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# ERIE COUNTY LEGAL JOURNAL

OPINION
INSIDE

104 ERIE 97-140
In Re: Lay v. County of Erie Tax Claim Bureau and Bolla,
as Executor of the Estate of Lawrence C. Bolla

# INDEX



# ON THE COVER

**CLE**, Accounting, Financial Planning and Legal Advice for Small Business Clients

**MID-YEAR MEETING**, ECBA President Nicholas Pagliari

**MID-YEAR MEETING**, Johnny Johnson and Atty. Khadija Horton


# ERIE COUNTY LEGAL JOURNAL

Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania

Managing Editor: Megan E. Anthony


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# ERIE COUNTY BAR ASSOCIATION
# CALENDAR OF EVENTS AND SEMINARS

**FRIDAY, JUNE 11, 2021**
Erie County Law Foundation Board Meeting
Noon
via Zoom

**MONDAY, JUNE 14, 2021**
Flag Day Holiday
Erie County Courthouse Closed

**TUESDAY, JUNE 15, 2021**
In-house Counsel Division Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

**WEDNESDAY, JUNE 16, 2021**
Workers' Compensation Section Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

**TUESDAY, JUNE 22, 2021**
Solo/Small Firm Division Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

**WEDNESDAY, JUNE 23, 2021**
Diversity and Inclusion Division Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

**WEDNESDAY, JUNE 23, 2021**
AKT Kid Konnection Event
TBD
Tinseltown

**THURSDAY, JUNE 24, 2021**
Defense Bar Meeting
4:00 p.m.
ECBA Headquarters live (must RSVP*)
or via Zoom

**FRIDAY, JUNE 25, 2021**
LAVA Committee Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

**MONDAY, JUNE 28, 2021**
ECBA Board of Directors Meeting
Noon
ECBA Headquarters live (must RSVP*)
or via Zoom

*The ECBA is open for meetings. To attend in person, please RSVP to netheuerkauf@eriebar.com. This will allow us to prepare the appropriate space.

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June 11

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June 4, 11, 18

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## IN RE: DARLENE M. LAY v. COUNTY OF ERIE TAX CLAIM BUREAU and DANIEL BOLLA, AS EXECUTOR OF THE ESTATE OF LAWRENCE C. BOLLA

*REAL ESTATE TAXATION / TAX SALES*

Pursuant to Section 602 of the Real Estate Tax Sale Law, prior to selling a property, a tax claim bureau is required to provide notice of the sale to the owners by mail, publication, and conspicuous posting of the notice on the property.

*REAL ESTATE TAXATION / TAX SALES*

A taxpayer's actual notice of a tax sale cures any defect in a tax claim bureau's failure to provide notice by mail under Section 602 of the Real Estate Tax Sale Law.

*REAL ESTATE TAXATION / TAX SALES*

Pursuant to Section 601(a)(3) of the Real Estate Tax Sale Law, prior to selling an owner-occupied property, a tax claim bureau is required to provide personal service of notice of the sale to the owner occupant or seek waiver of personal service for good cause shown from the court of common pleas.

*STATUTES / CONSTRUCTION*

Pursuant to the Statutory Construction Act, when analyzing particular words or phrases in a statute, courts must construe them according to rules of grammar and according to their common and approved usage.

*STATUTES / CONSTRUCTION*

Pursuant to the Statutory Construction Act, in interpreting a statute, a court must give effect to every word of a statute.

*REAL ESTATE TAXATION / TAX SALES*

To meet the definition of owner occupant, the owner must be an owner of a property with improvements constructed thereon, an owner must reside at the property, and the annual tax bill for the property must be mailed to the owner residing at the property; however, the annual tax bill need not be mailed to that owner at any particular address.

*REAL ESTATE TAXATION / TAX SALES*

A prior judge's *ex parte* determination that good cause existed for waiver of the personal service requirement under Section 601(a)(3) may be reexamined by a later judge who has the benefit of evaluating the evidence in the context of an adversarial proceeding, but a later judge may not make a determination as to whether good cause existed for waiver where no waiver was originally sought by the tax claim bureau prior to sale.

*COURTS / JUDICIAL POWERS*

Under principles of stare decisis, courts of common pleas have no authority to contravene established appellate court precedents.

*REAL ESTATE TAXATION / TAX SALES*

A taxpayer's actual notice of a tax sale does not cure a defect in a tax claim bureau's failure to provide personal service of notice to an owner occupant under Section 601(a)(3) of the Real Estate Tax Sale Law.

*CIVIL PROCEDURE / PLEADINGS/GENERAL REQUIREMENTS*

Failure to formally file amended pleadings asserting new claims related to the original action after being granted leave to do so, while constituting a technical defect, may be disregarded where the party included proposed amended pleadings in its motion highlighting





the changes, the opposing parties were aware of the amendments and had full opportunity to be heard on the new claims, and the court did not set a time certain for the filing of the amended pleadings in its order granting leave to amend.

*REAL ESTATE TAXATION / TAX SALES*

Prior to the sale of real property for unpaid taxes, a tax claim bureau must give an owner the opportunity to pay the unpaid taxes.

*REAL ESTATE TAXATION / TAX SALES*

Pursuant to Section 603 of the Real Estate Tax Sale Law, a tax claim bureau must inform the taxpayer of the possibility of entering into an installment agreement at the option of the tax claim bureau, which would have the effect of staying the sale; however, the tax claim bureau need only do so upon payment of 25% of the balance of all tax claims and tax judgments, and the interests and costs thereon.

*REAL ESTATE TAXATION / TAX SALES*

In determining whether a payment meets the 25% threshold of Section 603 of the Real Estate Tax Sale Law, a tax claim bureau need not make the calculation the moment the payment is tendered so long as the determination is made prior to sale.

*REAL ESTATE TAXATION / TAX SALES*

A taxpayer's actual notice of the possibility of a stay agreement cures any defect in a tax claim bureau's failure to inform the taxpayer under Section 603 of the Real Estate Tax Sale Law.

*MUNICIPAL CORPORATIONS / POWERS AND FUNCTIONS*

The policy or practice of the County of Erie Tax Claim Bureau to offer stay of sale agreements to senior citizens upon payment of 10%, rather than 25%, of the balance of all tax claims and tax judgments, and the interests and costs thereon, is not preempted by the Real Estate Tax Sale Law.

*REAL ESTATE TAXATION / TAX SALES/AGENCY*

Pursuant to Section 208 of the Real Estate Tax Sale Law, tax claim bureaus have the power to bind the taxing districts for whom they serve as agents even in the absence of express authority from those taxing districts.

*COURTS / SUFFICIENCY OF THE EVIDENCE*

A court may not enforce a law or policy for which the party claiming its protection has failed to produce sufficient evidence of its parameters such that the court may only guess as to what conduct it prohibits or permits.

*REAL ESTATE TAXATION / TAX SALES*

A taxpayer's actual notice of the possibility of a stay agreement cures any defect in the County of Erie Tax Claim Bureau's alleged failure to comply with a county ordinance providing that the Bureau publish and post conditions under which the Bureau will enter into a stay of sale agreement.

