described in deed conveying to Port Authority certain property in which city had an interest in no way impaired adequacy of description or validity of deed. *Port Authority of Allegheny County v. Flaherty*, 293 A.2d 152, 6 Pa. Cmwlth. 135, Cmwlth.1972.

The principle that a deed should be construed most strongly against the grantor is recognized, but it has no priority over other rules of construction. The objective in construing an ambiguous provision in a deed is to find the intention of the parties and if this can be ascertained, other rules of construction are unnecessary. *Chapleski v. Com. Dept. of Highways*, 44 Northumb.LJ 1 (1972), affirmed 291 A.2d 360, 5 Pa.Cmwlth. 482.

7. Description

Where language in deed to plaintiffs' predecessors in title merely expressed that lateral boundary lines were parallel and at right angles to avenue, and that the line of the 44-foot wide street which constituted one of the lateral boundaries was situated at right angle to the avenue, this clearly defined boundary could not be altered by the course of the private street as it had been described in a deed conveying a separate lot to defendants' predecessor in title, nor could it be altered by a later survey was which was wholly inadequate to show a mistake in the description.

Wysinski v. Mazzotta, 472 A.2d 680, 325 Pa.Super. 128, Super.1984.

Where there is a conflict between boundaries described in deeds from the same grantor, the deed first executed has priority, and the grantee named therein has superior title. *Wysinski v. Mazzotta*, 472 A.2d 680, 325 Pa.Super. 128, Super.1984.

To permit a variation from a deed description which is complete and unambiguous on its face, there must be evidence of a mutual mistake which is clear, precise and convincing. *Wysinski v. Mazzotta*, 472 A.2d 680, 325 Pa.Super. 128, Super.1984.

Although there was no mention of any of buildings on conveyed property in the deed, where description in deed was not prepared by a professional engineer but by grantor, where there could easily have been a mistake or ambiguity in deed concerning the description, regardless of omission of the word "building," where subsequent to the deed, grantees moved into farmhouse and operated antique shop in barn and obviously relied on deed as having conveyed to them their interest in property and in the buildings, where proposed sale of strip of land which would clear the building at a price of \$10,000 seemed extremely unreasonable in light of fact that deed of 1971 conveyed majority of land without any consideration passing, parol evidence was properly admitted in boundary dispute to determine intent of parties. *Baker v. Zingelman*, 393 A.2d 908, 259 Pa.Super. 441, Super.1978.

Where portion of building is not included in description of deed and it is not clear from deed that parties meant for entire building to pass, only that portion of building passes that is cov-

ered in the description. *Baker v. Zingelman*, 393 A.2d 908, 259 Pa.Super. 441, Super.1978.

Description of land, allegedly the subject of an agreement for sale, that, "the subject land shall be bounded on the North by a line to be decided upon by the party of the first part within the limits of a westerly extension of the northerly boundary of lot number 9 and a line beginning at the most northwesterly point of lot number 9 and extended southwesterly exactly parallel to the southerly boundary," supplemented by a survey map which was incorporated by reference, was sufficiently definite to identify the parcel and to warrant specific performance, notwithstanding contention that the northern boundary was insufficiently defined and that accompanying plan was incomplete and not in accord with the agreement. *Snow v. Corsica Const. Co., Inc.*, 329 A.2d 887, 459 Pa. 528, Sup.1974.

Fact that description of land which is the subject of an agreement for sale, contained typographical error defining parcel lying in an easterly direction from certain lot rather than in a westerly direction did not affect agreement's enforceability in equity where remaining language sufficiently described the parcel so as to obviate any ambiguity. *Snow v. Corsica Const. Co., Inc.*, 329 A.2d 887, 459 Pa. 528, Sup.1974.

A call for adjoiners takes precedence over metes and bounds and indeed a description only to adjoiners is wholly adequate. *Port Authority of Allegheny County v. Flaherty*, 293 A.2d 152, 6 Pa.Cmwlth. 135, Cmwlth.1972.

Where an ambiguity exists in a deed description, it should be determined in accordance with the intention of the parties, and where grantees in an ambiguous deed attempt to correct the ambiguity unilaterally by executing a later deed to themselves containing a description by courses and distances which ignores a monument that was intended to be a boundary in the original

deed, the later deed will be declared a nullity and the court will cause a correct description to become a matter of record. *McGill v. McGill*, 31 Fay.L.J. 92 (1968).

The object of a description in a deed is to identify the land conveyed, but need not necessarily be technically accurate, but must be sufficiently precise for the purpose of identification and to enable a surveyor to locate it. *Nestico v. Carnucci*, 39 Northumb.L.J 39 (1966).

Where the thing granted has been described by its number as found on the ground, or on a plat, such description in a conveyance, contract or writ of ejectment is a sufficient description to effectuate the purpose of the parties. *Nestico v. Carnucci*, 39 Northumb.L.J 39 (1966).

Where common owners of two adjoining numbered lots of ground on a recorded borough plan, whereon improvements are erected, convey one numbered lot passing through successive owners to the defendant in an action of ejectment, and the adjoining numbered lot to the plaintiffs, and the municipally numbered structure on defendant's lot was torn down, leaving only the foundation walls with wooden flooring on top of the walls remaining on the premises, and this structure had encroached on the adjoining numbered lot owned by the plaintiffs a depth of 63½ feet for a width varying from 3 feet at one end to 5 feet at the other end, lot and block number description of the land prevailed over the municipally numbered designation of the structure erected thereon, and plaintiff was the owner of disputed strip of land. *Nestico v. Carnucci*, 39 Northumb.L.J 39 (1966).

Where a map or plan is referred to in a deed as showing or identifying the land described in the deed, the map or plan becomes a material and essential part of the deed and must be treated as if copied into the deed. *Nestico v. Carnucci*, 39 Northumb.L.J 39 (1966).

§ 2. Words necessary to pass fee simple title

Library References

P.L.E. Deeds § 42.

Notes of Decisions

I. Construction and application

Words of indubitable limitation, such as "so long as," "during," "while" and "until," are generally used to create fee simple determinable. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

Where deed conveyed property and stated that property was granted "forever provided the [grantee] his heirs and assigns wishes to make use of it for the purpose of a road" and further stated that grantee agreed to keep good fence around property and that failing to do so forfeited his claim, deed was ambiguous, and conflicting terminology created fee simple subject to condition subsequent, not fee simple determinable. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

When otherwise effective conveyance contains clause which provides that "if," or "upon the condition that" or "provided that" stated event occurs, then estate created "shall be null and void" or "shall revert back," problem in construction is presented as to whether such conveyance creates estate in fee simple subject to condition subsequent or estate in fee simple determinable; such conveyance more commonly manifests intent to create estate in fee simple subject to condition subsequent. *Stolarick v. Stolarick*, 363 A.2d 793, 241 Pa.Super. 498, Super.1976.

Because there was no evidence of contrary intent, deed of land framed in conditional language, except for provision that in event of non-performance, deed was to be "null and void" and farm was to revert to grantors, conveyed fee

simple subject to condition subsequent. *Stolarick v. Stolarick*, 363 A.2d 793, 241 Pa.Super. 498, Super.1976.

Purpose of this section, relating to words necessary to pass fee simple title, was to validate written instruments purporting to convey realty in fee which use words "grant" or "convey" but fail to use words of inheritance or perpetuity. *Pennsylvania Bank & Trust Co., Youngsville Branch v. Dickey*, 335 A.2d 483, 232 Pa.Super. 224, Super.1975.

Agreement between husband and wife that realty should no longer be held by them as tenants by the entireties, but that each should own undivided one-half interest as tenants in common, without right of survivorship, and that in event of death of wife her undivided one-half interest should become sole and separate property of guardian of wife's sister-in-law, who was mentally retarded and physically unable to work and care for herself, for personal care, use, and benefit of sister-in-law, was void and did not convey a fee-simple interest of wife as tenant in common of undivided one-half interest to either guardian or sister-in-law since agreement did not contain words "grant and convey" or either of them, which are deemed effective to pass to a grantee or grantees a fee-simple title of premises conveyed, and since common-law rule that conveyance to husband and wife of an entire estate creates an estate by entireties even though habendum clause therein contains specific language to contrary still prevails. *Kern v. Finnegan*, 162 A.2d 93, 192 Pa.Super. 611, Super.1960.

Recitation in instrument of conveyance, that grantor has "granted, bargained, sold, released and conveyed" strip of land "unto" the grantee and "its successors and assigns" constitute a certification of the quantum and quality of grantor's estate, not of that which is being conveyed. *Brookbank v. Benedum-Trees Oil Co.*, 131 A.2d 103, 389 Pa. 151, Sup.1957.

In instrument of conveyance, words "granted, bargained, sold, released and conveyed" strip of land "unto" the grantee and "its successors and assigns" would have to be interpreted in light of the entire instrument, particularly since the words were used in the past tense, and quoted words, standing alone, would not compel an interpretation that a fee was intended to be conveyed. *Brookbank v. Benedum-Trees Oil Co.*, 131 A.2d 103, 389 Pa. 151, Sup.1957.

Extent of grant, which was made in deeds of common grantor, and which allowed grantee and his immediate family to enjoy free use of certain

swimming pool constructed by common grantor, would depend upon intent of parties as determined by fair interpretation of language employed and consideration of all the attendant circumstances. *Maranatha Settlement Ass'n v. Evans*, 122 A.2d 679, 385 Pa. 208, Sup.1956.

This section is applicable to grant of an easement. *Maranatha Settlement Ass'n v. Evans*, 122 A.2d 679, 385 Pa. 208, Sup.1956.

Absence of words of inheritance is an indication that an exception rather than a reservation is intended. *Kohn v. Klopfenstein*, 87 Pa. D. & C. 411 (1954).

This act is applicable to the grant of an easement as well as the conveyance of the title. *Shuey v. Long*, 36 Northumb.LJ 186 (1964).

This section is applicable to grant of an easement as well as the conveyance of the title. *Shuey v. Long*, 36 Northumb.LJ 186 (1964).

2. Fee or life estate

Mere fact that word "grant" appeared in "lease agreement" did not necessarily create fee simple estate in lessees. *Pennsylvania Bank & Trust Co., Youngsville Branch v. Dickey*, 335 A.2d 483, 232 Pa.Super. 224, Super.1975.

"Lease agreement" granting to lessees the exclusive right to oil and gas was more than a mere license granting them right to remove minerals, where lessor was prohibited by agreement's terms from removing minerals herself or from permitting anyone else to do so. *Pennsylvania Bank & Trust Co., Youngsville Branch v. Dickey*, 335 A.2d 483, 232 Pa.Super. 224, Super.1975.

"Lease agreement" granting to lessees the exclusive right to remove all of oil and gas in premises for term of one year "and as long thereafter as oil or gas is found" resulted in separate mineral estate being created in lessees; such estate was taxable realty, and subsequent treasurer's sale of estate for nonpayment of real estate taxes was valid. *Pennsylvania Bank & Trust Co., Youngsville Branch v. Dickey*, 335 A.2d 483, 232 Pa.Super. 224, Super.1975.

4. Words of purchase or limitation

In accordance with Pennsylvania's policy of favoring free alienability of land, deed which would convey estate in fee simple except for certain words, or for a phrase of clause, must be interpreted strictly against any such limitation unless grantor's intention to so limit fee is clearly expressed or necessarily implied. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

§ 3. Grantor's entire estate and rights conveyed

Library References

P.L.E. Deeds § 41.

Notes of Decisions

Competency 19
Construction of deed 16

Exceptions, reservations and limitations 17
Fraud 21

Gift	18
Leases, generally	4.5
Presumptions and burden of proof	20
Restrictive covenants	10.5
Reversionary interest	15
Undue influence	19.5

I. Construction and application in general

Estate or title subsequently acquired by grantor or who conveys under warranty inures to benefit of grantee whether party assuming to convey title acted under honest mistake or committed fraud. *Daley v. Hornbaker*, 472 A.2d 703, 325 Pa.Super. 172, Super.1984.

Where there was no evidence of agreement or understanding between parties that new roadway would replace looped roadway as easement, new roadway was built merely as alternative route through land, and was intended only as accommodation to property owners over whose land right-of-way existed. *Flaherty v. DeHaven*, 448 A.2d 1108, 302 Pa.Super. 412, Super.1982.

Where defendants in action seeking permanent injunction restraining defendants from interfering with plaintiffs' use of right-of-way over plaintiffs' property asserted as new matter easement in contradiction to that raised by plaintiffs in their complaint, situs of right-of-way was legal conclusion rather than averment of fact, and answer was controlled by Pa.R.C.P. No. 1026, 42 Pa. C.S.A. which states that no pleading need be filed unless preceding pleading was endorsed with notice to plead, therefore, where no such notice was given, plaintiffs were under no duty to reply. *Flaherty v. DeHaven*, 448 A.2d 1108, 302 Pa.Super. 412, Super.1982.

As a general rule, where a sale of real estate is of a tract as a whole, and not by the acre, the purchaser, unless there has been fraud or the vendor has guaranteed the number of acres, is not entitled to recover a portion of the consideration paid merely because the quantity of land is less than estimated at the time of sale. *Matter of Warner's Estate*, 446 A.2d 293, 300 Pa.Super. 188, Super.1982.

Purchasers, who paid the full net price for an accepted title to a parcel of land at public auction estimated to contain 10.4 acres, were not entitled to recover portion of the purchase price from the vendor's estate because a survey made after closing disclosed that the tract contained only 8.163 acres, where the quantity had been qualified to indicate that it might be more or less and, aside from the absence of the slightest hint of fraud, there had been no guarantee regarding the quantity of land which the tract contained. *Matter of Warner's Estate*, 446 A.2d 293, 300 Pa.Super. 188, Super.1982.

A deed is to be interpreted in light of conditions existing when it was executed, and entirety of language is to be considered. *Nevling v. Natoli*, 434 A.2d 187, 290 Pa.Super. 174, Super.1981.

Grantor and his successors are capable of transmitting both possibility of reverter and right

of reentry but inheritance, conveyance, assignment or release. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

Grantor is characterized as retaining possibility of reverter and right of reentry because when he creates fee simple determinable or fee simple subject to condition subsequent he does not dispose of his entire interest in land; therefore, interests are deemed vested at time of their creation and are not subject to rule against perpetuities. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

Portions of deed preceding phrase "forever provided the [grantee] his heirs and assigns wishes to make use of it for the purpose of a road" created fee simple. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

Where deed conveyed property "forever provided the [grantee] his heirs and assigns wishes to make use of it for the purpose of a road," term "wishes" referred to state of mind of grantee and established that mere nonuse of property as road did not establish that condition subsequent had been broken, and, therefore, estate could not be deemed forfeited only upon showing that grantee had no inclination to use property as road. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

Where description is sufficient so that one may determine exact limits of property included by reference to plan, deed or other similar records, the law is satisfied. *Dickson v. Pennsylvania Power and Light Co.*, 423 A.2d 711, 283 Pa.Super. 53, Super.1980.

Traditional rules of construction applicable to determine intention of landowner in executing document in favor of railroad are that the nature and quantity of interest conveyed must be ascertained from the instrument itself and cannot be orally shown in absence of fraud, accident or mistake and court seeks to ascertain not what parties may have intended by language but what is meaning of words; that effect must be given to all the language of an instrument and no part shall be rejected if it can be given meaning; if doubt arises concerning interpretation of instrument it will be resolved against party who prepared it; unless contrary to plain meaning of instrument, interpretation given it by parties themselves will be favored; and language of deed should be interpreted in light of subject matter, apparent object or purpose of parties and conditions existing when it was executed. *Lawson v. Simonsen*, 417 A.2d 155, 490 Pa. 509, Sup.1980.

The amount of consideration paid for interest of property is a factor to be considered in determining nature of estate intended to be conveyed by landowner executing written instrument in favor of railroad. *Lawson v. Simonsen*, 417 A.2d 155, 490 Pa. 509, Sup.1980.

Where side of street is called for as boundary in deed, grantee takes title in fee to center of street, if grantor had title to that extent and did not expressly or by clear implication reserve it. *Heller v. Borough of South Williamsport*, 408 A.2d 1172, 47 Pa.Cmwlth. 642, Cmwlth.1979.

Trial court's determination that property owners' lots, as subdivided pursuant to their plans, would be in substantial conformity with other lots in development was erroneous, in view of fact that owners' plans called for subdivided lots having area of approximately 12,450 square feet each while, out of a total of 134 lots in the area, only 12 lots did not exceed 15,000 square feet in area. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

An agreement by vendor to convey to purchaser a deed "free from all encumbrances" means a deed free from encumbrances at time of settlement. *Byrne v. Kanig*, 332 A.2d 472, 231 Pa.Super. 531, Super.1974.

Purchaser who has duty to pay for municipal improvement begun and completed subsequent to agreement of sale but before conveyance of property may not unilaterally impose obligation for payment of improvement upon vendor by failing to pay improvement charge when assessed and allowing lien to be entered against property. *Byrne v. Kanig*, 332 A.2d 472, 231 Pa.Super. 531, Super.1974.

The mere expression of the purpose of a grant will not debase a fee. A fee may be cut down only by clearly expressed, or necessarily implied, intent of the grantor. In *re Masmer's Estate*, 68 York 65 (1955).

2. Intention of parties

Evidence offered to establish grantor's alleged intent at time of execution of deed that the property would ultimately pass to his children was too ambiguous and conflicting to permit determination of grantor's intent and, particularly, to establish that grantor effectively disposed of his beneficial interest in the property so as to preclude finding of resulting trust. *Galford v. Burkhouse*, 478 A.2d 1328, 330 Pa.Super. 21, Super.1984.

Evidence, in action seeking permanent injunction against landowner restraining landowner from interfering with plaintiffs' use of right-of-way across landowners' property, including testimony of common grantor that he graded and enlarged roadway in question prior to sale of parcels, was sufficient to show that looped roadway was intended to be situs of right-of-way expressly provided for in deeds, even though deed itself was silent as to situs of easement. *Flaherty v. DeHaven*, 448 A.2d 1108, 302 Pa.Super. 412, Super.1982.

Superior Court's primary object in construing terms of deed is to ascertain and effectuate the intention of parties. *Nevling v. Natoli*, 434 A.2d 187, 290 Pa.Super. 174, Super.1981.

Grantor, as draftsman of deed, bears heavy burden of using clear and unambiguous language to make explicit his intent to create fee simple determinable. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

Primary objective in interpreting deed is to ascertain and effectuate intent of parties. *Higbee Corp. v. Kennedy*, 428 A.2d 592, 286 Pa.Super. 101, Super.1981.

Where ambiguity in deed exists, surrounding circumstances may be considered to determine the intent of the parties, and the subsequent acts of the parties are important to manifest their intentions. *Baker v. Zingelman*, 393 A.2d 908, 259 Pa.Super. 441, Super.1978.

Although there was no mention of any of buildings on conveyed property in the deed, where description in deed was not prepared by a professional engineer but by grantor, where there could easily have been a mistake or ambiguity in deed concerning the description, regardless of omission of the word "building," where subsequent to the deed, grantees moved into farmhouse and operated antique shop in barn and obviously relied on deed as having conveyed to them their interest in property and in the buildings, where proposed sale of strip of land which would clear the building at a price of \$10,000 seemed extremely unreasonable in light of fact that deed of 1971 conveyed majority of land without any consideration passing, parol evidence was properly admitted in boundary dispute to determine intent of parties. *Baker v. Zingelman*, 393 A.2d 908, 259 Pa.Super. 441, Super.1978.

In construing restrictive covenants and restrictive agreements, intentions of parties thereto govern, and outmoded restrictions will not be enforced and must give way to new and modern uses of property. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

Title to realty cannot be destroyed by mere declarations of the grantor. *Scientific Living, Inc. v. Hohensee*, 270 A.2d 216, 440 Pa. 280, Sup.1970, certiorari denied 91 S.Ct. 2189, 402 U.S. 1012, 29 L.Ed.2d 435, rehearing denied 92 S.Ct. 28, 404 U.S. 874, 30 L.Ed.2d 121.

Interpretation of deed depends not on what parties may have intended by language but what is meaning of words employed. *Krill v. Petitto*, 175 A.2d 54, 405 Pa. 203, Sup.1961.

Deed is to be construed most strongly against grantor. *Krill v. Petitto*, 175 A.2d 54, 405 Pa. 203, Sup.1961.

Real intention of parties, particularly grantor, should be sought and carried out whenever possible, when contrary to no settled rule of property which specifically ingrafts a particular meaning upon certain language or when not contrary to or violative of, settled principles of law or statutory prohibitions. *Lacy v. Montgomery*, 124 A.2d 492, 181 Pa.Super. 640, Super.1956.

To ascertain intention of parties, language of deed should be interpreted in light of subject matter, apparent object or purpose of parties, and conditions existing when it was executed. *Lacy v. Montgomery*, 124 A.2d 492, 181 Pa.Super. 640, Super.1956.

In construing a deed, it is not what the parties may have intended by the language used, but what is the meaning of the words. *Nestico v. Carnucci*, 39 Northumb.L.J 39 (1966).

4. Recitals

By deed in which the owners, conveying premises, inserted reservation of "right to use the said premises as tenants" of grantee "free of rental",

until grantee, his heirs or assigns would require it in connection with development of hydroelectric power, they conveyed fee and reserved only leasehold interest. *Wilford v. Dickey*, 175 A.2d 98, 196 Pa.Super. 468, Super.1961.

The recital in a deed is not a necessary part of it, and where the recital and the operative part of the deed conflict, the operative part prevails if certain and definite. *Nestico v. Carnucci*, 39 Northumb.L.J 39 (1966).

4.5. Leases, generally

Under gasoline service station lease, which, in separate paragraphs, gave lessee option of purchasing for \$45,000 and gave lessee first option to purchase on written notice from lessor at same price and terms as third party offered, "fixed price option" was not terminated upon giving of such notice of third-party offer as was required to bring "first purchase option" into operation and lessors therefore had to execute and deliver deed to lessee upon tender of fixed price of \$45,000. *Amoco Oil Co. v. Snyder*, 448 A.2d 1139, 302 Pa.Super. 472, Super.1982, affirmed 478 A.2d 795, 505 Pa. 214.

Law of property regards lease of land as the equivalent to a sale of premises for the term. *Com.*, by *Cremer v. Monumental Properties, Inc.*, 329 A.2d 812, 459 Pa. 450, Sup.1974, on remand 365 A.2d 442, 26 Pa.Cmwth. 864.

Where nothing appeared to indicate that the role of the defendant printers of allegedly deceptive lease forms was anything other than mechanical and there was no allegation by Commonwealth that printers did not act in good faith or that they had any knowledge of the alleged false and deceptive character of lease provisions, the defendant printers under record could not be enjoined under the Consumer Protection Law (73 P.S. 201-1 et seq.) for printing the lease forms. *Com.*, by *Cremer v. Monumental Properties, Inc.*, 329 A.2d 812, 459 Pa. 450, Sup.1974, on remand 365 A.2d 442, 26 Pa.Cmwth. 864.

Leasing of residential property falls within ambit of Consumer Protection Law (73 P.S. § 201-1 et seq.). *Com.*, by *Cremer v. Monumental Properties, Inc.*, 329 A.2d 812, 459 Pa. 450, Sup. 1974, on remand 365 A.2d 442, 26 Pa.Cmwth. 864.

6. Contract or conveyance

The purchaser under a contract of sale, as used for an installment purchase, obtains a legally cognizable interest in property; from moment an agreement of sale of real estate is executed and delivered it vests in grantee what is known as an equitable title to real estate. *Floyd v. Com.*, Dept. of Public Welfare, 407 A.2d 1388, 47 Pa. Cmwth. 338, Cmwth.1979.

Property sold pursuant to installment purchase agreement providing for ten-year period in which to pay balance due on purchase price was "sold" within meaning of statute providing that date of completion in certificate determines liability, as between vendor and purchaser, for payment of municipal claim in a case where real estate benefited by improvement is sold before claim is filed when purchasers entered into agreement of sale

in 1966 and became equitable owners of property; thus, purchasers were liable for assessment arising out of construction of sewer certified as being completed in 1970. *Byrne v. Kanig*, 332 A.2d 472, 231 Pa.Super. 531, Super.1974.

"Free from encumbrances" clause contained in installment purchase agreement did not evidence an agreement between vendor and purchasers to allocate cost of municipal improvement begun and completed subsequent to agreement of sale to vendor rather than to purchasers. *Byrne v. Kanig*, 332 A.2d 472, 231 Pa.Super. 531, Super.1974.

When an unconditional agreement for the sale of land is signed, vendor retains security interest for payment of unpaid purchase price and purchaser becomes equitable or beneficial owner through doctrine of equitable conversion and thus bears risk of loss and is entitled to any benefit accruing to property between date of execution of agreement of sale and conveyance. *Byrne v. Kanig*, 332 A.2d 472, 231 Pa.Super. 531, Super.1974.

It is a principle of law that the owner of a piece of property may divide it as he sees fit, regardless of structures on the property, and when he sells different pieces to different purchasers by precise description, each buyer takes to the line called for by the description, and not to any other line. *Nestico v. Carnucci*, 39 Northumb.L.J 39 (1966).

7. Easement or fee

An appurtenant easement cannot be terminated by a mere nonuser. *Wysinski v. Mazzotta*, 472 A.2d 680, 325 Pa.Super. 128, Super.1984.

"Easement" is liberty, privilege, or advantage which one may have in lands of another; it may be merely negative and may be created by covenant or agreement not to use land in certain way. *Burns v. Baumgardner*, 449 A.2d 590, 303 Pa.Super. 85, Super.1982.

Easement by implication arises only where such easement was intended by parties, as shown by terms of grant and surrounding circumstances. *Flaherty v. DeHaven*, 448 A.2d 1108, 302 Pa.Super. 412, Super.1982.

Where intent of parties to original conveyance was that looped roadway provide alternate access route to property owners' land, property owners had knowledge of intent and use, and steep terrain of land suggested reason why looped roadway was important to all parties in that vehicles "bottom out" when attempting to use roadway on western boundary of property owners' land, sufficient factors existed to imply existence of easement for right-of-way consisting of looped roadway. *Flaherty v. DeHaven*, 448 A.2d 1108, 302 Pa.Super. 412, Super.1982.

When property is jointly owned, all of the co-owners must join in the deed before an easement on their jointly owned property will arise, since one tenant in common alone cannot create an easement which can be enforced against his co-owners. *Ecenbarger v. Lesoine*, 438 A.2d 969, 293 Pa.Super. 230, Super.1981.

A 33-foot easement along entire length of line dividing defendant's eastern segment from plaintiffs' western segment did not arise by implication of law because deed by which plaintiffs' grantors conveyed their interest in eastern segment to defendant's grantor described a right-of-way for length of its western boundary, where plaintiffs' grantors did not own fee, but were tenants in common with defendant's grantor at time they made conveyance of their interest in eastern segment, and record was devoid of any evidence suggesting that defendant's grantor conveyed her interest in western segment to plaintiffs' grantors before latter conveyed their interest in eastern segment. *Ecenbarger v. Lesoine*, 438 A.2d 969, 293 Pa.Super. 230, Super.1981.

Release executed by predecessors in title in favor of railroad and its successors concerning strip of land 66 feet wide and 33,415 feet long extending through portion of property owner's land conveyed only an easement for railroad purposes and not a fee interest where consideration was one dollar and release lacked warranty of title. *Lawson v. Simonsen*, 417 A.2d 155, 490 Pa. 509, Sup.1980.

Burden is on party claiming easement to prove it clearly. *Brady v. Yodanza*, 409 A.2d 48, 269 Pa.Super. 31, Super.1979, reversed on other grounds 425 A.2d 726, 493 Pa. 186.

For easement to be appurtenant, it must have been created for purpose of benefiting owner or possessor of dominant estate in his use of the land. *Brady v. Yodanza*, 409 A.2d 48, 269 Pa.Super. 31, Super.1979, reversed on other grounds 425 A.2d 726, 493 Pa. 186.

An easement is a liberty, privilege, or advantage which one may have in the lands of another without profit; it may be merely negative, and may be created by a covenant or agreement not to use land in a certain way, but it cannot be an estate or interest in the land itself, or the right to any part of it. *Nestico v. Carnucci*, 39 Northumb.L.J. 39 (1966).

8. Easements passing under conveyance

Where deed to plaintiffs' predecessor in title included an easement over a 40-foot wide private street for a passageway and watercourse "at all times hereafter forever," and easement, though not recited in later deeds, continued to be used intermittently, easement was for a specific use and, being in perpetuity, became an appurtenance which passed by a conveyance of the estate and did not require a subsequent writing or deed to support its continued existence. *Wysinski v. Mazzotta*, 472 A.2d 680, 325 Pa.Super. 128, Super.1984.

Where deed by which plaintiffs' grantors conveyed their interest in eastern segment to defendant's grantor purported to grant a right-of-way along entire boundary of western segment, while deed by which defendant's grantor conveyed her interest in western segment to plaintiffs' grantors failed to even mention existence of such an easement, inference arose that purported right-of-way arose from a conveyancing error, even though road, for most of its length, ran along boundary between two properties. *Ecenbarger v.*

Lesoine, 438 A.2d 969, 293 Pa.Super. 230, Super.1981.

One who purchases land expressly subject to easement or with notice that it is burdened with existing easement takes the land subject to easement irrespective of whether deeds to dominant landowners expressly grant the easement appurtenant. *Brady v. Yodanza*, 425 A.2d 726, 493 Pa. 186, Sup.1981.

Expressly created easement appurtenant can conceivably last forever, and mere nonuse, no matter how long extended, will not result in extinguishment of easement created by deed. *Brady v. Yodanza*, 425 A.2d 726, 493 Pa. 186, Sup.1981.

Appurtenances clause was sufficient to pass easement appurtenant, but easement would have passed under this section even without appurtenances clause. *Brady v. Yodanza*, 425 A.2d 726, 493 Pa. 186, Sup.1981.

Deeds were not ineffective to convey already existent 30-foot easement merely because conveyances specifically conveyed 50-foot easement. *Brady v. Yodanza*, 425 A.2d 726, 493 Pa. 186, Sup.1981.

Appurtenant easements require no deed or writing to support them, but pass instead by conveyance of estate to which they are appurtenant. *Brady v. Yodanza*, 409 A.2d 48, 269 Pa.Super. 31, Super.1979, reversed on other grounds 425 A.2d 726, 493 Pa. 186.

An easement will never be presumed to be a mere personal right, when it can fairly be construed to be appurtenant to some other estate. *Rusciolelli v. Smith*, 171 A.2d 802, 195 Pa.Super. 562, Super.1961.

As a matter of law, all easements, rights and incidents which belong to the land conveyed and are necessary to its full enjoyment, pass as appurtenances without mention of them in a deed. *Katz v. DiPietro*, 18 Beaver 124, 1957.

Where a street called for as a boundary in a deed is not a highway nor dedicated to public use, the grantee does not take title in fee to the center of it, but if title thereto is in the grantor, the grantee by implication acquires an easement or right-of-way over it. *Leeann Corp. v. Jones*, 22 Cumb. L.J. 15, 58 Pa. D. & C.2d 703 (1972), motion overruled 22 Cumb. L.J. 68.

9. Streets, easements in streets passing under conveyance

Where defendants owned adjoining lots over which ran a black top driveway, and one lot was sold to plaintiffs' grantor by deed which purported to reserve to plaintiffs' grantor the right to use the drive over defendants' land, but which, by obvious error of the conveyancer, inaccurately described one of the parties to the transaction and also omitted reference to one of the lots, the grant, construed in relation to the surrounding circumstances, contained an express grant of an easement (and an easement by implication as well). *Wapinsky v. Botdorf*, 15 Chest. 37 (1966).

In the absence of other factors, an implied easement will be declared for a width of 20 feet for the purpose of meeting the requirements of

the abutting owner. *Leeann Corp. v. Jones*, 22 Cumb. L.J. 15, 58 Pa. D. & C.2d 703 (1972), motion overruled 22 Cumb. L.J. 68.

Where the street called for a boundary is not dedicated, the grantee by implication acquires an easement or right of way over the undedicated street. *Leeann Corp. v. Jones*, 22 Cumb. L.J. 15, 58 Pa. D. & C.2d 703 (1972), motion overruled 22 Cumb. L.J. 68.

The right to the use of an alley or driveway is appurtenant to the abutting lot to which the easement is granted. *Leeann Corp. v. Jones*, 22 Cumb. L.J. 15, 58 Pa. D. & C.2d 703 (1972), motion overruled 22 Cumb. L.J. 68.

In an action to quiet title the burden of proof is on plaintiff to establish by the fair preponderance of the evidence that defendants have no right of user over undedicated street described as a boundary in defendants' deed. *Leeann Corp. v. Jones*, 22 Cumb. L.J. 15, 58 Pa. D. & C.2d 703 (1972), motion overruled 22 Cumb. L.J. 68.

Where lots are sold by reference to a recorded plan which includes reference to certain streets and roadways in a subdivision, the grantees and their successors receive a private easement in the streets as laid out on the plan. This right is independent of the action or inaction of public authorities to accept these streets as dedicated. *Novinger v. Harry Myhre, Inc.*, 89 Dauph. 203 (1968).

The purchasers of lots abutting streets laid out in a plan hold their title to the middle of the street. They hold such title under and subject to the private easement rights of other persons having title to lots within the subdivision plan. *Novinger v. Harry Myhre, Inc.*, 89 Dauph. 203 (1968).

10. Easements, reservation of

Reservation of easement is conceptually fused with land it benefits and passes with the land if there is subsequent conveyance, and it is not necessary for easement appurtenant to have been expressly granted to subsequent purchasers, but, rather, easement passes by operation of law unless grantors limit or make personal the right-of-way. *Brady v. Yodanza*, 425 A.2d 726, 493 Pa. 186, Sup.1981.

Where reservation of easement was for "any and all purposes connected with the use and occupation of other land now owned by the parties of the first part adjoining the land hereby granted," meaning of clause was abundantly clear and benefited grantors' lands laying to east as well as grantors' lands to west. *Brady v. Yodanza*, 425 A.2d 726, 493 Pa. 186, Sup.1981.

10.5. Restrictive covenants

Members of class who owned lots in separate subdivision could enforce building restrictions imposed upon adjacent ten-acre tract by common grantor in a prior deed in light of evidence of a uniform scheme of development extending to and including the ten-acre parcel. *Fey v. Swick*, 454 A.2d 551, 308 Pa.Super. 311, Super.1982.

Fact that owner imposes restrictions on portions of tract does not raise inference that he

intends thereby to obligate himself to restrict similarly remainder of his land; in every such instance there must appear definite evidence of purpose to bind remaining land. *Burns v. Baumgardner*, 449 A.2d 590, 303 Pa.Super. 85, Super.1982.

Clause contained in deed by which half-owners conveyed their interest in subdivision to developers, providing that property was subject to restrictions set forth in declaration of restrictive and protective covenants for development, was merely acknowledgment that building restrictions existed with respect to portion of tract and did not create new restrictions or expand existing restrictions to unencumbered portions of tract, and thus attempt to infer applicability of building restrictions to entire tract based upon "subject to" clause was error. *Burns v. Baumgardner*, 449 A.2d 590, 303 Pa.Super. 85, Super.1982.

Restrictions on use of land are interference with owner's free and full enjoyment of his property and are not favored. *Burns v. Baumgardner*, 449 A.2d 590, 303 Pa.Super. 85, Super.1982.

Remand to lower court was required in action by assignee of lease challenging restrictive covenants set forth in certain lease agreements for an analysis of specific issues raised of whether the restrictive covenants, which limited uses of the leased commercial premises, were void and unenforceable in violation of federal law governing restraints of trade, whether such federal law was applicable, whether the proposed sublease by assignee would operate as a violation of the restrictive covenant, and if proposed sublease would not violate the covenant, what type or types of relief, including damages, could be granted. *Peter J. Schmitt Co., Inc. v. Mason's Stores, Inc.*, 438 A.2d 989, 293 Pa.Super. 270, Super.1981.

Restrictive covenants are strictly construed against those attempting to enforce them. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

A building restriction and a use restriction are wholly independent of one another, and one is not to be extended so as to include the other unless the intention so to do is expressly and plainly stated. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

Deed restriction, which provided that no building could be erected on lot other than "one to be used as a dwelling house of the type and design to accommodate one family with garage," included both use and building restrictions and only permitted erection of one single-family dwelling house on lot. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

Restrictive covenant in deed forbidding construction of any building or a part thereof except eaves, open porches, steps or other similar parts of such building within 60 feet of sidelines of property was valid and enforceable. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

Defendants did not waive or abandon their right to enforce deed restriction, despite defendants' acquiescence in prior violations of restric-

tive covenant by third parties and despite fact that defendants acquiesced in construction of swimming pool and cabana on lot, in view of fact that deviations from deed restrictions were minor and did not change character of the neighborhood. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Supr.1977.

Where the language of a covenant in a deed was ambiguous, the intentions of the parties were to be ascertained by interpreting the language of such deed in light of the subject matter, the apparent object or purpose of the parties, and the conditions existing when it was made. *Oakwood Park Townhouse Ass'n v. Wideman*, 19 Pa. D. & C.3d 263 (1981).

Three unrelated adult women could properly reside in a private residence as a family unit jointly using the home within the meaning of a restrictive covenant which prohibited any building on the land to be used other than as a private dwelling house. *Smith v. Field*, 9 Pa. D. & C.3d 378 (1979).

A deed restriction prohibiting use of property for other than one private dwelling house with garage prohibited erection on property of barn for use as livestock refuge. *Smouse v. Glunt*, 9 Pa. D. & C.3d 371 (1978).

Where a common grantor incorporates a building restriction in deeds to a number of grantees, it is clear that he intends the restrictions to benefit adjoining or neighboring property owners; who may therefore properly enforce the restrictions. *Smouse v. Glunt*, 9 Pa. D. & C.3d 371 (1978).

Building restrictions and similar covenants which restrain a grantee in the free enjoyment of his land are not favored in the law and must be strictly construed against the grantor. *Smouse v. Glunt*, 9 Pa. D. & C.3d 371 (1978).

A restriction in a deed providing that there may be erected upon the premises only one detached single-family dwelling not to exceed one and one-half stories in height was not so vague as to be unenforceable. *Indian Mountain Lake Development Corp. v. Davidson*, 8 Pa. D. & C.3d 522 (1978).

The grantor of real estate by deed incorporating certain restrictions has standing to enforce such restrictions. *Indian Mountain Lake Development Corp. v. Davidson*, 8 Pa. D. & C.3d 522 (1978).

Where the owners of a large tract of land recorded a plan for development of a part of it as a subdivision and inserted uniform building restrictions in all of the deeds out of them for lots in the subdivision, the restrictions were not binding upon the remaining land of the grantors not set aside as part of the development. *Wilson v. Schmidt*, 28 Monroe L.R. 333, 65 Pa. D. & C.2d 38 (1973).

Under the rule that restrictions on the use of land are not favored by the law because they are an interference with an owner's free and full enjoyment of his property, nothing will be deemed a violation of a restriction that is not in plain disregard of its express words, no implied

rights arise from a restriction which the courts will recognize, a restriction is not to be extended or enlarged by implication, and every restriction will be construed most strictly against the grantor with every doubt and ambiguity in its language resolved in favor of the owner. *Skyline Swimming Pool, Inc. v. Stanley Co., Limited*, 40 Pa. D. & C.2d 201, 60 Lanc.L.R. 147 (1966).

Restrictions on the use of land are not favored in the law because they are an interference with an owner's free and full enjoyment of his property and thus will be strictly construed and not enforced unless there is a plan disregard of its express terms. *Weidle v. Bustleton Development Corp.*, 26 Bucks 105 (1973).

Where part of one tract was sold as separate lots and the deeds for these lots contain restrictions, but that in the transfer of the remaining tract such restrictions did not appear; nevertheless, the restrictions contained in the transfer of the several lots would apply to the remaining tract, since their inclusion in the transfer of the individual lots inferred a reciprocal covenant that no part of the original tract would be transferred without the same restrictions. *Weidle v. Bustleton Development Corp.*, 26 Bucks 105 (1973).

In an equity action to restrain defendants from operating a water softener business on property subject to a deed restriction limiting its use "for residential living only and also seeking relief for a retaining wall constructed by defendants allegedly in violation of side setback requirements, the retaining wall was not in violation of the restrictive covenant but a decree nisi was entered enjoining defendants from operating a water softener business and related activities on their premises despite defendants' contentions that plaintiff frequently used his property for repairing automobiles and that there was such a change in the character of the neighborhood as to make it other than residential. *Stepp v. Woltman*, 96 Dauph. 474 (1974).

Restrictive covenants are a partial restraint upon the free exercise of trade and our courts have frequently stated that they should be strictly construed. *Suburban Oil Service, Inc. v. Parker*, 63 Luz.L.R. 73 (1972).

12. Mineral rights, conveyance of

Where owner of lands leased for 100 years the coal thereunder with right to mine and remove, and then conveyed to another, subject to the lease, the land together with the minerals, reversions and remainders and also all the grantor's estate, right, title, interest, claim and demand in law or equity or otherwise, conveyance was of owner's interest in the land including reversionary rights in the coal upon termination of the lease, and divested grantor of all interest which his descendants could inherit. *Douglas v. Kingsley*, 124 A.2d 107, 386 Pa. 59, Supr.1956.

A deed to "all the coal of whatever kind lying and being in and under" a tract of land made at a time when the only established method of mining coal was deep-mining conveyed title to all the coal, including coal removable only by strip-mining; that the grantees might not be permitted to strip-mine without the permission of the sur-

face owner did not affect their ownership of the coal. *Armstrong v. Black Fox Min. & Develop. Corp.*, 15 Pa. D. & C.3d 757 (1980).

13. Oil and gas, conveyance of

Evidence was sufficient for jury whether deed conveyed both surface and coal interests, in view of admission that quoted portion of deed could be interpreted as indication that its draftsman believed that grantor could convey only surface rights. *Nevling v. Natoli*, 434 A.2d 187, 290 Pa.Super. 174, Super.1981.

15. Reversionary interest

Deed providing that "in case" grantee abandoned property or ceased to use it "as a railroad, right of way, or for railroad, purposes," and such nonuse or abandonment continued for one year after notice in writing from grantor, grantor could reenter and repossess land following expiration of one-year notice, created fee simple subject to condition subsequent. *Bethlehem Tp. v. Emrick*, 465 A.2d 1085, 77 Pa.Cmwlth. 327, Cmwlth.1983, reversed on other grounds 485 A.2d 736, 506 Pa. 372.

If deed to land created estate in fee simple determinable, estate of grantees would expire automatically upon failure of grantees to comply with limitations in deed and grantors would have had possibility of reverter. *Stolarick v. Stolarick*, 363 A.2d 793, 241 Pa.Super. 498, Super.1976.

Where deed conveyed fee simple subject to condition subsequent, grantees held conditional fee, and grantors reserved right of reentry of themselves and their heirs in event that the conditions were not performed; therefore, at time of death of sole surviving original grantor, her devisees held a right of reentry to entire fee. *Stolarick v. Stolarick*, 363 A.2d 793, 241 Pa.Super. 498, Super.1976.

Devisees of sole surviving original grantor of property, conveyed pursuant to deed which conveyed fee simple subject to condition subsequent, held, in year their right of reentry accrued upon death of original grantor and breach of condition subsequent, equitable title to entire fee because their possession of property was notice to all of their equitable right; however, in order to remove any cloud on their title, holders of right of reentry would have to commence legal action following exercise of their right. *Stolarick v. Stolarick*, 363 A.2d 793, 241 Pa.Super. 498, Super.1976.

Holder of right of reentry, which right accrued upon breach of condition subsequent in deed of conveyance while holder, who was also heir of grantee and thus had duty to comply with provisions of deed, was in possession of property, could not be estopped, by virtue of her conduct with respect to breach of condition subsequent, from asserting that her possession of land was exercise of her right of reentry, where parties invoking estoppel failed to assert that holder was silent, but on contrary, admitted that holder and her brothers and sisters attempted to secure amicable compliance with conditions in deed, there was absence of proof of reasonable reliance, and further, because holder was in possession and

because terms of deed were so clear, grantees' successors in interest were under duty of inquiry. *Stolarick v. Stolarick*, 363 A.2d 793, 241 Pa.Super. 498, Super.1976.

Right of grantor's successors in interest to assert rights of reentry on breach of condition subsequent was not waived by virtue of delay in commencing legal action until more than 20 years after right accrued, where holder of right of reentry did not acquiesce in breach and no valuable improvements were made on property such that declaration of forfeiture would be inequitable. *Stolarick v. Stolarick*, 363 A.2d 793, 241 Pa.Super. 498, Super.1976.

Where school directors of a township acquired certain land under a conveyance reserving to grantors, and their heirs and assigns, a reversionary interest in the event that the ground be abandoned for school purposes, and such reversionary interest passed to heirs of one of the grantors, who conveyed a certain number of acres of the tract which included the school lot, without mention of the reversionary interest, reversionary interest did not pass to subsequent grantees through the chain of title, in view of fact reversionary interest in the school lot was a property interest separate and distinct from the land conveyed by original grantors' heirs. *Petition of Reichard*, 146 A.2d 71, 188 Pa.Super. 130, Super.1958.

This section has the effect only of transferring a complete title to the premises, involved in the deed to the grantees, the language of the statute referring to reversions "thereof" meaning nothing more than that the reversionary interests transferred are those arising out of the same piece of land conveyed by the deed in question, but such language did not mean that a reversionary interest in a school lot not part of the property conveyed by a deed to a specified tract of land, passed reversionary interest in the school lot to grantees named in such deed. *Petition of Reichard*, 146 A.2d 71, 188 Pa.Super. 130, Super.1958.

Deed for remainder of tract excepting land previously conveyed to school district with a reversionary interest, did not convey the reversionary interest. *Brabson v. Fulton Tp. School Directors*, 88 Pa. D. & C. 577, 54 Lanc.L.R. 103 (1954).

16. Construction of deed

When the language of the deed is clear and free from ambiguity, the intent of the parties must be determined from the language of the deed. *Wysinski v. Mazzotta*, 472 A.2d 680, 325 Pa.Super. 128, Super.1984.

In the absence of fraud, accident or mistake, the nature and quantity of real estate interest conveyed must be ascertained from the deed itself and cannot be shown by parol evidence. *Wysinski v. Mazzotta*, 472 A.2d 680, 325 Pa.Super. 128, Super.1984.

Deed which provided for reentry by grantor in case grantee abandoned property or ceased to use it "as a railroad, right of way, or for railroad, purposes," was intended to be limited in meaning

to right-of-way used in connection with railroad operations, and thus, township's use of property as bicycle path did not foreclose occurrence of condition subsequent. *Bethlehem Tp. v. Emrick*, 465 A.2d 1085, 77 Pa.Cmwlth. 327, Cmwlth.1983, reversed on other grounds 485 A.2d 736, 506 Pa. 372.

Every doubt is to be resolved against existence of restrictions on use of land and in favor of free and unrestricted use of property by its owner. *Burns v. Baumgardner*, 449 A.2d 590, 303 Pa.Super. 85, Super.1982.

Restrictions on use of land are not to be extended by implication. *Burns v. Baumgardner*, 449 A.2d 590, 303 Pa.Super. 85, Super.1982.

Restrictions on use of land are to be strictly construed. *Burns v. Baumgardner*, 449 A.2d 590, 303 Pa.Super. 85, Super.1982.

Where deed is not clear and intention of parties cannot be construed from instrument itself, parties' intentions are to be ascertained from language of entire instrument, from consideration of subject matter and from conditions existing when it was executed, together with surrounding circumstances. *Flaherty v. DeHaven*, 448 A.2d 1108, 302 Pa.Super. 412, Super.1982.

When precise location of expressed right-of-way is not fixed or defined by deed, it is competent for parties to define location by subsequent agreement, use or acquiescence. *Flaherty v. DeHaven*, 448 A.2d 1108, 302 Pa.Super. 412, Super.1982.

Where property owners used looped roadway on daily basis from time they erected their dwellings until other property owners prevented access approximately nine years later, use of roadway was sufficient to define location of right-of-way provided for in deed, although deed itself was silent as to situs of right-of-way. *Flaherty v. DeHaven*, 448 A.2d 1108, 302 Pa.Super. 412, Super.1982.

In grantors' action against subsequent grantees for conversion of coal allegedly excepted from conveyance under deed, evidence concerning subsequent deeds to adjacent tracts in which same coal reservation was included by grantors was inadmissible. *Johns v. Castellucci*, 401 A.2d 753, 264 Pa.Super. 591, Super.1979.

Evidence outside pleadings and relating to circumstances subsequent to deed cannot be admitted to color or vary interpretation of language of the deed. *Johns v. Castellucci*, 401 A.2d 753, 264 Pa.Super. 591, Super.1979.

Where 1940 deed defined exception and reservation of coal rights "as conveyed by * * * by deed dated April 27, 1921," the 1940 deed reserved to grantors coal on exactly same terms as it had been conveyed by such 1921 deed. *Johns v. Castellucci*, 401 A.2d 753, 264 Pa.Super. 591, Super.1979.

Deed, unless specified otherwise in writing, must be read in accordance with lights and shadows existing at time of execution of instrument. *Krill v. Petitto*, 175 A.2d 54, 405 Pa. 203, Sup. 1961.

In view of public policy favoring free alienability of land, a deed which would convey an estate in fee simple except for certain words, or for a phrase or clause, must be interpreted strictly against any such limitation unless the grantor's intention to limit the fee is clearly expressed or necessarily implied. *Peters v. East Penn Tp. School Dist.*, 126 A.2d 802, 182 Pa.Super. 116, Super.1956.

Where terms of a deed are doubtful, court will adopt construction which is most strongly in favor of grantee and against grantor. *Lacy v. Montgomery*, 124 A.2d 492, 181 Pa.Super. 640, Super.1956.

The habendum clause in a deed serves to define the estate created. *Yuscavage v. Hamlin*, 47 Luz.L.R. 213 (1957), affirmed 137 A.2d 242, 391 Pa. 13.

17. Exceptions, reservations and limitations

In grantor's action against subsequent grantees for conversion of coal allegedly excepted from conveyances under deed, evidence grantors sought to introduce concerning other deeds to adjacent tracts in which same reservation was included by the grantors was inadmissible for purpose of ruling on motion for judgment on pleadings. *Johns v. Castellucci*, 401 A.2d 753, 264 Pa.Super. 591, Super.1979.

Where term of exception and reservation of coal rights in 1940 deed was fixed by 1921 deed incorporated into 1940 deed, and the 1921 deed permitted removal of coal for five-year period, grantors' reservation expired in 1945 and subsequent grantees were within their legal rights in removing coal in 1974. *Johns v. Castellucci*, 401 A.2d 753, 264 Pa.Super. 591, Super.1979.

Words which merely express the purpose for which conveyance is made are not considered words of limitation on the title, and are viewed as superfluous to the grant. *Peters v. East Penn Tp. School Dist.*, 126 A.2d 802, 182 Pa.Super. 116, Super.1956.

The words "so long as" and "as long as" are technical words which limit a fee. *Peters v. East Penn Tp. School Dist.*, 126 A.2d 802, 182 Pa.Super. 116, Super.1956.

Where grantors had fee simple title, words of inheritance in deed exceptions were not essential to vest excepted interest in grantors' heirs. *Silvis v. Peoples Natural Gas Co.*, 126 A.2d 706, 386 Pa. 453, Sup.1956.

Use of word "reserving," in deeds, was not conclusive that reservation rather than exception was intended. *Silvis v. Peoples Natural Gas Co.*, 126 A.2d 706, 386 Pa. 453, Sup.1956.

An "exception" is the withholding from operation of deed of something existent which otherwise deed would pass to grantee, while a "reservation" narrows, limits on cuts down that which grantee otherwise would take; a reservation does not affect description of property conveyed but retains to grantor some right upon property, whereas an exception operates upon description and withdraws excepted property from the description; and whether a provision is actually an exception or reservation must be determined by

its context and by intention of parties, particularly of grantor. *Lacy v. Montgomery*, 124 A.2d 492, 181 Pa.Super. 640, Super.1956.

Under circumstances of making, deed to tract, part of which had been condemned for railroad purposes, conveying tract excepting so much as was condemned for railroad purposes, disclosed intention to convey grantor's entire interest, including the possibility of reverter in condemned tract. *Lacy v. Montgomery*, 124 A.2d 492, 181 Pa.Super. 640, Super.1956.

A conveyance of real estate, ambiguous as to the creation of an exception or reservation concerning oil and gas rights, would result in the failure to retain such rights. *Songer v. Erickson*, 25 Pa. D. & C.3d 499 (1983).

Whether certain language in a conveyance of real estate imported an exception or a reservation was to be determined from the effect of the language and the design and intent of the parties as gathered therefrom. *Songer v. Erickson*, 25 Pa. D. & C.3d 499 (1983).

18. Gift

Delivery of deed directly to grantee is not necessary to make gift of realty and deed may be placed in possession of third party for delivery to grantee upon happening of a specified contingency in which even legal delivery date is that on which donor effectuated his intention. *Fiore v. Fiore*, 174 A.2d 858, 405 Pa. 303, Sup.1961.

19. Competency

A declaration of incompetency five months after the execution of a deed raises no presumption of general incompetency of the grantor at the time of signing. *DiMaggio v. Delfiaco*, 29 Beaver 203, 1969.

In the absence of fraud or undue influence, mere weakness of intellect resulting from sickness or old age is no ground for avoiding a deed, if sufficient intelligence remains to comprehend the nature of the transaction. *DiMaggio v. Delfiaco*, 29 Beaver 203, 1969.

19.5. Undue influence

Although son testified that his mother told him that she wanted him to have title to property and requested him to have deed prepared, and realtor who prepared deed testified that he told mother that he was preparing deed at request of her son, findings of fact that at no time did mother intend to convey ownership of her home property to son and daughter-in-law and that she signed deed with her mark due to abuse by son of position of trust and confidence were amply supported by testimony of mother and corroborated by undisputed circumstances and therefore order directing reconveyance of property from son to mother was appropriate. *Stefanik v. Matkowski*, 446 A.2d 655, 300 Pa.Super. 359, Super.1982.

20. Presumptions and burden of proof

Where a confidential relationship exists between grantor and grantee, burden of proof shifts to party asserting validity of deed to prove that it was obtained by free, voluntary and intelligent act of the grantor. *Stefanik v. Matkowski*, 446 A.2d 655, 300 Pa.Super. 359, Super.1982.

Once a fiduciary or confidential relationship is shown to exist, the burden is shifted to the person who is in such relationship, to prove absence of fraud and that transaction was fair and equitable. *Shupp v. Brown*, 439 A.2d 178, 293 Pa.Super. 412, Super.1981.

In order to effect relief for discharge of real covenant, burden of proof is upon owners of servient tenements to show that original purpose and intent of restrictions had been materially altered or destroyed by changed conditions and that substantial benefit and advantage may not inure to owners of dominant tenement by enforcement of restriction. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

Presumption that a deed which is signed, sealed and acknowledged was delivered to person in whose possession it is found is rebuttable by evidence clear, precise and convincing in nature. *Scientific Living, Inc. v. Hohensee*, 270 A.2d 216, 440 Pa. 280, Sup.1970, certiorari denied 91 S.Ct. 2189, 402 U.S. 1012, 29 L.Ed.2d 435, rehearing denied 92 S.Ct. 28, 404 U.S. 874, 30 L.Ed.2d 121.

It is only if a confidential relationship is shown to exist between the grantor and the donee that the burden of proof shifts to the donee to show that he did not use his preferred position of trust to take advantage of the grantor. *DiMaggio v. Delfiaco*, 29 Beaver 203, 1969.

21. Fraud

In action to void a deed on basis of alleged fraud, any error arising from trial court's interpretation of statement of decedent to her daughter, a defendant, "you still have the land," as being evidence that decedent was aware that she had signed a deed rather than a management agreement, was harmless, where other evidence supported finding that decedent knowingly and voluntarily conveyed land to the defendants. *Shupp v. Brown*, 439 A.2d 178, 293 Pa.Super. 412, Super.1981.

In action to void a deed on basis of alleged fraud, evidence was sufficient to support trial court's finding that decedent voluntarily and knowingly gave property to her daughter and son-in-law, the defendants. *Shupp v. Brown*, 439 A.2d 178, 293 Pa.Super. 412, Super.1981.

Mere fact that one defendant was daughter of decedent and that second defendant was a son-in-law of decedent did not, without more, place them in a relationship of confidentiality for purposes of determining whether deed had been conveyed due to alleged fraud by defendants. *Shupp v. Brown*, 439 A.2d 178, 293 Pa.Super. 412, Super.1981.

§ 4. Words grant and convey import covenants of title and quiet enjoyment

Notes of Decisions

1. Construction and application

When seller expressly covenants to convey title "clear of all encumbrances" buyer is entitled to all benefits of such warranty even if he knows of existence of encumbrance at time of agreement. *Ziskind v. Bruce Lee Corp.*, 307 A.2d 377, 224 Pa.Super. 518, Super.1973.

Where seller covenants to convey title "clear of all encumbrances" buyer may expect that seller will expunge any encumbrance from title prior to delivery of deed. *Ziskind v. Bruce Lee Corp.*, 307 A.2d 377, 224 Pa.Super. 518, Super.1973.

Right of way easements were "encumbrances" within meaning of seller's covenant to convey title "clear of all encumbrances" precluding en-

forcement of land sale contract where such encumbrances had not been expunged from title prior to closing, whether or not encumbrances rendered property unmarketable. *Ziskind v. Bruce Lee Corp.*, 307 A.2d 377, 224 Pa.Super. 518, Super.1973.

2. Breach of covenant

Where seller failed to expunge encumbrances from title prior to delivery of deed under contract wherein seller covenanted to convey title "clear of all encumbrances" buyer could recover down payment with interest. *Ziskind v. Bruce Lee Corp.*, 307 A.2d 377, 224 Pa.Super. 518, Super.1973.

§ 5. "Warrant generally" construed

Notes of Decisions

Breach of warranty 1

Construction and application $\frac{1}{2}$

$\frac{1}{2}$. Construction and application

Vendor by general warranty is obliged to deliver a deed that is free of liens for taxes, and he covenants to defend the purchaser's title against all the world. *Zurich General Acc. & Liability Ins. Co. v. Klein*, 121 A.2d 893, 181 Pa.Super. 48, Super.1956.

Where vendors under general warranty conveyed land which was subject to tax lien, vendors were obligated to purchasers for amount of taxes. *Zurich General Acc. & Liability Ins. Co. v. Klein*, 121 A.2d 893, 181 Pa.Super. 48, Super.1956.

Where plaintiff received a deed of general warranty which included an implied easement, and the grantor later conveyed the servient tene-

ment to a third party without excepting the easement in the second deed, grantor was liable for the counsel fee and expenses of his first grantee in defending an action to quiet title (by decree that the easement did not exist) brought by the second grantee. *Jones v. Hollar*, 17 Adams L.J. 15, 25 Cumb. L.J. 86, 66 Pa. D. & C.2d 99 (1974).

1. Breach of warranty

In deed of general warranty, the first grantee, in order to recover for breach of warranty, was not required to notify his grantor of the suit by the second grantee for the purpose of permitting grantor to defend, since in such event it would have been to the grantor's advantage to have a finding that no implied easement existed, thus proving that the warranty had not been breached. *Jones v. Hollar*, 17 Adams L.J. 15, 25 Cumb. L.J. 86, 66 Pa. D. & C.2d 99 (1974).

§ 6. "Warrant specially" construed

Notes of Decisions

Recovery under warranty 3

1. Scope of warranty

Although deed from original covenantor contained a special warranty to defend title, such warrant did not require the covenantor to reimburse her grantee for sums expended on enforcement of covenant, which required the original covenantor or her successors to bear a proportionate share of expenses in event adjacent road were paved, where covenantor's deed to her grantees, although failing to reiterate the covenant, made specific reference to the prior recorded deed, there was no agreement of sale requiring the covenantor to discharge any lien, it was

only after the covenantor transferred the property that the developer began to take steps to pave road and road itself did not physically infringe on the property. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

Doctrine of merger holds that all warranties and representations in connection with sale or other transaction made prior to or contemporaneous with deed are merged into deed and unless therein expressly provided for are forever lost. *Elderkin v. Gaster*, 288 A.2d 771, 447 Pa. 118, Sup.1972.

Delivery of deed does not foreclose inquiry into those matters not intended to be controlled by deed or which are collateral to deed. *Elder-*

kin v. Gaster, 288 A.2d 771, 447 Pa. 118, Sup. 1972.

2. Breach of warranty

Under a covenant of special warranty, the grantor agrees to defend the title to the property against any adverse claimant with a superior interest in the land claiming through the grantor; such a warranty is not breached by the existence of liens or encumbrances on the property since it protects only the title. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Sup.1974.

Developer's claim of landowner for proportionate share of construction of road adjacent to the property could not be likened to a present easement for actual use by the public of a portion of the property; thus, the original covenantor, who neither caused road to be constructed at time her grantees were in possession or failed to pay any claim made against the land while she held title, had not breached her special warranty

§ 8. Force and effect of words "grant, bargain," etc.

Repealed in Part

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 303, § 3, in so far as they are inconsistent with the latter act. Sections 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as §§ 329, 330 of this title.

Notes of Decisions

Construction of covenants	10
Discharge of covenant	15
Enforceability of covenant	12
Extent of liability	13
Incumbrances in general	11
Property under covenant	14

3. Grant, bargain and sell, effect of

Recitation in instrument of conveyance, that grantor has "granted, bargained, sold, released and conveyed" strip of land "unto" the grantee and "its successors and assigns" constitute a certification on the quantum and quality of grantor's estate, not of that which is being conveyed. *Brookbank v. Benedum-Trees Oil Co.*, 131 A.2d 103, 389 Pa. 151, Sup.1957.

In instrument of conveyance, words "granted, bargained, sold, released and conveyed" strip of land "unto" the grantee and "its successors and assigns" would have to be interpreted in light of the entire instrument, particularly since the words were used in the past tense, and quoted words, standing alone, would not compel an interpretation that a fee was intended to be conveyed. *Brookbank v. Benedum-Trees Oil Co.*, 131 A.2d 103, 389 Pa. 151, Sup.1957.

7. Persons liable on covenant

Deed covenant providing that in event that surface of proposed road were ever paved or in event that waterlines were placed thereunder the grantees, their heirs or successors in title, were to

that she was seized of an indefeasible estate free of encumbrances, since covenant, which bound the grantees and its successors to bear a proportionate share of expense of construction of road on adjacent tract, did not constitute an encumbrance at time of transfer by the original covenantor. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Sup.1974.

3. Recovery under warranty

Where there is no agreement of sale requiring the grantor to discharge any lien or encumbrance and the deed contains only covenant of special warranty to defend title against any adverse claim with a superior interest, a grantee, in order to recover under the warranty, must show that the grantor caused or allowed a lien or encumbrance to burden land at the time of the transfer. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Sup.1974.

bear their proportionate share of the expense of such improvements ran with the land; agreement did not create a personal liability in the original grantee. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Sup.1974.

8. Persons bound by covenants

When a promise to do an affirmative act, such as to make a monetary payment, is found to run with the land, the person in possession at the time the obligation matures is responsible for discharging it; conversely, prior or subsequent owners of the property, including the original covenantor, are relieved of the responsibility not arising contemporaneously with their interest in the land. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Sup.1974.

9. Covenants running with land

Not all covenants running with the land are necessarily restrictive covenants. *Birchwood Lakes Community Ass'n, Inc. v. Comis*, 442 A.2d 304, 296 Pa.Super. 77, Sup.1982.

Covenants providing for assessment of annual lien or charge against each of lakefront lots for beach privileges were "covenants running with the land" where clearly intended to bind successors in interest of all grantees and therefore intended to follow title. *Birchwood Lakes Community Ass'n, Inc. v. Comis*, 442 A.2d 304, 296 Pa.Super. 77, Sup.1982.

Covenant in deed will not be extended or enlarged by implication. *DiCarlo v. Cooney*, 423 A.2d 3, 282 Pa.Super. 477, Sup.1980.

Test for determining whether a covenant or a promise runs with the land is whether it was so intended by its creator; an indication that the grantees' heirs or assigns are considered bound by its terms is generally decisive of the question. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

10. Construction of covenants

Restrictive covenants not being favored in law will be strictly construed against grantor. *Birchwood Lakes Community Ass'n, Inc. v. Comis*, 442 A.2d 304, 296 Pa.Super. 77, Super.1982.

Deed provisions for assessment of annual lien or charge against each of lakefront lots for beach privileges did not restrict or regulate use of lot owner's property and were thus not "restrictive covenants." *Birchwood Lakes Community Ass'n, Inc. v. Comis*, 442 A.2d 304, 296 Pa.Super. 77, Super.1982.

Two different covenants employed in separate deeds to separate lots in same residential recreational community were not required to be enforced in same manner, since grantor may impose different restrictions and obligations upon different grants. *Birchwood Lakes Community Ass'n, Inc. v. Comis*, 442 A.2d 304, 296 Pa.Super. 77, Super.1982.

Where deed clauses first indicated that lot owners had to pay annual lien and charge of \$10 for beach privileges and then indicated annual lien and assessment for beach privileges would be no less than \$30, intent of parties could not be determined and therefore, construing words of grant most strongly against grantor and more favorably to grantee, successor in interest to developer could not collect in excess of \$30. *Birchwood Lakes Community Ass'n, Inc. v. Comis*, 442 A.2d 304, 296 Pa.Super. 77, Super.1982.

Where landowners' complaint averred that neighboring landowners' commercial ventures violated restrictive covenant in deeds, and neighboring landowners' answer specifically denied that their activity transgressed limits imposed by covenant, trial court did not err by sua sponte raising issue of deed interpretation. *Morean v. Duca*, 430 A.2d 988, 287 Pa.Super. 472, Super.1981.

Where restrictive covenant expressly limited use of land for residential and recreational purposes only, use of limiting "only" made intent to prohibit all contrary uses apparent; thus, landowners' automotive repair and snowmobile businesses conducted from their garage were commercial ventures and clearly violative of restriction. *Morean v. Duca*, 430 A.2d 988, 287 Pa.Super. 472, Super.1981.

Use is in violation of restrictive covenant only if it is in clear defiance to provisions imposed by covenant. *Morean v. Duca*, 430 A.2d 988, 287 Pa.Super. 472, Super.1981.

Only reasonable interpretation of deed covenant providing that if proposed road were paved or waterlines placed thereunder the grantees or their successors would bear their proportionate share of the cost was to include the related costs of construction; construction of a 30-foot-wide

roadway, while all the preexisting roads were 20 feet wide, was not outside scope of the covenant where road was constructed according to specifications required by the township and the developer grantor acted reasonably by building the most inexpensive road that would comply with township standards. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

If a covenant in a deed is not clearly expressed, an effort is made by the court interpreting the language to give effect to the intention of the parties as expressed at the time. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

11. Incumbrances in general

Where there is no agreement of sale requiring the grantor to discharge any lien or encumbrance, the grantee is presumed to be on notice of any future conveyance which he might find objectionable and to settle the matter with his grantor prior to transfer; if he fails to make objection and the transaction has been completed, the grantee may still recover but he is limited to the warranties made in his deed. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

12. Enforceability of covenant

Successor in interest to developer of residential recreational community could not assess against lake-front lots fees for beach privileges beyond amounts listed in deed covenants under theory of quasi contract where there was no claim that subject lot owners wrongfully secured maintenance of community, services were performed and accepted in belief that covenants were controlling, and property owners did not passively accept such knowing that they were mistakenly provided. *Birchwood Lakes Community Ass'n, Inc. v. Comis*, 442 A.2d 304, 296 Pa.Super. 77, Super.1982.

Restrictive covenants which restrict use of property, although not favored by law, are legally enforceable. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

Restrictions in deeds as to erection or uses of buildings or other structures are lawful and enforceable. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

Restrictive covenant in deed forbidding construction of any building or a part thereof except eaves, open porches, steps or other similar parts of such building within 60 feet of sidelines of property was valid and enforceable. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

Imprecision is not fatal to a covenant in a deed. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

Deed covenant providing that in event proposed road was paved or waterlines placed thereunder the grantees and their successors would bear a proportionate share of the cost was not unenforceable on ground that it was too vague to permit a fair assessment of damages since at time covenant was executed it was impossible to state with specificity the details of construction, since

grantor intended to develop the as yet unimproved tract the language indicated the parties intended to share the costs of those road construction and waterline improvements which would benefit the abutting land. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

13. Extent of liability

In computing landowner's proportionate share of road construction costs under deed covenant providing that if adjacent road were paved or waterlines placed thereunder the grantees or their successors would bear proportionate share of the cost, the trial court properly applied the front-foot percentage only to the cost of those improvements expressly mentioned in the covenant, i.e., paving of the road, including related engineering, clearing and grading costs and installation of waterlines, and properly excluded unrelated expenses such as construction of storm sewers and curbing, even though those improvements were required by the township in order to construct the road. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

Use of the front-foot rule was a reasonable and objective method of apportioning road construction costs under deed covenant providing that in event surface of proposed road were paved or waterlines placed under the grantees, their heirs and successors in title would bear their proportionate share of the expense of such improvements. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

14. Property under covenant

Although deeds first provided for assessment of annual lien or charge of \$15 for beach privileges and then subsequently indicated that annual lien and charge for beach privileges would be no less than \$45 per annum, where latter clause included words "or such additional sum as may be determined by the Grantor, its successors and assigns," express intent of parties was that grantor or its successors could assess beyond \$45 per annum and therefore those lot owners having such provision in their deeds were bound by covenant to pay such assessment. *Birchwood*

Lakes Community Ass'n, Inc. v. Comis, 442 A.2d 304, 296 Pa.Super. 77, Super.1982.

When grantor conveys parcel with covenant which affects other lands owned by grantor, and deed is duly recorded, subsequent purchasers of grantor's other lands in same county are charged with constructive notice of covenant. *DiCarlo v. Cooney*, 423 A.2d 3, 282 Pa.Super. 477, Super.1980.

Dispensing of gasoline from underground tanks by means of self-service pumps by grocery store operators, who apparently conceded that covenant contained in deed to plaintiffs from common grantor prohibiting use of property as gasoline service station applied to their land, violated deed's prohibition against use of land as a gasoline service station. *DiCarlo v. Cooney*, 423 A.2d 3, 282 Pa.Super. 477, Super.1980.

Where although defendants' adjacent tracts were conveyed to their common grantor by a single deed from land developer the property was described as two purparts, with each being numbered and separately described and building restrictions and conditions being separately recited and only the lot which was adjacent to proposed road being referred to in covenant requiring the grantee and its successors to bear proportionate share of expenses in event road were paved, and when road was paved the developer looked only to owner of such tract for compensation, only the lot adjacent to the road was bound by the covenant. *Leh v. Burke*, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

15. Discharge of covenant

In order to effect relief for discharge of real covenant, burden of proof is upon owners of servient tenements to show that original purpose and intent of restrictions had been materially altered or destroyed by changed conditions and that substantial benefit and advantage may not inure to owners of dominant tenement by enforcement of restriction. *Rieck v. Virginia Manor Co.*, 380 A.2d 375, 251 Pa.Super. 59, Super.1977.

§ 10. Deeds effective without seal

Notes of Decisions

1. Construction and application

This section, eliminating the necessity for seals on deeds, seems to apply to leases as well. *Gra-*

ham Industries, Inc. v. York Bias, Inc., 79 York 193, 39 Pa. D. & C.2d 331 (1965).

§ 10.1. Uniform parcel identifier; conveyances, mortgages, releases, and other instruments

(a) In counties adopting a uniform parcel identifier system under statutory provisions on parcel identification, all conveyances, mortgages or releases or other instruments affecting real estate included in the system may be made by reference to the uniform parcel identifier of the real estate being conveyed, mortgaged, released or otherwise affected as indicated on the recorded county tax maps. The first conveyance, mortgage, release or other instrument affecting real estate recorded after the adoption of an ordinance under the statutory provisions on parcel identification shall contain the uniform parcel identifier assigned to the parcel or parcels affected by such instrument.

Thereafter, the first conveyance after a change of size and description of real estate represented by a uniform parcel identifier shall contain, in addition to the uniform parcel identifier assigned to the parcel, or parcels affected by the instrument, either:

(1) A metes and bounds description based on a precise survey; or

(2) A lot number and reference to a recorded subdivision plan which plan on its face shows metes and bounds prepared by a professional land surveyor as required by the act of May 23, 1945 (P.L. 913, No.367), known as the "Professional Engineers Registration Law."¹ Any subdivision plan which was prepared prior to the effective date of the aforesaid "Professional Engineers Registration Law," which contains metes and bounds, shall be acceptable for compliance with these provisions, except that no requirement for metes and bounds description by survey or subdivision plan shall be necessary for any conveyance, transfer, mortgage, release or other purpose involving a right-of-way, surface or subsurface easement or oil, gas or mineral lease or other interest or any subsurface estate. Further, as to any mortgages recorded which seek to grant an interest in real estate which real estate has not obtained a parcel identifier, the failure to refer to the uniform parcel identifier for each such interest or the failure to include a deed reference for each such interest shall not affect the lien of such mortgage.

(b) Any subsequent conveyance, mortgage, release or other instrument affecting real estate so made by reference to the uniform parcel identifier and the record location where the metes and bounds description or first number and reference to a recorded plot plan last appears shall be as effective to pass title or affect title to the real estate so described as it would be if the premises had been described by the metes and bounds description used in the first instrument so recorded or appearing in the recorded subdivision plan.

(c) The uniform parcel identifier, the recorded tax map or record thereof or the recorded subdivision plan shall be received in evidence and in all courts and places as describing the real estate therein designated as though the same were set forth in full as appearing in the first conveyance, mortgage, release or other instrument or as shown on the recorded subdivision plan.

1988, Jan. 15, P.L. 6, No. 3, § 1, effective in 60 days.

163 P.S. § 148 et seq.

Cross References

Recorders of deeds, indexes, see 16 P.S. §§ 9854.1, 9854.2. Uniform Parcel Identifier Law, see 21 P.S. § 331 et seq.
Recording deeds, mortgages, and other instruments, see 16 P.S. § 9781.

§ 13. Conveyance of estate tail by deed of bargain and sale

Law Review and Journal Commentaries

Rule against perpetuities and the generation-skipping tax: Do we need both? Leonard Levin and Michael Mulroney, 35 Vill.L.Rev. 333 (1990).

§ 14. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[38], effective June 27, 1980

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

EXECUTION, PROBATE AND ACKNOWLEDGMENT

GENERAL PROVISIONS

Library References

P.L.E. Acknowledgment § 1 et seq.
P.L.E. Deeds § 6.

§ 41. Deeds made out of the province are valid

Repealed in Part

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 303, § 3, in so far as they are inconsistent with the latter act. Sections 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as sections 329, 330 of this title.

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§ 42. Deeds to be acknowledged before recording

Repealed in Part

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 303, § 3, in so far as they are inconsistent with the latter act. Sections 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as sections 329, 330 of this title.

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 2003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

Cross References

Persons who must acknowledge document to qualify for its recording, see 21 P.S. § 444.

Library References

P.L.E. Acknowledgment § 2.

Notes of Decisions

1. Necessity and sufficiency of acknowledgment

An acknowledgment is a judicial act and is conclusive of the facts certified, absent fraud. *Abraham v. Mihalich*, 479 A.2d 601, 330 Pa.Super. 378, Super.1984.

Execution, sealing, acknowledging and recording of deed gives rise to rebuttable presumption of delivery. *Fiore v. Fiore*, 174 A.2d 858, 405 Pa. 303, Sup.1961.

Under this section and § 325.1, an unacknowledged instrument cannot be recorded, even though plaintiff church has been in exclusive, continuous and uninterrupted possession of the land for 197 years. *Trustees of Baptist Church v. Boden*, 6 Pa. D. & C.2d 378 (1956).

Acknowledgment is required to make an instrument recordable, but an unacknowledged instrument, signed and delivered is effective between the parties. *St. Johns' Place Ass'n v. Murray*, 5 Cumb. L.J. 122 (1955).

A deed needs no acknowledgment to make it valid and binding as between the parties thereto. *Stanko v. Males*, 18 Fay.L.J. 32 (1955), vacated

on other grounds on rehearing 19 Fay.L.J. 155, affirmed as modified 135 A.2d 392, 390 Pa. 281.

Instruments must be acknowledged before they can be recorded. *Hart v. Hackman*, 57 Lanc. L.R. 511 (1961).

2. Persons who may take acknowledgments

An "acknowledgment" is a formal declaration before an authorized official, by the person who executed a deed, that it is his free act and deed. *Abraham v. Mihalich*, 479 A.2d 601, 330 Pa.Super. 378, Super.1984.

Acknowledgment refers to the certificate of the officer that the instrument has been acknowledged as the maker's free act and deed. *Abraham v. Mihalich*, 479 A.2d 601, 330 Pa.Super. 378, Super.1984.

4. Instruments which may be recorded

Acknowledgment is an essential prerequisite for recording of deed but is not necessary to render a deed valid as between the parties. *Abraham v. Mihalich*, 479 A.2d 601, 330 Pa.Super. 378, Super.1984.

§ 43. Proof of execution where grantor is dead or cannot appear**Repealed in Part**

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 303, § 3, in so far as they are inconsistent with the latter act. Sections 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as sections 329, 330 of this title.

Library References

P.L.E. Acknowledgment § 1.

§ 44. Proof of deeds where grantor and witnesses are dead or cannot be found**Repealed in Part**

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 303, § 3, in so far as they are inconsistent with the latter act. Sections 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as sections 329, 330 this title.

Library References

P.L.E. Acknowledgment § 1.

§ 46. Certificate of acknowledgment prima facie evidence thereof and of execution**District Justices**

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a

district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

Library References

P.L.E. Acknowledgment § 3.
P.L.E. Deeds § 73.
Acknowledged documents, see West's Pa.Prac. vol. 1, Evidence, Packel and Poulin, § 803.10.

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged documents, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

Notes of Decisions

1. Construction and application in general

Acknowledgment of a deed is a judicial act and the certificate thereof, in the absence of fraud, is conclusive as to the facts therein stated. *Clair v. Burket*, 5 Lycoming 237 (1956).

2. Evidence of execution

Although a notary's certificate is prima facie evidence of due execution of a deed, this may be rebutted by testimony of grantors and grantees. *Stanko v. Males*, 18 Fay.L.J. 32 (1955), vacated on other grounds on rehearing 19 Fay.L.J. 155, affirmed as modified 135 A.2d 392, 390 Pa. 281.

3. Delivery evidenced by acknowledgment

Delivery of deed is not accomplished by mere handing of executed deed to a stranger nor is mere handing of executed deed, without more, to

a third person, who is agent of grantee, effective to constitute a delivery. *Fiore v. Fiore*, 174 A.2d 858, 405 Pa. 303, Sup.1961.

In order for delivery of deed to third person to be effectual and to result in culmination of transition of title, there must be express and definite instruction that deed is to be given to grantee then or at some future time. *Fiore v. Fiore*, 174 A.2d 858, 405 Pa. 303, Sup.1961.

Failure to take grantor's acknowledgement at time of signing deed, and absence of actual or implied instruction to attorney to deliver deed to grantee or to record deed, negative any presumption of delivery even though acknowledgement is subsequently affixed and deed recorded. *Armbruster v. Freas*, 18 Bucks 192 (1968).

§ 48. Effect of prothonotary's certificate on treasurer's deed

Library References

P.L.E. Acknowledgment §§ 1, 2.
P.L.E. Deeds § 73.

Notes of Decisions

5. Records as evidence

Certificate of prothonotary endorsed on tax deed stating that treasurer acknowledged tax deed in open court was prima facie evidence of that fact. *Proctor v. Sagamore Big Game Club*, C.A.3 (Pa.)1959, 265 F.2d 196, certiorari denied 80 S.Ct. 81, 361 U.S. 831, 4 L.Ed.2d 73.

6. Prima facie case and rebuttal

County treasurer's deed conveying unseated lands to purchaser at tax sale was validly ac-

knowledged in open court on July 3, 1894 as required by Pennsylvania statute, where the county prothonotary's "trial list and court minutes" book disclosed that common pleas court was in session on July 3, 1894 and prothonotary's "treasurer's acknowledgment book" disclosed that treasurer came into court on that day and acknowledged the deed. *Proctor v. Sagamore Big Game Club*, W.D.Pa.1958, 166 F.Supp. 465, affirmed 265 F.2d 196, certiorari denied 80 S.Ct. 81, 361 U.S. 831, 4 L.Ed.2d 73.

§ 50. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[248], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 51. Execution and acknowledgment of deed to adult's real estate by minor spouse

Library References

- P.L.E. Deeds § 6.
P.L.E. Husband and Wife § 13.
P.L.E. Minors § 51.

§ 52. Repealed. 1985, Oct. 30, P.L. 264, No. 66, § 3, effective in 90 days

Notes of Decisions

Construction and application 1

1. Construction and application

As a general rule, a married woman may not convey her real estate without husband's joinder, but rule is subject to exceptions, such as where husband neglects or refuses to provide for wife, where husband and wife are living apart and

husband for one or more years has not supported wife, or where parties are separated and by recorded agreement husband has released his interest in wife's realty. *Rice v. Shank*, 115 A.2d 210, 382 Pa. 396, Sup.1955.

A married woman has no power to convey her real estate except in precise mode prescribed by statute conferring power. *Rice v. Shank*, 115 A.2d 210, 382 Pa. 396, Sup.1955.

§§ 52.1, 52.2. Repealed. 1990, Dec. 19, P.L. 1240, No. 206, § 6, effective in 90 days

Historical and Statutory Notes

For subject matter of repealed §§ 52.1 and 52.2, see, now, 23 Pa.C.S.A. § 3508.

Annotations Under Repealed Sections

SECTION 52.1

Notes of Decisions

Construction and application 1

1. Construction and application

Once misappropriation of property held by both spouses has been established, all property of parties held by entireties is affected. *Vento v. Vento*, 389 A.2d 615, 256 Pa.Super. 91, Super.1978.

Generally, neither tenant can partition entireties property prior to divorce. *Vento v. Vento*, 389 A.2d 615, 256 Pa.Super. 91, Super.1978.

Where husband coerced wife to convey her interest in tenancy by the entireties real estate to him by the use of physical force and threat of

divorce, and refused to permit her to examine the deed, the conveyance would be set aside on the grounds of duress. *Woodruff v. Woodruff*, 13 Lycoming 46 (1974).

Where husband and wife are separated and one of them is excluded from enjoyment of property held by the entireties, an accounting is proper. *Paetzer v. Paetzer*, 97 Montg. 28 (1973).

The existence of a support order has no connection with a wife's entitlement to share in the fruits of entireties property, and the husband is not entitled to credit for support payments in the accounting. *Paetzer v. Paetzer*, 97 Montg. 28 (1973).

§ 53. Conveyance by officer when decreed by court; acknowledgment in open court

Notes of Decisions

Power of court 1

1. Power of court

Creditors' suit against nonresident former wife of resident, her former husband and her new

nonresident husband to set aside allegedly fraudulent conveyance of wife's half interest in land situated within state to herself and her new husband was an in rem proceeding and, therefore, service of wife and husband outside state by registered mail was proper and trial court could order reconveyance of wife's half interest if credi-

Note 1

tors proved conveyance was fraudulent even though creditors had not reduced their claim to judgment. *Malis v. Zinman*, 261 A.2d 875, 436 Pa. 592, Sup.1970.

Fact that court had no jurisdiction over defendants to permit enforcement of decree against

them to execute and deliver the deed was immaterial, since under § 53-56 of this title, the prothonotary or an especially appointed trustee could deliver the deed. *Esher v. Esher*, 49 Del. Co. 284, 25 Pa. D. & C.2d 464 (1962).

§ 57. Repealed. 1990, Dec. 19, P.L. 1240, No. 206, § 6, effective in 90 days

Historical and Statutory Notes

Former § 57, which was added by Act 1961, Aug. 7, P.L. 961, § 1, related to the validity of a deed or mortgage executed and acknowledged by

an adult married person in conjunction with his or her minor spouse.

FORM AND SUFFICIENCY OF ACKNOWLEDGMENTS

Library References

P.L.E. Acknowledgment § 1 et seq.

§ 81. Form of certificate of acknowledgment

Library References

P.L.E. Acknowledgment § 8.

Notes of Decisions

Construction and application 1

date on the acknowledgment does not impair the validity of the acknowledgment. *Dorand v. Reiber*, 7 Cumb. L.J. 130 (1957).

1. Construction and application

If a deed is regularly dated and recorded, the omission of the last numeral of the year in the

§ 82. Acknowledgments by married woman

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

Library References

P.L.E. Acknowledgment § 2.

Notes of Decisions

3. Strict compliance with act

A married woman has no power to convey her real estate except in precise mode prescribed by

statute conferring power. *Rice v. Shank*, 115 A.2d 210, 382 Pa. 396, Sup.1955.

EXECUTION OR ACKNOWLEDGMENT BY CORPORATIONS

§ 116. Sale, lease or mortgage not to be invalidated by informality in execution**Cross References**

Record of minutes of corporate meeting, see
21 P.S. § 400.

AUTHORITY TO TAKE ACKNOWLEDGMENTS

Library References

P.L.E. Acknowledgment §§ 5, 6.