*CONSTITUTIONAL LAW / COURTS*

Courts should not reach constitutional questions where relief may be granted on non-constitutional grounds.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
TRIAL DIVISION – CIVIL
No. 12931 of 2019

Appearances: James P. Miller, Esq., for the Petitioner, Darlene Lay
Norman A. Stark, Esq., for the Petitioner, Darlene Lay
George Joseph, Esq., for Respondent, County of Erie Tax Claim Bureau
Lisa Smith Presta, Esq., for Respondent, Daniel Bolla, Executor of the Estate of Lawrence C. Bolla

**OPINION OF THE COURT**

Piccinini, J., May 12, 2021

Every year in late September, the County of Erie Tax Claim Bureau sells numerous properties at auction in an effort to recoup delinquent taxes. In 2019, one such property was 3827 Lake Front Drive, located in Millcreek Township, and situated upon the shores of Lake Erie (the Lakefront Property). Among other issues, this case concerns whether adequate notice of the impending sale of the Lakefront Property was provided to the owner under Pennsylvania's complex statutory scheme governing such sales. For the following reasons, and despite the owner's willful, persistent, and long-standing defiance of her local tax obligations, the Court holds that the Tax Claim Bureau failed to provide her the legally required notice as an occupant of the property, and consequently, the September 30, 2019, upset tax sale of the Lakefront Property must be set aside as a matter of law.

## I. BACKGROUND

Petitioner, Darlene Lay, first acquired an ownership interest in the Lakefront Property on February 26, 1996, along with her husband, James P. Lay III, with right of survivorship. Erie County Land Records, Deed Book 435, Page 1200. At the time, the Lakefront Property was more of a weekend getaway, and the Lays primarily resided at 6165 Bridlewood Drive in Fairview, Pennsylvania. Evidentiary Hearing Transcript (Evid. Hr'g Tr.), Day 2, p. 73. Jim Lay died on August 27, 2010, vesting sole ownership of the Lakefront Property in Darlene. Evid. Hr'g Tr., Day 2, p. 73; Tax Claim Bureau Ex. 22. In the years following Jim's death, Darlene Lay's financial purse strings tightened and her tax liabilities soon turned into tax delinquencies. Evid. Hr'g Tr., Day 2, pp. 80-81. In order to maximize her short-term cash flow concerns, she (purportedly on the advice of her accountant) devised a scheme to defer payment on her local taxes for one to two years, making only minimum necessary payments so as to stave off any sale of her properties.[1] Evid. Hr'g Tr., Day 2, pp. 80-81, 86, 176-179. Lay eventually sold the Bridlewood Drive property on August 9, 2016, but critically, she failed to notify the Erie County Assessment Office that she no longer resided there. Evid. Hr'g Tr., Day 2, pp. 112-13.

[1] The Tax Claim Bureau must sell a property at an upset tax sale if, among other things, a tax claim becomes "absolute." 72 P.S. § 5860.601(a)(1)(i). A tax claim becomes absolute "[o]n the first day of January next following [notice], if the amount of the tax claim referred to in the notice has not been paid, or no exceptions thereto filed." 72 P.S. § 5860.311. Such notice must be provided not later than July 31 of the year in which the taxes become due and must state that "on July first of the year in which such notice is given a one (1) year period for discharge of tax claim shall commence or has commenced to run, and that if full payment of taxes is not made during that period as provided by this act, the property shall be advertised for and exposed to sale under this act[.]" 72 P.S. § 5860.308(a).





By the summer of 2019, Lay had not yet satisfied her 2017 or 2018 tax liability, potentially exposing the Lakefront Property to an upset tax sale in September. Evid. Hr'g Tr., Day 2, p. 178. The Tax Claim Bureau claims it made several attempts at notice to Lay of the upcoming sale by mail, by publication, and by posting a notice on the Lakefront Property. Evid. Hr'g Tr., Day 2, pp. 233-34. Lay asserts she never received any of these notices, but was reminded by benevolent neighbors to pay her taxes, or alternatively, realized she needed to pay upon overhearing someone on the phone talking about taxes while at an exercise class. Petition to Set Aside Tax Sale, ¶ 13; Evid. Hr'g Tr., Day 2, pp. 100-02, 136-37. Lay did turn up at the Erie County Tax Claim Bureau office on August 29, 2019, paying $5,000.00 towards her delinquent balance. Tax Claim Bureau Exs. 24, 26. Notably, the Tax Claim Bureau is required to notify a taxpayer of the possibility of entering into a stay of sale agreement upon the payment of 25% of the delinquent balance, including interests and costs. 72 P.S. § 5860.603. According to the Tax Claim Bureau's calculations, Lay's $5,000 was approximately $260 shy of that amount. Evid. Hr'g Tr., Day 1, p. 44. Lay claims the amount was intended to be $6,000.00, but her original check made out in that amount was rejected. Evid. Hr'g Tr., Day 2, pp. 199-201; Tax Claim Bureau Ex. 25. But no installment plan was offered, and roughly a month later, on September 30, 2019, the Tax Claim Bureau sold the Lakefront Property at the annual upset tax sale to Lawrence C. Bolla, who entered a winning bid of $76,000.00, well in excess of the upset sale price of $26,217.26.[2] TCB Ex. 14; Evid. Hr'g Tr., Day 1, pp. 34, 36.

On October 25, 2019, Lay initiated the present action in her Petition to Set Aside Tax Sale. The Tax Claim Bureau responded, as did Bolla. After attempts at settlement proved unfruitful, an evidentiary hearing was held over four days: November 12, 13, 17, and 19, 2020. At its close, the Court ordered post-trial briefing on certain issues and invited the parties to file proposed findings of facts and conclusions of law.[3] Those documents were filed on February 19, 2021. After careful consideration of the evidence and arguments offered by the parties in their filings and at the evidentiary hearing, the case is now ripe for resolution. Before turning to its analysis, the Court provides an overview of the law applicable to this dispute.

## II. THE PENNSYLVANIA REAL ESTATE TAX SALE LAW

Tax sales in Erie County are governed by the Real Estate Tax Sale Law (RETSL), codified at 72 P.S. §§ 5860.101-5860.803.[4] The primary purpose of the RETSL "is to provide speedier and more efficient procedures for enforcing tax liens and to improve the quality of title of

[2] Here, the overbid, that is, the excess of the upset tax sale price and any additional delinquent and current taxes and municipal liens and claims, would have gone to the owner, Darlene Lay. Evid. Hr'g Tr., Day 1, pp. 34-35.

[3] Respondent, Lawrence C. Bolla, passed away on December 11, 2020. Statement of Substitution of Successor Party, ¶ 3. His son, Daniel Bolla, in his capacity as executor of his father's estate, has been substituted as a party to this lawsuit. Order of Substitution, 2/17/2021.

[4] The RETSL governs tax sales in second class A through eighth class counties, while tax sales in counties of the first and second class (currently only Philadelphia and Allegheny counties) are governed by a different statute, the Municipal Claims and Tax Liens Act (MCTLA), 53 P.S. §§ 7101-7505. *Lohr v. Saratoga Partners, L.P.*, 238 A.3d 1198, 1200 (Pa. 2020). The MCTLA allows taxpayers "to redeem property sold at an upset tax sale by paying the delinquent taxes and other costs within nine months of the sale[.]" *Id.* The RETSL explicitly states that "[t]here shall be no redemption of any property after the actual sale thereof." 72 P.S. § 5860.501(c). On the other hand, the RETSL provides delinquent taxpayers a pre-sale remedy by allowing them to stay the sale of their property by paying twenty-five percent of the delinquent taxes prior to the date set for the upset sale and agreeing to an installment plan to pay the remaining taxes within the next twelve months. 72 P.S. § 5860.603. "The purchaser takes on greater risk in buying a property under the MCTLA, given the potential post-sale redemption, but likely pays a lower price to compensate for the higher risk." *Lohr*, 238 A.3d at 1212. The trade-off under the RETSL is that the Tax Claim Bureau "is provided twenty-five percent in advance and likely receives higher bids for those properties which go to sale, due to the lower risk given the prohibition on redemption in the RETSL." *Id.*

the property sold at a tax sale" and "not to strip away citizens' property rights." *Pacella v. Washington County Tax Claim Bureau*, 10 A.3d 422, 428 (Pa. Cmwlth. 2010); *Rice v. Compro Distributing, Inc.*, 901 A.2d 570, 575 (Pa. Cmwlth. 2006). "The tax claim bureau acts as the agent of the taxing district in collecting taxes and in managing and disposing of the property" and is required to sell certain properties in satisfaction of delinquent taxes. *Pacella*, 10 A.3d at 428 (citing 72 P.S. § 5860.208); 72 P.S. § 5860.601. Tax sales can take one of three forms: upset tax sales, judicial tax sales, and private sales. *In re Balaji Investments, LLC*, 148 A.3d 507, 510 (Pa. Cmwlth. 2016) (citing 72 P.S. §§ 5860.605; 5860.610; 5860.613). A tax claim bureau must first attempt an upset tax sale, where a listed property is offered for sale at a minimum sale price, known as an "upset sale price" and where the purchaser takes the property "subject to the lien of every recorded obligation, claim, lien, estate, mortgage, ground rent and Commonwealth tax lien not included in upset price." *Id*. (quoting 72 P.S. § 5860.605; 72 P.S. § 5860.609).[5]

Prior to an upset tax sale, a tax claim bureau is required to provide various forms of notice to owners and the public. Pursuant to Section 602 of the RETSL, a taxing authority is required to undertake three steps in an attempt to notify any property owner of an impending upset tax sale auction. *Horton v. Washington County Tax Claim Bureau*, 81 A.3d 883, 888 (Pa. 2013). First, at least thirty days prior to the upset tax sale, the Bureau must give notice by publication in two local newspapers and a legal journal. 72 P.S. § 5860.602(a). Whenever "any notification of a pending tax sale … is required to be mailed to any owner … and such mailed notification is either returned without the required receipted personal signature of the addressee" or where there is "significant doubt as to the actual receipt of such notification" the Tax Claim Bureau is required to "exercise reasonable efforts to discover the whereabouts of such person or entity and notify him." 72 P.S. § 5860.607a(a). These records include "a search of current telephone directories for the county and of the dockets and indices of the county tax assessment offices, recorder of deeds office and prothonotary's office, as well as contacts made to any apparent alternate address or telephone number which may have been written on or in the file pertinent to such property." *Id*.

Second, at least thirty days prior to the sale, the Bureau must give notice by "United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner." 72 P.S. § 5860.602(e)(1). If the return receipt is not returned from the owner, the Bureau is required to attempt "similar notice … to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post office address by virtue of the knowledge and information possessed by the bureau, by the tax collector for the taxing district making the return and by the county office responsible for assessments and revisions of taxes." 72 P.S. § 5860.602(e)(2). Third, at least ten days prior to the sale, the property must be posted. 72 P.S. § 5860.602(e)(3). "If any of the three types of notice is defective, the tax sale is void." *Gladstone v. Federal National Mortgage Association*, 819 A.2d 171, 173 (Pa. Cmwlth. 2003).

Nevertheless, strict compliance with the mailing requirements of Section 602 is no longer required if the property owner has actual knowledge of the upset tax sale for these notice

[5] "When the upset price is not reached at the sale, the Bureau may petition the court of common pleas to sell the property free and clear of all tax and municipal claims, liens, mortgages, charges, and estates at a judicial tax sale." 777 *L.L.P. v. Luzerne County Tax Claim Bureau*, 111 A.3d 292, 296 (Pa. Cmwlth. 2015) (citing 72 P.S. § 5860.610).





requirements "are not an end in themselves, but are rather intended to ensure a property owner receives actual notice that his or her property is about to be sold due to a tax delinquency." *In re Consolidated Reports and Return by Tax Claim Bureau of Northumberland County (Appeal of Neff)*, 132 A.3d 637, 645 (Pa. Cmwlth. 2016) (en banc) (citing *Donofrio v. Northampton County Tax Claim Bureau*, 811 A.2d 1120, 1122 (Pa. Cmwlth. 2002). "Actual notice in the tax sale context encompasses both express actual notice and implied actual notice." *Id*. (quoting *Sabbeth v. Tax Claim Bureau of Fulton County*, 714 A.2d 514, 517 (Pa. Cmwlth. 1998)).

These statutory requirements stem from fundamental guarantees of due process enshrined in the federal and Pennsylvania constitutions. *Tracy v. County of Chester, Tax Claim Bureau*, 489 A.2d 1334, 1337-39 (Pa. 1985). Indeed, even a taxing authority's strict compliance with the requirements of the RETSL may not automatically satisfy the demands of due process. *Geier v. Tax Claim Bureau of Schuylkill County*, 588 A.2d 480, 483 (Pa. 1991). Rather, "[d]ue process requires that the practicalities and peculiarities of the case are considered and given their due regard." *Famageltto v. County of Erie Tax Claim Bureau*, 133 A.3d 337, 345 (Pa. Cmwlth. 2016) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Still, there is an another provision of the RETSL specifically applicable to owner-occupied properties, extending the procedures for notice beyond the minimum required by due process. Added in 1980, Section 601(a)(3) states:

> No owner-occupied property may be sold unless the bureau has given the owner occupant written notice of such sale at least ten (10) days prior to the date of actual sale by personal service by the sheriff or his deputy or person deputized by the sheriff for this purpose unless the county commissioners, by resolution, appoint a person or persons to make all personal services required by this clause. The sheriff or his deputy shall make a return of service to the bureau, or the persons appointed by the county commissioners in lieu of the sheriff or his deputy shall file with the bureau written proof of service, setting forth the name of the person served, the date and time and place of service, and attach a copy of the notice which was served. If such personal notice cannot be served within twenty-five (25) days of the request by the bureau to make such personal service, the bureau may petition the court of common pleas to waive the requirement of personal notice for good cause shown. Personal service of notice on one of the owners shall be deemed personal service on all owners.