*Within State***§ 142. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[30], effective June 27, 1978.****Historical and Statutory Notes**

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Con-
Disposition Table preceding Title 42, Judiciary solidated Statutes Annotated.

§ 145. Repealed. 1978, Oct. 4, P.L. 909, No. 173, § 9, effective in 60 days**§ 146. Repealed. 1992, Nov. 24, P.L. 717, No. 108, § 3, imd. effective****§ 147. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[44], effective June 27, 1978****Historical and Statutory Notes**

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Con-
Disposition Table preceding Title 42, Judiciary solidated Statutes Annotated.

§ 148. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[67], effective June 27, 1978**Historical and Statutory Notes**

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Con-
Disposition Table preceding Title 42, Judiciary solidated Statutes Annotated.

§ 152. Power of recorder of deeds as to acknowledgments enlarged**District Justices**

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

- § 153. Treasurers, commissioners, executors, etc., may acknowledge before any authorized officer

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Any Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

- § 154. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[643], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

- §§ 155, 156. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[122], effective June 27, 1980

Historical and Statutory Notes

These sections were repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

Without State

- § 181. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[83], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

- § 182. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[252], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

- § 183. Repealed. 1974, Dec. 10, P.L. 867, No. 293, § 19, imd. effective

- § 191. Repealed. 1974, Dec. 10, P.L. 867, No. 293, § 19, imd. effective

Without the United States

- § 221. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[106], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.
Disposition Table preceding Title 42, Judiciary

§ 223. Deputy consuls and commercial agents, etc., of United States**Cross References**

Time for recording deeds, see 21 P.S. §§ 444, 445.

VALIDATION OF CERTAIN ACKNOWLEDGMENTS AND CONVEYANCES**Library References**

P.L.E. Acknowledgment § 9.

§ 253. Repealed. 1992, Nov. 24, P.L. 717, No. 108, § 3, imd. effective**§ 255. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[248], effective June 27, 1978****Historical and Statutory Notes**

Act 1978, April 28, P.L. 202, No. 53, § 2(a)[424] repealed Act 1863, April 22, P.L. 533, No. 529 (see Historical Note in main volume). For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 257. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[248], effective June 27, 1978**Historical and Statutory Notes**

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.
Disposition Table preceding Title 42, Judiciary

§ 258. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[252], effective June 27, 1978**Historical and Statutory Notes**

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.
Disposition Table preceding Title 42, Judiciary

§ 259. Defective acknowledgments by husband and wife prior to January 4, 1923.**Historical and Statutory Notes**

Act 1850, April 25, P.L. 569, § 41, referred to in the historical note in the Main Volume, was repealed by Act 1974, Dec. 10, P.L. 867, No. 293, § 19, imd. effective.

§ 261. Acknowledgments made in any of the United States by husband and wife

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§ 262. Conveyances by trustees

Historical and Statutory Notes

Act 1967, Sept. 1, P.L. 304, effective immediately, contains the same provisions as Act 1927, May 12, P.L. 974, No. 465, § 1. However, the 1967 act substituted "beneficiary or beneficia-

ries" for "cestuis que trustent," and did not capitalize "trustee" or enclose it with quotation marks.

§ 265. Deeds made in any other state

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§ 269. Deeds by county commissioners, which have not been acknowledged before a justice

Notes of Decisions

Priority 1

1. Priority

Notation of encumbrance on the certificate of title did not give lien the status of a judgment or mortgage. *Com. Nat. Bank v. York Bus Co.*, 85 York 143, 54 Pa. D. & C.2d 442 (1971).

Where a judgment was entered on a note against defendant listing four buses as collateral

security, titles to which were also properly encumbered, and the buses were sold at execution sale, exceptions to the sheriff's proposed schedule of distribution allowing the claims of defendant's employes for wages will be dismissed, where the judgment was entered after the labor on which the claims were based was performed, since the issue of priority is determined by the Act of April 9, 1872, as amended. *Com. Nat. Bank v. York Bus Co.*, 85 York 143, 54 Pa. D. & C.2d 442 (1971).

§ 269.1. Commissioners' deed on resale of land purchased at tax sale

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or

elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§ 273. Acts done by notaries, who were at the same time justices of the peace

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§ 277.2. Repealed. 1966, Jan. 18, P.L. (1965) 1305, § 50(a)(258), 15 P.S. § 2203(a)(258)

Historical and Statutory Notes

This section, derived from Act 1955, June 23, P.L. 197, No. 59, § 1, related to the validation of

conveyances by foreign corporations not authorized to transact business of State.

§ 279. Correction of defective certificates by court

Notes of Decisions

2. Reformation of certificate

Where parties to a divorce agree, after the divorce, to an amicable settlement of real estate and, because of a mutual mistake, a portion of the real estate was not included in the settlement

deed, the court will exercise its equitable powers in directing the necessary party to execute a deed which will rectify the mistake. *McGrath v. McGrath*, 35 Fay.L.J. 120 (1972).

§ 281.1. Defective acknowledgments prior to 1996

No grant, bargain and sale, feoffment, deed of conveyance, release, assignment, mortgage or other assurance of lands, tenements and hereditaments, whatsoever, bearing date prior to the year one thousand nine hundred ninety-six, made, executed and delivered by husband and wife, or by any person or trustee or attorney in fact for any other person or persons, to a bona fide purchaser or purchasers for a valuable consideration, and acknowledged before any officer duly authorized by law to take such acknowledgment, shall be deemed, held or adjudged invalid or defective or insufficient in law by reason of any informality or defect in such acknowledgment as not being made according to law, or because the date of the acknowledgment predates the date of the instrument, or by reason of the acknowledgment thereto having been made by any trustee or attorney in fact in his individual capacity instead of as such trustee or attorney in fact; but all and every such grant, bargain and sale, feoffment, deed of conveyance, release, assignment, mortgage or other assurance, so made, executed and acknowledged, as aforesaid, shall be as good, valid and effectual in law for transferring, passing and conveying the estate, right, title and interest of such husband and wife of, in and to the lands, tenements and hereditaments mentioned in the same, as if all the requisites and particulars of such acknowledgment had been made according to law, and as if such trustee or attorney in fact had made the acknowledgment thereto in such capacity; and the record of the same duly made in the proper office for recording of deeds in this Commonwealth, and exemplifications of the same duly certified, shall be legal evidence in all cases in which the original would be competent evidence.

1967, Aug. 11, P.L. 205, § 1. As amended 1974, June 17, P.L. 328, No. 106, § 1; 1978, June 22, P.L. 496, No. 75, § 1, imd. effective; 1989, Dec. 22, P.L. 704, No. 94, § 1, imd. effective; 1997, Nov. 26, P.L. 528, No. 56, § 1, imd. effective.

Historical and Statutory Notes

Section 2 of Act 1974, June 17, P.L. 328, No. 106 provided that the 1974 amendment of this section "shall not apply to suits now pending and undetermined."

Section 2 of the act of 1967 provides that the act "shall not apply to suits now pending and undetermined."

1974 Amendment: Extended effectiveness of section from 1967 to 1973.

1978 Amendment: Extended effectiveness of section from 1973 to 1978, inserted throughout section word "mortgage" preceding phrase "or other assurance of lands", added phrase "or defect" following phrase "by reason of any informality", and added phrase "as not being made according to law" following phrase "in such acknowledgment".

1989 Legislation

The 1989 amendment extended the date limitation from one thousand nine hundred seventy-eight to one thousand nine hundred eighty-eight, and inserted the phrase "or because the date of the acknowledgment predates the date of the instrument".

1997 Legislation

The 1997 amendment changed the date from one thousand nine hundred eighty-eight to one thousand nine hundred ninety-six.

Title of Act:

An Act to validate conveyances and other instruments which have been defectively acknowledged. 1967, Aug. 11, P.L. 205.

Library References

Acknowledgment § 47.
C.J.S. Acknowledgments § 120.
P.L.E. Acknowledgment § 9.

Notes of Decisions

Construction and application 1

1. Construction and application

Pennsylvania statute providing for cure of defective acknowledgments of mortgage by recording provides curative effect only as to document which is in fact acknowledged before a duly authorized officer. In re Rice, Bkrtcy.E.D.Pa. 1991, 133 B.R. 722.

Pennsylvania statute providing for cure of defective acknowledgments of mortgages by recording would not protect mortgage which was not

acknowledged before duly authorized officer, although mortgage contained false recitation by officer and witness that acknowledgment had occurred; curative statute did not purport to cure such a significant defect as complete absence of any acknowledgment before authorized official. In re Rice, Bkrtcy.E.D.Pa.1991, 133 B.R. 722.

Failure of mortgagee to record mortgage within 90 days was procedural error which could be cured by proper recording of mortgage combined with Pennsylvania statute providing for cure of defective acknowledgments through recording. In re Rice, Bkrtcy.E.D.Pa.1991, 133 B.R. 722.

§ 283. County treasurers' deeds in tax sales validated notwithstanding defective acknowledgment

Notes of Decisions

In general 1

1. In general

Failure of trial list and court minutes of the Pennsylvania court of common pleas to make any

reference to acknowledgment of tax deed by treasurer in open court as required by this section did not invalidate tax sale if in fact tax deed was acknowledged in open court. Proctor v. Sagamore Big Game Club, C.A.3 (Pa.)1959, 265 F.2d 196, certiorari denied 80 S.Ct. 81, 361 U.S. 831, 4 L.Ed.2d 73.

§ 283.3. County treasurers deeds prior to December 31, 1965 validated; no proof of service filed, etc.

Whenever, prior to December 31, 1965, any property was sold by a county treasurer for the purpose of securing the payment of delinquent taxes which were assessed and levied against such property, and no proof of service was filed or in lieu of personal service the property was not properly posted or if it was properly posted the certificate of posting was not filed or as if the proof of service had been filed, or if no proof of service was filed, if, in all other respects the law relating to the holding of such sale was fully complied with, all such sales and county treasurer's deeds are hereby ratified,

confirmed and validated and the title to any such property purchased by any person or by the county commissioners of the county is hereby declared to be as valid as if the proof of service had been filed or as if the property had been properly posted or the certificate of posting had been properly filed.

1978, Nov. 26, P.L. 1294, No. 310, § 1, imd. effective.

Historical and Statutory Notes

Title of Act:

An Act validating county treasurer's deeds made prior to December 31, 1965 where no proof of service was filed or where the property

was not properly posted or the certificate of posting was not filed or there was no proof of service filed. 1978, Nov. 26, P.L. 1294, No. 310.

Notes of Decisions

In general 1

1. In general

This section which validates pre-December, 1965 tax sale proceedings involving minor techni-

cal defects does not provide a cure for such serious procedural defects as failure of county treasurer to effect any notice to true owner or owners of property in default. *Fidei v. Underwood*, 435 A.2d 1275, 291 Pa.Super. 375, Super.1981.

§ 284. Instruments acknowledged by grantors before themselves validated

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§ 286. Acknowledgments by persons in armed forces; validation; record; evidence

Saved from Repeal

Act 1961, April 28, P.L. 130, amending § 291.3, and adding section 291.10a of this title, provided in § 3 that nothing in the act should be deemed to amend or repeal this section.

§ 287. Deed or transfer without certificate showing residence

When any real estate or interest in real estate has been or is in the future conveyed or transferred to any person, and the deed or transfer therefor properly executed and recorded in the office of the proper recorder of deeds without containing a certificate setting forth the precise residence of the grantee as required by law, such deed or transfer is hereby validated and the title to such real estate or interest so conveyed or transferred is hereby declared good and valid notwithstanding such omission.

As amended 1975, July 16, P.L. 54, No. 32, § 1, imd. effective.

Historical and Statutory Notes

1975 Amendment: In opening phrase, substituted "has been or is in the future conveyed" for "has heretofore been conveyed".

§ 289. Records of legal instruments having defective acknowledgments

The records of all legal instruments which, by law, are directed to be recorded or are entitled to be recorded, and which have been duly executed by the proper party or parties, and which have been acknowledged to and certified by a qualified officer without this State but in the United States, a territory or insular possession of the United States or the District of Columbia, notwithstanding the absence of any authentication, affirming the official character of such officer in conformity with the laws of this Commonwealth in force at the time such instrument was acknowledged, are hereby severally made as valid and effective in law as if each such instrument had been fully acknowledged, certified and authenticated. The record of each such instrument, or the original of such instrument itself, shall be admitted as evidence in all courts of this Commonwealth, and shall be as valid and conclusive evidence as if such instrument had been in all respects acknowledged and the acknowledgement certified and authenticated in accordance with the then existing law.

1957, May 31, P.L. 233, § 1.

Library References

Acknowledgment ⇔47.
C.J.S. Acknowledgments § 120.
P.L.E. Acknowledgment § 9.

UNIFORM ACKNOWLEDGMENT ACT

UNIFORM ACKNOWLEDGMENT ACT

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 12.

Jurisdiction	Statutory Citation
Arizona	A.R.S. §§ 33-511 to 33-513.
Arkansas	A.C.A. §§ 16-47-201 to 16-47-218.
Connecticut	C.G.S.A. §§ 1-28 to 1-41.
Hawaii	HRS § 502-41 et seq.
Idaho	I.C. § 55-701 et seq.
Maryland	Code, State Government §§ 19-101 to 19-114.
Massachusetts	M.G.L.A. c. 183, §§ 30, 31, 33, 41, 42; c. 183 App.Forms 13 to 16; c. 222, § 11.
New Hampshire	RSA 456:1 to 456:15.
North Dakota	NDCC 47-19-13 et seq.
Pennsylvania	21 P.S. §§ 291.1 to 291.13.
South Dakota	SDCL 18-5-1 to 18-5-18.
Wyoming	W.S.1977, §§ 34-2-114 to 34-2-118.

Library References

P.L.E. Acknowledgment § 1 et seq. Acknowledged documents, see West's Pa.Prac.
vol. 1, Evidence, Packel and Poulin,
§ 803.10.

§ 291.1. Acknowledgment of instruments

Library References

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged documents, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

§ 291.2. Acknowledgment within the State

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

Cross References

Acknowledgments taken by members of the bar, see 42 Pa.C.S.A. § 327.

Powers of notaries public, see 57 P.S. § 147 et seq.

Library References

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged docu-

ments, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

§ 291.3. Acknowledgment within the United States

The acknowledgment of any instrument may be made without the State, but within the United States, or a territory or insular possession of the United States, or the District of Columbia, and within the jurisdiction of the officer before—

- (1) A clerk or deputy clerk of any federal court;
- (2) A clerk, prothonotary or deputy prothonotary or deputy clerk of any court of record of any state or other jurisdiction;
- (3) A notary public;
- (4) A recorder of deeds.

As amended 1961, April 28, P.L. 130, § 1.

Historical and Statutory Notes

Section 4 of the amendatory act of 1961 provided:

"This act shall take effect immediately. No acknowledgments heretofore taken shall be affected by anything contained herein."

Library References

Acknowledgment ⇨17.

C.J.S. Acknowledgments §§ 49, 51.

P.L.E. Acknowledgment § 5.

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged docu-

ments, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

§ 291.4. Acknowledgment without the United States

Library References

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged docu-

ments, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

Notes of Decisions

Construction and application 1

1. Construction and application

Evidence offered by claimant, a resident of the Soviet Union, to establish his identity as the

person named in bequest, which evidence included certificate of United States consul at Moscow stating that claimant was personally known to consul, was sufficient to meet claimant's burden of proof. In re Demczuk's Estate, 282 A.2d 700, 444 Pa. 212, Sup.1971.

§ 291.5. Requisites of acknowledgment

Library References

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged docu-

ments, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

§ 291.6. Acknowledgment by a married woman

Library References

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged docu-

ments, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

§ 291.7. Forms of certificates

An officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in one of the following forms:

[See main volume for (1) to (4)]

(5) By an attorney at law—

State of _____

County of _____

On this, the _____ day of _____, 19____, before me _____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be a member of the bar of the highest court of said state and a subscribing witness to the within instrument, and certified that he was personally present when _____ whose name _____ subscribed to the within instrument executed the same, and that said person _____ acknowledged that _____ he _____ executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Title of Officer

Added 1981, July 10, P.L. 226, No. 71, § 1, effective in 60 days.

Historical and Statutory Notes

1981 Amendment: Added cl. (5).

Cross References

Certification by attorney to include attorney's Supreme Court identification number, see 42 Pa.C.S.A. § 327.

Library References

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged docu-

ments, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

§ 291.8. Execution of certificate

The certificate of the acknowledging officer shall be completed by his signature, his official seal, if he has one, the title of his office, and, if he is a notary public, the date his commission expires. The existence or absence of an embossed impression on documents left for recording in the office of the recorder of deeds may be disregarded by the recorder.

Amended 1992, July 1, P.L. 346, No. 73, § 1, effective in 60 days.

Historical and Statutory Notes

1992 Legislation

The 1992 amendment added the second sentence.

Library References

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged documents, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

§ 291.9. Authentication of acknowledgments

[See main volume for (1)]

(2) If the acknowledgment is taken without this State, but in the United States, a territory or insular possession of the United States or the District of Columbia, no authentication shall be necessary if the official before whom the acknowledgment is taken affixes his official seal to the instrument so acknowledged otherwise the certificate shall be authenticated by a certificate as to the official character of such officer, executed, (1) if the acknowledgment is taken by a clerk or deputy clerk of a court, by the presiding judge of the court, or, (2) if the acknowledgment is taken by some other authorized officer, by the official having custody of the official record of the election, appointment or commission of the officer taking such acknowledgment.

As amended 1957, May 14, P.L. 134, § 1.

[See main volume for (3)]

Library References

Acknowledgment § 17.
C.J.S. Acknowledgments §§ 49, 51.
P.L.E. Acknowledgment § 5.
Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged documents, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

Notes of Decisions

Construction and application 1

1. Construction and application

Power of attorney and survival certificate, executed by Russian officials, were admissible in action to determine heirship, and were limited to showing that person purporting to be decedent's sister had appeared and executed documents, not to prove that affiant was in fact the decedent's sister or to show present existence of the sister.

In re Bokey's Estate, 194 A.2d 194, 412 Pa. 244, Sup.1963.

Preliminary objections to a complaint executed before a notary in Louisiana on the ground that it failed to contain the required certification of notarial authority, was overruled on the ground that this section did away with the requirement for such a certificate where the acknowledgment was taken within the United States, and where the officer before whom acknowledgment was taken affixed his seal. American Bleacher Corp. v. Fried & Gerber, Inc., 15 Bucks 218, 35 Pa. D. & C.2d 729 (1965).

§ 291.10. Acknowledgments under laws of other states

Acknowledgments under laws of other states. Notwithstanding any provision of this act contained, the acknowledgment of any instrument without this State in compliance with the manner and form prescribed by the laws of the place of its execution, if in a

state, a territory or insular possession of the United States, or in the District of Columbia, verified by the official seal of the officer before whom it is acknowledged or authenticated, in the manner provided by section 9, subsection (2) hereof, shall have the same effect as an acknowledgment in the manner and form prescribed by the laws of this State for instruments executed within the State.

As amended 1957, May 14, P.L. 134, § 1.

Library References

Acknowledgment ⇨57.

C.J.S. Acknowledgments §§ 4, 23 et seq.

P.L.E. Acknowledgment § 5.

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged docu-

ments, see Packel & Poulin, 1 Pennsylvania Practice § 803.10.

§ 291.10a. Acknowledgment by persons serving in or with the armed forces of the United States or their dependents within or without the United States

In addition to the acknowledgment of instruments in the manner and form and as otherwise now or hereafter authorized by the laws of this State or by this act, persons serving in or with the armed forces of the United States or their dependents, wherever located, may acknowledge the same before any commissioned officer in active service of the armed forces of the United States with the rank of Second Lieutenant or higher in the Army, Air Force, or Marine Corps, or Ensign or higher in the Navy or Coast Guard. The instrument shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment shall be required but the officer taking the acknowledgment shall endorse thereon or attach thereto a certificate substantially in the following form:

"On this the day of 19...., before me, the undersigned officer, personally appeared, (Serial No.) (if any) known to me (or satisfactorily proven) to be (serving in or with the armed forces of the United States) (a dependent of (Serial No.) (if any) a person serving in or with the armed forces of the United States) and to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained. And the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the armed forces of the United States.

Signature of the Officer

Rank and Serial No. of Officer and Command to which attached".

1941, July 24, P.L. 490, § 10.1, added 1961, April 28, P.L. 130, § 2.

Historical and Statutory Notes

Section 3 of the amendatory act of 1961 provided that nothing therein should be deemed to amend or repeal § 286 of this title. Section 4 provided:

"This act shall take effect immediately. No acknowledgments heretofore taken shall be affected by anything contained herein."

Library References

Acknowledgment ⇨16.

C.J.S. Acknowledgments § 44 et seq.

P.L.E. Acknowledgment § 5.

§ 291.11. Acknowledgments not affected by this Act

Library References

Hearsay, hearsay exceptions, availability of declarant immaterial, acknowledged docu-

ments, see Packer & Poulin, 1 Pennsylvania Practice § 803.10.

CONVEYANCES BY ATTORNEYS OR AGENTS

§ 301. Sales made by attorneys or agents

Notes of Decisions

In general 1

1. In general

In an equity action for specific performance of a property settlement agreement which included provisions for the public sale of real property and requiring each party to grant an irrevocable power of attorney to their attorneys to carry out the agreement and execute deeds and other necessary documents, instituted following defendant's

attempted repudiation of the power of attorney on the grounds that she signed the agreement prior to its revision and signed the power of attorney in blank both of which later contained provisions to which she allegedly did not agree, defendant was not entitled to revoke the power of attorney and specific performance subject to defendant's counterclaim for a set-off for amounts due defendant under a court support order was granted. *Billow v. Billow*, 96 Dauph. 448 (1974).

§ 302. Future sales by power of attorney

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§ 303. Deeds defectively executed under power of attorney

Notes of Decisions

1. Construction and application

In an equity action for specific performance of a property settlement agreement which included provisions for the public sale of real property and requiring each party to grant an irrevocable power of attorney to their attorneys to carry out the agreement and execute deeds and other necessary documents, instituted following defendant's attempted repudiation of the power of attorney

on the grounds that she signed the agreement prior to its revision and signed the power of attorney in blank both of which later contained provisions to which she allegedly did not agree, defendant was not entitled to revoke the power of attorney and specific performance subject to defendant's counterclaim for a set-off for amounts due defendant under a court support order was granted. *Billow v. Billow*, 96 Dauph. 448 (1974).

REGISTRATION AND RECORDING

REGISTRATION IN GENERAL

§ 321. Registration of deeds in counties with more than 500,000 inhabitants**Repealed in Part**

Section 2 of Act 1988, Jan. 15, P.L. 4, No. 2, repealed this section insofar as it is inconsistent with said act.

Registration of ownership of property acquired by persons, corporations, municipal corporations, authorities, districts or political subdivisions, see 16 P.S. § 3708.

Library References

P.L.E. Deeds § 13.

P.L.E. Records §§ 2, 3.

Notes of Decisions**In general 1****1. In general**

Even if county does not, as it should, provide registration, holding that tax sale must be set aside where county government has failed to comply with provisions of 16 P.S. § 3708 and § 321 et seq. of this title intended, inter alia, to ensure notice to owners of imminence of sales by county of their properties for delinquent taxes is not unwarranted extension of notice provisions of 72 P.S. § 5860.602 governing tax sales of real

estate. *Grace Bldg. Co., Inc. v. Lanigan*, 328 A.2d 919, 15 Pa.Cmwth. 643, Cmwth.1974.

Whether grantees' deed to property subsequently sold at tax sale was in fact registered, or whether it was in fact not registered because county had failed to provide mandated service, such grantees were, when their deed was recorded, "owners" of property in question within purview of definitional section of statute (72 P.S. § 5860.102) governing tax sales of real estate, and as owners entitled to notices required for such tax sales. *Grace Bldg. Co., Inc. v. Lanigan*, 328 A.2d 919, 15 Pa.Cmwth. 643, Cmwth.1974.

§ 325.1. Duty to accept deeds for recording; registration of unregistered deeds; fee**Library References**

P.L.E. Deeds § 13.

P.L.E. Records §§ 2, 3.

Notes of Decisions**Construction and application 1****1. Construction and application**

Whether grantees' deed to property subsequently sold at tax sale was in fact registered, or whether it was in fact not registered because county had failed to provide mandated service, such grantees were, when their deed was recorded, "owners" of property in question within purview of definitional section of statute (72 P.S. § 5860.102) governing tax sales of real estate, and as owners entitled to notices required for such tax sales. *Grace Bldg. Co., Inc. v. Lanigan*, 328 A.2d 919, 15 Pa.Cmwth. 643, Cmwth.1974.

Even if county does not, as it should, provide registration, holding that tax sale must be set aside where county government has failed to

comply with provisions of 16 P.S. § 3708 and § 321 et seq. of this title intended, inter alia, to ensure notice to owners of imminence of sales by county of their properties for delinquent taxes is not unwarranted extension of notice provisions of 72 P.S. § 5860.602 governing tax sales of real estate. *Grace Bldg. Co., Inc. v. Lanigan*, 328 A.2d 919, 15 Pa.Cmwth. 643, Cmwth.1974.

Philadelphia realty transfer tax ordinance, which imposes a tax on every person who executes or presents for recording a deed which conveys or transfers realty was not applicable to deeds executed in connection with complete liquidation and dissolution of one corporation and transfer of its assets to its sole shareholder since the transfer was effectuated by operation of law rather than by the subsequent confirmatory deeds. *Uniroyal, Inc. v. Coleman*, 328 A.2d 893, 15 Pa.Cmwth. 596, Cmwth.1974.

In performing his duties the commissioner of records of the City of Philadelphia may act only in accordance with the law; if he determines that the law requires him to reject deeds submitted to him for recording his determination in such respect is subject to judicial review in a mandamus action. *Uniroyal, Inc. v. Coleman*, 328 A.2d 893, 15 Pa.Cmwlth. 596, Cmwlth.1974.

Mandamus would lie to compel commissioner of records of the City of Philadelphia to record, without payment of Philadelphia transfer tax, deeds confirmatory of transfer of property on complete corporate liquidation and dissolution. *Uniroyal, Inc. v. Coleman*, 328 A.2d 893, 15 Pa.Cmwlth. 596, Cmwlth.1974.

Recording of deed is not essential to its validity or transition of title. *Fiore v. Fiore*, 174 A.2d 858, 405 Pa. 303, Sup.1961.

Recorders of deeds act as agents of secretary of revenue for collection of state tax on deeds. *Powell v. Shepard*, 113 A.2d 261, 381 Pa. 405, Sup.1955.

Under sections 42, 325.1, of this title, an unacknowledged instrument cannot be recorded even though plaintiff church has been in exclusive, continuous and uninterrupted possession of the land for 197 years. *Trustees of Baptist Church v. Boden*, 6 Pa. D. & C.2d 378 (1956).

§ 329. City of Philadelphia, maintenance of day book by commissioner of records

The Commissioner of Records in the City of Philadelphia shall maintain a day book, or direct index book, in which shall be noted the date of the recording of all instruments, the book number and page number of recording and an identifying number.

1955, Aug. 4, P.L. 303, § 1.

Repealed in Part

Section 2 of Act 1988, Jan. 15, P.L. 4, No. 2, repealed this section insofar as it is inconsistent with said act.

Historical and Statutory Notes

Title of Act:

An Act, regulating the recording of all instruments in writing by the Commissioner of Records

in the City of Philadelphia, and repealing inconsistent laws. 1955, Aug. 4, P.L. 303.

Library References

Records ☞6.
Registers of Deeds ☞5.
C.J.S. Records §§ 9 to 18.

C.J.S. Registers of Deeds § 10.
P.L.E. Deeds § 13.
P.L.E. Records §§ 2, 3.

§ 330. City of Philadelphia, issuance of receipts by commissioner of records

The Commissioner of Records in the City of Philadelphia shall issue a receipt for all instruments, which receipt shall contain the date of payment, an identifying number and the amount of the fee charged.

1955, Aug. 4, P.L. 303, § 2.

Repealed in Part

Section 2 of Act 1988, Jan. 15, P.L. 4, No. 2, repealed this section insofar as it is inconsistent with said act.

Library References

Records ☞6.
Registers of Deeds ☞5.
C.J.S. Records §§ 9 to 18.

C.J.S. Registers of Deeds § 10.
P.L.E. Deeds § 13.

UNIFORM PARCEL IDENTIFIER LAW

Cross References

Deeds, mortgages, and other instruments, see 21 P.S. § 10.1.

Recorders of deeds, indexes, see 16 P.S. §§ 9854.1, 9854.2.

Recording deeds, mortgages, and other instruments, see 16 P.S. § 9781.1.

§ 331. Short title

This act shall be known and may be cited as the Uniform Parcel Identifier Law. 1988, Jan. 15, P.L. 1, No. 1, § 1, effective in 60 days.

Historical and Statutory Notes

Title of Act:

An Act authorizing a county, with the written recommendation of its recorder of deeds or commissioner of records, by ordinance of its governing body, to establish a uniform parcel identifier system by providing for a depository agency of

the county's tax maps, including additions, deletions and revisions to such maps, and by providing for the assignment by such depository agency of uniform parcel identifiers for each parcel on the map in order to facilitate conveyancing and its tax assessment and to establish a modern land record system. 1988, Jan. 15, P.L. 1, No. 1.

§ 332. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"County tax map." A map describing real estate in a county, maintained for its tax assessment purposes as otherwise provided by law.

"Governing body." The county commissioners of the county, except in those counties which have adopted an optional charter or home rule form of government where it shall mean that body vested with the legislative authority of the county.

"Municipality." Any city of the first, second, second class A or third class, borough, incorporated town, township of the first or second class or any similar general purpose unit of government which shall hereafter be created by the General Assembly. The term shall include those general purpose units of government smaller than a county which exercise self-government under a home rule charter or optional plan.

"Uniform parcel identifier." A finite, punctuated sequence of numbers indicating the land parcel or other interest in real estate as shown on the recorded county tax map, which sequence may be the existing county tax parcel number.

(1) In the case of a "unit" within the meaning of the act of July 3, 1963 (P.L.196, No.117), known as the Unit Property Act,¹ a designator for the number of the "unit" as indicated on the recorded "declaration plan" shall be included in the sequence of numbers forming the uniform parcel identifier for such "unit."

(2) In the case of a "unit" within the meaning of 68 Pa.C.S. Part II Subpart B (relating to condominiums), a designator for the number of the "unit" as indicated on the recorded declaration shall be included in the sequence of numbers forming the uniform parcel identifier for such "unit."

(3) In the case of an interest in real estate less than fee simple, an additional designator may be included in the sequence of numbers forming the uniform parcel identifier for such interest in order to distinguish such interest from the fee simple parcel of which such interest is a part.

1988, Jan. 15, P.L. 1, No. 1, § 2, effective in 60 days.

¹ 68 P.S. § 700.101 et seq. Rep.

§ 333. Ordinance requiring permanency of county maps

A county, with the written recommendation of its recorder of deeds or commissioner of records, may, by ordinance of its governing body, require the implementation of a

uniform parcel identifier system. The system shall provide for a permanent record of all county tax maps with the parcel identifier clearly visible.

1988, Jan. 15, P.L. 1, No. 1, § 3, effective in 60 days.

§ 334. Assigning uniform parcel identifiers

(a) **Requirements of county tax maps.**—The governing body shall provide for a single agency which shall be the permanent depository of all county tax maps. The agency shall assign to each parcel a uniform parcel identifier which shall correspond with the county tax maps.

(b) **Assignment of uniform parcel identifier.**—At the request of an owner subdividing or amalgamating or otherwise affecting for future transfer, mortgage, release or other purpose any parcel or parcels already designated on a county tax map, the agency having custody of the county tax map shall assign a uniform parcel identifier to each parcel included in the proposed transfer, mortgage, release or other purpose. If the conveyance in the proposed transfer represents a change of size and a description of the real estate, the owner shall provide the officials with either a metes and bounds description based on a precise survey or a lot number and references to a recorded subdivision plan, which plan on its face shows metes and bounds, prepared by a professional land surveyor as required by the act of May 23, 1945 (P.L. 913, No. 367), known as the Professional Engineers Registration Law.¹ Any subdivision plan which was prepared prior to the effective date of the aforesaid act and which contains metes and bounds shall be acceptable for compliance with these provisions. This assignment of uniform parcel identifiers shall take place within one day of the presentation of the request for such assignment when accompanied by the survey or such subdivision plan. No metes and bounds description by survey or subdivision plan shall be required for any transfer, mortgage, release or other purpose involving a right-of-way, surface or subsurface easement, oil, gas or mineral lease or other interest, or any subsurface estate.

1988, Jan. 15, P.L. 1, No. 1 § 4, effective in 60 days.

¹ 63 P.S. § 148 et seq.

§ 335. Recording procedures

(a) **Generally.**—The provisions of this section shall govern all recordings of county tax maps pursuant to a resolution adopted under section 3.¹

(b) **Initial recording.**—Immediately upon the adoption of an ordinance under section 3, or at such later time provided in the ordinance, the appropriate agency designated to have custody of the county tax maps shall provide for their permanency.

(c) **Filing in stages by municipality.**—The initial filing of county tax maps shall be accomplished by filing successively all the county tax maps relating to a municipality at one time. It is intended at the initial filing that no county tax map for a municipality be placed on record until all the county tax maps relating to a municipality are so recorded.

(d) **Additions, revisions and changes to county tax maps.**—Changes in municipal or county boundaries, resulting from annexation or otherwise, subdivisions, resubdivisions and additions shall be indicated on the county tax maps otherwise provided by law, and such revised or new county tax maps or that part thereof which is revised or new shall be filed within ten days of their revision or addition, or, in lieu thereof, the revised or new subdivision plan with the uniform parcel identifiers affixed shall be recorded.

(e) **Filing certified copies of county tax maps.**—A copy of any county tax map certified by any official having custody thereof may be placed in the depository in lieu of an original map.

(f) **Maintenance of tax maps.**—County tax maps may be maintained in the depository in a microfilmed, bound or otherwise permanent form for reference as provided in the ordinance adopted under section 3.

1988, Jan. 15, P.L. 1, No. 1, § 5, effective in 60 days.

¹ Section 333 of this title.

§ 336. Fees

Officials providing services in accordance with an ordinance enacted under section 3¹ shall receive their customary fees if otherwise provided by law.

1988, Jan. 15, P.L. 1, No. 1, § 6, effective in 60 days.

1 Section 333 of this title.

§ 337. Home rule charter and optional plan counties

A county exercising self-government under a home rule charter or optional plan that adopts an ordinance under section 3¹ shall be subject to the provisions of this act in the same manner as any other county so electing.

1988, Jan. 15, P.L. 1, No. 1, § 7, effective in 60 days.

1 Section 333 of this title.

NECESSITY OF RECORDING AND COMPULSORY RECORDING

§ 351. Failure to record conveyance

Library References

P.L.E. Deeds § 13.

P.L.E. Records § 2.

Records of documents affecting property, see West's Pa.Prac. vol. 1, Evidence, Packer and Poulin, § 803.14.

Hearsay, hearsay exceptions, availability of declarant immaterial, records of documents af-

fecting and interest in property, see Packer & Poulin, 1 Pennsylvania Practice § 803.14. Hearsay, hearsay exceptions, availability of declarant immaterial, statements in documents affecting an interest in property, affidavits affecting an interest in property, see Packer & Poulin, 1 Pennsylvania Practice § 803.15.

Notes of Decisions

Bankruptcy 9

Purchasers 8

2. Construction and application

Under Pennsylvania law, transfer of real property is good as against subsequent bona fide purchaser, mortgagee, or judgment holder when deed is recorded. In re MacQuown, C.A.3 (Pa.)1983, 717 F.2d 859.

Under Pennsylvania law, taxpayer's conveyance of his real property to himself and his wife as joint tenants was void against United States and, thus, could not prevent foreclosure to satisfy taxpayer's unpaid income tax assessments where taxpayer did not record conveyance within time required by state recording statute which deems untimely recorded conveyances as fraudulent and void against creditors. U.S. v. Craig, E.D.Pa. 1996, 936 F.Supp. 298.

Claimant who received deed conveying subject property did not have ownership interest in property under Pennsylvania law necessary for standing to contest government's forfeiture action, where government's filing of notice of lis pendens gave claimant constructive notice of government's interest in property before claimant recorded deed. U.S. v. Premises Known as 2930 Greenleaf Street, Allentown, Pa., E.D.Pa.1996, 920 F.Supp. 639.

Scope of protection afforded by recording laws extends only to bona fide purchasers, mortgagees

and judgment creditors. U. S. v. 137.02 Acres of Land, More or Less, in Centre County, Com. of Pa., M.D.Pa.1971, 334 F.Supp. 1021.

The primary purpose of recording a deed is to give the public notice in whom title resides, so that no one may be defrauded by deceptive appearance of title, and therefore recording is obligatory, on peril of having an unrecorded deed adjudged fraudulent and void as against subsequent purchasers, mortgagees, and creditors. Reiter v. Kille, E.D.Pa.1956, 143 F.Supp. 590.

Primary object of recording deed is to give public notice in whom the title resides so that no one may be defrauded by deceptive appearance of title. Mancine v. Concord-Liberty Sav. and Loan Ass'n, 445 A.2d 744, 299 Pa.Super. 260, Super.1982.

Mortgagee was not required, in order to perfect mortgage lien, to file mortgage bond with proper notary, and failure to file such bond did not defeat priority of mortgage. Kretschman v. Stoll, 352 A.2d 439, 238 Pa.Super. 51, Super.1975.

In performing his duties the commissioner of records of the City of Philadelphia may act only in accordance with the law; if he determines that the law requires him to reject deeds submitted to him for recording his determination in such respect is subject to judicial review in a mandamus action. Uniroyal, Inc. v. Coleman, 328 A.2d 893, 15 Pa.Cmwlth. 596, Cmwlth.1974.

Evidence supported finding that grantees of one-half interest in 21 lots were not bona fide purchasers of such lots and were not within protection of recording statutes. *Wheatcroft v. Albert Co.*, 180 A.2d 216, 407 Pa. 97, Sup.1962.

The recording statute is not applicable to resolve questions of title where one asserts title to real estate from a grantor different from another claimant's grantor. *Copenhaver v. Markle-Bullers Coal Co., Inc.*, 13 Pa. D. & C.3d 409 (1980).

Where plaintiff bought a parcel of real estate from county commissioners (who had purchased it at an admittedly valid tax sale) and recorded his deed from the county commissioners on the same day but at an earlier hour than defendants' deed from the last owner of record, the provisions of this section gave plaintiff the better title. *Mousley v. Fitzpatrick*, 70 Pa. D. & C.2d 481 (1974).

The recording statutes if not laches protects the defendant where a title search would not have revealed the oral covenants and no warning of legal action was made for over a year after plaintiffs knew of defendant's project. *Fritz v. Megoulas*, 92 Dauph. 20 (1969).

3. Unrecorded instruments in general

Though tax deed was void it was not invalid for purpose of determining grantee's right to share in condemnation proceeds to extent of value of improvements grantee made on land. *U. S. v. 137.02 Acres of Land, More or Less, in Centre County, Com. of Pa.*, M.D.Pa.1971, 334 F.Supp. 1021.

Notice of federal tax lien against intervening purchaser who never recorded his deed was not effective against a subsequent purchaser at public tax sale in Pennsylvania. *Reiter v. Kille*, E.D.Pa. 1956, 143 F.Supp. 590.

The failure of purchasers' predecessors in interest to record deed to campsite did not prevent purchasers from acquiring title to property and did not require that title be quieted in sons of original owners; deed conveying property from original owners to their sons specifically excepted campsite. *Graham v. Lyons*, 546 A.2d 1129, 377 Pa.Super. 4, Super.1988, appeal denied 559 A.2d 38, 522 Pa. 576.

A cause of action for trespass to land was not lost by the failure of the owner to record her deed (executed during the trespass) until after the trespass had ceased where the defendant was not among those protected by the recording statute. *Copenhaver v. Markle-Bullers Coal Co., Inc.*, 13 Pa. D. & C.3d 409 (1980).

One cannot make a deed and then nullify it by alleging some oral agreement, no mention of which appears of record. *Klein v. Lebo*, 17 Fay.L.J. 148 (1954).

After a deed is delivered, the recording of the deed by the grantee is not essential to its validity or the transition of title as between the parties. *Trautman v. Neidig*, 28 Northumb.L.J 12 (1956).

4. Judgments, invalidity against

Where assignment of interest in two parcels of land was neither acknowledged nor recorded,

assignment was void as to judgment creditor of assignee. *Merrill v. Hanley*, 340 A.2d 546, 235 Pa.Super. 22, Super.1975.

Where, following the death of an intestate decedent, her husband, son and daughter entered into an unrecorded family settlement, by which the interest of the son and daughter in the premises owned by decedent was conveyed to the father who remained in possession until his death, but where prior to his death two judgments were recorded against the son, who thereafter, by agreement, released his interest in his father's estate to his sister, and the orphans' court, by adjudication of which the agreement was made a part, awarded the premises to her, the liens of the judgment creditor took precedence over the unrecorded family settlement, and the judgment creditor was entitled to payment of its liens out of the proceeds of a subsequent condemnation award for the property. *Yancey v. Philadelphia Housing Authority*, 42 Pa. D. & C.2d 597 (1967).

6. Taxes

Mandamus would lie to compel commissioner of records of the City of Philadelphia to record, without payment of Philadelphia transfer tax, deeds confirmatory of transfer of property on complete corporate liquidation and dissolution. *Uniroyal, Inc. v. Coleman*, 328 A.2d 893, 15 Pa.Cmwlt. 596, Cmwlt.1974.

Philadelphia realty transfer tax ordinance, which imposes a tax on every person who executes or presents for recording a deed which conveys or transfers realty was not applicable to deeds executed in connection with complete liquidation and dissolution of one corporation and transfer of its assets to its sole shareholder since the transfer was effectuated by operation of law rather than by the subsequent confirmatory deeds. *Uniroyal, Inc. v. Coleman*, 328 A.2d 893, 15 Pa.Cmwlt. 596, Cmwlt.1974.

One who fails to register his deed in accordance with the Act of 1915 P.L. 172, repealed, cannot complain if tax liens are filed against the former owner rather than against himself. *Confidence Bldg. & Loan Ass'n v. Cegelis*, 104 Pitts. L.J. 453 (1956).