72 P.S. § 5860.601(a)(3). In short, Section 601(a)(3) requires that an owner occupant receive notice of a tax sale by personal service. "The requirements of Section 601(a)(3) are cumulative and apply in addition to the tax claim bureaus' obligations to provide notice through publications, posting, and mail." *Appeal of Neff*, 132 A.3d at 645.

Finally, although the RETSL expressly prohibits any post-sale redemption remedy, 72 P.S. § 5860.501(c), it does provide that a tax claim bureau must notify a taxpayer of the possibility of entering into a stay of sale agreement upon the payment of 25% of a delinquent balance, including interests and costs. 72 P.S. § 5860.603. Generally, by entering into the installment agreement, the taxpayer agrees to pay the remaining taxes within the next twelve months. 72 P.S. § 5860.603. The General Assembly also permits county commissioners to enact local legislation extending the period of discharge or deferment for residential real

estate owned and occupied solely by persons aged 65 or older. 72 P.S. § 5860.504. With these overarching principles in mind, the Court now turns to analysis, making findings of fact and conclusions of law as they become relevant.

## III. ANALYSIS: SECTION 602 AND SECTION 607a

The Court begins with its analysis of the mailing, publication, and posting requirements of Section 602. According to the Tax Claim Bureau, it provided Lay notice of the upcoming sale by certified mail, publication, and the posting of a notice on the Lakefront Property as required by law. Evid. Hr'g Tr., Day 2, pp. 233-34. Lay responds that she did not receive any such notice in the mail at the Lakefront Property as there is no mailbox, and she did not see the publications since she does not read any newspaper or legal journals. Evid. Hr'g Tr., Day 2, pp. 90-91, 195-96; Reply to New Matter of Erie County Tax Claim Bureau, ¶ 47-48. She also suggests the posted notice may have come off the Lakefront Property while it was being power washed or perhaps was blown away by the tempestuous winds of Lake Erie. Evid. Hr'g Tr., Day 2, pp. 100-102, 106-07; Reply to New Matter of Erie County Tax Claim Bureau, ¶ 46.

At the evidentiary hearing, the Tax Claim Bureau offered into evidence the Notice of Public Tax Sale sent to both Darlene Lay and James Lay III on July 11, 2019, at the Bridlewood Drive address and accompanied by a certified mail return receipt. Tax Claim Bureau Ex. 6. The receipt indicates the Notice was returned to sender as not deliverable as addressed. Tax Claim Bureau Ex. 6. Steven Letzelter, supervisor for the Bureau of Revenue and Tax Claim, likewise, testified that the mailing was sent certified to the Bridlewood Drive address, restricted delivery, but was returned undeliverable. Evid. Hr'g Tr., Day One, pp. 18-21. Accordingly, the Court finds that the Tax Claim Bureau attempted to send Lay notice of the sale at the Bridlewood address by "United States certified mail, restricted delivery, return receipt requested, postage prepaid[.]" 72 P.S. § 5860.602(e)(1). This satisfied the requirements of Section 602(e)(1).

Of course, by this time, Lay no longer owned the property at Bridlewood Drive, and upon return of the Notice as undeliverable, the Tax Claim Bureau was required to undertake further "reasonable efforts to discover [her] whereabouts[.]" 72 P.S. § 5860.607a. It was also required to provide "at least ten (10) days before the date of the sale, similar notice of the sale" to Lay by first class mail "at [her] last known post office address by virtue of the knowledge and information possessed by the bureau." 72 P.S. § 5860.602(e)(2). The Tax Claim Bureau indicates that, upon further investigation, it discovered the Lakefront Property address as well as two other potential addresses for the Lays, namely 558 West Sixth Street, Erie, PA 16507 and 222 Severm Avenue, Suite 33, Annapolis, MD, 21403, the former being the old address of Jim Lay's law practice and the latter being the address of Jim Lay's son, with whom Darlene has not spoken in ten years. Evid. Hr'g Tr., Day 2, p. 194. Tax Claim Bureau Exhibit 8 indicates that notice of the upcoming tax sale was sent to the Lakefront Property, the West Sixth Street address, and the Annapolis, Maryland address on September 18, 2019, as well as a United States Postal Service firm book indicating the same. Tax Claim Bureau Ex. 8. Letzelter confirmed as much in his testimony. Evid. Hr'g Tr., Day 1, pp. 25-28.

However, Lay argues that the Tax Claim Bureau did not conduct the reasonable efforts required under Section 607a (sometimes referred to as Section 607.1) to notify Lay once the first certified notice was returned undeliverable, including finding her correct address





in the telephone book and discovering Lay's whereabouts though her realtor. Petition to Set Aside Tax Sale, ¶¶ 29-30. Lay further suggests that the Tax Claim Bureau could have easily discovered Lay's telephone number on the internet to notify her of the tax sale. Petition to Set Aside Tax Sale, ¶ 31. These arguments echo the criticism previously lodged against the County of Erie Tax Claim Bureau in *Maya v. County of Erie Tax Claim Bureau*, 59 A.3d 50 (Pa. Cmwlth. 2013). In *Maya*, the Commonwealth Court held the record was "devoid of evidence" that the Tax Claim Bureau took reasonable efforts to discover additional addresses largely because the Honorable Michael Dunlavey was within his discretion to reject the only evidence the Tax Claim Bureau attempted to offer of those efforts. *Id*. at 56-57.

To the contrary, this Court explicitly finds the evidence offered by the Tax Claim Bureau on this point to be reliable. While *Maya* did note that "the legislature has identified a telephone directory as a type of source to consult, but it did not foreclose other searches, such as an internet search[,]" Lay's argument misses the point that the non-exclusive list of reasonable efforts enumerated under Section 607(a) is intended to reveal the whereabouts of the owner in order to notify them. 72 P.S. § 5860.607a(a). Indeed, "Section 607.1 of the Law does not require the Bureau to undertake extraordinary efforts only reasonable efforts and it does not require the Bureau to surf the web for an owner's alternative address or phone number, particularly where the Bureau is satisfied through other efforts that it has the owner's correct address on file." *In re Tax Sale of Real Property Situated in Jefferson Township*, 828 A.2d 475, 480 (Pa. Cmwlth. 2003). "Reasonable efforts are thus determined, in part, by the facts of the particular case." *Fernandez v. Tax Claim Bureau of Northampton County*, 925 A.2d 207, 213 (Pa. Cmwlth. 2018).

While the Tax Claim Bureau may claim it did not know at the time that Lay resided at the Lakefront Property, it undoubtedly sent a notice to her there on September 18. *See Sobolewski v. Schuylkill County Tax Claim Bureau*, 2019 WL 3436516, *4 (Pa. Cmwlth. 2019) (unpublished) (noting "had the Bureau conducted additional notification efforts, it would not have found another address or means of notifying him."). Where, as here, the Bureau has actually succeeded in discovering the whereabouts of the taxpayer, requiring more would place an unreasonably onerous burden on the Bureau, a result that is incompatible with the language of the statute. Accordingly, the Court finds that further reasonable efforts were undertaken by the Tax Claim Bureau to determine the whereabouts of Lay and that sufficient notice was provided to those addresses in compliance with Section 602.

Next, the Tax Claim Bureau must show that it satisfied it obligation under to 602(a) to publish the notice of the sale "not less than once in two (2) newspapers of general circulation in the county, if so many are published therein, and once in the legal journal" at least 30 days prior to the sale. 72 P.S. § 5860.602(a). The Tax Claim Bureau's Exhibits 11 and 12 indicate that notice of the sale was published in the *Erie Times-News* on August 30, 2019, and in the *Erie County Legal Journal* on August 30, 2019. Tax Claim Bureau Exs. 11 and 12. Letzelter further confirmed this in his testimony. Evid. Hr'g Tr. pp. 31-32. The Court finds this to be the case. Thus, the publication requirement of Section 602(a) is easily satisfied.

Lastly, the Tax Claim Bureau must show it posted notice of the sale on the Lakefront Property at least ten days prior to the sale. 72 P.S. § 5860.602(e)(3). Tax Claim Bureau Exhibit 10 includes a field report from Palmetto Postings, duly appointed for such purposes by Erie County Executive Kathy Dahlkemper pursuant to the Erie County Home Rule

Charter. Tax Claim Bureau Exs. 9-10. The field report includes a picture of the posting on the beach house of the Lakefront Property and a posting completed time stamp of 9:35 a.m. on July 26, 2019. Tax Claim Bureau Ex. 10. Letzelter confirmed the posting as did the field agent for Palmetto Postings who actually posted the notice, Roger Petty. Evid. Hr'g Tr., Day 1, pp. 30; 209-215. The Court accepts this evidence as credible. Therefore, the posting requirement of Section 602(e)(3) is also satisfied.

Lay claims she never received or saw any of these notices. At least as far as the mailing requirement is concerned, whether or not Lay actually read the notices is irrelevant because "the tax claim bureau must only show that it sent all required notices to the property owner or owners, not that the owner or owners actually received the notice of tax sale." *FS Partners v. York County Tax Claim Bureau*, 132 A.3d 577, 581 (Pa. Cmwlth. 2016) (citing 72 P.S. § 5860.602(h)) (emphases in the original). As such, her claims ring hollow. But more fundamentally, the Court finds her testimony to be contradictory, self-serving, and completely incredible. Having observed Lay testify, she appeared evasive, antagonistic, and often histrionic. *See, e.g.*, Evid. Hr'g Tr., Day 2, pp. 75, 79, 88-90, 105, 112, 119, 124, 141, 172, 176, 179, 181, 195. Lay's testimony and the way she presented herself while on the stand was not believable.

Most telling is the fact that Lay subsequently appeared at the Tax Claim Bureau to pay on her delinquent balance on August 29. Lay claims contradictorily in a pleading that she was reminded to pay by her neighbors, Marlene and Homer Mosco (although not in connection to the upset tax sale), but she later testified that she was reminded after overhearing a conversation about taxes at an exercise class. Petition to Set Aside Tax Sale, ¶ 13; Evid. Hr'g Tr., Day 2, pp. 136-37. And 2019 was not the first year in which Lay claims she was serendipitously reminded to pay on her delinquent balance just in the nick of time. One month before the Lakefront Property was set to be sold in 2017, she claims she was told by a friend, Bonnie Baker, that "we better get down there and get this paid" at which point she arrived at the Tax Claim Bureau with $5,320.09, the precise amount necessary to remove the Lakefront Property from the upset tax sale list. Evid. Hr'g Tr., Day 2, pp. 87-88. The following year, in another fortuitous turn of events for Lay, a tall, thin man in a blue t-shirt walking a "blonde-colored" and thin-tailed dog, and who failed to mention his name, brought her the bright green posting that had mysteriously came off her property. Evid. Hr'g Tr., Day 2, pp. 91-94. But these implausible stories strain credulity. The Court does not credit Lay's far-fetched, unverifiable, and contradictory claims.

Specifically, as to the 2019 tax sale, Lay testified that she left the Lakefront Property between 9:00 a.m. and 9:15 a.m. on the morning of July 26 to get coffee and donuts for the day workers power washing the residence and returned about 11:30 a.m. Evid. Hr'g Tr., Day 2, pp. 187-89. As revealed by the field report, the court finds that Roger Petty posted the property at 9:35 a.m. Tax Claim Bureau Ex. 10. Petty testified he secured the posting using 3M painter's tape. Evid. Hr'g Tr., Day 1, p. 220. Lay testified she has no idea what happened to the posting, although she speculates it was washed off by the day workers. Evid. Hr'g Tr., Day 2, p. 107. She further speculates that the notice may have blown off by the wind, but Petty testified that July 26 was a calm day with no adverse weather conditions, and "zero" wind such that Lake Erie appeared "like a sheet of glass." Evid. Hr'g Tr., Day 1, pp. 214-15; Day 2, pp. 106-07. The Court finds Petty's description of the weather conditions





at the time of posting to be credible, and there is no evidence to suggest the weather conditions changed between 9:00 a.m. and 11:30 a.m. The Court further finds the method used by Palmetto Posting was sufficient to secure the posting to the Lakefront Property. *See Matter of Krzysiak*, 151 A.3d 292, 296 (Pa. Cmwlth. 2016) (affirming trial court opinion that "the notice was not unreasonably susceptible to being blown away or vulnerable to inclement weather because, although it extended approximately two inches past each edge of the sign, it was affixed using … 3M tape."). Had the day workers accidently washed off the brightly-colored notice, its remnants likely would have been visible on the ground outside the door near where it was posted. There is simply no credible explanation for the disappearance of the posting between 9:35 a.m. and 11:30 a.m., when she claims she returned. Rather, the Court finds that Lay received actual notice of the 2019 upset tax sale by virtue of the posting on the Lakefront Property on July 26.

But this was not Lay's only instance of actual notice. The Court further finds that Lay did receive actual notice of the tax sale by virtue of the ten-day notice. In particular, the Court finds that Lay received the ten-day notice at her PostNet post office box after it was forwarded from the Lakefront Property address. Evid. Hr'g Tr., Day 2, pp. 128, 195-198. Indeed, Lay readily admits that mail sent to the Lakefront Property address began to be forwarded to her PostNet post office box in Millcreek sometime in the summer of 2019, where she received any mail that would be in her name. Evid. Hr'g Tr., Day 2, pp. 128, 195. Furthermore, her bank statement indicates that she made a purchase at that same PostNet on August 28, 2019, at 8:02 p.m., the night before she happened to show up at the Bureau office to make the partial payment. Bolla Ex. 4. The Court finds this to be more than mere coincidence.