7. Notice

Government had notice of unrecorded conveyance of taxpayer's interest in real property to purchaser before Internal Revenue Service (IRS) assessed taxpayer and filed its tax liens and, therefore, government was disqualified from protection of Pennsylvania Recording Act and purchaser's interest in property was superior to government lien under Pennsylvania law; IRS agent had copy of agreement of sale concerning conveyance and purchaser had filed tax returns for himself and partnership, of which he and taxpayer were partners, which reflected conveyance of property and, therefore, IRS had actual notice that conveyance agreement had been consummated and that purchaser was sole owner of property before first IRS lien arose or was filed. *U.S. v. Purcell*, E.D.Pa.1991, 798 F.Supp. 1102, affirmed 972 F.2d 1334.

Under Pennsylvania law, recording of memorandum of sale/leaseback agreement between debtor and transferee was insufficient notice of interests of transferee and his estate in property under Pennsylvania recording statutes so as to protect transferee against subsequent claim of debtor-in-possession, as trustee, pursuant to strong-arm powers, to avoid transaction. In re Capital Center Equities, Bkrcty.E.D.Pa.1992, 137 B.R. 600.

Under Pennsylvania law, a subsequent purchaser may be bound by constructive notice of a prior unrecorded agreement since constructive notice is not limited to instruments of record. In re Hotel Associates, Inc., Bkrcty.E.D.Pa.1981, 10 B.R. 668.

Under Pennsylvania law, either actual or constructive notice is normally sufficient to prevent a purchaser from acquiring bona fide purchaser status. In re Hotel Associates, Inc., Bkrcty.E.D.Pa.1981, 10 B.R. 668.

Because constructive notice is not limited to instruments of record, a subsequent purchaser may be bound by constructive notice of a prior unrecorded agreement. Long John Silver's, Inc. v. Fiore, 386 A.2d 569, 255 Pa.Super. 183, Super.1978.

Where judgment against a brother was filed subsequent to an orphans' court adjudication incorporating an unrecorded family settlement, the judgment holder was subject to notice of the transfer. Yancey v. Philadelphia Housing Authority, 42 Pa. D. & C.2d 597 (1967).

Fact that a father was in possession of deceased wife's property from time of his wife's death until his death did not put son's judgment creditors on constructive notice of a family settlement by which interest of son and daughter in mother's property was conveyed to father, since he had been in joint possession prior to wife's death and had an interest in the property equal with his two children. Yancey v. Philadelphia Housing Authority, 42 Pa. D. & C.2d 597 (1967).

8. Bona fide purchasers

For purpose of protection afforded by recording laws, heirs who have given nothing of value in return for title are not in position of bona fide purchasers, mortgagees and judgment creditors. U. S. v. 137.02 Acres of Land, More or Less, in Centre County, Com. of Pa., M.D.Pa.1971, 334 F.Supp. 1021.

Under Pennsylvania law, bona fide purchaser is one who buys property (real or personal) for valuable consideration and without notice of outstanding rights of others in property. In re Capital Center Equities, Bkrcty.E.D.Pa.1992, 137 B.R. 600.

Under Pennsylvania law, where transfer of real property is at issue, interest of bona fide purchaser, as well as that of judgment creditor, may be superseded only by recordation of deed to underlying property. In re Capital Center Equities, Bkrcty.E.D.Pa.1992, 137 B.R. 600.

Where, prior to filing of debtor's reorganization petition, plaintiff and debtor had entered into an agreement for sale of an apartment locat-

ed in a hotel together with a certain percentage of common areas of the property and where settlement on the property had never taken place despite fact that plaintiff began residence in apartment and resided there at time of the filing, trustee, as hypothetical bona fide purchaser, could avoid interest of plaintiff. In re Hotel Associates, Inc., Bkrcty.E.D.Pa.1981, 10 B.R. 668.

Under Pennsylvania law, a subsequent bona fide purchaser for value without notice of a prior transaction has priority over equitable estate of first owner. In re Hotel Associates, Inc., Bkrcty.E.D.Pa.1981, 10 B.R. 668.

Pursuant to Pennsylvania law, purchaser of real property at sheriff's sale acquires, at the fall of the hammer, a vested interest in the property, but legal title to the property does not pass to the purchaser until acknowledgment and delivery of the sheriff's deed, and owner is entitled to possession of the premises until deed is acknowledged and delivered. Matter of Russell, Bkrcty.W.D.Pa.1980, 8 B.R. 342.

Buyer of property was bona fide purchaser of unrecorded easement for ten-inch pipeline, although buyer was aware of pipeline activity on his property at time he purchased it; two pipelines across buyer's property were marked in such manner that only one pipeline was indicated, and buyer's knowledge of pipeline activity did not impose duty to contact gas company or public utility commission to inquire into number of pipelines on property. Carnegie Natural Gas Co. v. Braddock, 597 A.2d 285, 142 Pa.Cmwth. 383, Cmwth.1991.

This section protects subsequent purchasers by giving a subsequent bona fide purchaser for value without notice of a prior transaction priority over an equitable estate of the first owner; in order to qualify as a bona fide purchaser, however, subsequent buyer must be without notice of the prior equitable interests of others. Long John Silver's, Inc. v. Fiore, 386 A.2d 569, 255 Pa.Super. 183, Super.1978.

Either actual or constructive notice is sufficient to prevent a subsequent purchaser from acquiring status of a bona fide purchaser. Long John Silver's, Inc. v. Fiore, 386 A.2d 569, 255 Pa.Super. 183, Super.1978.

Subsequent lessee of property and his attorney were not, as a matter of law, bona fide purchasers and had no priority to disputed 20-foot strip of land where lessee and his attorney admitted actual notice of interest of prior purchaser, yet failed to inquire into situation by contacting said purchaser. Long John Silver's, Inc. v. Fiore, 386 A.2d 569, 255 Pa.Super. 183, Super.1978.

9. Bankruptcy

Applying Pennsylvania law, critical date in determining whether transfer by debtor of interest in real property to wife was made with intent to hinder or defraud creditors, under section of applicable Bankruptcy Act of 1898 [11 U.S.C.A. § 32(c)(4)], was date of recordation, not date of execution of the deed. In re MacQuown, C.A.3 (Pa.)1983, 717 F.2d 859.

Transferee's failure to record deed within time period required by Pennsylvania law entitled Chapter 11 debtor to avoid transfer of property and any security interest therein pursuant to strong-arm provisions of Bankruptcy Code. In re Capital Center Equities, Bkrcty.E.D.Pa.1992, 137 B.R. 600.

Bankrupts, who acquired one-half interest in real estate titled jointly in their names and name of their son and his wife only because latter were under 21 years of age at time of conveyance and it was desired to have persons who were sui juris as co-owners to join in mortgage for construction funds, would be authorized to convey their one-

half interest free and clear of liens of judgments entered against bankrupts after their interest in premises was acquired where it was intended that bankrupts would convey their record one-half interest in legal title to son and his wife but such had inadvertently not been done and son and wife had at all times been in possession of premises. Matter of Abbott, Bkrcty.W.D.Pa.1981, 11 B.R. 583.

Interests fully paid for by persons in possession of real property are protected against trustee in bankruptcy of holders of record title and lien and judgment creditors of such record owners. Matter of Abbott, Bkrcty.W.D.Pa.1981, 11 B.R. 583.

§§ 352, 353. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[414], effective June 27, 1980

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 354. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[414], effective June 27, 1979

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 355. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[302], effective June 27, 1980

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 356. Agreements concerning real property

Notes of Decisions

1. Construction and application

Covenant running with land had to be recorded in order to bind bankruptcy trustee. In re

Oxford Royal Mushroom Products, Inc., Bkrcty. E.D.Pa.1984, 39 B.R. 948.

§ 357. Constructive notice as result of recordation

Notes of Decisions

In general 1

1. In general

Lack of index entry did not create negative inference that no deed to real property had been recorded, under Pennsylvania law, even though Pennsylvania statute (16 P.S. § 9853) provides that entry of recorded deeds and mortgages in indexes shall be notice, given another Pennsylvania statute (21 P.S. § 357) stating that actual recording of deed is sufficient to create construc-

tive notice. In re R.A. Beck Builders, Inc., Bkrcty.W.D.Pa.1986, 66 B.R. 666.

Where there is no agreement of sale requiring the grantor to discharge any lien or encumbrance, the grantee is presumed to be on notice of any future conveyance which he might find objectionable and to settle the matter with his grantor prior to transfer; if he fails to make objection and the transaction has been completed, the grantee may still recover but he is limited to the warranties made in his deed. Leh v. Burke, 331 A.2d 755, 231 Pa.Super. 98, Super.1974.

INSTRUMENTS SUBJECT TO RECORD

§ 381. Deeds, etc., duly executed and acknowledged out of the state, may be recorded

Deeds duly executed and acknowledged out of the State may be recorded. Any and every grant, bargain and sale, release or other deed of conveyance or assurance of any lands, tenements or hereditaments in this Commonwealth, and any power or powers of attorney to make and execute such sale, conveyance, mortgage or transfer of any lands, tenements or hereditaments in this Commonwealth, made and executed in any of the United States, may be recorded in the county in which such lands, tenements or hereditaments are situated, if the acknowledgment thereof be taken in due form before any officer or magistrate of the state wherein such deed, et cetera, is executed, authorized by the laws of said state to take the acknowledgment of deeds or other instruments of writing therein; and such acknowledgment is either verified by the official seal of the officer or magistrate before whom it is taken or authenticated by a certificate of the clerk or prothonotary of any court of record in such state, that the officer or magistrate so taking such acknowledgment, is duly qualified by law to take the same.

As amended 1957, May 14, P.L. 136, § 1.

Library References

Deeds § 83.

C.J.S. Deeds § 75.

P.L.E. Deeds § 13.

P.L.E. Records § 2.

§ 383. Deeds of county commissioners**Notes of Decisions****In general 1****1. In general**

In absence of any evidence which rendered doubtful or untrustworthy either the deed from county commissioners to predecessor in title of property owner, which deed demonstrated that the property was sold at a tax sale in compliance with applicable statute, or testimony of custodian of county tax sales records that the records

showed that the acreage was sold in 1928 to county commissioners for taxes owing for the year 1926, property owner was entitled, despite the unavailability of treasurer's deed, to presumption that county officials properly conducted the tax sale to the county commissioners; therefore, title to the subject acreage vested in the estate of property owner who obtained title from county commissioners' grantees. *Bell v. Provance*, 430 A.2d 391, 59 Pa.Cmwth. 522, Cmwth. 1981.

§ 385. Patents and official deeds**Notes of Decisions****4. Sheriffs' and treasurers' deeds**

Existence of treasurer's deed establishes prima facie lawful title in grantee by rebuttable presumption of regularity of acts of public officials in accordance with duties of their offices and applicable laws; therefore, a person challenging title obtained through treasurer's deed has burden of proving defect or irregularity in proceedings which produced deed. *Bell v. Provance*, 430 A.2d 391, 59 Pa.Cmwth. 522, Cmwth. 1981.

In absence of any evidence which rendered doubtful or untrustworthy either the deed from county commissioners to predecessor in title of property owner, which deed demonstrated that

the property was sold at a tax sale in compliance with applicable statute, or testimony of custodian of county tax sales records that the records showed that the acreage was sold in 1928 to county commissioners for taxes owing for the year 1926, property owner was entitled, despite the unavailability of treasurer's deed, to presumption that county officials properly conducted the tax sale to the county commissioners; therefore, title to the subject acreage vested in the estate of property owner who obtained title from county commissioners' grantees. *Bell v. Provance*, 430 A.2d 391, 59 Pa.Cmwth. 522, Cmwth. 1981.

§ 386. Releases of legacies and releases to executors, etc., duly acknowledged and sealed

Notes of Decisions

1. Construction and application

That service station lessee, which had been sending its monthly rental payments to bank holding mortgage on station, made two more payments to bank, instead of to lessors, after mortgage had been paid off, did not entitle lessors to ejectment of lessee, in view of fact that lessee made prompt attempt to remedy such

minor technical breach of lease contract, that strike by lessee's clerical staff was in part responsible for misdirection of payments and that lessors made no attempt to comply with contractual requirement that they send lessee the original or certified copy of instrument by which the change of ownership of rentals was made. *Barracrough v. Atlantic Refining Co.*, 326 A.2d 477, 230 Pa.Super. 276, Super.1974.

§ 391. Releases, etc., executed by married woman alone may be recorded

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§§ 392 to 394. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[791], effective June 27, 1980

Historical and Statutory Notes

These sections were repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§§ 395 to 397. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[974], effective June 27, 1980

Historical and Statutory Notes

These sections were repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 398. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[974], effective June 27, 1979

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 399. Plan of subdivided tract; penalty for omission; recovery

Rules of Civil Procedure

Rule of Civil Procedure 1068 provides that the rules of civil procedure shall not be deemed to suspend or affect this section.

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§ 403. Wills probated outside state; exemplified copies

The recorder of deeds shall record exemplified copies of wills probated outside of this Commonwealth, and shall index them in the grantor index under the name of the testator and in the grantee index under the name of each person named in the will as devisee of real property located in this Commonwealth. Each will so recorded and indexed shall be notice to all persons of the existence thereof.

1957, June 5, P.L. 248, § 1.

Historical and Statutory Notes

Section 2 of the act of 1957 provided that the act should take effect immediately.

office of the recorder of deeds, and the effect thereof. 1957, June 5, P.L. 248, No. 124.

Title of Act:

An Act providing for the recording of wills probated outside of this Commonwealth in the

Library References

Wills ⇐245.

C.J.S. Wills § 341 et seq.

P.L.E. Records § 2.

P.L.E. Wills § 179.

§ 404. Lease or sublease or agreement to lease or sublease

Any lease or sublease or agreement to lease or to sublease, acknowledged according to law by the lessor, may but need not, unless otherwise required by law, be recorded in the office for the recording of deeds in the county or counties wherein are situate the premises thereby leased or to be leased.

1959, June 2, P.L. 454, § 1.

Historical and Statutory Notes

Title of Act:

An Act permitting the recording of leases, subleases and agreements to lease or sublease; permitting the recording of memoranda thereof; prescribing the minimum contents of such memoranda; prescribing the effect of recording such

instruments, including provisions thereof for the purchase of or refusal on the demised premises; and specifying that the recording of such a memorandum shall be a sufficient recording of the full lease, sublease or agreement in connection with the assignment or mortgaging of the lessee's interest therein. 1959, June 2, P.L. 454.

Library References

Landlord and Tenant ⇐26.

C.J.S. Landlord and Tenant §§ 220, 251.

P.L.E. Landlord and Tenant § 25.

P.L.E. Records § 2.

Notes of Decisions

In general 1

Consumer protection 2

1. In general

Law of property regards lease of land as the equivalent to a sale of premises for the term.

Com., by Creamer v. Monumental Properties, Inc., 329 A.2d 812, 459 Pa. 450, Sup.1974, on remand 365 A.2d 442, 26 Pa.Cmwlt. 864.

2. Consumer protection

Where nothing appeared to indicate that the role of the defendant printers of allegedly deceptive lease forms was anything other than mechanical and there was no allegation by Commonwealth that printers did not act in good faith or that they had any knowledge of the alleged false and deceptive character of lease provisions, the

defendant printers under record could not be enjoined under the Consumer Protection Law (73 P.S. 201-1 et seq.) for printing the lease forms. Com., by Creamer v. Monumental Properties, Inc., 329 A.2d 812, 459 Pa. 450, Sup.1974, on remand 365 A.2d 442, 26 Pa.Cmwlt. 864.

Leasing of residential property falls within ambit of Consumer Protection Law (73 P.S. § 201-1 et seq.). Com., by Creamer v. Monumental Properties, Inc., 329 A.2d 812, 459 Pa. 450, Sup. 1974, on remand 365 A.2d 442, 26 Pa.Cmwlt. 864.

§ 405. Memorandum of lease, sublease or agreement

In lieu of the recording of such a lease, sublease or agreement, there may be recorded in such office a memorandum thereof, executed by all persons who are parties to said lease, sublease or agreement and acknowledged according to law by the lessor, containing at least the following information with respect to such lease, sublease or agreement:

- (1) The name of the lessor in such lease, sublease or agreement;
- (2) The name of the lessee therein;
- (3) The addresses, if any, set forth therein as addresses of such parties;
- (4) A reference to the date thereof;
- (5) The description of the demised premises in the form set forth therein;
- (6) The date of commencement of the term of the lease, if a fixed date, and if not the full provision or provisions thereof pursuant to which such date of commencement is to be fixed;
- (7) The term of the lease;
- (8) If the lessee has a right of extension or renewal, the date of expiration of the final period for which such right is given;
- (9) If the lessee has a right of purchase or of refusal on the demised premises or any part thereof, a statement of the term during which said right is exercisable.

1959, June 2, P.L. 454, § 2.

Library References

Landlord and Tenant § 26.
C.J.S. Landlord and Tenant §§ 220, 251.

P.L.E. Landlord and Tenant § 25.
P.L.E. Records § 2.

§ 406. Indexing of lease, sublease or agreement

Any such lease, sublease, agreement or memorandum, so recorded, shall be indexed by the recording officer in the grantor index against the lessor therein named and in the grantee index against the lessee therein named.

1959, June 2, P.L. 454, § 3.

Library References

Landlord and Tenant § 26.
C.J.S. Landlord and Tenant §§ 220, 251.
P.L.E. Records § 3.

§ 407. Effect of recording lease, sublease, agreement or memorandum

The recording of any such lease, sublease, agreement or memorandum in accordance with the provisions of this act shall constitute constructive notice to subsequent purchasers, mortgagees and judgment¹ creditors of the lessor of the making and of the provisions of such lease, sublease or agreement, including any purchase or refusal provisions set forth in the lease, sublease or agreement.

1959, June 2, P.L. 454, § 4.

¹ "judgement" in original.

Library References

Landlord and Tenant §26.
C.J.S. Landlord and Tenant §§ 220, 251.

P.L.E. Landlord and Tenant § 25.
P.L.E. Records §§ 2, 3.

Notes of Decisions**Purchasers 1****1. Purchasers**

Under Pennsylvania law, shopping center tenant that had exclusive right in lease to operate pharmacy, and that filed memorandum of lease, was "purchaser" within meaning of statute that

provided that recording of lease memorandum results in constructive notice to "subsequent purchasers, mortgagees and judgment creditors of the lessor," and so other shopping center tenant, that operated supermarket, had notice of tenant's exclusive right to operate pharmacy when other tenant entered into its lease. *J.C. Penney Co., Inc. v. Giant Eagle, Inc.*, C.A.3 (Pa.)1996, 85 F.3d 120.

§ 408. Construction of act regarding lease, sublease or agreement

This act shall not be construed as derogating from any actual or constructive notice which would be effective under existing law of the making or of the provisions of any present or future lease, sublease or agreement.

1959, June 2, P.L. 454, § 5.

Library References

Landlord and Tenant §26.
C.J.S. Landlord and Tenant §§ 220, 251.
P.L.E. Landlord and Tenant § 25.

§ 409. Effect of recording memorandum of lease, sublease or agreement

The recording of any such memorandum shall constitute full compliance with the provisions of any act now or hereafter requiring or permitting the recording of leases, subleases or agreements to lease or to sublease in connection with the mortgaging or assignment thereof.

1959, June 2, P.L. 454, § 6.

Library References

Landlord and Tenant §26.
C.J.S. Landlord and Tenant §§ 220, 251.

P.L.E. Landlord and Tenant § 25.
P.L.E. Records §§ 2, 3.

§ 410. Application of act regarding lease, sublease or agreement

The provisions of this act shall apply to all such instruments recorded after the effective date hereof.

1959, June 2, P.L. 454, § 7.

TIME OF RECORDING**§ 444. All deeds made in the state to be acknowledged and recorded within ninety days****Repealed in Part**

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 303, § 3, in so far as they are inconsistent with the latter act. Sections 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as §§ 329, 330 of this title.

District Justices

Section 3(d) of Act 1973, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act) [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

Library References

P.L.E. Acknowledgment § 2.
P.L.E. Records §§ 2, 3.

Notes of Decisions

Title acquired by adverse possession 4.5

Capital Center Equities, Bkrtcy.E.D.Pa.1992, 137 B.R. 600.

2. Construction and application—In general

Government had notice of unrecorded conveyance of taxpayer's interest in real property to purchaser before Internal Revenue Service (IRS) assessed taxpayer and filed its tax liens and, therefore, government was disqualified from protection of Pennsylvania Recording Act and purchaser's interest in property was superior to government lien under Pennsylvania law; IRS agent had copy of agreement of sale concerning conveyance and purchaser had filed tax returns for himself and partnership, of which he and taxpayer were partners, which reflected conveyance of property and, therefore, IRS had actual notice that conveyance agreement had been consummated and that purchaser was sole owner of property before first IRS lien arose or was filed. *U.S. v. Purcell*, E.D.Pa.1991, 798 F.Supp. 1102, affirmed 972 F.2d 1334.

A record title is prima facie valid. *Reynolds v. Slanaker*, 16 Beaver 97, 1954.

3. — Instruments to which applicable

Even if letter from mortgagor to assignee of mortgagee, expressing an intention that assignee should hold original mortgage as security for advances made by assignee to mortgagor or for other indebtedness due from mortgagor to assignee, constituted a mortgage, where such letter was not properly recorded it did not create a lien on mortgagor's property. *In re Riddlesburg Min. Co.*, C.A.3 (Pa.)1955, 224 F.2d 834.

A tenant was not entitled to have his oral option rights to purchase property declared superior to those of other purchasers even though agreement to sell to the others was not recorded until after the tenant had made his down payment. *Dorsey v. Kline*, 10 Pa. D. & C.2d 440, 55 Lanc.L.R. 219 (1957).

4. — Persons protected

Under Pennsylvania law, bona fide purchaser is one who buys property (real or personal) for valuable consideration and without notice of outstanding rights of others in property. *In re*

Under Pennsylvania law, where transfer of real property is at issue, interest of bona fide purchaser, as well as that of judgment creditor, may be superseded only by recordation of deed to underlying property. *In re Capital Center Equities*, Bkrtcy.E.D.Pa.1992, 137 B.R. 600.

Evidence supported finding that grantees of one-half interest in 21 lots were not bona fide purchasers of such lots and were not within protection of recording statutes. *Wheatcroft v. Albert Co.*, 180 A.2d 216, 407 Pa. 97, Sup.1962.

Where defendants conveyed a house in 1957 and the conveyance was recorded in 1960, after plaintiffs' judgment was entered in 1959, and at time judgment was entered grantee had exclusive possession of the house, and plaintiffs in 1963, caused a writ of scire facias to revive the lien of judgment to issue against plaintiffs' motion for judgment on the pleadings was denied as to grantee as a terre tenant, and denied as to defendants. *Factors v. Ashley*, 52 Del.Co. 93 (1964).

4.5. Title acquired by adverse possession

Even if plaintiff did have a valid easement by prescription, its right to that easement was erased when defendants, innocent purchasers for value, purchased the property. *Freedman's Cleaners, Inc. v. Myers*, 83 Montg. 285, 34 Pa. D. & C.2d 306 (1964).

5. Acknowledgment of instrument

Motion to strike mortgage on the grounds that the acknowledgment was false and the recording therefore defective denied since, although a defectively recorded mortgage is not given the protection of constructive notice to intervening purchasers or lien holders, there is no authority which entitles a mortgagor, in an action against his mortgagee, to strike from a record a mortgage which he concedes is valid and effective between them, simply because it bears a defective acknowledgment. *Hopkins v. Albee York Homes, Inc.*, 80 York 183, 42 Pa. D. & C.2d 211 (1967).

10. Failure to record in general

Transferee's failure to record deed within time period required by Pennsylvania law entitled Chapter 11 debtor to avoid transfer of property and any security interest therein pursuant to strong-arm provisions of Bankruptcy Code. In re Capital Center Equities, Bkrcty.E.D.Pa.1992, 137 B.R. 600.

Pennsylvania recording laws do not render invalid an unrecorded interest in land. Com., Pennsylvania Game Com'n v. Ulrich, 565 A.2d 859, 129 Pa.Cmwlth. 376, Cmwlth.1989, reargument denied.

An agreement by separate purchasers of a parcel of realty as to how the property was to be divided and as to what portions thereof should go to each purchaser was admissible in an action to declare an easement in favor of one parcel and against other parcel even though agreement was not recorded and successor in title to one of the parcels had no notice of it, in view of fact agreement showed intent of the parties at time of severance of the land. Lerner v. Poulos, 194 A.2d 874, 412 Pa. 388, Sup.1963.

It is responsibility of purchaser to see that his deed is properly recorded and indexed, and if he fails in this, recording would not be notice to a subsequent purchaser. However, defective indexing will not inure to benefit of grantor or his heirs. Hickey v. Chalfant, 20 Fay.L.J. 101 (1957).

An unrecorded grant, even one presumed to arise out of 21 years of adverse user, is void as against a subsequent bona fide purchaser without actual notice. Freedman's Cleaners, Inc. v. Myers, 83 Montg. 285, 34 Pa. D. & C.2d 306 (1964).

12. Notice

Under Pennsylvania law, recording of memorandum of sale/leaseback agreement between debtor and transferee was insufficient notice of interests of transferee and his estate in property under Pennsylvania recording statutes so as to protect transferee against subsequent claim of debtor-in-possession, as trustee, pursuant to strong-arm powers, to avoid transaction. In re Capital Center Equities, Bkrcty.E.D.Pa.1992, 137 B.R. 600.

The court rejected defendant's contention that they were not bound by the plan because it was not recorded since reference to the alley in the deed was notice to the defendants of its existence. McKillips v. Bauder, 59 Lanc.L.R. 321 (1964).

13. — Record as notice

Where restrictive covenant was recorded in office of Department of Records all parties affected thereby were deemed to have notice of its contents. (Per Musmanno, J., with one justice concurring and two justices concurring in result.)

Loeb v. Watkins, 240 A.2d 513, 428 Pa. 480, Sup.1968.

Proper recordation of a mortgage gives constructive notice to all persons of that which the record contains. Demharter v. First Fed. Sav. & Loan Ass'n of Pittsburgh, 194 A.2d 214, 412 Pa. 142, Sup.1963.

The record of a deed is notice of its contents to those who are bound to search for it. Jones v. Sedwick, 38 Erie C.L.J. 141 (1955), affirmed 117 A.2d 709, 383 Pa. 120.

Where a wife invests her personal funds in improvement of property owned by her and her husband as tenants by the entireties and against which there was recorded a mortgage prior to the marriage, at which time the husband was the equitable owner of the property, the wife has no greater right than if she had had actual knowledge of the recorded mortgage, the recordation being constructive notice to her. Mamolen v. Mamolen, 5 Lycoming 167, 8 Pa. D. & C.2d 312 (1957), affirmed 132 A.2d 185, 389 Pa. 134.

A grantee of a deed has both notice and constructive knowledge of an executory contract in his grantor's title record. Com. of Pa., Dept. of Public Assistance v. Miller 17 Som. 45, 1954.

15. — Possession as notice

Purchasers buying estate realty from administratrix who occupied it and who was both sole heir and administratrix were justified in searching title against the name of the deceased alone and took free and clear of mortgage which had been given earlier by the sole heir and administratrix in her individual capacity and which had been made and recorded within one year after the death of the decedent and during the period of administration. Quality Lumber & Millwork Co. v. Andrus, 191 A.2d 685, 201 Pa.Super. 189, Super.1963, affirmed 200 A.2d 754, 414 Pa. 411.

While visible possession of a tenant is constructive notice of his interest and that of the landlord, and would charge a purchaser with knowledge of an option to purchase contained in the lease, nevertheless such possession would not charge a purchaser with knowledge of an oral option to purchase not mentioned in the written lease. Dorsey v. Kline, 10 Pa. D. & C.2d 440, 55 Lanc.L.R. 219 (1957).

Actual possession is constructive notice to a prospective purchaser of the interest of the possessor in the premises and of his relation thereto. Cumberland Val. Sav. & Loan Ass'n v. Lightner, 6 Adams L.J. 84, 15 Cumb. L.J. 52 (1964).

16. — Duty to inquire

A prospective purchaser of land is required to make inquiry of those in possession thereof and, failing to do so, is affected with constructive notice of all that such inquiry would have disclosed. Cumberland Val. Sav. & Loan Ass'n v. Lightner, 6 Adams L.J. 84, 15 Cumb. L.J. 52 (1964).

§ 445. Deeds proved out of state to be recorded within six months

Repealed in Part

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 308, § 3, in so far as they are inconsistent with the latter act. Sections 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as §§ 329, 330 of this title.

Library References

P.L.E. Deeds § 13.
P.L.E. Records §§ 2, 3.

RECORDING OF AFFIDAVITS**Library References**

Documents and affidavits affecting property,
see West's Pa.Prac. vol. 1, Evidence, Packel
and Poulin, § 803.15.

§ 451. Recording of affidavits; admissibility into evidence

An affidavit, stating facts relating to the matters hereinafter named, which may affect the title to real estate in this Commonwealth, made by any person having personal knowledge of the facts and competent to testify concerning them in open court, may be recorded (even though not acknowledged) in the Office of the Recorder of Deeds or Commissioner of Records in the county in which such real estate is situated; and when so recorded, such affidavit, or a certified copy thereof, shall be admissible evidence of the facts therein stated, insofar as such facts affect title to real estate, provided a member of the bar of the highest court of this Commonwealth shall have signed a certification, appended thereto, that he or she relied upon such affidavit in passing on the title to such real estate.

1981, Nov. 5, P.L. 328, No. 118, § 1, effective in 60 days.

Historical and Statutory Notes**Title of Act:**

An Act providing for the recording of certain affidavits affecting the title to real estate and for

their admissibility into evidence. 1981, Nov. 5, P.L. 328, No. 118.

Library References

Affidavits ⇨19.
C.J.S. Affidavits § 7.
Hearsay, hearsay exceptions, availability of declarant immaterial, statements in documents

affecting an interest in property, affidavits affecting an interest in property, see Packel & Poulin, 1 Pennsylvania Practice § 803.15.

§ 452. Contents of affidavit

The affidavit herein provided for may relate to the following matters: age, sex, birth, death, capacity, relationship, family history, heirship, names, identity of parties, marital status, possession or adverse possession, residence, service in the armed forces, conflicts or ambiguities in descriptions of land in recorded instruments, and the happening of any condition or event which may terminate an estate or interest.

1981, Nov. 5, P.L. 328, No. 118, § 2, effective in 60 days.

Library References

Affidavits ⇨19.
C.J.S. Affidavits § 7.

Hearsay, hearsay exceptions, availability of declarant immaterial, statements in documents

affecting an interest in property, affidavits
affecting an interest in property, see Packel
& Poulin, 1 Pennsylvania Practice § 803.15.

§ 453. Requirements of affidavit; certification; index

Every affidavit herein provided for shall include the name, age and residence of the affiant, a description of such real estate, title to which may be affected by facts stated in such affidavit, and facts showing that the affiant has personal knowledge of the facts stated, and shall state the name of the person appearing by the record to be the owner of such real estate at the time of the recording of the affidavit. The official taking the affidavit shall certify that the affiant is personally known to him or her, or satisfactorily proven, to be the person named as affiant. The recorder shall index the affidavit in the name of such record owner in both grantor and grantee indexes, and, if possible, shall note the recording thereof in the margin of the record of any instrument therein referred to.

1981, Nov. 5, P.L. 328, No. 118, § 3, effective in 60 days.

Library References

Affidavits § 19.
C.J.S. Affidavits § 7.

Hearsay, hearsay exceptions, availability of declarant immaterial, records of documents af-

fecting an interest in property, see Packel & Poulin, 1 Pennsylvania Practice § 803.14.

EFFECT OF RECORDING

§ 471. Deeds recorded to have the same effect as deeds of feoffment with livery and seisin

Repealed in Part

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 303, § 3, in so far as they are inconsistent with the latter act. Section 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as §§ 329, 330 of this title.

Cross References

Photostatic copies of records authorized, see
65 P.S. § 61 et seq.

Library References

P.L.E. Deeds § 13.
P.L.E. Records §§ 2, 3.

Notes of Decisions

7. **Presumptions and burden of proof** set it aside. Hagopian v. Eskandarian, 8 Bucks
Burden of proof of irregularity in execution of 28 (1958).
recorded deed must be borne by party seeking to

REPRODUCTION OF MAPS, PLATS, OR PLANS

§ 481. Court direction; process; originals preserved

In any county of the third, fourth, fifth, sixth, seventh or eighth class, the judge of the court of common pleas may, in order to protect and preserve original maps, plats or plans which have been recorded in the office of the recorder of deeds of such county, direct the reproduction thereof by means of any photostatic, photographic or other mechanical process which produces a clear, accurate and permanent copy or reproduc-

tion of the original. The originals of any maps, plats or plans so reproduced shall be preserved by the recorder of deeds and shall be available upon demand.

1961, July 14, P.L. 625, § 1.

Historical and Statutory Notes

Title of Act:

An Act authorizing the judge of the court of common pleas of any county of the third, fourth, fifth, sixth, seventh or eighth class to direct that recorded maps, plats or plans be reproduced;

requiring the recorder of deeds to preserve originals of maps, plats or plans so reproduced; and providing for payment of costs by the county. 1961, July 14, P.L. 625, No. 319.

Library References

Records ⇨ 15.

C.J.S. Records §§ 38, 40.

P.L.E. Records §§ 2, 3.

§ 482. Expense

The expense of any reproduction of maps, plats or plans authorized by this act shall be arranged for by the county commissioners and paid out of the county treasury.

1961, July 14, P.L. 625, § 2.

PROOF OF LOST DEED AND PLANS

§§ 491, 492. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[27], effective June 27, 1980

Historical and Statutory Notes

Former § 492 was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 493. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[27], effective June 27, 1979

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 494. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[33], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 495. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[33], effective June 27, 1980

Historical and Statutory Notes

This section was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 497. Proceedings in case of lost or destroyed plan

Rules of Civil Procedure

Rule of Civil Procedure 1068 provides that the rules of civil procedure shall not be deemed to suspend or affect this section.

§ 498. Appointment of examiner; report; new plan

Rules of Civil Procedure

Rule of Civil Procedure 1068 provides that the rules of civil procedure shall not be deemed to suspend or affect this section.

§ 499. Costs; limitation of powers of examiner

Rules of Civil Procedure

Rule of Civil Procedure 1068 provides that the rules of civil procedure shall not be deemed to suspend or affect this section.

RESULTING TRUSTS

§ 601. Validity

Notes of Decisions

1. Construction and application in general

One who seeks to establish the existence of a resulting trust bears a heavy burden of proof; the evidence must be clear, direct, precise, and convincing. *Grubb v. Delathauer*, 418 A.2d 523, 274 Pa.Super. 511, Super.1980.

Whether there is a resulting trust rather than a gift, must always depend on the intentions of the grantor. *Mermon v. Mermon*, 390 A.2d 796, 257 Pa.Super. 228, Super.1978.

Payor's intention at time of transfer is determinative of whether a resulting trust arises. *Mermon v. Mermon*, 390 A.2d 796, 257 Pa.Super. 228, Super.1978.

A resulting trust is of no effect against the purchaser from the holder of the legal title unless (1) a declaration of trust has been executed and acknowledged by the holder of the legal title and recorded, or (2) an action of ejectment has been brought by the person advancing the money against the holder of the legal title. *McCabe v. McCabe*, 99 Montg. 319 (1974).

2. — Applicability in general

This statute is not limited to protection of holders of judgment notes who appraise value of debtor's real property, estimate his equity in it, and then file judgment which is solid security for a loan, but rather protection of statute extends generally to judgment and other lien creditors, many of whom file their judgments mechanically without relying on anything other than undefined hope of realizing something therefrom. *Penn Mut. Life Ins. Co. v. Finkel*, 235 A.2d 396, 428 Pa. 11, Sup.1967.

3. — Constructive trusts, applicability

Where plaintiff conveyed real estate to defendant and later alleged a breach of certain conditions with respect to the transfer requesting the imposition of a constructive trust, after hearing, it was held, that plaintiff did not meet the burden of proving that the conveyance was a result of fraud, duress or undue influence nor that a confidential relationship existed to warrant the declaration of a constructive trust of the real estate upon defendant. *Focht v. Stamm*, 65 Berks 151 (1973).

4. Creation of trust

Where a transfer of property is made to one person and purchase price is paid by another, a resulting trust arises in favor of person by whom the purchase price is paid. *Grubb v. Delathauer*, 418 A.2d 523, 274 Pa.Super. 511, Super.1980.

When a person pays purchase price for a conveyance made to himself as a loan to another, there exists a resulting trust in favor of person to whom loan was made. *Grubb v. Delathauer*, 418 A.2d 523, 274 Pa.Super. 511, Super.1980.

Uncaptioned documents relating to purchase of property did not show intention of parties that no resulting trust should arise. *Grubb v. Delathauer*, 418 A.2d 523, 274 Pa.Super. 511, Super.1980.

General rule is that a resulting trust arises where a transfer of property is made by one person and the purchase price is paid by another. *Mermon v. Mermon*, 390 A.2d 796, 257 Pa.Super. 228, Super.1978.

Presumption of a gift is rebuttable by proof of a contrary intention; on such rebuttal a resulting

trust arises. *Mermon v. Mermon*, 390 A.2d 796, 257 Pa.Super. 228, Super.1978.

When purchase money is advanced as a loan, a resulting trust does not arise. *Mermon v. Mermon*, 390 A.2d 796, 257 Pa.Super. 228, Super.1978.

In suit brought by brother and sister against older sister seeking to impose a resulting trust on residential real estate the record supported trial court's rejection of plaintiffs' claim that the deed for the subject property delivered to defendant and later recorded was only intended for convenience in financing and that it was the parties' intent that each sibling would retain a beneficial interest in the real estate. *Herwood v. Herwood*, 336 A.2d 306, 461 Pa. 322, Sup.1975.

A resulting trust arises where circumstances indicate transferor of property did not intend transferee to have beneficial interest in property. *Armbruster v. Freas*, 18 Bucks 192 (1968).

Although evidence shows grantor of real estate to herself and son as joint tenants with right of survivorship lacked mental capacity to thereby create a trust with herself as beneficiary, court may nevertheless find constructive or resulting trust where parties are in a confidential relationship and there is evidence of fraud, duress and undue influence. *Armbruster v. Freas*, 18 Bucks 192 (1968).

In the case of a resulting trust, it is not necessary to show that the settlor manifested an intention to create it. *Meholchick v. Meholchick*, 66 Luz.L.R. 112 (1976).

A resulting trust does not arise if the conveyance is intended as a gift. *McCabe v. McCabe*, 99 Montg. 319 (1974).

5. Validity of trust

Under this section, resulting trust which was created when purchaser purchased real property with money supplied by another was void and had no effect against government, as tax lien creditor, or against finance company, as judgment holder and mortgagee, where neither lienholder had actual notice of trust. *Barrish v. Flitter*, E.D.Pa.1989, 715 F.Supp. 692.

6. Judgment creditors, rights of

Creditors relying on record ownership are not protected by this statute governing validity of resulting trusts even if debt creating transaction occurs when resulting trust is unrecorded, unless they also become judgment or lien creditors while there is still unrecorded resulting trust. *Penn Mut. Life Ins. Co. v. Finkel*, 235 A.2d 396, 428 Pa. 11, Sup.1967.

If electric company, which became judgment creditor of record owner of property relying on record owner's ownership for possibility of recovery, lacked notice of unrecorded resulting trust,

its judgment bound interest of beneficiary of resulting trust and it was entitled to be paid from beneficiary's share of proceeds of mortgage foreclosure sale in excess of mortgage debt, foreclosure costs and local property taxes. *Penn Mut. Life Ins. Co. v. Finkel*, 235 A.2d 396, 428 Pa. 11, Sup.1967.

7. Beneficial owners, rights of

The presumption that a resulting trust has arisen may be rebutted by showing that someone who is not a wife or child and therefore not within the definition of a natural object of the payor's bounty was intended to receive the beneficial ownership. *McCabe v. McCabe*, 99 Montg. 319 (1974).

9. Evidence

In action by husband and wife seeking to compel imposition of constructive trust or resulting trust on property they had transferred to their daughter and son-in-law, chancellor had abundant evidence to support his finding that title to property was passed to daughter and son-in-law with absolutely no conditions, including any suggestion of intent by husband and wife to create trust in transaction. *Sorokin v. Krasner*, 433 A.2d 88, 289 Pa.Super. 324, Super.1981.

Evidence, in purchaser's action seeking title to property based upon claim that defendants' involvement in purchase of property constituted a loan to them and that deeding property to defendants was a mere device to secure repayment of that loan, supported finding of chancellor that financial intervention in purchase of property did constitute a loan and that defendants therefore held legal title to the property as trustee for purchasers' benefit. *Grubb v. Delathauwer*, 418 A.2d 523, 274 Pa.Super. 511, Super.1980.

Determination that parents intended to make a gift of residential dwelling to their son and daughter-in-law and, hence, were not entitled to resulting trust was supported by evidence, including evidence that over the years the parents had made numerous gifts to the son and daughter-in-law, including cash, payment of rent and automobile and that the realty was transferred to son and daughter-in-law as tenants by the entireties. *Mermon v. Mermon*, 390 A.2d 796, 257 Pa.Super. 228, Super.1978.

A person who seeks to establish the existence of a resulting trust does so by showing circumstances which raise an inference that the person making or causing a transfer of property did not intend to give to the transferee the beneficial interest in the property; and since the transferee is not to have the beneficial interest, and since no other effective disposition is made of it, the person who made or caused the transfer of his estate is entitled to it. *Meholchick v. Meholchick*, 66 Luz.L.R. 112 (1976).

§ 602. Repealed. 1985, Oct. 30, P.L. 264, No. 66, § 3, effective in 90 days

USE REGISTRATION PERMITS

§ 611. Legislative findings

(a) The General Assembly finds that in municipalities throughout the Commonwealth many owners of properties are using such properties in violation of the zoning ordinances and regulations of such municipalities, and are maintaining such properties in violation of housing, building, safety, and fire ordinances and regulations, and are offering such properties for sale without revealing such illegal use or the receipt of notice of the existence of housing, building, safety and fire violations. Many innocent purchasers of such properties are not aware of the illegal use or the existence of the nature of violations until they have entered into agreements of sale or have consummated the purchase.

(b) In order to prevent undue hardships and losses imposed on such innocent purchasers by owners who have failed to reveal the illegal use of the property being conveyed or who have made misrepresentations in that regard, the General Assembly finds and declares that in cities of the first class, cities of the second class and in cities of the second class A, cities of the third class, boroughs, towns, townships of the first class and townships of the second class adopting the provisions of this act, all sellers of property shall be required to advise the purchaser of the legal use of such property, and to deliver to the purchaser not later than at the settlement held for such property a use registration permit showing the legal use and zoning classification for such property.