For reasons unexplained, the Tax Claim Bureau appears to assume that the first class mail was not forwarded to Lay's post office box. *See* Tax Claim Bureau Ex. 29, ¶ 8; Proposed Findings of Fact and Conclusions of Law Submitted on Behalf of the Respondent, County of Erie Tax Claim Bureau, ¶ 21. It notes that Lay "did not take steps to ensure that mail address [sic] to her at the Subject Property would be received at her P.O. Box 114 until November 2019." Proposed Findings of Fact and Conclusions of Law Submitted on Behalf of the Respondent, County of Erie Tax Claim Bureau, ¶ 21. For this proposed finding, it appears to rely on Assessment Notes, marked as Tax Claim Bureau Exhibit 21, and a letter from Darlene Lay received by the Assessment Office on November 8, 2019, informing the office of her post office box address, marked as Tax Claim Bureau Exhibit 22. Tax Claim Bureau Exs. 21-22. But nothing in Lay's letter indicates when she began forwarding mail addressed to the Lakefront Property to the post office box and the Assessment record merely indicates when the Assessment Office received Lay's correspondence.

At the evidentiary hearing, the Tax Claim Bureau attempted to shed light on this point in its questioning of Lay when it stated "I believe there may be two different things that are at play. So I want to ask you very specifically, did you ask for a change of address or did you ask for a forwarding of service address?" Evid. Hr'g Tr., Day 2, p. 196. After a series of obscure responses, the Court stepped in to clarify:

> THE COURT: Ma'am, when did you take steps to make sure that any mail that might go to 3827 was forwarded to the new post office box?
> DARLENE LAY: I did that some time during the summer or late summer of 2019.

Evid. Hr'g Tr., Day 2, pp. 196-97. When asked again whether the Millcreek post office box could receive "any mail that might go to 3827 Lake Front Drive[,]" Lay responded "[a]nything that would be in my name, yes." Evid. Hr'g Tr., Day 2, p. 198. August 28, 2019, is well within the range of time that, by Lay's own admission, she received forwarded mail addressed to the Lakefront Property at her PostNet post office box. The postal service firm book indicates the post office received the ten-day notice to be mailed to Lay and there is no evidence in the record to suggest that the first class mailing to the Lakefront Property address in Darlene Lay's name was ever returned to the Tax Claim Bureau. Evid. Hr'g Tr., Day 1, pp. 27-28; *see Pitts v. Delaware County Tax Claim Bureau*, 967 A.2d 1047, 1053, 1055 (Pa. Cmwlth. 2009) (en banc) (noting fact that ten-day notice sent by first class was not returned by the U.S. Postal Service as proof that mailing was sent to correct address). The Court thus rejects any suggestion that Lay was not able to receive first class mail addressed to the Lakefront Property during the relevant timeframe, and specifically finds that Lay did receive the ten-day notice addressed in her name to the Lakefront Property on the night of August 28, 2019, when she checked her mail at the Millcreek PostNet, which then caused her to appear at the Tax Claim Bureau office the next day.

Additionally, the Courts finds Lay again received actual notice from Tax Claim Bureau account clerk, Kathy Getchell, on August 29. Getchell testified that Lay appeared only once and presented a $5,000 check to her. Evid. Hr'g Tr., Day 2, pp. 11, 18. Although the check was made out to the Erie County Treasurer, checks addressed to the Erie County Treasurer are still acceptable since supervisor Letzelter acts as the Erie County Treasurer. Evid. Hr'g Tr., Day 1, p. 38; Evid. Hr'g Tr., Day 2, pp. 11-12. Getchell testified that she informed Lay of the upcoming tax sale and that the $5,000 would not be enough to prevent the sale. Evid. Hr'g Tr., Day 2, p. 16. Lay told her she would return the following Monday, to which Getchell replied that the following Monday the office would be closed due to a holiday. Evid. Hr'g Tr., Day 2, p. 17. Getchell testified that she even calculated and wrote down for Lay the interest for the month of September. Evid. Hr'g Tr., Day 2, p. 18. Getchell stressed to Lay that she should pay her delinquent balance by the Friday before the upset tax sale to ensure property would not be sold and Lay reassured Getchell that she would return. Evid. Hr'g Tr., Day 2, pp. 16, 19. Getchell had a particularly vivid recollection of her conversation with Lay, who commented on Getchell's ring, passed down to her by her late mother, of whom Lay reminded her. Evid. Hr'g Tr., Day 2, p. 18. The Court finds Getchell's testimony to be credible.

A bank check was no doubt made out on August 29 by Darlene Lay in the amount of $6,000 made payable to the Erie County Treasurer. Tax Claim Bureau Ex. 25. The Court does credit the testimony of Susan Peters, then-Bank Manager of the West 8th Street First National Bank who testified that Lay returned to the bank on August 29, claiming that the Tax Claim Bureau did not accept her check, and then called the Bureau to inquire as to how the check should be made out. Evid. Hr'g Tr., Day 4, pp. 48, 50, 52, 58. But Peters had no knowledge of whether Lay actually ever presented the $6,000 check to Getchell prior to returning to the bank, nor could she testify as to why or even if Lay requested the second check in an amount of $5,000 rather than $6,000. Evid. Hr'g Tr., Day 4, pp. 60-61, 65-66. As such, Peters' testimony is not in conflict with Getchell's credible testimony that she never saw nor ever rejected the $6,000 check from Lay. Evid. Hr'g Tr., Day 2, p. 19.

Rather, the Court finds that Lay did not present the $6,000 check to the Tax Claim Bureau





as she claims. This is in keeping with Lay's pattern of serial tax delinquency dating as far back as 2013. Tax Claim Bureau Ex. 17; Evid. Hr'g Tr., Day 2, p. 176. The Court finds her motivation for this last-minute change of heart to be her desire to keep a larger cash balance in her bank account, which was down to as low as $372.87 on the morning of August 29, 2019, according to her bank records. Bolla Ex. 4; Evid. Hr'g Tr., Day 2, pp. 132-35. Despite Lay's claim that her delinquency was not intentional, the Court finds that her delinquency was clearly strategic as she believed the delinquent taxes could accrue on the property for two years before the property would be at risk of sale, and as such, her delinquency was knowing, willful, and intentional, regardless of whether it was based upon the advice of her accountant. Evid. Hr'g Tr., Day 2, pp. 80-81.

The Court further finds that Lay actively avoided updating her address with the Assessment office in order to provide plausible deniability as to any adverse consequences of her delinquency. This is evinced by her failure to update her address with the Assessment Office, her decision to utilize a post office box rather than a mailbox on the Lakefront Property, her false claims that she did not see any of the bright green notices placed on the Lakefront Property year after year, and her fantastic explanations for how she would remember to pay down her delinquent balance just in time to prevent the Lakefront Property from being exposed to a sale. Evid. Hr'g Tr., Day 2, pp. 91-102, 128-29. On this basis, the Court finds Lay had actual knowledge of the 2019 upset tax sale of the Lakefront Property prior to her appearance at the Tax Claim Bureau office on August 29, 2019. It also finds she was a serial tax delinquent who did not innocently miss her tax payments, but played dangerously with the tax sale laws, exploiting them in an effort to postpone her local tax obligations and pay as little as possible in the short term. As such, she has "proven herself to be a willful, persistent, and long-standing tax delinquent." *In re Sale of Real Estate by Montgomery County Tax Claim Bureau for 1997 Delinquent Tax (Appeal of JUL Realty Corp)*, 836 A.2d 1037, 1042 (Pa. Cmwlth. 2003) (en banc). Her claims that she did not receive adequate notice of the upset tax sale pursuant to Section 602 is therefore denied.[6]

## IV. ANALYSIS: SECTION 601(a)(3)

### A. The Definition of Owner-Occupant Under Section 102

To be entitled to the benefit of the personal service requirement of Section 601(a)(3), a taxpayer must first meet the definition of owner occupant found in Section 102 of the RETSL. Section 102 defines an owner occupant as "the owner of a property which has improvements constructed thereon and for which the annual tax bill is mailed to an owner residing at the same address as that of the property." 72 P.S. § 5860.102. This definition, to put it mildly, is not a model of lucid legislative drafting. As a leading treatise observes:

> One reading of the statute could suggest that many properties considered to have owner-occupants in the general sense would not satisfy the definition. For example, if the real estate tax bill is mailed to a mortgage service company, a trustee, accountant, attorney, or agent for an owner who resides on the property, or if the Bureau has the wrong

[6] In her Petition, Lay also claims that the failure to properly serve her under Section 602 violated her constitutional right to notice and due process. Petition to Set Aside Tax Sale, ¶ 40. Because the Court finds that the Tax Claim Bureau complied with the requirements of Section 602, and because it finds she had actual notice of the sale, there is no question that she received adequate procedural due process protections in this regard.

address, one could argue he or she is not an "Owner Occupant" within the meaning of the statute and therefore not entitled to notice by personal service.

DARRELL M. ZASLOW, MONTGOMERY L. WILSON, & LEVI S. ZASLOW, *Pennsylvania Real Estate Tax Sales and Municipal Claims*, 4 ed., § 4.37 Personal Service of Notice on Owner of Owner-Occupied Residence, 254 (2020) (emphasis added). The Tax Claim Bureau and Bolla take up this interpretation. They argue because Lay never updated her address, and thus, the annual tax bill was sent to her former residence, she was not an owner occupant under the statutory definition. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 2; Post-Hearing Brief of Respondent Daniel Bolla, as Executor of the Estate of Lawrence C. Bolla, p. 5. Lay argues she is an owner occupant because she receives the annual tax bill in her name and resides at the property. Evid. Hr'g Tr., Day 2, p. 223.

The Court's interpretation of the definition of owner occupant in Section 102 is guided by the Statutory Construction Act, 1 Pa.C.S. §§ 1501-1991. "The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a). To that end, "[t]he first and best indication of legislative intent is the language used by the General Assembly in the statute." *Matter of Private Sale of Property by Millcreek Township School District*, 185 A.3d 282, 290-91 (Pa. 2018) (citing *Commonwealth v. Veon*, 150 A.3d 435, 444-45 (Pa. 2016)). "Words and phrases shall be construed according to rules of grammar and according to their common and approved usage[.]" 1 Pa.C.S. § 1903(a). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). "When the text of the statute is ambiguous, then — and only then — do we advance beyond its plain language and look to other considerations to discern the General Assembly's intent." *Woodford v. Commonwealth of Pennsylvania Insurance Department*, 243 A.3d 60, 73-74 (Pa. 2020) (citing *A.S. v. Pennsylvania State Police*, 143 A.3d 896, 903 (2016)). In any event, it is presumed that "the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable." 1 Pa.C.S. § 1922(1).

Accordingly, the Court begins with the text of the definition, applying traditional rules of grammar, and construing the language consistent with its common usage. 1 Pa.C.S. § 1903(a). Because that definition is somewhat cumbersome, it is helpful to deconstruct the definition into its constituent parts. An owner occupant is, unsurprisingly, "the owner of a property[.]" 72 P.S. § 5860.102. The remainder of the definition places two necessary conditions on the type of property the taxpayer must own in order to satisfy the definition. The first condition (not at issue here) states that the property must have "improvements constructed thereon[.]" *Id*. The second condition (very much at issue here) states that the property must be one "for which the annual tax bill is mailed to an owner residing at the same address as that of the property." *Id*.

The first part of the clause instructs that the annual tax must be mailed. It is written in the passive voice with the subject of the clause — here the Tax Claim Bureau — implied.[7] The direct object is the annual tax bill and the indirect object is "an owner[.]" *Id*. At this point in the definition, it is clear that an owner of the property must receive the annual tax bill. The

[7] If written in the active voice, the clause would read: the tax claim bureau mails the annual tax bill to an owner.





crux of the issue is whether the phrase constituting the second part of the clause ("residing at the same address as that of the property") modifies the verb "is mailed," or whether it modifies the indirect object "an owner." If the phrase modifies "is mailed," then the Tax Claim Bureau and Bolla are correct, for it describes where the annual tax bill must be mailed, *i.e.* the address where the taxpayer resides. And since Lay was not residing at the Bridlewood address where the annual tax bill was mailed, she would not be an owner occupant. On the other hand, if the phrase modifies "an owner," then Lay is correct for it merely describes the type of owner who must receive the annual tax bill. And since the annual tax bill was undoubtedly addressed to her, an owner residing at the property, she would be an owner occupant.

Traditional rules of grammar unequivocally lead to the conclusion that the phrase "residing at the same address as that of the property" modifies "an owner" not "is mailed." First, the proximity of the phrase is telling, as it directly follows the word "owner." Under the interpretative canon of the last antecedent, "a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1170 (April 1, 2021) (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003); citing *Lockhart v. United States*, 577 U.S. 347, 351 (2016)). Admittedly, this canon, "[p]erhaps more than most … is highly sensitive to context." ANTONIN SCALIA & BRYAN GARNER, *Reading Law: The Interpretation of Legal Texts* 150 (2012); *see also Duguid*, 141 S. Ct. at 1175 (Alito, J., concurring in the judgment) ("To the extent that interpretive canons accurately describe how the English language is generally used, they are useful tools. But they are not inflexible rules.").