(c) In order to prevent undue hardship and losses imposed on an innocent purchaser by an owner who has failed to disclose to a prospective purchaser of property that a notice has been received that such property is in violation of housing, building, safety or fire ordinances or regulations, the General Assembly finds and declares that all sellers of property shall be required to advise purchasers of any notice received by the owners of any violation of any housing, building, safety or fire ordinance or regulation with respect to the property to be sold.

(d) The provisions of this act may apply to cities of the second class A, cities of the third class, boroughs, towns, townships of the first class and townships of the second class only if the governing bodies of such municipalities so elect.

1955, July 27, P.L. 288, § 1. As amended 1957, July 5, P.L. 502, § 1; 1959, May 11, P.L. 303, § 1; 1961, Sept. 20, P.L. 1532, § 1. Reenacted and amended 1973, Nov. 28, P.L. 348, No. 121, § 1, imd. effective; 1976, June 23, P.L. 400, No. 89, § 1, imd. effective.

Historical and Statutory Notes

1973 Amendment: Re-enacted and amended the section to include third class cities within its scope.

1976 Amendment: Extended provisions of section to include cities of the second class A, boroughs, towns and townships.

Title of Act:

An Act making it unlawful for owners of certain property in cities of the first class cities of the second class and in cities of the second class A, cities of the third class, boroughs, towns and townships adopting the provisions of this act, to sell or agree to sell such property without first delivering to the purchaser a certification of the District classification and without first delivering

a certification disclosing any notice of an uncorrected violation of any housing, building, safety, or fire ordinance; and requiring such owners to insert in any agreement of sale of such property a statement concerning zoning classification, legality of the use of such property and, in addition thereto, a statement concerning uncorrected violations of housing, building, safety or fire ordinances; and providing penalties for violations. 1955, July 27, P.L. 288; As amended 1957, July 5, P.L. 502, § 1; 1959, May 11, P.L. 303, § 1; 1961, Sept. 20, P.L. 1532, No. 652, § 1; Reenacted and amended 1973, Nov. 28, P.L. 348, No. 121, § 1, imd. effective; 1976, June 23, P.L. 400, No. 89, § 1, imd. effective.

Library References

Vendor and Purchaser ⇄ 33.
C.J.S. Vendor and Purchaser § 54 et seq.
P.L.E. Sales of Realty §§ 39, 40.

Notes of Decisions

Construction and application 1

I. Construction and application

Applicants' negligence in failing, before purchasing property, to check zoning status thereof or to require statutory certificate from seller

could not be advanced in support of grant of variance. *Hasage v. Philadelphia Zoning Bd. of Adjustment*, 202 A.2d 61, 415 Pa. 31, Sup. 1964.

Zoning designation and permissive uses of property must be disclosed to all purchasers in cities of the first class. *Fagan v. Philadelphia Zoning Bd. of Adjustment*, 132 A.2d 279, 389 Pa. 99, Sup. 1957.

§ 612. Definitions

(a) "Owner" means any person, co-partnership, association, corporation or fiduciary having legal, or equitable title, or any interest in any real property. Whenever used in any clause, prescribing or imposing a penalty, the term owner, as applied to co-partnerships and associations, shall mean the partners, or members thereof, and as applied to corporations, the officers thereof.

(b) "Property" means any building or structure situate in any city of the first class or situate in any city of the second class, or situate in any other municipality eligible and electing to adopt the provisions of this act, except buildings or structures used, designed or intended to be used, exclusively, for single family or two-family occupancy, churches or other places of religious worship, except that for the purpose of certification or statements regarding notices of housing, building, safety or fire violations, the word "property" shall include all buildings or structures.

(c) "Agreement of sale" means any agreement, or written instrument, which provides that title to any property shall thereafter be transferred from one owner to another owner, and shall include inter alia written leases which contain options to purchase the leased property, and leases which provide that the lessee of the property shall acquire title thereto after the payment of a stipulated number of regular rent payments or after a stipulated period of time.

1955, July 27, P.L. 288, § 2. As amended 1957, July 5, P.L. 502, § 1; 1959, May 11, P.L. 303, § 1; 1961, Sept. 20, P.L. 1532, § 1. Reenacted and amended 1973, Nov. 28, P.L. 348, No. 121, § 1, imd. effective; 1976, June 23, P.L. 400, No. 89, § 1, imd. effective.

Historical and Statutory Notes

1973 Amendment: Re-enacted and amended the section to include third class cities within its scope.

1976 Amendment: In subsection (b), substituted "other municipality eligible" for "city of the third class".

Library References

Vendor and Purchaser § 33.
C.J.S. Vendor and Purchaser § 54 et seq.
P.L.E. Sales of Realty §§ 39, 40.

§ 613. Certificates

(a) In any city of the first class, any city of the second class or in any city of the second class A, city of the third class, borough, town, township of the first class or township of the second class which has adopted the provisions of this act it shall be unlawful for any owner to sell his property, or any interest therein, unless the owner shall first deliver to the purchaser at or prior to the time for settlement a certification of the District classification, issued by the appropriate municipal officer indicating the zoning classification and the legality of the existing use of the property to be sold.

(b) It shall be unlawful for an owner to sell his property, or any interest therein, unless the owner shall first deliver to the purchaser at or prior to the time for settlement a certificate issued by the appropriate municipal official disclosing whether there exists any notice of an uncorrected violation of the housing, building, safety or fire ordinances.

1955, July 27, P.L. 288, § 3. As amended 1957, July 5, P.L. 502, § 1; 1959, May 11, P.L. 303, § 1; 1961, Sept. 20, P.L. 1532, § 1. Reenacted and amended 1973, Nov. 28, P.L. 348, No. 121, § 1, imd. effective; 1976, June 23, P.L. 400, No. 89, § 1, imd. effective.

Historical and Statutory Notes

1973 Amendment: Included third class cities within scope of this section.

1976 Amendment: In subsection (a), extended provisions to include cities of the second class A,

boroughs, towns and townships, and substituted "municipal officer" for "city officer" in both subsections (a) and (b).

Library References

Vendor and Purchaser ⇐33.

C.J.S. Vendor and Purchaser § 54 et seq.

P.L.E. Sales of Realty §§ 39, 40.

Notes of Decisions

Vested rights 1

1. Vested rights

"Vested right" doctrine was applicable to situation where owner relied on certificate of zoning classification and legality of use to authorize three-family occupancy of building based on apparently forged occupancy permit, where certificate was apparently issued in compliance with requirement and on city's mistake of fact as to validity of occupancy permit. *Ernsberger v. Zoning Bd. of Adjustment of City of Pittsburgh*, 531 A.2d 98, 109 Pa.Cmwth. 373, Cmwth.1987, appeal denied 538 A.2d 878, 517 Pa. 625.

Fact that use of building was not in conformance with zoning ordinance did not put owner on notice that certificate of zoning classification and legality of use was defective, for purposes of owner's claim of a "vested right" in nonconforming use, since certificate, issued by city for own-

er's protection, stated that the use was a legal nonconforming use, and owner thereby had no reason to inquire further about the matter. *Ernsberger v. Zoning Bd. of Adjustment of City of Pittsburgh*, 531 A.2d 98, 109 Pa.Cmwth. 373, Cmwth.1987, appeal denied 538 A.2d 878, 517 Pa. 625.

Building owner had no duty to check city records to determine if valid occupancy permit for three-family use of building had been issued, for purposes of contention that he had a "vested right" in nonconforming use, and owner was entitled to rely on certificate of zoning classification and legality of use signed by city official, notwithstanding subsequent claim of city that occupancy permit on which certificate was based had been forged. *Ernsberger v. Zoning Bd. of Adjustment of City of Pittsburgh*, 531 A.2d 98, 109 Pa.Cmwth. 373, Cmwth.1987, appeal denied 538 A.2d 878, 517 Pa. 625.

§ 613.1. Agreements of sale

(a) Every owner shall insert in every agreement for the sale of property a provision showing the zoning classification of such property, and stating whether the present use of the property is in compliance with or in violation of zoning laws and ordinances, and every owner shall insert in every agreement for the sale of property a provision disclosing whether there exists any notice of an uncorrected violation of the housing, building, safety or fire ordinances.

(b) If any owner fails to include any provision required by this act in an agreement for the sale of property, then in any action, at law or in equity, instituted by a purchaser against an owner, it shall be conclusively presumed that the owner at the time of the signing of such agreement, represented and warranted to the purchaser that such property was being used in compliance with the then existing zoning laws and ordinances, and that there was no uncorrected violation of the housing, building, safety or fire ordinances.

1955, July 27, P.L. 288, § 3.1, added 1957, July 5, P.L. 502, § 2. As amended 1959, May 11, P.L. 303, § 1; 1961, Sept. 20, P.L. 1532, § 1. Reenacted and amended 1973, Nov. 28, P.L. 348, No. 121, § 1, imd. effective.

Historical and Statutory Notes

1973 Amendment: Re-enacted and amended the section to include third class cities within its scope.

Library References

Vendor and Purchaser ⇐33.

C.J.S. Vendor and Purchaser § 54 et seq.

P.L.E. Sales of Realty §§ 39, 40.

Notes of Decisions

Construction and application 1

I. Construction and application

Generally, when owner sells parcel of land, owner must deliver to purchaser certificate of zoning, issued by municipal officer, which acts as notice to purchaser indicating parcel's zoning classification and legality of its existing use; on other hand, purchaser retains duty to check parcel's zoning before completion of sale, and cannot later advance lack of knowledge of parcel's zoning to support variance request. *Levin v. St. Peter's School*, 578 A.2d 1349, 134 Pa.Cmwth. 342, Cmwth.1990.

Where property was zoned as industrial at time agreement of sale was executed and at time vendor executed certificate but zoning was changed by ordinance to residential before transaction was settled and neither vendor nor purchasers had knowledge of change at time of

settlement, purchasers were not entitled to rescind sale on ground of misrepresentation as to zoning. *DiDonato v. Reliance Standard Life Ins. Co.*, 249 A.2d 327, 433 Pa. 221, Sup.1969.

The fact that the seller of real property has obtained and delivered to the buyer at the time of the closing a certificate of occupancy and a certificate from the bureau of building inspection of the city of Pittsburgh that no violations exist at the time of the closing does not eliminate the seller's liability to disclose known uncorrected violations in the agreement of sale pursuant to the provisions of this section. *Weitzman v. Wolf*, 117 Pitts.L.J. 393 (1969).

Under this section the seller of real property is obligated to include a provision in the agreement of sale of the property disclosing whether there exists any notice of any uncorrected violation of the housing building, safety or fire ordinances. *Weitzman v. Wolf*, 117 Pitts.L.J. 393 (1969).

§ 614. Non-conforming uses

A certificate from the appropriate municipal officer certifying that the property has been approved or designated as a non-conforming use shall be deemed compliance with this act.¹

1955, July 27, P.L. 288, § 4. As amended 1957, July 5, P.L. 502, § 3; 1959, May 11, P.L. 303, § 1. Reenacted and amended 1973, Nov. 28, P.L. 348, No. 121, § 1, imd. effective; 1976, June 23, P.L. 400, No. 84, § 1, imd. effective.

¹ Sections 611 to 615 of this title.

Historical and Statutory Notes

1973 Amendment: Re-enacted the section without change.

1976 Amendment: Substituted "municipal officer" for "city officer".

Library References

Vendor and Purchaser § 33.

C.J.S. Vendor and Purchaser § 54 et seq.

P.L.E. Sales of Realty §§ 39, 40.

§ 615. Penalties

Any owner who violates the provisions of section 3 of this act¹ shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars, or undergo imprisonment for not more than one year, or both.

1955, July 27, P.L. 288, § 5. As amended 1957, July 5, P.L. 502, § 3; 1959, May 11, P.L. 303, § 1. Reenacted and amended 1973, Nov. 28, P.L. 348, No. 121, § 1, imd. effective.

¹ Section 613 of this title.

Historical and Statutory Notes

1973 Amendment: Re-enacted the section without change.

Library References

Vendor and Purchaser § 33.
 C.J.S. Vendor and Purchaser § 54 et seq.
 P.L.E. Sales of Realty §§ 39, 40.

CHAPTER 2

MORTGAGES

RECORDING OF MORTGAGES

Section

624. Assignments to be entered on margin of record of mortgage.
 626. Repealed.
 629. Stipulation of general mortgage provisions.
 630. Short form mortgages.
 631. Operation and effect of short form mortgage.
 632. Recording of stipulations of general mortgage provisions.
 633. Recording of short form mortgages.

LIEN OF MORTGAGE

651. Repealed.
 654. Agreement postponing lien of mortgage.

SATISFACTION OF MORTGAGES

681. Satisfaction of mortgage on margin of record or by satisfaction piece.
 682. Fine for neglect.
 683. Repealed.
 684. Repealed.
 686. Repealed.
 687. Repealed.
 689. Repealed.
 690, 691. Repealed.
 692. Repealed.
 693. Repealed.
 694, 695. Repealed.
 696. Repealed.
 697 to 699. Repealed.
 703. Repealed.
 705. Notice requirement.

CITIES AND COUNTIES OF FIRST CLASS

711. Definitions.
 712. Satisfaction piece; recording; execution; effect.
 713. Contents of satisfaction piece.
 714. Indexing of satisfaction piece.
 715. Satisfaction by order or decree.
 716. Fee.
 717. Form of satisfaction piece.

Section

COUNTIES OF SECOND TO EIGHTH CLASS

- 720-1. Definitions.
 720-2. Satisfaction piece, effect of recording.
 720-3. Satisfaction piece, contents, execution, acknowledgment, mortgage accompanying.
 720-4. Form of satisfaction piece.
 720-5. Recording; indexing; reference on mortgage record.
 720-6. Mistakes, liability.
 720-7. Other statutes or rule of civil procedure.
 720-8. Fee for recording.
 720-9. Prior written satisfactions.

FORECLOSURE OF MORTGAGE

- 791 to 793. Repealed.
 794. Repealed.
 795. Repealed.
 796 to 798.1. Repealed.
 799. Repealed.
 800. Repealed.
 801. Repealed.
 802. Repealed.
 803. Repealed.
 804. Repealed.
 805. Recorders; release of mortgage noted on record; exception.

GENERAL PROVISIONS

- 941.1. Definition.
 941.2. Indices.
 941.3. Filing related instruments.
 941.4. Property moved to another county.
 941.5. Assignments.
 941.6. Satisfaction.
 941.7. Extension.
 941.8. Remedies.
 941.9. Foreclosure.
 941.10. Penalties.
 941.11. Prothonotary's fees.
 941.12. Extension affidavits.
 941.13. Construction.

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

Cross References

Priority of liens, see 42 Pa.C.S.A. §§ 8141, 8142.

RECORDING OF MORTGAGES**Law Review and Journal Commentaries**

Misuse of escrow funds by mortgagees. (1974)
13 Duq.L.Rev. 374.

§ 621. Mortgages to be recorded within six months**Repealed in Part**

The act of May 28, 1715, 1 Sm.L. 94, and the act of March 18, 1775, 1 Sm.L. 422, are repealed by act of 1955, Aug. 4, P.L. 303, § 3, in so far as they are inconsistent with the latter act. Sections 1 and 2 of the 1955 act, regulating the recording of instruments by the commissioner of records in the city of Philadelphia, appear as §§ 329, 330 of this title.

Cross References

Time for recording, see 21 P.S. § 445.

Library References

P.L.E. Mortgages §§ 67, 109.
P.L.E. Records § 2.

Notes of Decisions**1. Construction and application in general**

Purchasers buying estate realty from administratrix who occupied it and who was both sole heir and administratrix were justified in searching title against the name of the deceased alone and took free and clear of mortgage which had been given earlier by the sole heir and administratrix in her individual capacity and which had been made and recorded within one year after the death of the decedent and during the period of administration. *Quality Lumber & Millwork Co. v. Andrus*, 191 A.2d 685, 201 Pa.Super. 189, Super.1963, affirmed 200 A.2d 754, 414 Pa. 411.

Generally, a prospective mortgagee had a duty to inquire whether those persons actually in possession of the premises might have some title to or interest in the premises which was adverse to the prospective mortgagor's interest or title. *Hunter v. Hunter*, 20 Pa. D. & C.3d 96 (1981).

Where a grantor remains in possession of premises after giving a fully recorded deed, a purchaser or mortgagee from the grantor's grantee was not required to inquire of the grantor in possession whether such grantor reserved any interest in the land conveyed. *Hunter v. Hunter*, 20 Pa. D. & C.3d 96 (1981).

Note 1

A mortgage, to be effective, had to describe the property sufficiently to enable it to be located and identified, and the real estate could be described by reference to a plan, a plot, a lot number, a prior conveyance, by name or by reference to another document such as a survey or another deed. *Hunter v. Hunter*, 20 Pa. D. & C.3d 96 (1981).

2. Acknowledgment

Notary public who took his own acknowledgment to fictitious name in his mortgage did not thereby affect its validity as between the parties, nor did such defect, if latent, prevent the record of the instrument from operating as constructive notice of lien. *Scott v. Penn Title Ins. Co.*, 48 Berks 239, 10 Pa. D. & C.2d 129 (1957), exceptions dismissed 49 Berks 36.

In an action in equity by mortgagors against mortgagee and its assignee to strike the mortgage from the record on the ground that it lacked a valid acknowledgment, defendants' motion for summary judgment will be granted where plaintiffs concede that the mortgage itself is valid. *Hopkins v. Albee York Homes, Inc.*, 80 York 183, 42 Pa. D. & C.2d 211 (1967).

§ 622. Priority according to date of recording

Repealed in Part

This act is repealed in so far as it is inconsistent with Act 1968, Jan. 18, P.L. (1967) 950, No. 422, § 2, which amended clause (1) of 68 P.S. § 602.

Library References

P.L.E. Mortgages §§ 67, 108, 109, 111.

P.L.E. Records §§ 2, 3.

Notes of Decisions

1. Construction and application in general

Lenders should not be penalized for taking cooperative approach to financial difficulties of their debtors, nor should they be discouraged from approving construction money mortgages. *Central Pennsylvania Sav. Ass'n v. Carpenters of Pennsylvania, Inc.*, 444 A.2d 755, 298 Pa.Super. 250, Super.1982, affirmed 463 A.2d 414, 502 Pa. 17.

3. Priorities

Where, under terms of mortgage agreement, the last \$600,000 was to be advanced to builder upon presentation to the mortgagee of a lease between builder and a third party, and where the advance was made by the mortgagee prior to the presentation of any such lease, the \$600,000 advance would be nonobligatory if the condition precedent to the last advance were not met and the mortgagee's claim would be subordinate to mechanic's lien filed after the mortgage was recorded but prior to the advance. (Per *Watkins, P.J.*, with two Judges concurring and one Judge concurring in the result.) *Trustees of C. I. Mortg. Group v. Stagg of Huntington, Inc. (D. C. Goodman & Sons, Inc.)*, 372 A.2d 854, 247

4. — Time for recording

Where claimant, who sought determination that he was a "secured creditor" under the Bankruptcy Act, 11 U.S.C.A. § 1(28), failed to report his security interest within six months of making of note in connection with loan to debtor with debtor's house as collateral, written agreement failed to qualify as a mortgage. In re *Butz*, *Bkrcty.E.D.Pa.1979*, 1 B.R. 435.

5. Unrecorded mortgages

Under Pennsylvania law, unrecorded mortgage does not attach to the subject real estate or grant any estate in it unless it is recorded within six months after the granting of the mortgage. In re *Cortez*, 9th Cir.BAP (Cal.)1995, 191 B.R. 174.

Unrecorded note, security agreement and disclosure were insufficient to create security interest in debtor's real property under this section. *DiRoderico v. Equibank, N. A.*, *Bkrcty.W.D.Pa.1981*, 17 B.R. 70.

Pennsylvania does not recognize unrecorded mortgage. *Matter of Fisher*, *W.D.Pa.1980*, 7 B.R. 490.

Pa.Super. 336, Super.1977, reversed on other grounds 399 A.2d 386, 484 Pa. 464.

Advances made pursuant to an advance money mortgage take lien precedence over mechanic's lien if the mechanic's lien is filed subsequent to the time the mortgage is recorded and if the mortgagee is obligated to make the advances but if the mortgagee makes an advance which it is not obligated to make after notice of a mechanic's lien, the lien of such advance dates only from the time it was made and not from the time of the recording of the original mortgage. (Per *Watkins, P.J.*, with two Judges concurring and one Judge concurring in the result.) (Per *Watkins, P.J.*, with two Judges concurring and one Judge concurring in the result.) *Trustees of C. I. Mortg. Group v. Stagg of Huntington, Inc. (D. C. Goodman & Sons, Inc.)*, 372 A.2d 854, 247 Pa.Super. 336, Super.1977, reversed on other grounds 399 A.2d 386, 484 Pa. 464.

Where owner conveyed real estate to another party without written permission of the mortgagee in direct violation of the building loan agreement between the mortgagee and the owner, subsequent advance made by the mortgagee was not obligatory and was thus subordinate to mechanic's lien filed after the mortgage was record-

ed but prior to the time that the advance was made. (Per Watkins, P.J., with two Judges concurring and one Judge concurring in the result.) or Watkins, P.J., with two Judges concurring and one Judge concurring in the result.) (Per Watkins, P.J., with two Judges concurring and one Judge concurring in the result.) Trustees of C. I. Mortg. Group v. Stagg of Huntington, Inc. (D. C. Goodman & Sons, Inc.), 372 A.2d 854, 247 Pa.Super. 336, Super.1977, reversed on other grounds 399 A.2d 386, 484 Pa. 464.

Purchasers buying estate realty from administratrix who occupied it and who was both sole heir and administratrix were justified in searching title against the name of the deceased alone and took free and clear of mortgage which had been given earlier by the sole heir and administratrix in her individual capacity and which had been made and recorded within one year after the death of the decedent and during the period of administration. Quality Lumber & Millwork Co. v. Andrus, 191 A.2d 685, 201 Pa.Super. 189, Super.1963, affirmed 200 A.2d 754, 414 Pa. 411.

7. Record as notice

Recording of a mortgage was constructive notice of its existence to a subsequent investor in such realty, as effective as actual notice. Mamolen v. Mamolen, 132 A.2d 185, 389 Pa. 134, Sup.1957.

Notary public who took his own acknowledgment to fictitious name in his mortgage did not thereby affect its validity as between the parties, nor did such defect, if latent, prevent the record of the instrument from operating as constructive notice of lien. Scott v. Penn Title Ins. Co., 48 Berks 239, 10 Pa. D. & C.2d 129 (1957), exceptions dismissed 49 Berks 36.

§ 623. Assignments and letters of attorney

Notes of Decisions

4. Effect of assignment

Although assignee of mortgage was not originally a party to action by tax sale purchaser to eject mortgagors, assignee had an appealable interest in trial court's disposition of its petition to stay enforcement of the ejectment; such interest was not affected by determination as to which action, i.e., ejectment action or mortgage foreclo-

8. Future advancements

Even if letter from mortgagor to assignee of mortgagee, expressing an intention that assignee should hold original mortgage as security for advances made by assignee to mortgagor or for other indebtedness due from mortgagor to assignee, constituted a mortgage, where such letter was not properly recorded it did not create a lien on mortgagor's property. In re Riddlesburg Min. Co., C.A.3 (Pa.)1955, 224 F.2d 834.

Transfer of construction loan funds into escrow account created obligation on part of lender to commit such funds to mortgagor as per contractual agreement, notwithstanding that advances were made from such account after date of judgment against mortgagor in favor of other construction lender; thus, other construction lender, as junior lienholder, had duty to provide actual notice to lender as senior lienholder before lien of construction lender could take priority of lender's mortgage. Central Pennsylvania Sav. Ass'n v. Carpenters of Pennsylvania, Inc., 444 A.2d 755, 298 Pa.Super. 250, Super.1982, affirmed 463 A.2d 414, 502 Pa. 17.

It is only when advance money mortgagee is contractually obligated to make advances that lien relates back to date of mortgage. Central Pennsylvania Sav. Ass'n v. Carpenters of Pennsylvania, Inc., 444 A.2d 755, 298 Pa.Super. 250, Super.1982, affirmed 463 A.2d 414, 502 Pa. 17.

Advances made by construction lender from escrow account in which mortgage loan funds had been transferred were not nonobligatory. Central Pennsylvania Sav. Ass'n v. Carpenters of Pennsylvania, Inc., 444 A.2d 755, 298 Pa.Super. 250, Super.1982, affirmed 463 A.2d 414, 502 Pa. 17.

§ 624. Assignments to be entered on margin of record of mortgage

From and after the passage of this act, it shall be the duty of the recorders of deeds, of the several counties of this commonwealth, to enter upon the margin of the record of any mortgages, the book and page wherein any assignment or assignments of the same are recorded, together with the date of such assignment, for which service the recorders aforesaid shall charge and be entitled to receive such fee as is provided by law unless the recorder of deeds microfilms the mortgages in which case the assignment shall be recorded without a marginal notation.

As amended 1986, March 21, P.L. 66, No. 20, § 1, imd. effective.

§ 626. Repealed. 1992, Dec. 18, P.L. 133, No. 169, § 5, effective in 60 days

Historical and Statutory Notes

Former § 626, added by Act 1921, May 24, P.L. 1071, No. 394, § 1, related to recording powers of attorney in respect to mortgages, and prior to repeal was amended by Act 1925, April 1, P.L. 102, § 1.

§ 629. Stipulation of general mortgage provisions

Any party contemplating the recording, as mortgagee in the same county, of more than one real estate mortgage subject to the same general provisions, covenants, conditions and obligations, may record an unacknowledged instrument which shall be called a stipulation of general mortgage provisions, and shall be in the following form:

Stipulation of General Mortgage Provisions.

The following general provisions, covenants, conditions and obligations shall be an integral part of any mortgage hereafter recorded in County, Pennsylvania, in favor of the undersigned, when such subsequently recorded mortgage expressly provides for the incorporation of the following general provisions, covenants, conditions and obligations as an integral part thereof by reference to this recorded stipulation.

(Here insert the general provisions, covenants, conditions and obligations intended to be incorporated by reference in future mortgages.)

In witness whereof this stipulation is executed this day of, 19....

1959, June 2, P.L. 452, § 1.

Historical and Statutory Notes

Title of Act: An Act providing for the recording of specified forms of stipulations of general mortgage provisions and of short form mortgages; defining the effect and construction to be given thereto. 1959, June 2, P.L. 452.

Law Review and Journal Commentaries

Master Mortgage Law. S. Knox Hunter and William S. Bender, (1960) 31 Pa.B.A.Q. 312.

Library References

Mortgages ¶91, 94. C.J.S. Mortgages §§ 203, 206. P.L.E. Mortgages § 67. P.L.E. Records §§ 2, 3.

§ 630. Short form mortgages

When a stipulation of general mortgage provisions has been recorded in any county, the party filing the same may thereafter record in that county, as evidence of its mortgage loans, instruments to be known as short form mortgages. A short form mortgage shall set forth the date on which it is executed, the names of the parties thereto, the amount of the indebtedness secured or to be secured thereby, the description of the real property mortgaged as security for the indebtedness, and a statement incorporating by reference the general provisions, covenants, conditions and obligations recited in the lender's recorded stipulation of general mortgage provisions and citing the volume and page of the mortgage book in which such stipulation is recorded. A short form mortgage shall contain a defeasance clause and any special provisions, covenants, conditions or obligations of the parties, and shall be signed and acknowledged by the mortgagor in the same manner as any other real estate mortgage. Following the acknowledgment, and under the caption "General Provisions Incorporated by Reference and Not to be Recorded Herewith," there shall be inserted an exact copy of the general provisions, covenants, conditions and obligations set forth in the recorded stipulation of general mortgage provisions which are incorporated in the short form mortgage by reference.

1959, June 2, P.L. 452, § 2.

Library ReferencesMortgages \Leftrightarrow 91, 94.

C.J.S. Mortgages §§ 203, 206.

P.L.E. Mortgages § 67.

P.L.E. Records §§ 2, 3.

§ 631. Operation and effect of short form mortgage

A short form mortgage shall be a lien against the real property described therein as of the date and time it is recorded, except that if the mortgage is a purchase money mortgage under the definition set forth in the act of June 28, 1951 (P.L. 927), known as the "Lien Priority Law,"¹ it shall be a lien from the time it is delivered to the mortgagee if it is recorded within ten days after its date. When a short form mortgage incorporating by reference the provisions of a stipulation of general mortgage provisions is recorded, it shall have the same effect as any other mortgage instrument and the two recorded instruments together shall be construed to constitute one mortgage. The recording of a short form mortgage which incorporates by reference the provisions, covenants, conditions and obligations, set forth in a recorded stipulation of general mortgage provisions, shall operate as constructive notice of the whole thereof, the same as if the provisions incorporated by reference were set forth in full in the short form mortgage.

1959, June 2, P.L. 452, § 3. As amended 1968, Jan. 18, P.L. (1967) 951, § 1.

¹ 68 P.S. § 602.

Historical and Statutory Notes

Section 2 of the act of 1967 provided:

"This act shall take effect immediately and shall apply to all mortgages hereafter executed and recorded."

Library ReferencesMortgages \Leftrightarrow 95, 145 et seq..

C.J.S. Mortgages §§ 202, 208, 210.

P.L.E. Mortgages § 101 et seq.

§ 632. Recording of stipulations of general mortgage provisions

The recorders of deeds or other officials in charge of recording mortgages in the several counties are hereby authorized and directed to receive and record unacknowledged stipulations of general mortgage provisions in the form set forth in section one of this act.¹ Such stipulations of general mortgage provisions shall be entered of record in the same manner as real estate mortgages, and shall be indexed in the mortgagee index with a notation that the indexed instrument is a stipulation of general mortgage provisions.

1959, June 2, P.L. 452, § 4.

¹ Section 629 of this title.

Library ReferencesMortgages \Leftrightarrow 91, 94.

C.J.S. Mortgages §§ 203, 206.

P.L.E. Mortgages § 67.

§ 633. Recording of short form mortgages

The recorders of deeds or other officials in charge of recording mortgages in the several counties are hereby authorized and directed to receive and record properly acknowledged short form mortgages which incorporate by reference the provisions of a previously recorded stipulation of general mortgage provisions. The copy of the provisions incorporated by reference which is set forth in a short form mortgage under the caption "General Provisions Incorporated by¹ Reference and Not to be Recorded Herewith" shall not be transcribed into the records, but in all other respects a short

form mortgage shall be entered of record and indexed in same manner as other real estate mortgages are recorded and indexed.

1959, June 2, P.L. 452, § 5.

1 "By" in original.

Library References

Mortgages §§ 91, 94.
C.J.S. Mortgages §§ 203, 206.
P.L.E. Mortgages § 67.

LIEN OF MORTGAGE

Library References

P.L.E. Mortgages § 101 et seq.

§ 651. **Repealed.** 1978, April 28, P.L. 202, No. 53, § 2(a)[1104], effective June 27, 1978

Historical and Statutory Notes

The following Acts cited in main volume Historical Note are repealed by § 2(a) of Act 1978, April 28, P.L. 202, No. 53 [bracketed number indicates paragraph of § 2(a)]:

[121]: Act 1830, April 6, P.L. 293, No. 164.

[467]: Act 1867, March 23, P.L. 43, No. 26.

[738]: Act 1887, March 22, P.L. 6, No. 5.

[781]: Act 1893, May 19, P.L. 110, No. 62.

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

Notes of Decisions

1. Construction and application in general

Appointment of a receiver for an insolvent corporation to liquidate its assets will be rescinded, and a petition by creditors to have real estate, the only corporate asset, sold free and clear of all liens and encumbrances will be refused, where the first lien mortgagee seeks leave to proceed with a foreclosure sale and has not waived its rights to preserve its lien under this section, especially where the highest bid received at a prior unsuccessful auction sale was substantially less than the mortgage debt. *Reichert v. Reichert*, 49 Pa. D. & C.2d 274 (1970).

3. Priority of liens

Under provisions of subordination agreement that subordination of mortgage lien to two junior judgment liens would have same force and effect as though judgments had been entered of record prior to execution and recording of mortgage and that mortgage was subordinate to the lien, operation and payment and distribution on any judicial sale of and under judgments, superiority of judgment liens was established when subordination agreement was executed; it was not necessary that exercise of priority rights occur; thus, by virtue of statute providing that a tax sale shall discharge all liens except a mortgage that is not prior to other liens, instant mortgage lien was discharged by tax sale. *Wheatcroft v. Auritt*, 312 A.2d 441, 226 Pa.Super. 118, Super.1973.

Where plaintiffs sold property to defendant executing a purchase money mortgage constituting a first lien but subordinating it to lien of any

new construction mortgage and subsequently a judgment for a third party was entered against the defendant and defendant defaulted on mortgage and thereafter executed an alleged construction mortgage and owner of judgment did not agree to extension of the purchase money mortgage or that the alleged construction mortgage could be a prior lien, the alleged construction mortgage was not prior to all other liens upon the same property within this section. *Liss v. Medary Homes, Inc.*, 130 A.2d 137, 388 Pa. 139, Sup.1957.

The plaintiff brought this action in replevin to recover personal property purchased by it at an execution sale and to determine the interests, liens, and priorities therein as between the plaintiff and the defendant, and it appearing that the plaintiff's security interest in the property perfected in 1959 was not continued when the same expired in 1964, it was held that the defendant's security interest originally perfected in 1961 and continued until the sale date had priority over the plaintiff's interest and that although the plaintiff was entitled to possession of the property by virtue of its purchase at the execution sale, such property remained subject to defendant's security interest. *Stearns Mfg. Co. v. National Bank & Trust Co. of Central Pa.*, 86 York 89 (1972).

Although federal tax liens and Pennsylvania unemployment compensation tax liens are both, by statute, postponed in payment to a prior recorded mortgage, since both of these liens are prior to local real estate taxes, which taxes are, in

turn, prior to a mortgage, all of said tax liens are payable prior to the mortgage. *First Nat. Bank of York v. R. & H. Const. Co.*, 78 York 25, 34 Pa. D. & C.2d 100 (1963).

5. Effect of sale on liens

Pennsylvania judicial sale on mortgage foreclosure did not divest senior federal tax lien, although United States was not named party to proceeding. *U.S. v. Peterson*, E.D.Pa.1962, 204 F.Supp. 683.

Where mortgagor's obligation under mortgage to first lender and second lender was joint, the foreclosure of the mortgage by first lender would discharge the second lender's mortgage lien so that the court should not proceed in the absence of second lender, second lender was therefore an indispensable party. *Republic Realty Morg. Corp. v. Eagson Corp.*, E.D.Pa.1975, 68 F.R.D. 218.

Where court of common pleas, which appointed liquidating receiver with power to dispose of nonprofit corporation's tract, expected that sale of tract would result in a surplus of funds distributable among other creditors after payment of the mortgage debt in default, court had authority to order the sale free of all liens, other than the first mortgage lien. *Bogosian v. Foerderer Tract Committee, Inc.*, 399 A.2d 408, 264 Pa.Super. 84, Sup. 1979.

Generally, a sheriff's sale of realty discharges all liens on the property sold unless the sale is expressly made subject to prior lien or unless it is otherwise provided by statute. *Liss v. Medary Homes, Inc.*, 130 A.2d 137, 388 Pa. 139, Sup. 1957.

6. Effect of sale as to mortgages

Where plaintiffs conveyed premises to defendant who executed a purchase money mortgage

constituting a first lien and subordinating it to the lien of any new construction mortgages, and subsequently a judgment for a third party was entered against the defendant, and thereafter defendant defaulted and then executed an alleged construction mortgage, and plaintiff caused judgment to be entered on bond accompanying the purchase money mortgage and the premises were sold at a sheriff's sale, lien of the alleged construction mortgage was discharged by the sheriff's sale and plaintiff had clear title to the premises. *Liss v. Medary Homes, Inc.*, 130 A.2d 137, 388 Pa. 139, Sup. 1957.

Where plaintiff sold property to defendant executing a purchase money mortgage constituting a first lien and subordinating it to lien of any new construction mortgage, and subsequently a judgment for a third party was entered against the defendant and thereafter defendant defaulted and executed an alleged construction mortgage, and the property was sold at a sheriff's sale, fact that construction mortgagee at time of sale gave notice that construction mortgage would not be discharged by sale could not create a title or lien in her which she did not possess, and hence had no effect upon the rights of the judgment creditor or purchasers at sheriff's sale. *Liss v. Medary Homes, Inc.*, 130 A.2d 137, 388 Pa. 139, Sup. 1957.

7. Tax sales

City of Pittsburgh v. Black, [main volume] 89 Pa. D. & C. 20, 102 Pitts.L.J. 177 (1954).

A prior mortgage is preserved from divestiture by a tax sale under this section and can be divested only by a second sale free and clear of liens and incumbrances under § 2051 of Title 53, if the procedure provided therein is followed exactly. *City of Pittsburgh v. Black*, 89 Pa. D. & C. 20, 102 Pitts.L.J. 177 (1954).

§ 654. Agreement postponing lien of mortgage

In every case where a mortgage has been or shall hereafter be made and recorded in the proper office in the county in which the land mortgaged is situated, it shall be lawful for the mortgagee or mortgagees, his or their heirs, executors, administrators, or assigns, and, in the case of a corporate mortgagee, its successors and assigns, to postpone the lien of such mortgage or mortgages on the mortgaged premises, and the bond or bonds accompanying the same, to the lien of a subsequent mortgage or mortgages, and the bond or bonds accompanying the same, on the same mortgaged premises, (a) by entering a postponement upon the margin of the record of such mortgage, which postponement shall state the date and place of record of, and the names of the parties to, the subsequent mortgage or mortgages to which mortgage or mortgages the said entry of postponement is intended to subordinate the lien of the mortgage or mortgages to be postponed, which postponement shall be signed by the person or persons who are then the owner or owners of the said mortgage or mortgages so postponed, and which postponement, when attested by the recorder of deeds, shall be a part of the record of said mortgage, and shall be notice to all persons of the facts therein contained; or (b) by a stipulation contained in the body of the mortgage postponing the lien thereof to the lien of another mortgage or mortgages about to be recorded; or (c) by an agreement in writing with the mortgagor and with the subsequent mortgagee or mortgagees and any other person interested as owners of the mortgaged premises or as holders of liens thereon, duly acknowledged before a proper officer authorized by the State of Pennsylvania to take acknowledgments; which said agreement for the postponement of lien of mortgage and bond accompanying the same

shall be recorded in the office of the recorder of deeds in the county where the mortgaged premises lie, and, if the said mortgaged premises lie in more than one county, then in the recorder of deed's office in all the counties in which said mortgaged premises lie; the recording of which shall be notice to all persons of the facts therein contained, when and only when a memorandum of the said agreement shall be noted by the said recorder of deeds upon the margin of the record of the mortgage or mortgages to be postponed, giving the book and page wherein any such postponement agreement is recorded, together with the date of such recording.

For each such notation entered upon the margin of the record of a mortgage, the recorder of deeds shall be entitled to charge and receive a fee as prescribed by law for satisfactions of mortgages.

All postponements heretofore made in conformity with the provisions of this section and this amendment are hereby validated. If the recorder of deeds microfilms mortgages, all postponements shall be by either stipulation, agreement or other document which shall be recorded without a marginal notation.

As amended 1989, Oct. 4, P.L. 582, No. 61, § 1, imd. effective.

§ 655. Grantee not to be liable for encumbrances

Library References

P.L.E. Mortgages §§ 162, 163.

Notes of Decisions

2. Construction and application in general

Where property is transferred to one party and paid for by another, there is an inference that the purchaser does not intend that the transferee should have the beneficial interest in the property but that the purchaser himself should have the beneficial interest so that there is created a resulting trust. *Masgai v. Masgai*, 333 A.2d 861, 460 Pa. 453, Sup.1975.

Evidence that, although one party made the down payment on the property, the mortgage debt which comprised the balance of the purchase price was assumed both by payor and the woman with whom he was living, so that the woman was exposed to personal liability on the mortgage, evidence that the woman had made at least five of the mortgage installment payments, and evidence that the property was purportedly transferred to the man and woman as tenants by the entireties, and that either a joint tenancy or a tenancy in common resulted, did not demonstrate that a gift was not intended by the man to the woman or that woman held her interest in a resulting trust for the man. *Masgai v. Masgai*, 333 A.2d 861, 460 Pa. 453, Sup.1975.

Fact that decedent's written title from straw party was dated after his assignment of the mortgage to claimant, did not make him "a grantee of real estate . . . subject to mortgage", where decedent was real owner of premises at time he made the loan from claimant and arranged for assignment of the mortgage to him. In *re Jardella's Estate*, 15 Pa. D. & C.2d 31, 9 Fiduc.Rep. 40 (1959).

5. Personal liability in general

Grantee of obligor under bond accompanying a realty mortgage was not personally liable to the mortgagee where he had not expressly assumed

personal liability under the mortgage. *Meco Realty Co. v. Burns*, 200 A.2d 869, 414 Pa. 495, Sup.1964.

6. Requisites of assumption of liability

Under Pennsylvania law, grantee of real estate will not be personally liable for mortgage which encumbers the property unless the grantee expressly agrees, in writing, to assume the liability or unless there are express words in the deed of conveyance stating that the grant is made on the condition of the grantee assuming such liability. *Karagianis v. G.F.C. Consumer Discount Co.*, E.D.Pa.1983, 34 B.R. 108.

7. Extent of liability under assumption of liability

One who, by acceptance of a deed, assumes and agrees to pay a mortgage to which the property is subject becomes liable both to his grantor and also to the mortgagee as a third-party beneficiary. *Masgai v. Masgai*, 333 A.2d 861, 460 Pa. 453, Sup.1975.

9. Grantor and grantee, liability between

Fact that payor takes title to property in the name of himself and another jointly is an indication of an intention of the payor to make a beneficial gift of an undivided interest in the property to the other person; in the absence of evidence of a different intention, the other person does not hold his interest upon a resulting trust for the payor whether the transfer was made to the payor and the other person as joint tenants or as tenants in common. *Masgai v. Masgai*, 333 A.2d 861, 460 Pa. 453, Sup.1975.

Woman who had been living with man who was making mortgage payments on property and holding herself out as his wife, had standing, if she was a joint owner of the property, to main-

tain an action for partition whether she was found to be a joint tenant or a tenant in common. *Masgai v. Masgai*, 333 A.2d 861, 460 Pa. 453, Sup.1975.

11. — Matters for which grantee liable to grantor

If conveyance of mortgaged property is made under and subject to a mortgage but without an express assumption by the grantee, there is no direct obligation to the mortgagee on the part of the grantee; rather the obligation of the grantee is to indemnify the grantor from the mortgage obligation, including any deficiency judgment following foreclosure. *Masgai v. Masgai*, 333 A.2d 861, 460 Pa. 453, Sup.1975.

Provision of this section that grantee of real estate subject to ground rent or other encumbrance shall not be personally liable for payment of such encumbrance unless he expressly assumes encumbrance in writing or deed expressly provides that grant was made on condition of grantee assuming personal liability was inapposite to situation in which grantees purchased properties and continued to collect rents and pay over brokerage commissions pursuant to existing leases providing therefor and grantees were not entitled to accept benefits of leases without assuming concomitant brokerage commission obligations. *William I. Mirkil Co. v. Gayton*, 285 A.2d 181, 446 Pa. 111, Sup.1971.

SATISFACTION OF MORTGAGES

Library References

P.L.E. Mortgages § 181 et seq.

§ 681. Satisfaction of mortgage on margin of record or by satisfaction piece

Any mortgagee of any real or personal estates in the Commonwealth, having received full satisfaction and payment of all such sum and sums of money as are really due, to him by such mortgage, shall, at the request of the mortgagor, enter satisfaction either upon the margin of the record of such mortgage recorded in the said office or by means of a satisfaction piece, which shall forever thereafter discharge, defeat and release the same; and shall likewise bar all actions brought, or to be brought thereupon.

As amended 1983, Oct. 28, P.L. 194, No. 52, § 1, imd. effective.

Historical and Statutory Notes

1983 Amendment: Following "personal estates in" substituted "the Commonwealth" for "this province", following "enter satisfaction" inserted

"either" and following "in the said office" inserted "or by means of a satisfaction piece".

Notes of Decisions

Evidence 10

1. Construction and application in general

Action charging violation of this section requiring mortgagee, upon payment of sums due under mortgage, to enter satisfaction upon margin of record of mortgage and seeking recovery of statutory fine for failure to enter satisfaction within 45 days of request was not maintainable as a class action on behalf of class of mortgagors who had paid their loans, requested satisfaction and tendered satisfaction fees but whose mortgages were not marked satisfied within 45 days after request and tender, where named plaintiff had had their mortgage marked satisfied within 30 days after their request and tender of satisfaction fee. *Bell v. Beneficial Consumer Discount Co.*, 360 A.2d 681, 241 Pa.Super. 192, Super.1976.

Action charging violation of this section requiring mortgagee, upon satisfaction of mortgage, to enter satisfaction upon margin of record of recorded mortgage and seeking recovery of statutory fine for failure to enter satisfaction within 45 days after request was not maintainable as class

action on behalf of class of mortgagors whose mortgages were not marked satisfied within 45 days of request and tender, actual or constructive, where there was crucial issues of fact not shared by all class members and not susceptible of just resolution in single action. *Bell v. Beneficial Consumer Discount Co.*, 360 A.2d 681, 241 Pa.Super. 192, Super.1976.

Action charging violation of this section requiring mortgagee, upon satisfaction of mortgage, to enter satisfaction upon margin of record of recorded mortgage and seeking recovery of statutory fine for failure to enter satisfaction within 45 days after request was not maintainable as class action on behalf of class of mortgagors who did not request satisfaction and tender satisfaction fee because of unawareness that their mortgages had been filed where there were no members of such theoretical class. *Bell v. Beneficial Consumer Discount Co.*, 360 A.2d 681, 241 Pa.Super. 192, Super.1976.

4. Persons who may enter satisfaction

For purposes of this section permitting mortgagor to recover amount of the mortgage monies

upon mortgagee's failure to mark the mortgages satisfied within 45 days, mortgagors could fulfill requirement of offering to pay reasonable costs of marking the mortgages satisfied by demonstrating an understanding between the mortgagors and the mortgagee that the mortgagors or their lawyer would take the step of having the mortgages marked satisfied. *Levin v. Weissman*, E.D.Pa.1984, 594 F.Supp. 322, affirmed 760 F.2d 258, affirmed 760 F.2d 263.

8. Cancellation of entry

In action to strike a satisfaction of mortgage where defendant allegedly perpetrated a fraud upon decedent to obtain a power of attorney, it was held that a party who relies on fraud to establish a claim has burden of proving by clear and convincing evidence the fact upon which alleged fraud is based; and where fraud is alleged in an endeavor to set aside a written instrument, proof must be clear, precise and indubitable. *Satterthwaite v. Sarkees*, 53 Del.Co. 325 (1966).

§ 682. Fine for neglect

And if such mortgagee, by himself or his attorney, shall not, within forty-five days after request and tender made for his reasonable charges, return to the said office, and there make such acknowledgment¹ as aforesaid, he, she or they, neglecting so to do, shall for every such offence,² forfeit and pay, unto the party or parties aggrieved, any sum not exceeding the mortgage-money, to be recovered in any Court of Record within this Commonwealth, by bill, complaint or information.

As amended 1968, July 31, P.L. 866, No. 259, § 1.

¹ "acknowledgments" in original.

² "offense" in original.

9. Penalty

Fact that tender of amount due under mortgage was accompanied by a request that the mortgages be satisfied did not render the tender invalid so as to preclude award of damages for failure to mark the mortgages satisfied within 45 days. *Levin v. Weissman*, E.D.Pa.1984, 594 F.Supp. 322, affirmed 760 F.2d 258, affirmed 760 F.2d 263.

10. Evidence

Evidence that mortgagee knew that an appeal had been taken from a judgment in his favor on the mortgage, knew of his counsel's stroke, knew of a motion to dismiss, and did not change counsel until after the appeal was dismissed sustained jury finding that, notwithstanding the appeal, mortgagee did not have an honest, good-faith belief that there was a genuine dispute as to the amount at issue and that he thus could be held liable for failing to mark the mortgages satisfied when the amount of the judgment was tendered by the mortgagors. *Levin v. Weissman*, E.D.Pa.1984, 594 F.Supp. 322, affirmed 760 F.2d 258, affirmed 760 F.2d 263.

Notes of Decisions

Class actions 6.5

6.5. Class actions

Action charging violation of § 681 of this title, requiring mortgagee, upon payment of sums due under mortgage, to enter satisfaction upon margin of record of mortgage and seeking recovery of statutory fine for failure to enter satisfaction within 45 days of request was not maintainable as a class action on behalf of class of mortgagors who had paid their loans, requested satisfaction and tendered satisfaction fees but whose mortgages were not marked satisfied within 45 days after requested and tender, where named plaintiffs had had their mortgage marked satisfied within 30 days after their request and tender of satisfaction fee. *Bell v. Beneficial Consumer Discount Co.*, 360 A.2d 681, 241 Pa.Super. 192, Super.1976.

Action charging violation of this section requiring mortgagee, upon satisfaction of mortgage, to enter satisfaction upon margin of record of re-

corded mortgage and seeking recovery of statutory fine for failure to enter satisfaction within 45 days after request was not maintainable as class action on behalf of class of mortgagors whose mortgages were not marked satisfied within 45 days of request and tender, actual or constructive, where there were crucial issues of fact not shared by all class members and not susceptible of just resolution in single action. *Bell v. Beneficial Consumer Discount Co.*, 360 A.2d 681, 241 Pa.Super. 192, Super.1976.

When plaintiff sought to represent all mortgagors who claimed a penalty under this section from mortgagees who have failed to satisfy mortgages within 45 days of the repayment of the debt, the criteria required for class action were not present and class treatment was denied. *Bell v. Beneficial Consumer Discount Co.*, 327 A.2d 874, 231 Pa.Super. 1, Super.1974, dissenting opinion 331 A.2d 902, 231 Pa.Super. 1, vacated on other grounds 348 A.2d 734, 465 Pa. 225, on remand 360 A.2d 681, 241 Pa.Super. 192.

§ 683. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[92], effective June 27, 1980

Historical and Statutory Notes

This section was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 684. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[280], effective June 27, 1980

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 685. Satisfaction of mortgage by prothonotary or recorder

Repealed in Part

This section is repealed, except as to satisfaction of mortgages, by § 2(a)[319] of Act 1978, April 28, P.L. 202, No. 53 [42 P.S. § 20002(a)[319]].

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

Historical and Statutory Notes

This section had also been classified under 12 P.S. § 976 until 1981.

§ 686. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[505], effective June 27, 1980

Historical and Statutory Notes

This section was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 687. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[708], effective June 27, 1980

Historical and Statutory Notes

This section was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 688. Satisfaction in case of presumption of payment from lapse of time

Suspended by Rules of Civil Procedure

Rule of Civil Procedure 1068, effective July 1, 1991, provides that this section is suspended absolutely, in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c), effective July 1, 1991.

Library References

P.L.E. Mortgages § 184.

Notes of Decisions

2. Time when presumption begins to run

Where a mortgage has been of record for more than twenty years, there arises a presump-

tion that the same has been paid. Forsythe v. James, 18 Fay.L.J. 189 (1955).

§ 689. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[725], effective June 27, 1980

Historical and Statutory Notes

This section was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§§ 690, 691. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[748], effective June 27, 1980

Historical and Statutory Notes

These sections were repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 692. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[252], effective June 27, 1980

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

Act 1978, April 28, P.L. 202, No. 53, § 2(a)[255] repealed Act 1849, Jan. 24, P.L. 678, No. 420, § 11 (see Historical Note in main volume).

§ 693. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[829], effective June 27, 1980

Historical and Statutory Notes

This section was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§§ 694, 695. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[829], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 696. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[829], effective June 27, 1979

Historical and Statutory Notes

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§§ 697 to 699. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[951], effective June 27, 1980

Historical and Statutory Notes

These sections were repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b). For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 703. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[400], effective June 27, 1980

Historical and Statutory Notes

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 705. Notice requirement

A bank, savings bank, savings and loan association or other lending institution holding a residential mortgage shall send written notification by first class mail to the mortgagor when the mortgage has been fully paid. Any moneys remaining in any escrow account established for the payment of taxes or insurance premiums shall be returned within 30 days to the mortgagor.

1986, May 9, P.L. 165, No. 53, § 1, effective in 60 days.

Historical and Statutory Notes

Title of Act: mortgage has been paid. 1986, May 9, P.L. 165, No. 53.
An Act requiring banks and other lending institutions to notify the mortgagor when the

CITIES AND COUNTIES OF FIRST CLASS**§ 711. Definitions**

As used in this act,¹

"Mortgagee" includes any person, partnership, association, corporation, society, organization or fiduciary, holding a mortgage against real estate in a city or county of the first class, and entitled to payment of the mortgage debt, or the heir, legal representative, successor or assignee of any of the foregoing.

1956, March 15, P.L. (1955) 1280, § 1.

¹ This section et seq.

Historical and Statutory Notes

Section 8 of the act of 1956 repealed all inconsistent acts and parts of acts. Section 9 provided that the act should take effect July 1, 1956. recording of a satisfaction piece, prescribing forms, therefor, and fixing the fees thereof. 1956, March 15, P.L. (1955) 1280.

Title of Act:

An Act relating to the satisfaction of mortgages in cities and counties of the first class by the

Library References

Mortgages §=313, 314.
C.J.S. Mortgages §§ 470, 471, 480.
P.L.E. Mortgages § 191 et seq.

§ 712. Satisfaction piece; recording; execution; effect

Every mortgagee shall, upon receipt of payment of the mortgage debt and tender of satisfaction and filing costs, at the request of the mortgagor or owner of the mortgaged premises, enter of record in the office where the mortgage is recorded a duly executed satisfaction piece to be phrased substantially as provided in the form set out in section seven of this act,¹ and acknowledged as provided by law. The satisfaction piece when recorded shall forever thereafter discharge, defeat and release the lien and debt of the mortgage.

1956, March 15, P.L. (1955) 1280, § 2.

¹ Section 717 of this title.

Library References

Mortgages ☞ 314.

C.J.S. Mortgages §§ 470, 480.

P.L.E. Mortgages §§ 67, 191.

P.L.E. Records §§ 2, 3.

§ 713. Contents of satisfaction piece

Every satisfaction piece shall contain the name of the mortgagor and mortgagee, the date and amount of the mortgage, a reference by book and page (or appropriate designation in the case of microfilm recording) to the record of the original mortgage, a brief description of the real estate, and any assignment or assignments thereof. The satisfaction piece shall be accompanied, on presentation for recording, by the original mortgage instrument. Nothing herein contained shall impose liability on any city or county of the first class for any mistake, error or inaccuracy found in any satisfaction piece filed by any mortgagee which shall appear complete and correct at the time of its filing.

1956, March 15, P.L. (1955) 1280, § 3.

Library References

Mortgages ☞ 313, 314.

C.J.S. Mortgages §§ 470, 471, 480.

§ 714. Indexing of satisfaction piece

The recording officer shall properly index all satisfaction pieces against the name of the mortgagee or last assignee, as each is indicated in the satisfaction piece, and the recording officer shall indicate the recording of the satisfaction piece in the mortgage record.

1956, March 15, P.L. (1955) 1280, § 4.

Library References

Mortgages ☞ 314.

C.J.S. Mortgages §§ 470, 480.

P.L.E. Records § 3.

§ 715. Satisfaction by order or decree

This act¹ shall not affect or impair any other act, or any rule of civil procedure promulgated by the Supreme Court of the Commonwealth, which provides for the satisfaction or discharge of a mortgage by order or decree of any court upon payment of the fee prescribed in section six hereof.² The recording officer shall accept for recording a copy of the order or decree certified by the prothonotary, and shall index and indicate the same in the record as is herein provided for a satisfaction piece.

1956, March 15, P.L. (1955) 1280, § 5.

¹ Section 711 et seq. of this title.

² Section 716 of this title.

Library References

Mortgages §314.
C.J.S. Mortgages §§ 470, 480.
P.L.E. Mortgages § 192.

§ 716. Fee

The fee for recording a satisfaction piece shall be two dollars and fifty cents (\$2.50), exclusive of any State tax now levied or that may hereafter be levied on recorded instruments. The council of any city of the first class may, by ordinance, establish any other fees as it may determine to be proper to cover the costs of the recording and the maintenance of the records of satisfied mortgages.

1956, March 15, P.L. (1955) 1280, § 6.

Library References

Mortgages §314.
C.J.S. Mortgages §§ 470, 480.
P.L.E. Mortgages § 191.

§ 717. Form of satisfaction piece

(a) Form of Individual Satisfaction Piece; Complete Satisfaction.

KNOW ALL MEN BY THESE PRESENTS

That ... do ... hereby certify that a certain Indenture of Mortgage bearing date the ... day of ... Nineteen Hundred and ... made and executed by ... to ... to secure payment of the principal sum of ... dollars and duly recorded in the Department of Records of the City of Philadelphia, Mortgage Book No. ... page ... on the ... day of ... Nineteen Hundred and ... 19 ... and secured upon (describe real estate) ... has been paid and that upon the recording of this instrument the said mortgage shall be and is hereby forever discharged. The mortgage has not been assigned, except as follows ... WITNESS ... hand and seal this ... day of ... A.D. 19 ... Signed, sealed and delivered in the presence of

(SEAL)

(SEAL)

(b) Form of Corporation Satisfaction Piece; Complete Satisfaction.

KNOW ALL MEN BY THESE PRESENTS

That ... do ... hereby certify that a certain Indenture of Mortgage bearing date the ... day of ... Nineteen Hundred and ... made and executed by ... to ... to secure payment of the principal sum of ... Dollars and duly recorded in the Department of Records of the City of Philadelphia, Mortgage Book No. ... page ... on the

..... day of Nineteen Hundred and
 19..., and secured upon (describe real estate)

 has been paid and that upon the recording of this indenture the said mortgage shall be
 and is hereby forever discharged. The mortgage has not been assigned, except as
 follows

IN WITNESS WHEREOF the said Corporation has caused its common or corporate
 seal to be hereunto affixed the day of in
 the year of our Lord one thousand nine hundred and

.....
 President
 Attest
 Secretary

1956, March 15, P.L. (1955) 1280, § 7.

Library References

Mortgages 313, 314.
 C.J.S. Mortgages §§ 470, 471, 480.
 P.L.E. Mortgages § 191.

COUNTIES OF SECOND TO EIGHTH CLASS

§ 720-1. Definitions

As used in this act:

(1) "**Mortgage**" shall mean any instrument or document recorded or filed for record in the office of the recorder of deeds (or other officials in charge of recording mortgages) in any county of the second, second A, third, fourth, fifth, sixth, seventh or eighth class of the Commonwealth which creates or purports to create a specific lien on any real property within such county.

(2) "**Real Property**" shall mean lands, tenements, buildings and parts thereof or any interest therein.

(3) "**Mortgagee**" shall mean the owner or holder of the mortgage lien and shall include natural persons, co-partnerships, associations, societies, fiduciaries, private and public corporations, authorities, the United States of America and any other country and their respective governmental agencies, the Commonwealth of Pennsylvania and any other state and their respective political subdivisions and agencies or the heir at law, legal representative, assignee, successor in interest, or attorney in fact of any of the foregoing.

1961, July 26, P.L. 887, § 1. As amended 1967, Dec. 14, P.L. 858, § 1.

Historical and Statutory Notes

Title of Act:

An Act relating to the satisfaction of mortgages in counties of the second, second A, third, fourth, fifth, sixth, seventh and eighth class by the

recording of a satisfaction piece, prescribing forms therefor, and fixing fees for the recording thereof. 1961, July 26, P.L. 887, title as amended 1967, Dec. 14, P.L. 858, § 1.

Library References

Mortgages 313, 314.
 C.J.S. Mortgages §§ 470, 471, 480.
 P.L.E. Mortgages § 191.

§ 720-2. Satisfaction piece, effect of recording

Every mortgagee may enter of record in the office where the mortgage is recorded a duly executed satisfaction piece which shall forever thereafter satisfy and discharge the

lien of the mortgage referred to therein; however, in every county that microfilms the mortgage, upon direction of the recorder of deeds the mortgagee shall satisfy and discharge the lien of the mortgage by means of a satisfaction piece.

1961, July 26, P.L. 887, § 2. As amended 1972, Feb. 25, P.L. 78, No. 26, § 1; 1983, Oct. 28, P.L. 188, No. 48, § 1, imd. effective.

Library References

Mortgages ⇨314, 315(1 to 3).
C.J.S. Mortgages §§ 470, 475, 480, 481.

P.L.E. Mortgages §§ 67, 191.
P.L.E. Records §§ 2, 3.

§ 720-3. Satisfaction piece, contents, execution, acknowledgment, mortgage accompanying

Every satisfaction piece shall be in substantially the form provided in section 4 of this act¹ and shall contain the names of the mortgagor, mortgagee and of the last assignee of mortgagee, if any, the date and the original principal amount of the mortgage, an accurate reference by book and page (or other appropriate recording reference) to the place where the mortgage and the last assignment thereof are recorded or filed for recording, and a brief description of or a statement of the location of the mortgaged real estate, and shall be executed and acknowledged by or on behalf of the mortgagee. The satisfaction piece shall be accompanied, upon presentation for recording, by the original or a certified copy of the mortgage instrument.

1961, July 26, P.L. 887, § 3. As amended 1983, Oct. 28, P.L. 193, No. 51, § 1, imd. effective.

¹ Section 720-4 of this title.

Library References

Mortgages ⇨314.
C.J.S. Mortgages §§ 470, 480.
P.L.E. Mortgages § 191.

§ 720-4. Form of satisfaction piece

(a) Form of satisfaction piece for use by natural persons.

Satisfaction Piece

Made this day of 19....

Name of Mortgagor:

Name of Mortgagee:

Name of Last Assignee:

Date of Mortgage:

Original Mortgage Debt: \$

Mortgage recorded on, 19..., in the office of the Recorder of Deeds of County, Pennsylvania, in Mortgage Book, page ... (Unless the word "None" is inserted after the "Name of Last Assignee" above, include the following): Last assignment recorded on, 19..., in the Office of the Recorder of Deeds of County, Pennsylvania, in Mortgage Book, page ...;

Brief Description or Statement of Location of Mortgaged Premises:

The undersigned hereby certifies that the debt secured by the above-mentioned Mortgage has been fully paid or otherwise discharged and that upon the recording hereof said Mortgage shall be and is hereby fully and forever satisfied and discharged.

Witness the due execution hereof.

Witnessed by:

.....

(Affix Acknowledgment)

(b) Form of satisfaction piece for use by other than natural persons,

Satisfaction Piece

Made this day of, 19....

Name of Mortgagor:

Name of Mortgagee:

Name of Last Assignee:

Date of Mortgage:

Original Mortgage Debt: \$

Mortgage Recorded on, 19..., in the Office of the Recorder of Deeds of County, Pennsylvania, in Mortgage Book page ..., (Unless the word "None" is inserted after the "Name of Last Assignee" above, include the following): Last assignment recorded on, 19..., in the Office of the Recorder of Deeds of County, Pennsylvania, in Mortgage Book, page

Brief Description or Statement of Location of Mortgaged Premises:

The undersigned hereby certifies that the debt secured by the above-mentioned Mortgage has been fully paid or otherwise discharged and that upon the recording hereof said Mortgage shall be and is hereby fully and forever satisfied and discharged.

Witness the due execution hereof.

Attested or witnessed by:

.....
..... By

(Affix Acknowledgment)

1961, July 26, P.L. 887, § 4.

Library References

- Mortgages 313, 314.
C.J.S. Mortgages §§ 470, 471, 480.
P.L.E. Mortgages § 191.

§ 720-5. Recording; indexing; reference on mortgage record

The recording officer shall enter of record and properly index all satisfaction pieces against the name of the mortgagee or last assignee, as each is indicated in the satisfaction piece, and the recording officer shall indicate the recording of the satisfaction piece by an accurate reference placed on the record of the instrument satisfied thereby, or when the mortgage so satisfied is transcribed or recorded in a manner which permits notations to be made on the margin thereof, the recording officer shall note such satisfaction on the margin of the recorded mortgage and shall refer in such notation to the volume and page of the record wherein the satisfaction piece is set forth in full.

1961, July 26, P.L. 887, § 5.

Library References

- Mortgages 314.
C.J.S. Mortgages §§ 470, 480.
P.L.E. Mortgages §§ 67, 191.
P.L.E. Records §§ 2, 3.

§ 720-6. Mistakes, liability

Nothing herein contained shall impose liability on any recording officer or any political subdivision of the Commonwealth for any mistake, error or inaccuracy found in any satisfaction piece recorded or filed for recording.

1961, July 26, P.L. 887, § 6.

Library References

Registers of Deeds ⇨6.
C.J.S. Registers of Deeds § 11.
P.L.E. Records § 4.

§ 720-7. Other statutes or rule of civil procedure

This act shall not affect or impair any other act, or any rule of civil procedure promulgated by the Supreme Court of the Commonwealth, which provides for the satisfaction or discharge of a mortgage in any manner other than as prescribed herein.

1961, July 26, P.L. 887, § 7.

Library References

Mortgages ⇨313, 314.
C.J.S. Mortgages §§ 470, 471, 480.
P.L.E. Mortgages § 191.

§ 720-8. Fee for recording

The fee for recording a satisfaction piece shall be four dollars and fifty cents (\$4.50), exclusive of any State tax now levied or that may hereafter be levied on recorded instruments.

1961, July 26, P.L. 887, § 8.

Library References

Mortgages ⇨314.
C.J.S. Mortgages §§ 470, 480.
P.L.E. Mortgages § 191.

§ 720-9. Prior written satisfactions

No written satisfaction or intended satisfaction given prior to the date hereof with respect to any mortgage on real property, situate in this Commonwealth, shall be deemed, held or adjudged invalid, defective or insufficient in law if the same shall purport to satisfy or discharge the lien of any mortgage and shall have been duly executed and acknowledged by or on behalf of the mortgagee and recorded in the office of the recorder of deeds of the county of the Commonwealth wherein the real property described or referred to in such satisfaction is situate, but all such satisfactions shall be good, valid and effective in law for the purposes therein recited.

1961, July 26, P.L. 887, § 9.

Library References

Mortgages ⇨314, 315(1, 2).
C.J.S. Mortgages §§ 470, 472, 475, 480.
P.L.E. Mortgages § 191.

COMPULSORY ASSIGNMENT OF MORTGAGE**Library References**

P.L.E. Assignments § 1 et seq.

§ 731. Holders of mortgages may be required to assign the same in certain cases

Library References

P.L.E. Mortgages § 141.

Notes of Decisions

1. Construction and application in general

Where purchaser of property paid in full principal, interest and costs of mortgage on such property, purchaser, as subrogee, had right to have mortgage assigned to him or satisfied upon such payment. *U. S. Steel Homes Credit Corp. v. South Shore Development Corp.*, 419 A.2d 785, 277 Pa.Super. 308, Super.1980.

For purposes of determining whether purchaser of property, as subrogee to rights of mortgagee, has right to have mortgage on property assigned to him together with all rights and remedies which original mortgagee had against individual guarantors of mortgage, reason why personal guarantee was given to mortgagee was of no legal significance where, in fact, it was

given as additional security for payment of mortgage. *U. S. Steel Homes Credit Corp. v. South Shore Development Corp.*, 419 A.2d 785, 277 Pa.Super. 308, Super.1980.

Under circumstances outlined neither §§ 731-2, 733-4 nor 735-8 of this title conferred any statutory right upon wife to purchase the encumbrance in question. *Kline v. Evans*, 9 Pa. D. & C.2d 156, 27 Lehigh.L.J. 43 (1957).

A wife has no standing to purchase the encumbrance on her husband's home simply because she and her family are residing in it, either under this section and §§ 732, 733, 734 or sections 735 to 738. *Kline v. Evans*, 27 Lehigh.L.J. 43, 1957.

§ 733. Assignment on tender of money due

Library References

P.L.E. Mortgages § 141 et seq.

Notes of Decisions

1. Construction and application

Mere fact that mortgagor tendered to mortgagee a certain amount as payment in full of mortgage did not bind him as to amount due on the mortgage in foreclosure proceeding; his cooperation was as likely to have been based on a desire to settle the matter, as on knowledge of correctness of the figure. *Mellon Bank, N.A. v. Joseph*, 406 A.2d 1055, 267 Pa.Super. 307, Super.1979.

Where mortgage was "payable within six months from the date hereof," mortgagors had right to pay debt within the six months' period.

Ruppin v. Clifton Builders Supply Corp., 57 Lanc.L.R. 287 (1961).

2. Right to require assignment

Under circumstances outlined neither §§ 731-2, 733-4 nor 735-8 of this title conferred any statutory right upon wife to purchase the encumbrance in question. *Kline v. Evans*, 9 Pa. D. & C.2d 156, 27 Lehigh.L.J. 43 (1957).

A wife has no standing to purchase the encumbrance on her husband's home simply because she and her family are residing in it, either under this section and §§ 731, 732, 734, or §§ 735-738. *Kline v. Evans*, 27 Lehigh.L.J. 43, 1957.

§ 735. Compulsory assignment to mortgagor tendering payment after sale of land

Library References

P.L.E. Mortgages § 141 et seq.

Notes of Decisions

2. Right to assignment

Under circumstances outlined neither §§ 731-2, 733-4 nor 735-8 of this title conferred any statutory right upon wife to purchase the encumbrance in question. *Kline v. Evans*, 9 Pa. D. & C.2d 156, 27 Lehigh.L.J. 43 (1957).

A wife has no standing to purchase the encumbrance on her husband's home simply because she and her family are residing in it, either under §§ 731, 732, 733, 734, or §§ 735-738. *Kline v. Evans*, 27 Lehigh.L.J. 43, 1957.

PARTIAL RELEASE

§ 761. Mortgagee may release part of mortgaged premises and proceed against remainder**Library References**

P.L.E. Mortgages § 189.

Notes of Decisions**I. Construction and application in general**

This section providing that mortgagee may release part of mortgaged premises and proceed against the remainder does not apply where two portions of mortgaged premises become owned by different persons by reason of a sheriff's sale; in that case neither person has preference over

the other, and the portions so owned by them are, as between themselves, liable to the payment of the mortgage debt in proportion to their respective values at the time of the sheriff's sale. Home Unity Sav. and Loan Ass'n to Use of Kallish v. Balmos, 162 A.2d 244, 192 Pa.Super. 542, Super.1960.

FORECLOSURE OF MORTGAGE

Library References

P.L.E. Mortgages § 201 et seq.

§§ 791 to 793. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[7], effective June 27, 1978**Historical and Statutory Notes**

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 794. Repealed. 1978, April 28, P.L. 202, No. 53, §-2(a)[7], effective June 27, 1980**Historical and Statutory Notes**

This section was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa. C.S.A. § 1722(b) (relating to enforcement and effect of orders and process).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 795. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[7], effective June 27, 1978**Historical and Statutory Notes**

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§§ 796 to 798.1. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[381], effective June 27, 1980**Historical and Statutory Notes**

These sections were repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

Former § 798.1, derived from Act 1860, April 3, P.L. 630, § 4, as added by Act 1961, July 14, P.L. 608, § 1, related to first class counties.

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

Repealed

and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 799. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[340], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 800. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[684], effective June 27, 1980

Historical and Statutory Notes

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 801. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[684], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 802. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[684], effective June 27, 1980

Historical and Statutory Notes

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 803. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[1019], effective June 27, 1980

Historical and Statutory Notes

This section was repealed, effective June 27, 1978, insofar as inconsistent with general rules prescribed pursuant to 42 Pa.C.S.A. § 1722(b).

For disposition of repealed subject matter, see Disposition Table preceding Title 42, Judiciary

§ 804. Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a)[1109], effective June 27, 1978

Historical and Statutory Notes

For disposition of repealed subject matter, see and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 805. Recordors; release of mortgage noted on record; exception

Hereafter it shall be the duty of the recordors of deeds of the several counties to enter upon the margin of the record of any mortgage the book and page wherein any release of such mortgage, or part thereof, is recorded, together with the date of such release, unless the recorder of deeds microfilms the mortgages in which case the release shall be recorded without a marginal notation.

As amended 1986, Feb. 21, P.L. 40, No. 13, § 1, imd. effective.

CHATTEL MORTGAGES

Library References

P.L.E. Secured Transactions § 11.

MORTGAGE OF LEASEHOLD ESTATES

§ 831. Mortgages of coal lands and mining rights in Schuylkill county

Historical and Statutory Notes

1988 Legislation volume under this section, was repealed by Act 1988, Dec. 21, P.L. 1444, No. 177, § 302, effective Oct. 1, 1989.

Act 1862, March 21, P.L. 149, No. 148, referred to in the Historical Note in the main

GENERAL PROVISIONS

§ 941.1. Definition

As used in this act—

(1) "Chattel Mortgage Act of 1945" shall mean the act of June first, one thousand nine hundred forty-five (Pamphlet Laws 1358),¹ entitled "An act relating to chattel mortgages on any chattel or chattels of any kind or description, including, but not limited to, livestock, poultry, farm machinery, farm equipment and crops, grown, growing or to be grown; designating the operation and effect of the lien of such mortgages; providing for the filing, indexing and docketing of such mortgages and related instruments in prothonotaries' offices; and prescribing prothonotaries' fees; providing for the filing in Pennsylvania of similar lien instruments originally filed or recorded in other states; regulating the assignment, release, satisfaction and extension of the lien of such mortgages; prescribing methods of foreclosure; defining defaults and violations; and fixing penalties", as amended from time to time while the act was in effect.

(2) "Chattel Mortgage" shall mean a mortgage upon any chattel or chattels of any kind or description which was executed and filed on or after June first, one thousand nine hundred forty-five, and prior to July first, one thousand nine hundred fifty-four, in accordance with the Chattel Mortgage Act of 1945.

1956, Jan. 24, P.L. (1955) 931, § 1.

¹ Sections 940.1-940.17 (repealed) of this title.

Historical and Statutory Notes

Title of Act:

An Act relating to chattel mortgages executed and filed prior to July first, one thousand nine hundred fifty-four, regulating the assignment, release, satisfaction and extension of the lien of mortgages, and the filing, indexing and docketing thereof in prothonotaries' offices; prescribing

methods of foreclosure; defining defaults and violations; prescribing prothonotaries' fees; and fixing penalties. 1956, Jan. 24, P.L. (1955) 931, No. 288.

Section 14 of the act provided that the act should take effect immediately.

Cross References

Secured transactions and chattel paper in general, see 13 Pa.C.S.A. § 9101 et seq.

Library References

Chattel Mortgages ⇄ 1, 3.

C.J.S. Chattel Mortgages §§ 1, 2, 22.

P.L.E. Secured Transactions §§ 11, 24, 25, 61 et seq.

§ 941.2. Indices

The prothonotary shall continue to maintain the books, known as the "Chattel Mortgage Book" and the "Chattel Mortgage Index", which he maintained pursuant to the Chattel Mortgage Act of 1945,¹ in which he shall docket and index each instrument presented to him for filing pursuant to this act.

1956, Jan. 24, P.L. (1955) 931, § 2.

¹ Sections 940.1-940.17 (repealed) of this title.

Library References

Chattel Mortgages ⇨87.

C.J.S. Chattel Mortgages § 151 et seq.

P.L.E. Secured Transactions §§ 11, 24, 25, 61 et seq.

§ 941.3. Filing related instruments

Any instrument affecting the lien of a chattel mortgage or its ownership may be filed in each office in which the chattel mortgage is filed, and, from the date of filing thereof, each such instrument shall be good and valid as against subsequent purchasers, subsequent mortgagees or other subsequent lienors, subsequent encumbrancers, and holders of subsequent security interests with or without notice thereof, and the fact and date of filing of each instrument shall be noted by the prothonotary on the margin of the page on which the chattel mortgage is docketed.

1956, Jan. 24, P.L. (1955) 931, § 3.

Library References

Chattel Mortgages ⇨85.

C.J.S. Chattel Mortgages §§ 132, 150.

P.L.E. Secured Transactions §§ 11, 24, 25, 61 et seq.

§ 941.4. Property moved to another county

If any of the property covered by a chattel mortgage is removed, with or without the written consent of the mortgagee, from the county in which it was located at the time of execution of the mortgage, or from the county in which the mortgage was filed, a true copy of the mortgage may be filed in the office of the prothonotary in the county to which the property is removed.

1956, Jan. 24, P.L. (1955) 931, § 4.

Library References

Chattel Mortgages ⇨87.

C.J.S. Chattel Mortgages § 151 et seq.

P.L.E. Secured Transactions §§ 11, 24, 25, 61 et seq.

§ 941.5. Assignments

Any chattel mortgage may be assigned by an instrument in writing, signed by the mortgagee or assignee, and setting forth the amount of the debt as of the assignment, and upon presentation of the assignment to the prothonotary, the prothonotary shall file it and note on the margin of the page in which the chattel mortgage is docketed the fact of the assignment, the date of the notation, the name of the assignor, the name of the assignee, the address of each, the date of the assignment, and the amount of the debt as of the date of the assignment and the assignment shall, except as to the parties thereto, take effect and be valid only from the time of the marginal notation as herein provided. Any chattel mortgage may be assigned by an assignment stating the amount of the debt on the date of the assignment and executed by the mortgagee or assignee on the margin of the page where the chattel mortgage is docketed, which assignment shall be attested by the prothonotary.

1956, Jan. 24, P.L. (1955) 931, § 5.

Library References

Chattel Mortgages ⇨203 et seq.
C.J.S. Chattel Mortgages § 312.

P.L.E. Assignments § 57.
P.L.E. Secured Transactions § 88.

§ 941.6. Satisfaction

Any chattel mortgage may be satisfied by an instrument, in writing, signed by the mortgagee or assignee, and, upon presentation of the instrument to the prothonotary, the prothonotary shall file it and note the fact of the satisfaction and the date thereof on the margin of the page of the book where the chattel mortgage is docketed, and, when so noted, the satisfaction shall fully and effectually release the lien of such mortgage. Any chattel mortgage may be satisfied by the mortgagee or assignee on the margin of the page where such chattel mortgage is docketed, which satisfaction shall be attested by the prothonotary. Each satisfaction of a chattel mortgage lien shall be noted by the prothonotary on the line of the page on which the chattel mortgage is indexed. 1956, Jan. 24, P.L. (1955) 931, § 6.

Library References

Chattel Mortgages ⇨246.
C.J.S. Chattel Mortgages § 349.
P.L.E. Secured Transactions § 92.

§ 941.7. Extension

A chattel mortgage shall remain a lien on the property mortgaged as between the parties thereto until paid, but as to third parties shall not remain a lien for a longer period than five years from the date it was last filed or extended pursuant to the Chattel Mortgage Act of 1945¹ or this act, unless the lien thereof is extended by filing, prior to the expiration of the lien, with the prothonotary, an affidavit of the mortgagee or his assignee stating the amount then secured by the lien, in which case the said mortgage shall remain a lien for an additional period of five years from the date of the filing of the affidavit. The lien of any mortgage may be further extended with like effect by the filing of successive affidavits. The prothonotary shall note each extension of a chattel mortgage lien and date of filing thereof on the margin of the page of the book where the chattel mortgage is docketed. The prothonotary shall also index each extension in the index of financing statements, maintained by him pursuant to the Uniform Commercial Code of April sixth, one thousand nine hundred fifty-three (Pamphlet Laws 3),² showing the mortgagor as the debtor and the mortgagee or his assignee as the secured party and noting in the index, in place of the file number and addresses of such parties, the book and page number of the book where the chattel mortgage is docketed. 1956, Jan. 24, P.L. (1955) 931, § 7.

¹ Sections 940.1-940.17 (repealed) of this title.

² Section 1-101 et seq. of Title 12A, Uniform Commercial Code.

Library References

Chattel Mortgages ⇨133 et seq.
C.J.S. Chattel Mortgages § 289.
P.L.E. Secured Transactions § 26.

§ 941.8. Remedies

(a) Upon default in any of the terms and covenants of any chattel mortgage, the mortgagee, assignee or duly authorized attorney or agent of such mortgagee or assignee shall have the right, either by process of law, by writ of replevin, or otherwise, or without process of law, immediately to take possession of the mortgaged property and to do all things necessary to preserve the same, and any expense incurred in conjunction therewith shall be included in and secured by the lien of said chattel mortgage, and this right shall be in addition to any and all other rights inuring to the benefit of the mortgagee or assignee.

(b) In the event of the repossession of the mortgaged chattel, in accordance with the provisions of this section, the mortgagee may sell the chattel, at public or private sale, after giving a written notice of at least ten days thereof to the mortgagor by mailing same to him at his last known address. Any surplus realized in excess of debt and costs shall be paid over to the mortgagor and any deficit may be collected from the mortgagor under the provisions of section nine hereof.

(c) The mortgagor or his assignee at any time prior to the sale of the mortgaged property shall have the right to redeem and to repossess the mortgaged property, either by process of law, by writ of replevin, or otherwise, or without process of law, upon making payment to the mortgagee or his assignee of the indebtedness secured by the chattel mortgage, together with interest thereon, and other charges and amounts payable under the terms of the chattel mortgage or the bond or note secured by the same.

(d) A mortgagee may, after default, replevin any goods subject to a chattel mortgage and in excess of one hundred dollars (\$100) in value in the hands of a third person who took title to the goods with actual or constructive notice of the mortgage; or, if the goods have been consumed or are not in the possession of the third person, the mortgagee may recover the value of the goods in an action in trespass for conversion. 1956, Jan. 24, P.L. (1955) 931, § 8.

Library References

Chattel Mortgages ⇨249 et seq.
C.J.S. Chattel Mortgages § 355 et seq.

P.L.E. Secured Transactions §§ 121 et seq.,
135.

Notes of Decisions

Construction and application 1

1. Construction and application

The Chattel Mortgage Act of 1945, repealed, was inapplicable to the landlord's right of distraint. The act was in derogation of the common

law, and the settled policy of the state, and was to be strictly construed. A landlord who had distrained for rent was not a subsequent lienor and encumbrancer, within the act, so as to subordinate his right of distraint to the chattel mortgagee. *Herman v. Osgood*, 103 Pitts.L.J. 231 (1955).

§ 941.9. Foreclosure

Upon default by the mortgagor in the payment of the mortgage debt, either as to principal or interest, or upon default in the performance of any covenant contained in the chattel mortgage or bond or note, the chattel mortgage may be foreclosed by any of the methods authorized by law for the foreclosure of a mortgage, including the entry of judgment on the bond, or note secured by the chattel mortgage. The lien of any levy which may be made upon the mortgaged property by virtue of any execution based upon a judgment entered upon the bond or note shall relate back ¹ to the date of the filing of the chattel mortgage. In foreclosure proceedings, the mortgaged chattels may be sold in the same manner as authorized by the laws of this Commonwealth in the case of personal property sold under execution.

1956, Jan. 24, P.L. (1955) 931, § 9.

¹ "to" in original.

Library References

Chattel Mortgages ⇨249 et seq.
C.J.S. Chattel Mortgages § 355 et seq.

P.L.E. Secured Transactions §§ 121, 122, 153,
154, 156.

§ 941.10. Penalties

Any person who, without the written consent of the mortgagee or his assignee, shall wilfully sell any property mortgaged by him or his predecessor in title in conformity with the provisions of the Chattel Mortgage Act of 1945,¹ either before or after the debt is due and before the debt is paid, or shall wilfully injure, destroy, conceal or, without

notice to the mortgagee, abandon or shall wilfully deface any marks identifying any mortgaged property, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to undergo imprisonment not exceeding one year, or to pay a fine of double the value of the personal property so sold, injured, destroyed, defaced, concealed or abandoned, or either, or both.

1956, Jan. 24, P.L. (1955) 931, § 10.

¹ Sections 940.1-940.17 (repealed) of this title.

Library References

Chattel Mortgages ⇨216 et seq.
C.J.S. Chattel Mortgages § 258.
P.L.E. Secured Transactions § 84 et seq.

§ 941.11. Prothonotary's fees

The prothonotary shall be entitled to charge and receive the following fees:

(1) For filing, indexing and noting each assignment or extension of a chattel mortgage, two dollars (\$2.00).

(2) For filing and noting each partial release, satisfaction, or subordination by written instrument, seventy-five cents (75¢).

(3) For attesting the entry of a marginal satisfaction and noting the satisfaction on the index, seventy-five cents (75¢).

(4) For indexing and attesting the entry of a marginal assignment, one dollar (\$1.00).

(5) For a certified copy of a chattel mortgage, the sum of fifty cents (50¢), if a copy of the instrument is furnished at the time it is filed.

1956, Jan. 24, P.L. (1955) 931, § 11.

Library References

Registers of Deeds ⇨3.
C.J.S. Registers of Deeds §§ 13 to 15.

§ 941.12. Extension affidavits

In the case of a chattel mortgage filed or last extended during the period beginning July first, one thousand nine hundred forty-nine, and ending five years prior to the effective date of this act, if an affidavit of the mortgagee or his assignee has been filed with the prothonotary on or after July 1, 1954, and prior to the effective date of this act in the manner provided by the Chattel Mortgage Act,¹ or if an affidavit is filed within sixty days after the effective date of this act in the manner provided by section seven hereof stating the amount secured by a chattel mortgage at the time of the affidavit, the mortgage shall be a lien on the mortgaged property which shall be good and valid against and superior to all rights of all persons who, after the effective date of this act, become purchasers, mortgagees, lienors, or encumbrancers of and all persons who, after the effective date of this act, deal with the mortgaged property or acquire a security interest therein, and shall remain a lien on the mortgaged property as to them for a period of five years from the date of filing.

1956, Jan. 24, P.L. (1955) 931, § 12.

¹ Sections 940.1 to 940.17 (repealed) of this title.

Library References

Chattel Mortgages ⇨133 et seq.
C.J.S. Chattel Mortgages § 289.
P.L.E. Secured Transactions § 26.

§ 941.13. Construction

(a) This act shall not be construed to adversely affect or impair the lien of or rights under any existing chattel mortgage, nor shall this act be construed to repeal or affect any act relating to chattel mortgages not herein expressly repealed.

(b) The provisions of this act shall be liberally construed to hold valid chattel mortgages made in good faith to secure bona fide loans and which substantially comply with the provisions of this act.

1956, Jan. 24, P.L. (1955) 931, § 13.

Library References

Chattel Mortgages § 133 et seq.
C.J.S. Chattel Mortgages § 289.
P.L.E. Secured Transactions §§ 11, 101 et seq.

DEFEASIBLE DEEDS

§ 951. Defeasances; requisites

Notes of Decisions

2. Construction and application in general

Lease which existed between nonprofit health care and medical teaching facility and Pennsylvania higher education facilities authority, and which provided for defeasance of property transferred to public corporation upon repayment of loan, rendered deed a mortgage for purposes of determining whether facility was entitled to refund of realty transfer tax paid by it under protest. *Hahnemann Medical College and Hospital of Philadelphia v. Com.*, 416 A.2d 604, 52 Pa. Cmwlth. 558, Cmwlth.1980.

5. Requisites and sufficiency of defeasance in general

Under Pennsylvania law, a written defeasance to a deed to realty is a mortgage if it is signed and delivered by the grantee in the deed to the grantor. In re *Evergreen Memorial Park Ass'n*, C.A.3 (Pa.)1962, 308 F.2d 65.

A deed absolute on its face may be transformed into a mortgage by a defeasance which is in writing, signed and delivered by grantee in deed to grantor. *Hahnemann Medical College and Hospital of Philadelphia v. Com.*, 416 A.2d 604, 52 Pa.Cmwlth. 558, Cmwlth.1980.

CHAPTER 3

COMMISSIONERS OF DEEDS

Section

981, 982. Repealed.

§ 973. Oath of office

District Justices

Section 3(d) of Act 1978, April 28, P.L. 202, No. 53 (the Judiciary Act Repealer Act), [42 P.S. § 20003(d)], provides:

"An express reference in any statute or other law to a justice of the peace or to the office of justice of the peace shall hereafter be deemed a reference to a district justice or to the office of district justice. Any person appointed or elected to judicial office in a magisterial district shall be known as and hereafter shall be commissioned as the 'district justice' in and for the appropriate magisterial district."

§§ 981, 982. Repealed. 1978, Oct. 4, P.L. 909, No. 173, § 9, effective in 60 days

Historical and Statutory Notes

Prior to repeal, § 981 was amended by Act
1976, Feb. 10, P.L. 8, No. 5, § 1.

TITLE 21 APPENDIX

**PURDON'S
PENNSYLVANIA CONSOLIDATED
STATUTES ANNOTATED**

TITLE 21

(RESERVED)

Acts 1970, No. 230, approved November 25, 1970, as amended, establishes the structure of the Pennsylvania Consolidated Statutes by listing the titles thereof which will be implemented from time to time in the future. For text of the Act including the list of titles, see Title 1, Pa.C.S.A.

PURDON'S PENNSYLVANIA STATUTES ANNOTATED

TITLE 22

DETECTIVES

Acts 1970, No. 230, approved November 25, 1970, as amended, establishes the structure of the Pennsylvania Consolidated Statutes by listing the titles thereof which will be implemented from time to time in the future. For text of the Act including the list of titles, see Title 1, Pa.C.S.A.

Pennsylvania Consolidated Statutes—Title 22

The text of Title 22, Detectives and Private Police, of the Pennsylvania Consolidated Statutes, enacted by Acts 1972, No. 271, § 1, approved November 15, 1972, is set out as an appendix following this title for convenient reference.

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

PRIVATE DETECTIVE ACT OF 1953		Section
Section		42. Legislative findings and purpose.
12. Definitions.		43. Definitions.
13. Licenses.		44. Education and training program.
14. Application for licenses.		45. Power and duties of commissioner.
16. Issuance of licenses; fees; bonds.		46. Certificate of qualification.
21. Renewal of licenses.		47. Certification and fee.
23. Employes.		48. Good standing.
25. Application of act.		48.1. Retired police officer.
26. Unlawful acts.		49. Penalties.
26.1. Penalty for unlicensed acts.		50. Prohibited act.
LETHAL WEAPONS TRAINING		50.1. Active police officers.
41. Short title.		

For Title 22, Consolidated Statutes, see Appendix following this Title

PRIVATE DETECTIVE ACT OF 1953

§ 11. Short title

Notes of Decisions

In general 2

2. In general

Pennsylvania Private Detective Act does not expressly preclude private parties from allocating risk of loss between themselves; thus, portion of

contract between security agent and client which limited liability of security company to \$50,000 for damage to client's property caused by intentional acts of agency's employees was not void as against public policy. *Knouse Foods Co-op., Inc. v. Burns Intern. Knouse Foods Co-op., Inc. v. Burns Intern. Sec. Services, Inc.*, E.D.Pa.1981, 519 F.Supp. 867.

§ 12. Definitions

[See main volume for (a)]

(b) "Private detective business" shall also mean and include, separately or collectively, the making, for hire, reward, or for any consideration whatsoever, of any investigation or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire, or reward:

(1) Crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America.

(2) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character, of any person, group of persons, association, organization, society, other groups of persons, partnership, or corporation.

(3) The credibility of witnesses or other persons.

(4) The whereabouts of missing persons.

(5) The location or recovery of lost or stolen property.

(6) The causes and origin of, or responsibility for, fires, or libels, or losses, or accidents, or damage, or injuries, to real or personal property.

(7) The affiliation, connection, or relation, of any person, partnership, or corporation, with any union, organization, society, or association, or with any official member or representative thereof.

(8) With reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike.

(9) With reference to the conduct, honesty, efficiency, loyalty, or activities, of employes, agents, contractors and subcontractors.

(10) The securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases.

(11) The furnishing, for hire or reward, of watchmen, or guards, or private patrolmen, or other persons, to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents, papers, and articles of value, or to procure the return thereof, or the performing of the service of such guard or other person, or any of said purposes.

The foregoing shall not be deemed to include persons engaged in the business of investigators for or adjusters for insurance companies, nor persons in the exclusive employment of common carriers subject to regulation by the interstate commerce commission or the Public Utility Commission of the Commonwealth of Pennsylvania, nor any telephone, telegraph or other telecommunications company subject to regulation by the Federal Communications Commission or the Public Utility Commission of the Commonwealth of Pennsylvania or an employe of any such company while performing

For Title 22, Consolidated Statutes, see Appendix following this Title

any investigatory activities engaged in by his employer, or investigators in the employment of credit bureaus.

As amended 1987, Dec. 3, P.L. 405, No. 83, § 1, effective in 60 days.

[See main volume for (c) and (d)]

(e) The term "patrol agency" shall mean and include any agency and/or individuals (including therein security guards, uniformed or nonuniformed) employed full time or part time, on a temporary or permanent basis, who, for any consideration whatsoever, patrols, guards, protects, monitors, regulates, secures or watches over persons and/or property, either real or personal. This term specifically includes any person employed in any capacity, for any length of time, to protect property, either real or personal, against labor strikes or against any person or persons who have become a party to any labor strike.

Added 1988, May 26, P.L. 405, No. 68, § 1, effective in 60 days.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment, in the second paragraph of cl. (11) in the definition of "private detective business", inserted the provision excepting tele-

phone, telegraph, or other telecommunications companies.

1988 Legislation

The 1988 amendment added subsec. (e).

Notes of Decisions

Construction and application 1

1. Construction and application

Fact that applicant for private detective license, who was otherwise eminently qualified, did not have power to arrest or to initiate enforcement proceedings in his prior employment as detective in bureau of investigations of department of auditor general did not disqualify him from obtaining private detective license. In re Harding, 369 A.2d 871, 246 Pa.Super. 180, Super.1977.

As a matter of public policy, it is incompatible for one having authority of a constable to carry

on business of private detective, and detective's license was property suspended so long as holder should remain a constable. In re Stanley, 201 A.2d 287, 204 Pa.Super. 29, Super.1964.

Investigations of validity of personal injury claim is in the best interest of society, and the following of a subject during his or her daily activities and recording on film movements and whereabouts of a subject is consonant with wording of the Private Detective Act and social purpose of exposing fabricated claims, and such activity does not give rise to a cause of action for invasion of privacy. Forster v. Manchester, 189 A.2d 147, 410 Pa. 192, Sup.1963.

§ 13. Licenses

[See main volume for (a)]

(b) No person, partnership, association, or corporation, shall engage in the business of furnishing or supplying for fee, hire, or any consideration or reward, information as to the personal character or activities of any person, partnership, corporation, society, or association, or any person or group of persons, or as to the character or kind of the business and occupation of any person, partnership, association, or corporation, or own or conduct or maintain a bureau or agency for the above mentioned purposes, except exclusively as to the financial rating, standing, and credit responsibility of persons, partnerships, associations, or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit, or of claimants under insurance policies: Provided, That the business so exempted does not embrace other activities described in subsections (a), (b) and (c) of section two of this act,¹ without having first obtained, as hereafter provided, a license so to do, for each such bureau or agency, and for each and every subagency, office and branch office to be owned, conducted, managed, or maintained by such persons, partnership, association, or corporation, for the conduct of such business.

(c) Nothing contained in this section shall be deemed to include the business of investigators for or adjusters for insurance companies, nor persons in the exclusive employment of common carriers subject to regulation by the interstate commerce commission or the Public Utility Commission of the Commonwealth of Pennsylvania, nor

For Title 22, Consolidated Statutes, see Appendix following this Title

any telephone, telegraph or other telecommunications company subject to regulation by the Federal Communications Commission or the Public Utility Commission of the Commonwealth of Pennsylvania or an employe of any such company while performing any investigatory activities engaged in by his employer, or investigators in the employment of credit bureaus.

As amended 1987, Dec. 3, P.L. 405, No. 83, § 1, effective in 60 days.

¹ Section 12 of this title.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment redesignated the former second paragraph of subsec. (b) as subsec. (c)

and, in that paragraph, inserted the provision excepting telephone, telegraph, or other telecommunications companies.

Notes of Decisions

1. Construction and application

All that is required of a corporation to be eligible for a private detective's license is for one member of the corporation to satisfy the statutory requirements for a private detective. In re Private Detective License of Keibler Detective Agency, Inc., 420 A.2d 1331, 279 Pa.Super. 276, Super.1980.

The Private Detective Act does not contain restriction against changes in ownership of stock of a detective agency corporation. In re Private Detective License of Keibler Detective Agency, Inc., 420 A.2d 1331, 279 Pa.Super. 276, Super.1980.

It would not be a deceptive practice for corporate detective agency to keep its name after its founder, after whom the corporation was named, had sold his interest, and possibility that some potential clients of the agency might believe that the found was still president of the corporation was irrelevant. In re Private Detective License of Keibler Detective Agency, Inc., 420 A.2d 1331, 279 Pa.Super. 276, Super.1980.

The Private Detective Act does not preclude holding company from owning stock in a private detective corporation. In re Private Detective License of Keibler Detective Agency, Inc., 420 A.2d 1331, 279 Pa.Super. 276, Super.1980.

As instigator of proceedings to revoke license to carry on private detective business, the Commonwealth bore burden of proving licensee's lack of requisite qualifications by preponderance of evidence. In re Sentry Sec., Inc., 393 A.2d 880, 259 Pa.Super. 385, Super.1978, affirmed 417 A.2d 190, 490 Pa. 578.

Fact that applicant for private detective license, who was otherwise eminently qualified, did not have power to arrest or to initiate enforcement proceedings in his prior employment as detective in bureau of investigations of department of auditor general did not disqualify him from obtaining private detective license. In re Harding, 369 A.2d 871, 246 Pa.Super. 180, Super.1977.

§ 14. Application for licenses

Any person, partnership, association, or corporation, intending to conduct a private detective business, the business of investigator, or the business of watch, guard or patrol agency, or the business of a detective agency, and any person, partnership, association, or corporation, intending to conduct the business of furnishing or supplying information as to the personal character of any person, or as to the character or kind of the business and occupation of any person, partnership, corporation, society, or association, or any person or group of persons, or intending to own, conduct, manage or maintain a bureau or agency for the above mentioned purposes, or, while engaged in other lawful business activities, also intending to engage in any one or more of the activities set forth in subsections (a), (b) and (c) of section two of this act¹, except exclusively as to the financial rating, standing and credit responsibility of persons, partnerships, associations, or corporations, shall, for each such bureau or agency, and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such person, partnership, association or corporation for the conduct of such business, file, in the office of the clerk of the court of quarter sessions of the county wherein the principal office of such business is located, a written application, duly signed and verified, as follows:

(a) If the applicant is a person, the application shall be signed and verified by such person, and if the applicant is a partnership or association, the application shall be signed and verified by each individual composing or intending to compose such partnership or association. The application shall state the full name, age, residence, present and previous occupations, of each person or individual so signing the same, that he is a

For Title 22, Consolidated Statutes, see Appendix following this Title

citizen of the United States; and shall also specify the name of the city, borough, township, or incorporated town, stating the street and number if the premises have a street and number, and otherwise such apt description as will reasonably indicate the location thereof, where is to be located the principal place of business, and the bureau, agency, sub-agency, office or branch office for which the license is desired, and such further facts as may be required by the court of quarter sessions, to show the good character, competency and integrity of each person or individual so signing such application. Each person or individual signing such application shall, together with such application, submit to the court of quarter sessions his photograph, in duplicate, in passport size, and also fingerprints of his two hands, recorded in such manner as may be specified by the court of quarter sessions. Before approving such application, it shall be the duty of the court of quarter sessions to compare such fingerprints with fingerprints of criminals now or hereafter filed in the records of the Pennsylvania State Police. Every such applicant shall establish, to the satisfaction of the court of quarter sessions and by at least two duly acknowledged certificates, that such applicant, if he be a person, or, in the case of a partnership, association, or corporation, at least one member of such partnership, association, or corporation, has been regularly employed as a detective, or shall have been a member of the United States government investigative service, a sheriff, a member of the Pennsylvania State Police, or a member of a city police department of a rank or grade higher than that of patrolman, for a period of not less than three years. Such application shall be approved as to each person or individual so signing the same by not less than five reputable citizens of the community in which such applicant resides or transacts business, or in which it is proposed to own, conduct, manage or maintain the bureau, agency, sub-agency, office or branch office for which the license is desired, each of whom shall certify that he has personally known the said person or individual for a period of at least five years prior to the filing of such application, that he has read such application and believes each of the statements made therein to be true, that such person is honest, of good character, and competent, and not related or connected to the person so certifying by blood or marriage. The certificate of approval shall be signed by such reputable citizens and duly verified and acknowledged by them before an officer authorized to take oaths and acknowledgment of deeds.

As amended 1957, April 30, P.L. 98, § 1.

[See main volume for (b)]

1 Section 12(a), (b), (c) of this title.

Historical and Statutory Notes

Section 2 of the amendatory act of 1957, affecting subsection (a), provided that the act should take effect immediately.

Library References

Detectives ⇨3.
C.J.S. Detectives § 3.

Notes of Decisions

Construction and application 1
Public officials 2
Regularly employed as a detective 3

1. Construction and application

Officer of corporate applicant for private detective license who had been a township police officer and participated in investigations involving over 800 criminal arrests, including both major crimes and juvenile and summary offenses, who had interviewed witnesses and suspects, who had obtained physical evidence, who had prepared complaints, and who had testified in courts

had performed the requisite work as a detective. In re Sentry Sec., Inc., 417 A.2d 190, 490 Pa. 578, Sup.1980.

Fact that officer of corporation which was seeking private detective license had been employed as a patrolman for most of his service with the township police department which he offered in support of the requirement that an officer of a corporate applicant have been regularly employed as a detective for not less than three years did not preclude grant of license. In re Sentry Sec., Inc., 417 A.2d 190, 490 Pa. 578, Sup.1980.

In view of the great potential for conflict of interest, applicants who were currently employed

For Title 22, Consolidated Statutes, see Appendix following this Title

Note 1

by the court of common pleas as probation officers could not be licensed as private detectives. *Com. v. Gregg*, 396 A.2d 797, 262 Pa.Super. 364, Super.1979.

Private detectives are not public officers and are not entrusted with any of the special authority held by various public officers. *Com. v. Gregg*, 396 A.2d 797, 262 Pa.Super. 364, Super.1979.

Lay persons, including private detectives, have no police powers such as those statutorily granted to probation officers. *Com. v. Gregg*, 396 A.2d 797, 262 Pa.Super. 364, Super.1979.

Corporation's president was qualified to be private detective on basis that he had been regularly employed as a detective for period of not less than three years, as required by this section where, during his six years as patrol officer and officer in charge of township police department, he had participated in over 800 criminal investigations and performed full gamut of investigative duties, including interviewing witnesses, interrogating suspects, contacting informants, collecting evidence and preparing detailed reports of his investigations for purposes of possible prosecution. In *re Sentry Sec., Inc.*, 393 A.2d 880, 259 Pa.Super. 385, Super.1978, affirmed 417 A.2d 190, 490 Pa. 578.

Because enumerated qualifications of this section for private detective license are in the disjunctive, compliance with any provision satisfies statutory mandate. In *re Sentry Sec., Inc.*, 393 A.2d 880, 259 Pa.Super. 385, Super.1978, affirmed 417 A.2d 190, 490 Pa. 578.

Where a member of a corporation seeking a private detective license had been employed for five years as a county parole officer and as such employe had performed extensive investigative work concerning crimes and criminals, including credibility of witnesses, whereabouts of missing persons, location of stolen property and the collection of evidence, and all of the personnel of petitioner are competent persons of good character and reputation, the court granted the license in spite of the provisions of the Private Detective Act of 1953. In *re Applications of Nichols & Clark, Inc.*, 2 Pa. D. & C.3d 385 (1977).

A private detective's license should not be issued to an applicant partnership where one of the partners is actively engaged in police work, since he would have access to records not ordinarily available to a private detective and could exert influence in opening various doors leading to certain information not normally available to a private detective. *License of Robinson*, 75 Pa. D. & C.2d 476 (1976).

Working for a detective agency on a call basis about 300 hours per year patrolling football and other games, discussing cases with head of agency, participating in nine investigations and being entrusted with location of needed information, was not sufficient experience to satisfy the act's requirement that the applicant for license have three years' prior regular employment as a detec-

tive. *Application of Gardner*, 6 Pa. D. & C.2d 742, 26 LeH.L.J. 524 (1956).

An applicant for a private detective's license, who is otherwise qualified, will nevertheless be denied a license where he presented evidence of many years experience as an insurance adjuster to meet the qualification of the Private Detective Act. *Application of Lowe*, 42 Wash.Co. 138, 27 Pa. D. & C.2d 259 (1962).

An applicant for a Private Detective License must satisfy the experience requirements set forth in this Act and court can not accept equivalent experience as a substitute since the legislature failed to provide the same. *Application of Rode*, 77 York 117, 32 Pa. D. & C.2d 33 (1963).

2. Public officials

A person may not be granted a private detective license if simultaneously he would be employed as a public official with police powers. In *re Kuma K-9 Sec., Inc.*, 506 A.2d 445, 351 Pa.Super. 471, Super.1986.

Police captain's association with corporation where he was employed as a consultant and continued to draw a salary created at least the appearance of a conflict of interest and a potential source of abuse and required, as a condition to retention of corporation's license to operate a private detective agency, that police captain sever all times with corporation and resign as a consultant. In *re Kuma K-9 Sec., Inc.*, 506 A.2d 445, 351 Pa.Super. 471, Super.1986.

Decision that it is a conflict of interest for a high ranking police official to maintain the position as an officer, owner or employee of a detective agency will not preclude a detective agency from hiring off-duty policemen to serve as security guards and other such positions wherein the functions of the job do not create a potential for conflict or abuse of the individual's police position. In *re Kuma K-9 Sec., Inc.*, 506 A.2d 445, 351 Pa.Super. 471, Super.1986.

3. Regularly employed as a detective

Phrase "regularly employed as a detective," within statute [22 P.S. § 14(a)] requiring that at least one member of corporation applying for a license to operate a private detective agency be regularly employed as a detective for not less than three years, is not limited to a person employed by a law enforcement agency, but extends to a person with experience as a private detective. In *re Kuma K-9 Sec., Inc.*, 506 A.2d 445, 351 Pa.Super. 471, Super.1986.

Individual who had been associated with private detective agency operated by corporation for 11 years, working an average of 30 to 40 hours a week, and who had taken part in hundreds of investigations involving nine of 11 specified activities was a person "regularly employed as a detective" within statute [22 P.S. § 14(a)] requiring that at least one member of licensed corporation be regularly employed as a detective for not less than three years. In *re Kuma K-9 Sec., Inc.*, 506 A.2d 445, 351 Pa.Super. 471, Super.1986.

For Title 22, Consolidated Statutes, see Appendix following this Title

§ 15. Enforcement of act; investigations

Notes of Decisions

In general 1

1. In general

Enforcement of provisions of Private Detective Act requires issuance of a subpoena by a district attorney rather than denial or revocation of a license. *Com. v. Aljia Dumas Private Detective Agency, Inc.*, 369 A.2d 850, 246 Pa.Super. 140, Super.1977.

Failure to produce documents pursuant to a subpoena issued by a district attorney in course of an investigation into alleged violations of Private Detective Act, while perhaps a basis for a fine of \$500 or a term of imprisonment, is not a basis for a license denial or a revocation. *Com.*

v. Aljia Dumas Private Detective Agency, Inc., 369 A.2d 850, 246 Pa.Super. 140, Super.1977.

Failure of detective agency to submit monthly reports of its hiring and firing as requested by district attorney's office, while perhaps a basis for a fine of \$500 or a term of imprisonment under Private Detective Act, was not a basis for denial of agency's application for reissuance of its license to do business. *Com. v. Aljia Dumas Private Detective Agency, Inc.*, 369 A.2d 850, 246 Pa.Super. 140, Super.1977.

District Attorney of Philadelphia had no power to issue subpoena to Philadelphia magistrate directing magistrate to appear in District Attorney's office and bring official magisterial records. *Com. ex rel. Specter v. Freed*, 228 A.2d 382, 424 Pa. 508, Sup.1967.

§ 16. Issuance of licenses; fees; bonds

[See main volume for (a)]

(b) Except as hereinafter provided in this subsection, no such license shall be issued to any person who has been convicted in this State or any other state or territory of a felony, or any of the following offenses: (1) illegally using, carrying or possessing a pistol or other dangerous weapon; (2) making or possessing burglar's instruments; (3) buying or receiving stolen property; (4) unlawful entry of a building; (5) aiding escape from prison; (6) unlawfully possessing or distributing habit forming narcotic drugs; (7) picking pockets or attempting to do so; (8) soliciting any person to commit sodomy or other lewdness; (9) recklessly endangering another person; (10) making terroristic threats; or (11) committing simple assault.

Except as hereinafter in this subsection provided, no license shall be issued to any person whose license has been previously revoked by the court of common pleas or the authorities of any other state or territory because of conviction of any of the crimes or offenses specified in this section. The provisions of this subsection shall not prevent the issuance of a license to any person who, subsequent to his conviction, shall have received executive pardon therefor removing this disability.

As amended 1988, May 26, P.L. 405, No. 68, § 2, effective in 60 days.

[See main volume for (c) and (d)]

Historical and Statutory Notes

1988 Legislation

The 1988 amendment, in the first paragraph of subsec. (b), added cls. (9) to (11), and in the

second paragraph substituted "court of common pleas" for "court of quarter sessions".

Notes of Decisions

Incompatible offices 12

Liability of licensee 4.5

Right to license 10

Suspension of license 11

4. Grounds for refusal to license

Prohibition of this act against issuance of license to any person who has been convicted in this state or any other state or territory of a felony applied to individuals who were convicted

of felonies in federal courts. *Petition of McMillan*, 465 A.2d 1052, 319 Pa.Super. 59, Super.1983.

Enforcement of provisions of Private Detective Act requires issuance of a subpoena by a district attorney rather than denial or revocation of a license. *Com. v. Aljia Dumas Private Detective Agency, Inc.*, 369 A.2d 850, 246 Pa.Super. 140, Super.1977.

Though lower court erred in basing its denial of detective agency's application for reissuance of its license on failure of agency to submit monthly reports of its hiring and firing as requested by

For Title 22, Consolidated Statutes, see Appendix following this Title

Note 4

district attorney's office, where it was possible that lower court would have reached same conclusion based on other evidence in record, it was necessary to remand case to lower court for purpose of determining whether other evidence in record warranted a denial of application. *Com. v. Aljia Dumas Private Detective Agency, Inc.*, 369 A.2d 850, 246 Pa.Super. 140, Super.1977.

Failure of detective agency to submit monthly reports of its hiring and firing as requested by district attorney's office, while perhaps a basis for a fine of \$500 or a term of imprisonment under Private Detective Act, was not a basis for denial of agency's application for reissuance of its license to do business. *Com. v. Aljia Dumas Private Detective Agency, Inc.*, 369 A.2d 850, 246 Pa.Super. 140, Super.1977.

Failure to produce documents pursuant to a subpoena issued by a district attorney in course of an investigation into alleged violations of Private Detective Act, while perhaps a basis for a fine of \$500 or a term of imprisonment, is not a basis for a license denial or a revocation. *Com. v. Aljia Dumas Private Detective Agency, Inc.*, 369 A.2d 850, 246 Pa.Super. 140, Super.1977.

4.5. Liability of licensee

Fact that defendants, two of whom were licensed under state Private Detective Act, were authorized by state statute to detain plaintiff whom they suspected of shoplifting did not mean that defendants were acting "under color of state law", and damages could not be recovered on theory defendants had violated civil rights statutes. *Weyandt v. Mason's Stores, Inc.*, W.D.Pa. 1968, 279 F.Supp. 283.

6. Status and powers of licensees

A private detective, not being a police officer or constable, has no right, not possessed by an ordinary citizen, to make an arrest. Application of Niehoff, 48 Berks 286, 70 York 135, 9 Pa. D. & C.2d 410 (1957).

The act of 1887, May 23, P.L. 173, which empowered private detectives to serve warrants in criminal cases, has been repealed by the Private Detective Act under which private detectives

no longer have any authority to serve such warrants, and the court will strongly disapprove of private detectives being in any way connected with the service of warrants or the actual arrest of an individual charged with a crime. Application of Niehoff, 48 Berks 286, 70 York 135, 9 Pa. D. & C.2d 410 (1957).

9. Burden of proof

As instigator of proceedings to revoke license to carry on private detective business, the Commonwealth bore burden of proving licensee's lack of requisite qualifications by preponderance of evidence. In re Sentry Sec., Inc., 393 A.2d 880, 259 Pa.Super. 385, Super.1978, affirmed 417 A.2d 190, 490 Pa. 578.

10. Right to license

A private detective's license should not be issued to an applicant partnership where one of the partners is actively engaged in police work, since he would have access to records not ordinarily available to a private detective and could exert influence in opening various doors leading to certain information not normally available to a private detective. License of Robinson, 75 Pa. D. & C.2d 476 (1976).

Where an applicant complies with the requirements of the Detective Act, court shall deliver a license. Application of Gardner, 6 Pa. D. & C.2d 742, 26 Lehigh 524 (1956).

11. Suspension of license

Court's previous refusal to revoke detective's license, and grant of new license, gave licensee no vested right and created no estoppel against court to suspend license so long as licensee should remain a constable. In re Stanley, 201 A.2d 287, 204 Pa.Super. 29, Super.1964.

12. Incompatible offices

As a matter of public policy, it is incompatible for one having authority of a constable to carry on business of private detective, and detective's license was properly suspended so long as holder should remain a constable. In re Stanley, 201 A.2d 287, 204 Pa.Super. 29, Super.1964.

§ 21. Renewal of licenses

(a) A license granted under the provisions of this act may be renewed by the clerk of courts upon application therefor by the holder thereof upon payment of fee and filing of surety bond, each in amounts equivalent to those specified in section 6 as pertaining to original licenses.

(b) A brief renewal application form shall be prescribed by the Attorney General. Fingerprints and references shall not be required with a renewal application. The clerk of courts shall reissue the license for a period of up to five years, without a mandatory waiting period, unless the clerk perceives a problem which requires submission of the renewal application to the court.

(c) A renewal period, within the meaning of this act, is considered as being six months from the date of expiration of a previously issued license.

Amended 1992, Dec. 14, P.L. 817, No. 132, § 1, effective in 60 days.

For Title 22, Consolidated Statutes, see Appendix following this Title

Historical and Statutory Notes

1992 Legislation

The 1992 amendment rewrote the section.

§ 23. Employes

(a) The holder of any license certificate issued pursuant to this act may employ to assist him in his work of private detective or investigator as described in section 2¹ and in the conduct of such business as many persons as he may deem necessary, and shall at all times during such employment be legally responsible for the good conduct in the business of each and every person so employed and shall be responsible for the reasonable supervision of said employes' conduct.

No holder of any unexpired license certificate issued pursuant to this act shall knowingly employ in connection with his or its business, in any capacity whatsoever, any person who has been convicted of a felony, or any of the following offenses, and who has not, subsequent to such conviction, received executive pardon therefor removing this disability: (1) illegally using, carrying or possessing a pistol or other dangerous weapon; (2) making or possessing burglar's instruments; (3) buying or receiving stolen property; (4) unlawful entry of a building; (5) aiding escape from prison; (6) unlawfully possessing or distributing habit forming narcotic drugs; (7) picking pockets or attempting to do so; (8) soliciting any person to commit sodomy or other lewdness; (9) any person whose private detective or investigator's license was revoked or application for such license was denied by the court of common pleas or by the authorities of any other state or territory because of conviction of any of the crimes or offenses specified in this section; (10) recklessly endangering another person; (11) terroristic threats; or (12) committing simple assault.

A holder of an unexpired license certificate issued pursuant to this act who knowingly employs a person who has been convicted of a felony or any of the offenses specified in this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not more than five thousand dollars (\$5000) or to undergo imprisonment for not more than one (1) year, or both.

A first conviction for violation of this section may subject the license holder to revocation of his license by the issuing authority.

Upon the second conviction of a license holder for knowingly hiring a person convicted of a felony or other specified offenses in this section, the license of said holder shall be revoked.

Should the holder of an unexpired license certificate falsely state or represent that a person is or has been in his employ, such false statement or misrepresentation shall be sufficient cause for the revocation of such license. Any person falsely stating or representing that he is or has been a detective or employed by a detective agency shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or to undergo imprisonment for not more than one (1) year, or both.

As amended 1988, May 26, P.L. 405, No. 68, § 2, effective in 60 days.

(b) No person shall hereafter be employed by any holder of a license certificate until he shall have executed and furnished to such license certificate holder a verified statement to be known as "employee's statement," setting forth:

- (1) His full name, age and residence address;
- (2) The country of which he is a citizen;
- (3) The business or occupation engaged in for the three years immediately preceding the date of the filing of the statement, setting forth the place or places where such business or occupation was engaged in, and the name or names of employers, if any;
- (4) That he has not been convicted of a felony, or of any offense involving moral turpitude, or of any of the misdemeanors or offenses described in subsection (a) of this section;

For Title 22, Consolidated Statutes, see Appendix following this Title

(5) That he holds current and valid certification under the act of October 10, 1974 (P.L. 705, No. 235), known as the "Lethal Weapons Training Act,"² if, as an incidence to employment, he will carry a lethal weapon.

(6) Such further information as the court of common pleas may by rule require to show the good character, competency and integrity of the person executing the statement.

As amended 1988, May 26, P.L. 405, No. 68, § 2, effective in 60 days.

(c) The license holder shall act with due diligence in taking the necessary steps to ensure the veracity of the employe's statement, and immediately upon the verification of an employe's statement, the holder of a license certificate by whom such person has been or is to be employed shall cause two sets of fingerprints of the two hands of such person to be recorded in such manner as the court of common pleas may by rule prescribe. The holder of a license certificate shall immediately stamp, in indelible ink, the employe's statement and each set of fingerprints with the name, year and license certificate number of such holder, and a number, which number shall be determined by the number of such statements furnished to such holder and shall be in numerical sequence.

As amended 1988, May 26, P.L. 405, No. 68, § 2, effective in 60 days.

[See main volume for (d)]

(e) The holder of a license certificate shall file the other set of fingerprints with the court of common pleas. Proof of the employe's current and valid certification under the "Lethal Weapons Training Act," must also be submitted to the court if the employe will carry a lethal weapon as an incidence to employment.

As amended 1988, May 26, P.L. 405, No. 68, § 2, effective in 60 days.

[See main volume for (f) and (g)]

¹ Section 12 of this title.

² Section 41 et seq. of this title.

Historical and Statutory Notes

1988 Legislation

The 1988 amendment, in the first paragraph of subsec. (a), added "and shall be responsible for the reasonable supervision of said employes' conduct", in the second paragraph, substituted "court of common pleas" for "court of quarter sessions" and added cls. (10) to (12), and inserted the third, fourth, and fifth paragraphs; in subsec. (b), inserted cl. (5), redesignated former

cl. (5) as cl. (6), and, in that clause, substituted "court of common pleas" for "court of quarter sessions"; in subsec. (c), added "The license holder shall act with due diligence in taking the necessary steps to ensure the veracity of the employe's statement and", and substituted "court of common pleas" for "court of quarter sessions"; and, in subsec. (e), substituted "court of common pleas" for "court of quarter sessions", and added the second sentence.

Notes of Decisions

In general 1

1. In general

Pennsylvania Private Detective Act imposes responsibility upon licensee for his employe's "good conduct" only while employe is acting in

furtherance of his employer's security business; thus, where fire at warehouse of client of licensee was caused by intentional act of employe of licensee, licensee could assert defense that employe acted outside of scope of employment. *Knouse Foods Co-op., Inc. v. Burns Intern. Sec. Services, Inc.*, E.D.Pa.1981, 519 F.Supp. 867.

§ 25. Application of act

Nothing in this act shall apply to any detective officer or man belonging to the Pennsylvania State Police, or to the police force of any county, city, borough, township, or incorporated town, or any employe of such State Police, or such police force, appointed or elected by due authority of law, while engaged in the performance of their official duties, nor to any person, partnership, association, or corporation, or any bureau or agency, whose business is exclusively the furnishing of information as to the business

For Title 22, Consolidated Statutes, see Appendix following this Title

and financial standing and credit responsibility of persons, partnerships, associations, or corporations, or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit, or of claimants under insurance policies, and whose business does not embrace other activities described in section 2 of this act,¹ nor to any corporation duly authorized by the Commonwealth to operate a fire alarm protection business, nor to any person while engaged in the business of adjuster for an insurance company, nor to any person regularly employed as special agent, detective or investigator exclusively by one employer in connection with the affairs of that employer only, nor to any charitable or philanthropic society or association duly incorporated under the laws of the Commonwealth and which is organized and maintained for the public good and not for private profit, nor shall anything in this act contained be construed to affect in any way attorneys or counselors at law in the regular practice of their profession, but such exemption shall not enure to the benefit of any employe or representative of such attorney or counselor at law who is not employed solely, exclusively and regularly by such attorney or counselor at law, nor to persons in the exclusive employment of common carriers subject to regulation by the interstate commerce commission or the Public Utility Commission of the Commonwealth of Pennsylvania, nor to investigators in the employment of credit bureaus. No person, partnership, association, corporation, or any bureau or agency, exempted hereunder from the application of this act, shall perform any manner of detective service as described in section 2 hereof for any other person, partnership, association, corporation, bureau or agency, whether for fee, hire, reward, other compensation, remuneration, or consideration, or as an accommodation without fee, reward, or remuneration, or by a reciprocal arrangement whereby such services are exchanged on request of parties thereto. The commission of a single act prohibited by this act shall constitute a violation thereof.

Nothing in this act shall apply to any telephone, telegraph or other telecommunications company subject to regulation by the Federal Communications Commission or the Public Utility Commission of the Commonwealth of Pennsylvania or to an employe of any such company while performing any investigatory activities engaged in by his employer.

Nothing in this act shall be construed to affect or prohibit the right of any person to form, or become affiliated with, or to continue as a member of, any union, association, society, or organization of his own choosing.

As amended 1987, Dec. 3, P.L. 405, No. 83, § 1, effective in 60 days.

¹ Section 12 of this title.

Historical and Statutory Notes

1987 Legislation

The 1987 amendment inserted the paragraph relating to telephone, telegraph, and other telecommunications companies.

§ 26. Unlawful acts

It is unlawful for the holder of a license issued under this act, or for any employe of such licensee, knowingly to commit any of the following acts, within or without the Commonwealth of Pennsylvania: to incite, encourage, or aid in the incitement or encouragement of, any person or persons who have become a party to any strike to do unlawful acts against the person or property of any one, or to incite, stir up, create, or aid in the inciting of discontent or dissatisfaction among the employes of any person, partnership, association, or corporation with the intention of having them strike, to interfere or prevent lawful and peaceful picketing during strikes, to interfere with, restrain, or coerce employes in the exercise of their right to form, join, or assist any labor organization of their own choosing, to interfere or hinder the lawful or peaceful collective bargaining between employes and employers, to pay, offer, or give any money, gratuity, favor, consideration, or other thing of value, directly or indirectly, to any person, for any verbal or written report of the lawful activities of employes in the exercise of their right of self-organization, to form, join, or assist labor organizations,

For Title 22, Consolidated Statutes, see Appendix following this Title

and to bargain collectively through representatives of their own choosing, to advertise for, recruit, furnish or replace, or offer to furnish or replace, for hire or reward, within or without the Commonwealth of Pennsylvania, any help or labor, skilled or unskilled, or to furnish or offer to furnish armed guards, other than armed guards theretofore regularly employed, for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course or existence of a strike, or furnish armed guards upon the highways for persons involved in labor disputes, or to furnish or offer to furnish to employers or their agents, any arms, munitions, tear gas, implements, or any other weapons, or to send letters or literature to employers offering to eliminate labor unions, or distribute or circulate any list of members of a labor organization, or to advise any person of the membership of an individual in a labor organization for the express purpose of preventing those so listed or named from obtaining or retaining employment. The violation of any of the provisions of this section shall constitute a misdemeanor, and, upon conviction thereof, shall be punishable by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5000), or to imprisonment for not less than six (6) months nor more than one (1) year or both. If the holder of a license shall violate any of the provisions in this section, the license holder may be subject to the revocation of his license by the issuing authority. Upon the second conviction of a license holder for violation of any of the provisions in this section, the license of said holder shall be revoked.

As amended 1988, May 26, P.L. 405, No. 68, § 2, effective in 60 days.

Historical and Statutory Notes

1988 Legislation

The 1988 amendment increased the maximum fine from one thousand dollars to five thousand dollars and rewrote the last sentence.

§ 26.1. Penalty for unlicensed acts

Any person in violation of the provisions of section 3(a)¹ by reason of engaging in the private detective business without a license, shall upon conviction thereof, be guilty of a misdemeanor of the third degree.

1953, Aug. 21, P.L. 1273, § 16.1, added 1978, Oct. 4, P.L. 1019, No. 224, § 1, effective in 60 days.

¹ Section 13(a) of this title.

Cross References

Misdemeanor of the third degree defined, see
18 Pa.C.S.A. § 106.

Library References

Detectives ⇨6.
C.J.S. Detectives § 6.

LETHAL WEAPONS TRAINING

§ 41. Short title

This act shall be known and may be cited as the "Lethal Weapons Training Act."
1974, Oct. 10, P.L. 705, No. 235, § 1, effective Dec. 31, 1975.

Historical and Statutory Notes

Effective Date: July 25, P.L. 101, No. 52, § 1, amending § 11,
Section 11 of the 1974 Act provided that the moved the effective date of the 1974 Act to
Act shall be effective in six months but Act 1975, December 31, 1975.

For Title 22, Consolidated Statutes, see Appendix following this Title

Title of Act:

An Act providing for the training and licensing of watch guards, protective patrolmen, detectives and criminal investigators, carrying and using

lethal weapons in their employment; imposing powers and duties on the Commissioner of the Pennsylvania State Police; and providing penalties. 1974, Oct. 10, P.L. 705, No. 235.

Pennsylvania Code References

Administration of program, see 37 Pa. Code § 21.1 et seq.

§ 42. Legislative findings and purpose

(a) The General Assembly finds that there are private detectives, investigators, watchmen, security guards and patrolmen, privately employed within this Commonwealth who carry and use lethal weapons including firearms as an incidence of their employment and that there have been various tragic incidents involving these individuals which occurred because of unfamiliarity with the handling of weapons. The General Assembly also finds that there is presently no training required for such privately employed agents in the handling of lethal weapons or in the knowledge of law enforcement and the protection of rights of citizens, and that such training would be beneficial to the safety of the citizens of this Commonwealth.

(b) It is the purpose of this act to provide for the education, training and certification of such privately employed agents who, as an incidence to their employment, carry lethal weapons through a program administered or approved by the Commissioner of the Pennsylvania State Police.

1974, Oct. 10, P.L. 705, No. 235, § 2, effective Dec. 31, 1975.

Historical and Statutory Notes**Effective Date:**

See note under § 41 of this title.

Library References

Detectives ⇐ 1.
C.J.S. Detectives § 3.

Notes of Decisions**Construction and application 1****1. Construction and application**

Lethal Weapons Training Act provided ample standards for exercise of Commissioner of State

Police's power to grant or withdraw license to school desiring to provide training required by the Act to persons who as incident to their employment carried lethal weapons. Security Officers Training Academy v. Com., State Police, 397 A.2d 56, 40 Pa.Cmwth. 280, Cmwth.1979.

§ 43. Definitions

As used in this act:

"**Commissioner**" means the Commissioner of the Pennsylvania State Police.

"**Full-time police officer**" means any employee of a city, borough, town, township or county police department assigned to law enforcement duties who works a minimum of two hundred days per year. The term does not include persons employed to check parking meters or to perform only administrative duties, nor does it include auxiliary and fire police.

"**Lethal weapons**" include but are not limited to firearms and other weapons calculated to produce death or serious bodily harm. A concealed billy club is a lethal weapon. The chemical mace or any similar substance shall not be considered as "lethal weapons" for the purposes of this act.

"**Privately employed agents**" include any person employed for the purpose of providing watch guard, protective patrol, detective or criminal investigative services

For Title 22, Consolidated Statutes, see Appendix following this Title

either for another for a fee or for his employer. Privately employed agents do not include local, state or federal government employees or those police officers commissioned by the Governor under the act of February 27, 1865 (P.L. 225, No. 228).¹ The term shall include a police officer of a municipal authority.

"Program" means the education and training program established and administered or approved by the commissioner in accordance with this act.

1974, Oct. 10, P.L. 705, No. 235, § 3, effective Dec. 31, 1975. As amended 1976, Nov. 23, P.L. 1155, No. 254, § 1, imd. effective; 1982, Feb. 20, P.L. 88, No. 32, § 1, imd. effective; 1982, Dec. 14, P.L. 1209, No. 278, § 1, effective in 60 days.

138 P.S. § 31 et seq.

Historical and Statutory Notes

1982 Amendments: Act 32 added definition of "full-time police officer". Act 278 added last sentence in definition of "privately employed agents".

Effective Date:

See note under § 41 of this title.

Library References

Detectives ⇐3.
C.J.S. Detectives § 3.

§ 44. Education and training program

(a) An education and training program in the handling of lethal weapons, law enforcement and protection of rights of citizens shall be established and administered or approved by the commissioner in accordance with the provisions of this act.

(b) All privately employed agents, except those who have been granted a waiver from compliance herewith by the commissioner who, as an incidence to their employment, carry a lethal weapon shall be required to attend the program established by subsection (a) of this section in accordance with the requirements or regulations established by the commissioner and upon satisfactory completion of such program, shall be entitled to certification by the commissioner.

(c) Except for colleges and universities, no nongovernment employer of a privately employed agent who, as an incidence to his employment, carries a lethal weapon, shall own, operate, or otherwise participate in, directly or indirectly, the establishment or administration of the program established by subsection (a) of this section.

1974, Oct. 10, P.L. 705, No. 235, § 4, effective Dec. 31, 1975. As amended 1976, Nov. 23, P.L. 1155, No. 254, § 2, imd. effective.

Historical and Statutory Notes

Effective Date:

See note under § 41 of this title.

Library References

Detectives ⇐3.
C.J.S. Detectives § 3.

Notes of Decisions

In general 1

education and training requirements of this act and does not extend to all of the provisions thereof. *Com. v. Burgess*, 15 Pa. D. & C.3d 516 (1980).

1. In general

The state police commissioner's power under this act to grant waivers is limited to the edu-

For Title 22, Consolidated Statutes, see Appendix following this Title

§ 45. Power and duties of commissioner

The commissioner shall have the power and duty:

(1) To implement and administer or approve the minimum courses of study and training for the program in the handling of lethal weapons, law enforcement and protection of the rights of citizens.

(2) To implement and administer or approve physical and psychological testing and screening of the candidate for the purpose of barring from the program those not physically or mentally fit to handle lethal weapons. However, candidates who are full-time police officers and have successfully completed a physical and psychological examination as a prerequisite to employment or to continued employment by their local police departments or who have been continuously employed as full-time police officers since June 18, 1974 shall not be required to undergo any physical or psychological testing and screening procedures so implemented.

(3) To issue certificates of approval to schools approved by the commissioner and to withdraw certificates of approval from those schools disapproved by the commissioner.

(4) To certify instructors pursuant to the minimum qualifications established by the commissioner.

(5) To consult and cooperate with universities, colleges, community colleges and institutes for the development of specialized courses in handling lethal weapons, law enforcement and protection of the rights of citizens.

(6) To consult and cooperate with departments and agencies of this Commonwealth and other states and the Federal Government concerned with similar training.

(7) To certify those individuals who have satisfactorily completed basic educational and training requirements as established by the commissioner and to issue appropriate certificates to such persons.

(8) To visit and inspect approved schools at least once a year.

(9) In the event that the commissioner implements and administers a program, to collect reasonable charges from the students enrolled therein to pay for the costs of the program.

(10) To make such rules and regulations and to perform such other duties as may be reasonably necessary or appropriate to implement the education and training program.

(11) To grant waivers from compliance with the provisions of this act applicable to privately employed agents who have completed a course of instruction in a training program approved by the commissioner.

1974, Oct. 10, P.L. 705, No. 235, § 5, effective Dec. 31, 1975. As amended 1976, Nov. 23, P.L. 1155, No. 254, § 3, imd. effective; 1982, Feb. 20, P.L. 88, No. 32, § 2, imd. effective.

Historical and Statutory Notes**Effective Date:**

See note under § 41 of this title.

1982 Amendment: In cl. (2), added second sentence.

Library References

Detectives \Leftrightarrow 3.

C.J.S. Detectives § 3.

Notes of Decisions**In general 1****Hearing 2****1. In general**

Considering importance to safety of others of competence of persons licensed to carry and use

firearms in their employment, violations of instructional requirements, which were committed by school and which included permitted its director to give courses that he was not certified to teach while posing as another, qualified person and submitting for certification names of students who had not been provided with instruction required, amply justified withdrawal of school's

For Title 22, Consolidated Statutes, see Appendix following this Title

Note 1

privilege to teach persons to handle lethal weapons in their private employment. Security Officers Training Academy v. Com., State Police, 397 A.2d 56, 40 Pa.Cmwth. 280, Cmwth.1979.

Lethal Weapons Training Act provided ample standards for exercise of Commissioner of State Police's power to grant or withdraw license to school desiring to provide training required by the Act to persons who as incident to their employment carried lethal weapons. Security Officers Training Academy v. Com., State Police, 397 A.2d 56, 40 Pa.Cmwth. 280, Cmwth.1979.

The state police commissioner's power under this act to grant waivers is limited to the education and training requirements of this act and does not extend to all of the provisions thereof. Com. v. Burgess, 15 Pa. D. & C.3d 516 (1980).

2. Hearing

Commissioner of State Police's prerevocation investigation of school which trained persons desiring to be qualified to handle lethal weapons in their private employment, together with Commissioner's regulations providing for applications for reconsideration of license revocation and for hearing on the merits, sufficiently provided school with procedural due process. Security Officers Training Academy v. Com., State Police, 397 A.2d 56, 40 Pa.Cmwth. 280, Cmwth.1979.

Where only one member of hearing board was member of State Police Force and other two were employees of other departments of state government, and, as to participation of state policemen in hearing, record showed that two persons involved were trained in the law and one presented case against school while other assisted hearing board, hearing conducted to determine whether school's lethal weapons training license should be withdrawn was conducted fairly and had appearance of being conducted fairly. Security Officers Training Academy v. Com., State Police, 397 A.2d 56, 40 Pa.Cmwth. 280, Cmwth. 1979.

Since lethal weapons license revocation hearing was not directed against individual against whom prejudice or bias would be a clear possibility, accreditation of training school was clearly administrative, and since two of three members of hearing board were from outside police force, there was no impermissible commingling of prosecutive and adjudicative functions in hearing board, which determined that violations of instructional requirements justified withdrawal of school's privilege to teach under the Lethal Weapons Training Act. Security Officers Training Academy v. Com., State Police, 397 A.2d 56, 40 Pa.Cmwth. 280, Cmwth.1979.

§ 46. Certificate of qualification

(a) Any person desiring to enroll in such program shall make application to the commissioner, on a form to be prescribed by the commissioner.

(b) The application shall be signed and verified by the applicant. It shall include his full name, age, residence, present and previous occupations and such other information that may be required by the commissioner to show the good character, competency and integrity of the applicant.

(c) The application shall be personally presented by the applicant at an office of the Pennsylvania State Police where his fingerprints shall be affixed thereto. The application shall be accompanied by two current photographs of the applicant of a size and nature to be prescribed by the commissioner and a thirty-five dollar (\$35) application fee, unless the applicant is a full-time police officer, in which case no application fee shall be required. Thereafter the application shall be forwarded to the commissioner.

(d) The fingerprints of the applicant shall be examined by the Pennsylvania State Police and the Federal Bureau of Investigation to determine if he has been convicted of or has pleaded guilty or nolo contendere to a crime of violence. The commissioner shall have the power to waive the requirement of Federal Bureau of Investigation examination. Any fee charged by the Federal agency shall be paid by the applicant.

(e) No application shall be accepted if the applicant is under the age of eighteen.

(f) After the application has been processed and if the commissioner determines that the applicant is eighteen years of age and has not been convicted of or has not pleaded guilty or nolo contendere to a crime of violence, and has satisfied any other requirements prescribed by him under his powers and duties pursuant to section 5,¹ he shall issue a certificate of qualification which shall entitle the applicant to enroll in an approved program.

1974, Oct. 10, P.L. 705, No. 235, § 6, effective Dec. 31, 1975. As amended 1982, Feb. 20, P.L. 88, No. 32, § 2, imd. effective; 1982, Dec. 14, P.L. 1209, No. 278, § 2, effective in 60 days.

¹ Section 45 of this title.

Repealed in Part

Section 6(a) of Act 1981, July 1, P.L. 143, No. 48, provides that subsection (c) of this section is repealed insofar as it establishes a set fee for any activity inconsistent with the fees set forth in said act (71 P.S. § 240.1A et seq.).

Historical and Statutory Notes**Effective Date:**

See note under § 41 of this title.

1982 Amendment: In subsec. (c), at end of second sentence, added "unless the applicant is

*** shall be required", and, in subsec. (d), added second sentence.

Library References

Detectives ⇐ 3.

C.J.S. Detectives § 3.

Notes of Decisions**In general 1****Visual acuity 2****1. In general**

A municipal police officer who worked in a private capacity as a security guard during off-duty hours and carried a firearm at such work was required to be certified in such capacity under the Lethal Weapons Training Act. Com. v. Burgess, 15 Pa. D. & C.3d 516 (1980).

A person who has been granted a pardon for a crime of violence is eligible for certification under this section, and has the right to own and possess a firearm unless the pardon expressly provides otherwise. 1978 Op.Atty.Gen. No. 27.

2. Visual acuity

Federal requirements regarding visual acuity standards of persons using lethal weapons in atomic energy plant did not supersede state regulations applying to vision standards of weapons users generally, so as to permit security guard at energy facility to be recertified for carrying of lethal weapons by virtue of satisfying federal requirements, even though she did not meet state's vision standards. Demmy v. Pennsylvania State Police, 611 A.2d 782, 148 Pa.Cmwlth. 401, Cmwlth.1992.

State visual acuity standards for security guards carrying lethal weapons were applicable to recertification of security guard at atomic energy facility, even though there were no visual acuity requirements at time guard was originally certified. Demmy v. Pennsylvania State Police, 611 A.2d 782, 148 Pa.Cmwlth. 401, Cmwlth.1992.

§ 47. Certification and fee

(a) A certification fee of not more than fifteen dollars (\$15) shall be paid by each individual satisfactorily completing the program prior to the receipt of a certificate.

(b) The commissioner shall furnish to each individual satisfactorily completing the program, an appropriate wallet or billfold size copy of the certificate, which shall include a photograph of the individual thereon.

(c) Every certified individual shall carry his wallet or billfold size certificate on his person as identification during the time when he is on duty or going to and from duty and carrying a lethal weapon.

(d) Certification shall be for a period of five years.

(e) Privately employed agents who, as an incidence to their employment, carry a lethal weapon shall be required to renew their certification within six months prior to the expiration of their certificate. The commissioner shall prescribe the manner in which the certification shall be renewed, and may charge a nominal renewal fee therefore, not to exceed fifteen dollars (\$15).

1974, Oct. 10, P.L. 705, No. 235, § 7, effective Dec. 31, 1975.

Repealed in Part

Section 6(a) of Act 1981, July 1, P.L. 143, No. 48, provides that subsections (a) and (e) of this section are repealed insofar as they establish a set fee for any activity inconsistent with the fees set forth in said act (71 P.S. § 240.1A et seq.).

For Title 22, Consolidated Statutes, see Appendix following this Title

Historical and Statutory Notes**Effective Date:**

See note under § 41 of this title.

Library References

Detectives ⇨3.

C.J.S. Detectives § 3.

§ 48. Good standing

(a) Privately employed agents must possess a valid certificate whenever on duty or going to and from duty and carrying a lethal weapon.

(b) Whenever an employer of a privately employed agent subject to the provisions of this act discharges him for cause, the employer shall notify the commissioner of such within five days of the discharge.

(c) The commissioner may revoke and invalidate any certificate issued to a privately employed agent under this act whenever he learns that false, fraudulent or misstated information appears on the original or renewal application or whenever he learns of a change of circumstances that would render an employee ineligible for original certification.

1974, Oct. 19, P.L. 705, No. 235, § 8, effective Dec. 31, 1975.

Historical and Statutory Notes**Effective Date:**

See note under § 41 of this title.

§ 48.1. Retired police officer

(a) A nondisability retired police officer of a Pennsylvania Municipality or the Pennsylvania State Police shall be initially certified under this act, and need not meet the training and qualification standards or physical and psychological qualifications hereunder, if he was a full-time police officer for at least twenty years, retired in good standing and has assumed the duties of a privately employed agent on or before three years from the date of his retirement. If a retired police officer commences his duties as a privately employed agent after three years from the date of his retirement he must meet the physical and psychological requirements of this act for certification under this section.

(b) A retired police officer initially certified under this section shall not be required to pay the application fee but shall pay the certification fee upon the submission of a completed application provided by the commissioner.

1974, Oct. 10, P.L. 705, No. 235, § 8.1, added 1982, Dec. 14, P.L. 1209, No. 278, § 3, effective in 60 days.

Library References

Detectives ⇨3.

C.J.S. Detectives § 3.

§ 49. Penalties

(a) Any privately employed agent who in the course of his employ carries a lethal weapon, and who fails to comply with subsection (b) of section 4¹ or with subsection (a) of section 8 of this act,² shall be guilty of a misdemeanor and upon conviction shall be subject to imprisonment of not more than one year or payment of a fine not exceeding one thousand dollars (\$1,000), or both.

For Title 22, Consolidated Statutes, see Appendix following this Title

(b) Any privately employed agent who in the course of his employ carries a lethal weapon, and who violates subsection (c) of section 7 of this act³ shall be guilty of a summary offense, and, upon conviction, shall pay a fine not exceeding fifty dollars (\$50).

1974, Oct. 10, P.L. 705, No. 235, § 9, effective Dec. 31, 1975.

¹ Section 44 of this title.

² Section 48 of this title.

³ Section 47 of this title.

Historical and Statutory Notes

Effective Date:

See note under § 41 of this title.

Cross References

Misdemeanor defined, see 18 Pa.C.S.A. § 106.

Summary offenses defined, see 18 Pa.C.S.A.

§ 106.

Library References

Detectives ⇄6.

C.J.S. Detectives § 6.

§ 50. Prohibited act

No individual certified under this act shall carry an inoperative or model firearm while employed and he shall carry only a powder actuated firearm approved by the commissioner.

1974, Oct. 10, P.L. 705, No. 235, § 10, effective Dec. 31, 1975.

Historical and Statutory Notes

Effective Date:

See note under § 41 of this title.

Library References

Detectives ⇄4.

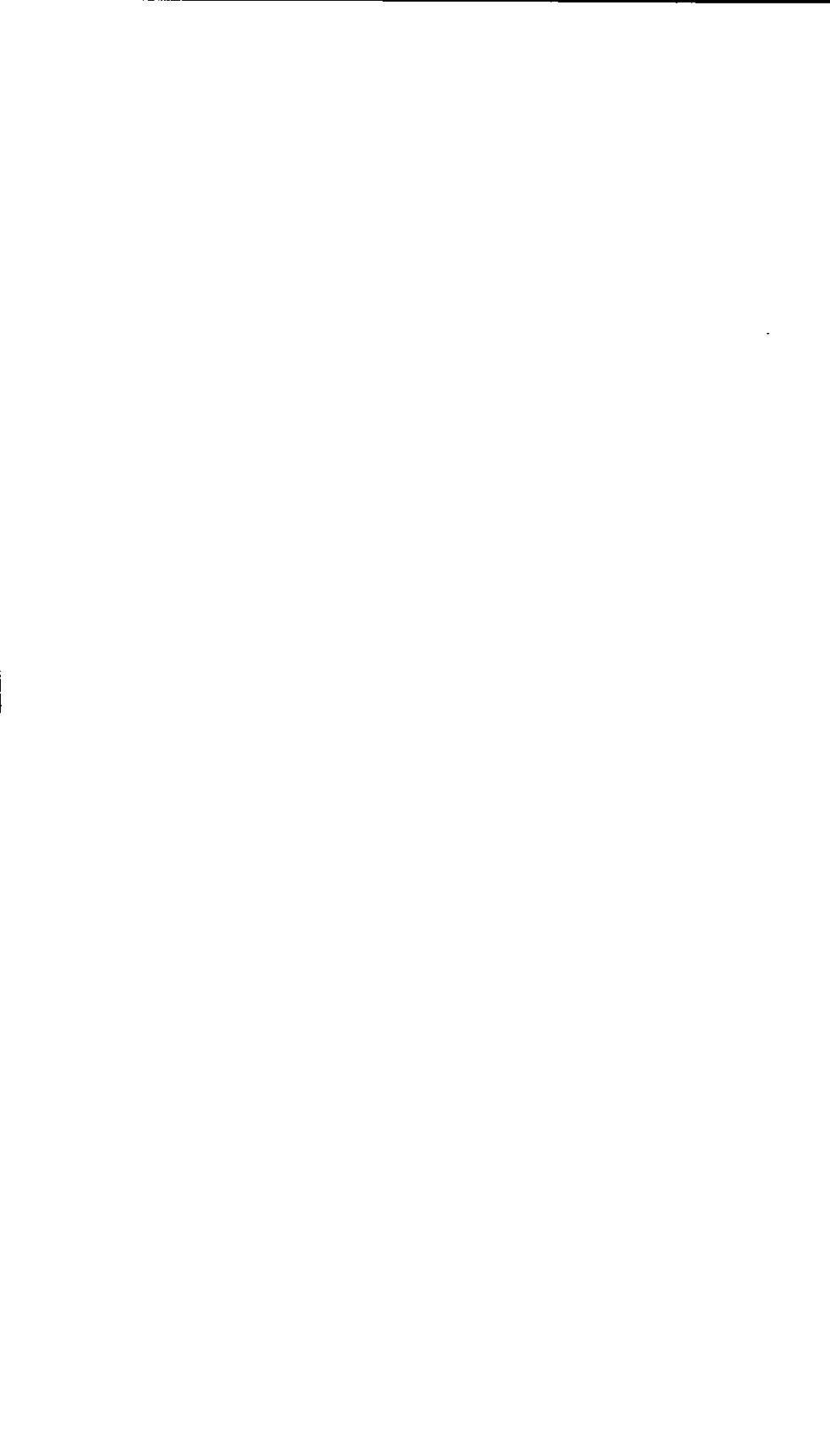
C.J.S. Detectives § 4.

§ 50.1. Active police officers

All active police officers subject to the training provisions of the act of June 18, 1974 (P.L. 359, No. 120), referred to as the Municipal Police Education and Training Law,¹ shall be granted a waiver of the training requirements of this act upon presentation to the commissioner of evidence of their completion of the training requirements of the Municipal Police Education and Training Law and the successful completion of a biennial firearms qualification examination administered by their respective police agency.

1974, Oct. 10, P.L. 705, No. 235, § 10.1, added 1990, April 4, P.L. 112, No. 26, § 1, effective in 60 days.

¹ 53 P.S. § 740 et seq.



PURDON'S PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED

TITLE 22

DETECTIVES AND PRIVATE POLICE

Chapter	Section
1. General Provisions (Reserved)	—
3. Detectives (Reserved)	—
5. Private Police	501
33. Railroad and Street Railway Police	3301

Acts 1970, No. 230, approved November 25, 1970, as amended, establishes the structure of the Pennsylvania Consolidated Statutes by listing the titles thereof which will be implemented from time to time in the future. For text of the Act including the list of titles, see Title 1, Pa.C.S.A.

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

CHAPTER 1

GENERAL PROVISIONS (Reserved)

CHAPTER 3

DETECTIVES (Reserved)

CHAPTER 5

PRIVATE POLICE

Section

501. Appointment by nonprofit corporations.

For Title 22, Purdon's Statutes, see text preceding this Appendix

§ 501. Appointment by nonprofit corporations

(a) **Appointment authorized.**—Any nonprofit corporation, as defined in 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations)¹ maintaining a cemetery or any buildings or grounds open to the public, or organized for the prevention of cruelty to children or aged persons or animals, or one or more of such purposes, may apply to the court of common pleas of the county of the registered office of the corporation for the appointment of such persons as the corporation may designate to act as policemen for the corporation. The court, upon such application, may by order appoint such persons, or as many of them as it may deem proper and necessary, to be such policemen.

(b) **Oath of office.**—Every policeman so appointed shall, before entering upon the duties of his office, take and subscribe the oath required by the sixth article of the Constitution of Pennsylvania. Such oath, together with the decree and order of the court, shall be recorded by the recorder of deeds of each county in which it is intended that such policemen shall act.

(c) **Powers.**—Such policemen, so appointed, shall severally possess and exercise all the powers of a police officer in this Commonwealth, in and upon, and in the immediate and adjacent vicinity of, the property of the corporation. Policemen so appointed for a corporation organized for the prevention of cruelty to children or aged persons or animals, or one or more of such purposes, shall severally possess and exercise all the powers of a police officer in any county in which they may be directed by the corporation to act, and are hereby authorized to arrest persons for the commission of any offense of cruelty to children or aged persons or animals. The keepers of jails and other places of detention in any county of this Commonwealth shall receive all persons arrested by such policemen for purposes of detention until they are dealt with according to law. Every policeman appointed under this section, when on duty, shall wear a metallic shield with the words "special officer" and the name of the corporation for which appointed inscribed thereon.

(d) **Compensation.**—The compensation of such policemen shall be paid by the corporation for which the policemen are appointed, as may be agreed upon between the corporation and such policemen.

(e) **Termination of appointment.**—When any corporation shall no longer require the services of any policeman, it shall file a notice to that effect, under its corporate seal, in the office of each recorder of deeds where the court decree and order of appointment of such policeman were recorded. The recorder of deeds shall note this information upon the margin of the record where the court decree and order were recorded, and thereupon the powers of such policeman shall terminate. It shall be the duty of the recorder of deeds to notify the clerk of the court by which such policeman was appointed of the termination of such appointment in such county.

1972, Nov. 15, P.L. 1063, No. 271, § 501, effective in 90 days. As amended 1990, Dec. 19, P.L. 834, No. 198, § 304, imd. effective.

¹ 15 Pa.C.S.A. § 5101 et seq.

Historical and Statutory Notes

1990 Legislation

The 1990 amendment in subsec. (a) substituted "15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations)" for "Part III of Title 15 (relating to corporations not-for-profit)" in the first sentence, and substituted "by order appoint" for "order and decree" in the second sentence.

Subject matter of this section was covered in 10 P.S. §§ 171 to 176, 11 P.S. § 22 and 15 P.S. § 7310.

Title of Act:

An Act amending the act of November 25, 1970 (No. 230), entitled "An act codifying and

compiling a part of the law of the Commonwealth," adding provisions relating to burial grounds, corporations, including corporations not-for-profit, educational institutions, private police, certain charitable or eleemosynary institutions, certain nonprofit insurers, service of process on certain nonresident persons, names, prescribing penalties and making repeals. 1971, Nov. 15, P.L. 1063, No. 271, eff. in 90 days.

For Title 22, Purdon's Statutes, see text preceding this Appendix

Cross References

Humane Society Police Officer Enforcement Act, see 3 P.S. § 456.1 et seq.

Law Review and Journal Commentaries

Arrest and search powers of special police in Pennsylvania: Do your constitutional rights

change depending on the officer's uniform? 59 Temp.L.Q. 497 (1986).

Notes of Decisions

In general 1

1. In general

While a court has the authority under 22 Pa. C.S.A. § 501 to appoint a special police officer for a branch of the society for the prevention of cruelty to animals, an application for the appointment will be denied where the applicant lacks sufficient knowledge in the area of animal husbandry, in that experience and education is limited to the care and treatment of small animals, and normal farming practices to properly enforce the cruelty to animals statute, 18 Pa.C.S.A. § 5511. In re Application of the Fayette Soc.

for the Prevention of Cruelty to Animals Inc., 28 D. & C.4th 187, 1993.

An association of lot owners in a real estate development which maintained private roads, a swimming pool and a lake, which were privately owned and not open to the public was not such a nonprofit corporation as was entitled to have private policemen appointed under provisions of this section. In re Lake Heritage Property Owners Ass'n, 66 Mun.L.R. 49, 63 Pa. D. & C.2d 135 (1973).

The court cannot appoint private policemen for a private non-profit corporation unless that corporation maintains buildings or grounds open to the public. In re Appointment of Policemen for Lake Heritage Property Owners Ass'n, 15 Adams L.J. 114 (1973).

CHAPTER 33

RAILROAD AND STREET RAILWAY POLICE

Section

3301. Appointment.
3302. Oath of office.

Section

3303. Powers and duties.
3304. Compensation and liability.
3305. Termination of appointment.

Official Comments

The official comments provided throughout this chapter were supplied by the Joint State Government Commission.

§ 3301. Appointment

A corporation owning or operating a railroad or street passenger railway in this Commonwealth, including also an authority existing pursuant to Article III of the act of January 22, 1968 (P.L. 42, No. 8), known as the "Pennsylvania Urban Mass Transportation Law,"¹ for its entire transportation system, and including an authority existing pursuant to the act of April 6, 1956 (1955 P.L. 1414, No. 465), known as the "Second Class County Port Authority Act,"² may apply to the Commissioner of the Pennsylvania State Police upon such forms as he shall prescribe for the appointment of specific persons as the applicant may designate to act as railroad or street railway policemen for it. The commissioner, after such investigation as he shall deem necessary, shall recommend to the Governor the commissioning of such persons as railroad or street railway policemen or advise the applicant of their adverse recommendations and the reasons therefor. The Governor, upon such application and recommendation, may appoint such persons to be railroad or street railway policemen, and shall issue to such persons so appointed a commission to act as such policemen.

1982, Nov. 23, P.L. 686, No. 196, § 1, effective in 30 days.

¹ 55 P.S. § 600.301 et seq.

² 55 P.S. § 551 et seq.

For Title 22, Purdon's Statutes, see text preceding this Appendix

Official Comment—1982

This section codifies the authority of the Governor to commission railroad and street railway police which in the case of the former has existed for 115 years.

Historical and Statutory Notes

Section 3 of Act 1982, Nov. 23, P.L. 686, No. 196, provides as follows:

"Nothing contained in this act shall affect the validity of any commissions which are presently

valid and issued pursuant to the acts repealed herein."

Law Review and Journal Commentaries

Arrest and search powers of special police in Pennsylvania: Do your constitutional rights

change depending on the officer's uniform? 59 Temp.L.Q. 497 (1986).

Library References

Detectives ⇄2.

C.J.S. Detectives § 2.

§ 3302. Oath of office

Every railroad or street railway policeman so commissioned shall, before entering upon the duties of his office, take and subscribe the oath required by Article VI of the Constitution of Pennsylvania. The oath and commission issued by the Governor shall be recorded in the office of the Secretary of the Commonwealth, in the county where the registered corporate office or principal place of business is located and a copy filed with the commissioner.

1982, Nov. 23, P.L. 686, No. 196, § 1, effective in 30 days.

Historical and Statutory Notes

Section 3 of Act 1982, Nov. 23, P.L. 686, No. 196, provides as follows:

"Nothing contained in this act shall affect the validity of any commissions which are presently

valid and issued pursuant to the acts repealed herein."

§ 3303. Powers and duties

(a) **General powers.**—Railroad and street railway policemen shall severally possess and exercise all the powers of a police officer in the City of Philadelphia, in and upon, and in the immediate and adjacent vicinity of, the property of the corporate authority or elsewhere within this Commonwealth while engaged in the discharge of their duties in pursuit of railroad, street railway or transportation system business.

(b) **Detention of arrested persons.**—The keepers of jails and other places of detention in any county of this Commonwealth shall receive all persons arrested by railroad or street railway policemen for purposes of detention until they are dealt with according to law.

(c) **Badge.**—Railroad and street railway policemen when on duty shall wear or carry a metallic shield containing the words "railroad police" or "railway police" and the name of the authority.

(d) **Course of instruction.**—Every railroad and street railway police officer shall successfully complete the same course of instruction required for municipal police officers by the act of June 18, 1974 (P.L. 359, No. 120), referred to as the Municipal Police Education and Training Law.¹

1982, Nov. 23, P.L. 686, No. 196, § 1, effective in 30 days.

¹ 53 P.S. §§ 740 to 749.

Historical and Statutory Notes

Section 3 of Act 1982, Nov. 23, P.L. 686, No. 196, provides as follows:

"Nothing contained in this act shall affect the validity of any commissions which are presently

valid and issued pursuant to the acts repealed herein."

Law Review and Journal Commentaries

Arrest and search powers of special police in Pennsylvania: Do your constitutional rights

change depending on the officer's uniform? 59 Temp.L.Q. 497 (1986).

Notes of Decisions**Arrest powers 1****1. Arrest powers**

Port Authority Transit (PAT) officer was discharging his duties in pursuit of PAT business when he stopped defendant for driving in bus lane and arrested him for driving under influence of alcohol (DUI), and thus arrest was legal, where officer was on routine patrol driving PAT vehicle from one PAT property to another, both his vehicle and defendant's vehicle were in bus lane, and he testified without contradiction that his normal duties included stopping vehicles

which are driving in bus lane and issuing citations. Com. v. Mundorf, 699 A.2d 1299, Super.1997.

Arrest by Port Authority Transit (PAT) officer away from PAT property is legal only where officer is on routine patrol and acts to prevent immediate threat to welfare of PAT passengers or property. Com. v. Mundorf, 699 A.2d 1299, Super.1997.

Port Authority Transit (PAT) officers do not possess arrest powers in excess of those set forth in Railroad and Street Railway Police Act. Com. v. Mundorf, 699 A.2d 1299, Super.1997.

§ 3304. Compensation and liability

The compensation of railroad or street railway policemen shall be paid by their corporate authority. The Commonwealth of Pennsylvania shall not be held liable for any wrongful act of any police officer commissioned under the provisions of this chapter. 1982, Nov. 23, P.L. 686, No. 196, § 1, effective in 30 days.

Historical and Statutory Notes

Section 3 of Act 1982, Nov. 23, P.L. 686, No. 196, provides as follows:

"Nothing contained in this act shall affect the validity of any commissions which are presently

valid and issued pursuant to the acts repealed herein."

§ 3305. Termination of appointment

When the corporate authority no longer requires the services of any railroad or street railway policemen, it shall file a notice to that effect, under its corporate seal, in the office of the Secretary of the Commonwealth, in the office of the recorder of deeds where the oath and commission were recorded and with the commissioner. The recorder of deeds shall note this information upon the margin of the record where the oath and commission were recorded and thereupon the powers of the policemen shall terminate.

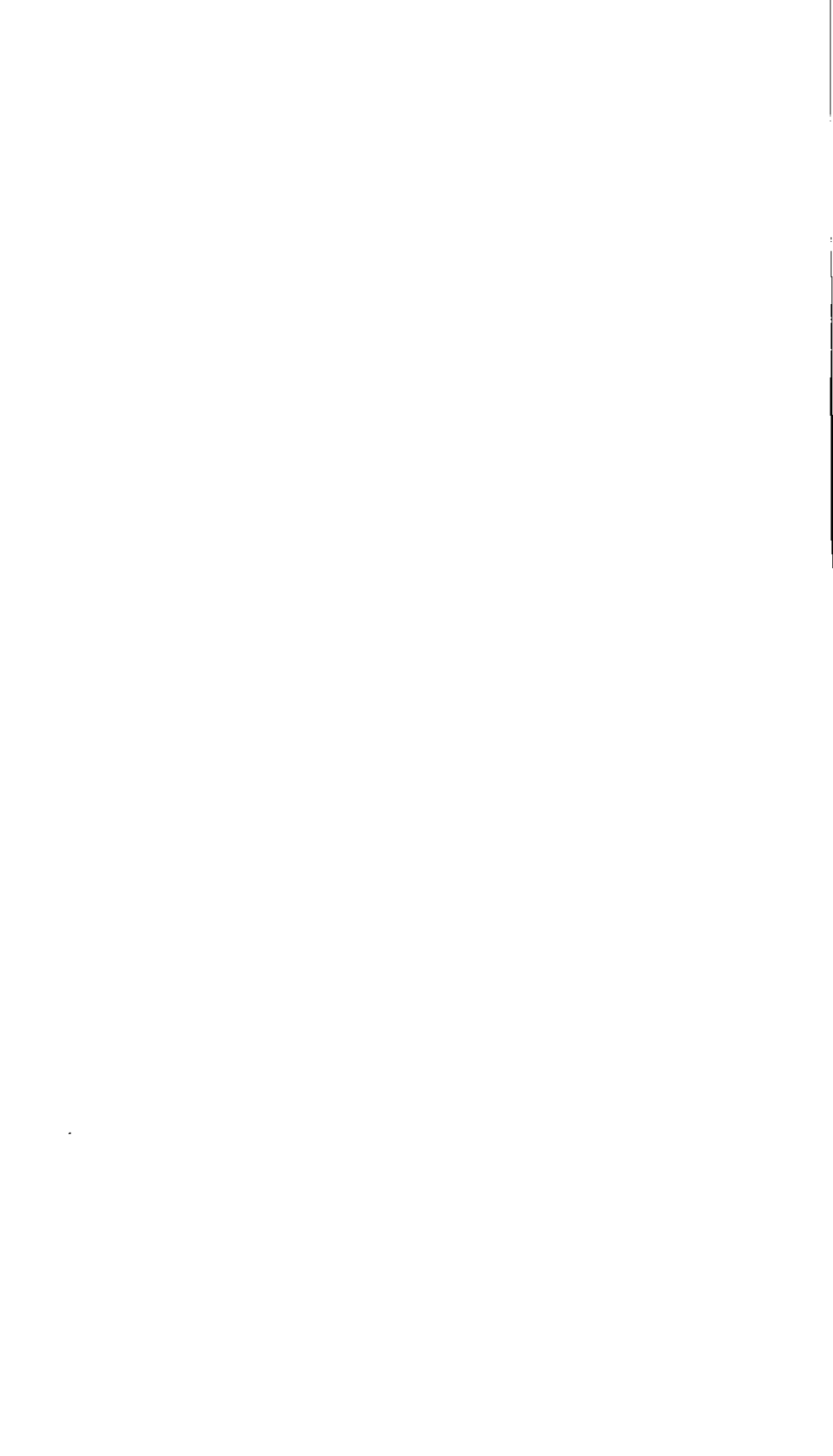
1982, Nov. 23, P.L. 686, No. 196, § 1, effective in 30 days.

Historical and Statutory Notes

Section 3 of Act 1982, Nov. 23, P.L. 686, No. 196, provides as follows:

"Nothing contained in this act shall affect the validity of any commissions which are presently

valid and issued pursuant to the acts repealed herein."



PURDON'S PENNSYLVANIA STATUTES ANNOTATED

TITLE 23

DIVORCE

Chapter	Section
3. Divorce Code	101
4. Custody and Grandparents Visitation [Repealed]	1001

Acts 1970, No. 230, approved November 25, 1970, as amended, establishes the structure of the Pennsylvania Consolidated Statutes by listing the titles thereof which will be implemented from time to time in the future. For text of the Act including the list of titles, see Title 1, Pa.C.S.A.

Title 23 of the Pennsylvania Consolidated Statutes appears as Appendix following this title.

WESTLAW Computer Assisted Legal Research

WESTLAW supplements your legal research in many ways. WESTLAW allows you to

- update your research with the most current information
- expand your library with additional resources
- retrieve direct history, precedential history and parallel citations with the Insta-Cite service

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Preface.

CHAPTER 1

THE DIVORCE LAW [REPEALED]

§ 1. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

Sec. now, 23 Pa.C.S.A. § 3101 et seq.

Title 23 Pa.C.S.A., see next volume

Repealed

GROUND'S FOR DIVORCE AND ANNULMENT OF MARRIAGE [REPEALED]

§§ 10 to 12. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

Prior to repeal, § 10 was amended by Act 1972, Sept. 22, P.L. 880, No. 202, § 1.

See, now, § 101 et seq. of this title.

JURISDICTION [REPEALED]

§§ 15 to 19. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

Prior to repeal, § 15 was amended by Act 1959, Dec. 30, P.L. 2055, § 1; 1978 April 28, P.L. 202, No. 53 § 2(a)[1107] and § 16 was amended by Act 1955, Sept. 27, P.L. 606, § 1.

Former § 19, derived from Act 1929, May 2, P.L. 1237, § 19, added 1959, Dec. 30, P.L. 2055,

§ 2, related to domestic relations divisions and probation officers.

See, now, 23 Pa.C.S.A. § 3101 et seq.

LIBELS; SUBPOENAS; SERVICE [REPEALED]

§§ 25 to 31. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

See, now, 23 Pa.C.S.A. § 3101 et seq.

JURY TRIALS; REFERENCE TO MASTER [REPEALED]

§§ 35 to 38. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

Prior to repeal, § 36 was amended by Act 1959, Dec. 30, P.L. 2055, § 3.

See, now, 23 Pa.C.S.A. § 3101 et seq.

BILL OF PARTICULARS [REPEALED]

§ 40. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

See, now, 23 Pa.C.S.A. § 3101 et seq.

ALIMONY [REPEALED]

§§ 45 to 48. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

Prior to repeal, § 46 was amended by Act 1963, Aug. 14, P.L. 1065, No. 462, § 1; 1967, Oct. 19, P.L. 451, No. 207, § 1; 1974, June 27, P.L. 403, No. 139, § 1.
Former § 48, derived from Act 1929, May 2, P.L. 1237, § 48 and added 1972, Sept. 22, P.L. 880, No. 202, § 2, related to permanent allowances for insane or mentally disordered defendant spouses.
See, now, 23 Pa.C.S.A. § 3101 et seq.

HEARING; REPORT; DECREE [REPEALED]

§§ 50 to 52. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

See, now, 23 Pa.C.S.A. § 3101 et seq.

§ 53. Repealed. 1972, Sept. 22, P.L. 880, No. 202, § 3; 1980, April 2, P.L. 63, No. 26, § 801

Historical and Statutory Notes

See, now, 23 Pa.C.S.A. § 3101 et seq.

§§ 54 to 56. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

Prior to repeal, § 55 was amended by Act 1959, Dec. 30, P.L. 2055, § 4.

See, now, 23 Pa.C.S.A. § 3101 et seq.

APPEALS [REPEALED]

§ 60. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

See, now, 23 Pa.C.S.A. § 3101 et seq.

GENERAL PROVISIONS [REPEALED]

§§ 65 to 69. Repealed. 1980, April 2, P.L. 63, No. 26, § 801, effective in 90 days

Historical and Statutory Notes

See, now, 23 Pa.C.S.A. § 3101 et seq.

CHAPTER 2

OTHER PROVISIONS [REPEALED]

§ 91. Repealed. 1990, Dec. 19, P.L. 1240, No. 206, § 6, effective in 90 days

Historical and Statutory Notes

For subject matter of repealed section, see, now, 23 Pa.C.S.A. § 1702.

Title 23 Pa.C.S.A., see next volume

Repealed

§ 98. Repealed. 1978, Oct. 4, P.L. 909, No. 173, § 9, effective in 60 days

Historical and Statutory Notes

See, now, 23 Pa.C.S.A. § 3101 et seq.

CHAPTER 3

DIVORCE CODE [REPEALED]

CHAPTER 1. PRELIMINARY PROVISIONS

§§ 101 to 504. Repealed. 1990, Dec. 19, P.L. 1240, No. 206, § 6, effective in 90 days

Historical and Statutory Notes

Former §§ 101 to 504, which were added by Act 1980, April 2, P.L. 63, No. 26, §§ 101 to 504, constituted the divorce code in part, and were amended by Act 1984, July 9, P.L. 663, No. 140, § 1 and Act 1988, Feb. 12, P.L. 66, No. 13, §§ 1 to 3.

For subject matter of repealed §§ 101 to 504, see, now:

Former 23 P.S. Section	New 23 Pa.C.S.A. Section
101	3101
102	3102
103	4106
104	3103
201	3301
202	3302
203	3303
204	3304

Former 23 P.S. Section	New 23 Pa.C.S.A. Section
205	3305
206	3306
207	3307
208	3308
301	3104
302	3104
303	3309
304	3321
305	3322
401	3323
401.1	3105
402	3504
403	3505
404	3506
501	3701
502	3702
503	3703
504	3704

§ 505. Repealed. 1988, Feb. 12, P.L. 66, No. 13, § 4, imd. effective

Historical and Statutory Notes

Former § 505, which was added by Act 1980, April 2, P.L. 63, No. 26, § 505, related to alimo-

ny in cases of foreign ex parte divorces or annulments.

§§ 506 to 801. Repealed. 1990, Dec. 19, P.L. 1240, No. 206, § 6, effective in 90 days

Historical and Statutory Notes

Former §§ 506 to 801, which were added by Act 1980, April 2, P.L. 63, No. 26, §§ 506 to 801, constituted the divorce code in part, and were amended by Act 1988, Feb. 12, P.L. 66, No. 13, §§ 5, 6.

For subject matter of repealed §§ 506 to 801, see, now:

Former 23 P.S. Section	New 23 Pa.C.S.A. Section
506	3705

Former 23 P.S. Section	New 23 Pa.C.S.A. Section
507	3706
508	3707
601	3331
602	3332
603	—
604	—
605	3333
701	1702

Title 23 Pa.C.S.A., see next volume

Former 23 P.S. Section	New 23 Pa.C.S.A. Section
702	—
703	—
801	—

CHAPTER 4

CUSTODY AND GRANDPARENTS VISITATION [REPEALED]

§§ 1001 to 1015. Repealed. 1985, Oct. 30, P.L. 264, No. 66, § 3, effective in 90 days

Historical and Statutory Notes

Former §§ 1001 to 1015, which were added by Act 1981, Nov. 5, P.L. 322, No. 115, §§ 1 to 15, constituted the "Custody and Grandparents Visitation Act".

For disposition of repealed subject matter, see Disposition Table preceding 23 Pa.C.S.A. § 2101.

**PURDON'S
PENNSYLVANIA CONSOLIDATED
STATUTES ANNOTATED**

TITLE 23

DOMESTIC RELATIONS

Title 23, Domestic Relations, of the Pennsylvania Consolidated Statutes, together with Disposition and Derivation Tables, is published as a separate volume of Purdon's Pennsylvania Consolidated Statutes Annotated.

INDEX

CONSULT GENERAL INDEX