However, proximity is only the beginning; movement, and deletion are the key tests for determining whether a given phrase acts adverbially or adjectivally. ED NAGELHOUT, *Analyzing Grammar in Context, Section 5: Participle Phrases*, available at https://nagelhout.faculty.unlv.edu/AGiC/s5i.html (last viewed May 11, 2021). Here, deletion provides a clear answer. If the phrase modifies "is mailed" as the Tax Claim Bureau and Bolla argue, then the deletion of the prepositional phrase "to an owner" from the clause should not affect its logical flow. Yet, it obviously does as the clause "for which the annual tax bill is mailed residing at the same address as that of the property" makes no sense. This is so because the word "residing" can only properly modify a noun or pronoun, not a verb. Only a thing can be said to reside, not an action. And if "residing" cannot modify a verb, then a phrase beginning with the word "residing" cannot modify the compound verb "is mailed." Hence, the phrase describes the type of owner who must receive the annual tax bill. The definition in Section 102 says nothing about the location *where* the annual tax bill must be mailed, only the type of person to *whom* it must be addressed.

Interestingly enough, a prior version of the definition was ambiguous on this point. A definition of owner occupant was first added to the RETSL in 1980. *Matter of Tax Sales by Tax Claim Bureau of Dauphin County (Appeal of Goldstein)*, 651 A.2d 1157, 1159 n.3 (Pa. Cmwlth. 1994). At the time, it defined an owner occupant as "the owner of all property which has improvements constructed thereon and for which the annual tax bill is mailed to the owner at the same address as that of the property." 1980 Pa. Laws 417. In 1986 the General Assembly enacted "vast" revisions to the RETSL. *Horton*, 81 A.3d at 894 (Baer, J., dissenting). One such change was amending the definition of owner occupant to its current form: "the owner of ~~all~~ **a** property which has improvements constructed thereon and for which the annual tax

bill is mailed to ~~the~~ **an** owner **residing** at the same address as that of the property." 1986 Pa. Laws 352. Noticeably absent is the word "residing." Without that participle, the phrase at issue would have been a prepositional phrase, which reasonably could have modified either "is mailed" or "the owner." But whatever the intentions of the General Assembly may have been in 1986, this Court cannot ignore the syntactical effect of the word "residing" on the definition's plain meaning, and adopting the Tax Claim Bureau and Bolla's argument would effectively read it out of the statute. *See Commonwealth v. McClelland*, 233 A.3d 717, 734 (Pa. 2020) ("Some meaning must be ascribed to every word in a statute … and there is a presumption that disfavors interpreting language as mere surplusage."); S *& H Transport, Inc. v. City of York*, 140 A.3d 1, 7 (Pa. 2016) ("In construing the language within a statute, we must give effect to every word of the statute."); 1 Pa.C.S. § 1922(2) ("In ascertaining the intention of the General Assembly in the enactment of a statute," a court may presume that "the General Assembly intends the entire statute to be effective and certain").[8]

"It is axiomatic that, if the General Assembly defines words that are used in a statute, those definitions are binding." *Snyder Brothers, Inc. v. Pennsylvania Public Utilities Commission*, 198 A.3d 1056, 1071 (Pa. 2018) (quoting *Pennsylvania Public Utilities Commission v. Andrew Seder/The Times Leader*, 139 A.3d 165, 173 (Pa. 2016)) (internal quotation marks omitted). The Tax Claim Bureau and Bolla's interpretation would require the Court to add words to the definition enacted by the General Assembly. To have the effect they desire, the definition would read something like this: "the owner of a property which has improvements constructed thereon and for which the annual tax bill is mailed **to the same address as that of the property** [where an owner resides.]" Conversely, Lay's oversimplified interpretation, disregarding the reference to the annual tax bill, would require the Court to delete words from the statute: "the owner of a property which has improvements constructed thereon and ~~for which the annual tax bill is mailed to an owner~~ [who is] residing at the same address as that of the property." Neither construction is true to the language of the statute and adopting either would require the Court to usurp the powers of the legislative branch in rewriting the statute. *See Givelify, LLC v. Department of Banking and Securities*, 210 A.3d 393. 403 (Pa. Cmwlth. 2019) ("it is not the function or duty of this Court or any other court to add provisions to a statute not provided for by the legislature") (quoting *Lower Merion Fraternal Order of Police Lodge No. 28 v. Lower Merion Township*, 512 A.2d 612, 616 (Pa. 1986)); *In re Bah*, 215 A.3d 1029, 1036 (Pa. Cmwlth. 2019) ("[t]he Court may not rewrite a statute") (quoting *Bender v. Pennsylvania. Insurance Department*, 893 A.2d 161, 164 (Pa. Cmwlth. 2006). The Court declines the parties' invitation to do so here.

Few cases have directly confronted the RETSL's definition of owner occupant. DARRELL M. ZASLOW, MONTGOMERY L. WILSON, & LEVI S. ZASLOW, *Pennsylvania Real Estate Tax Sales and Municipal Claims*, 4 ed., § 4.37 Personal Service of Notice on Owner of Owner-Occupied Residence, 254 (2020). Significantly, in *In Re Petition to Set Aside Upset Tax Sale (Appeal of Hansford)*, 218 A.3d 995 (Pa. Cmwlth. 2019), the Commonwealth Court

[8] One may ask why the General Assembly chose to reference the annual tax bill at all if it did not intend to connect its mailing to the address of the property. But there are rational reasons for the legislature's choice. For instance, if the General Assembly had adopted a definition like the one suggested by the Tax Claim Bureau and Bolla, those owners choosing to use a post office box rather than a traditional mailbox, or to receive mail at a different property, would be at a disadvantage. In that case, such individuals could never qualify as owner occupants since the annual tax bill would never be mailed to same address as that of the residence.





considered whether an incarcerated individual could qualify as an owner occupant under the definition. The Lehigh County Tax Claim Bureau argued that the petitioner could not be an owner occupant because the annual tax bill was mailed to a post office box rather than the same address as that of the property. *Id*. at 999-1000, n.11. The Commonwealth Court rejected this argument. Relying heavily on legislative intent, the Court held "[b]ecause the General Assembly's reason for mandating personal service is concern over the divesting of the property wherein owner occupants reside, without the owner occupants first receiving notice, this Court cannot hold that Hansford is not an owner occupant based solely on the Bureau's lack of knowledge." *Id*. at 999. The Court went on to conclude:

> [T]he Bureau is misconstruing the definition of owner occupant by focusing on the "address ... of the property," rather than the requirement that the tax bill be mailed to "an owner residing at ... the property." 72 P.S. § 5860.102. Recognizing the General Assembly's concern that owner occupants not be displaced, this Court cannot determine whether Hansford is an owner occupant based solely on the address listed on the Bureau's records in this case.

*Id*. at 1000. While this Court would not place so much emphasis on legislative intent absent an ambiguity in the plain meaning of the text, the result is consistent with the plain meaning of the definition. *See A.S.*, 143 A.3d at 903 ("it is only when statutory text is determined to be ambiguous that we may go beyond the text and look to other considerations to discern legislative intent.") (citing 1 Pa.C.S. § 1921(c)).

Here, as in *Appeal of Hansford*, the Tax Claim Bureau and Bolla overlook the fact that the annual tax bill need only be mailed to an owner residing at the same address as that of the property, not necessarily to the same address as that of the property. The facts of this case are arguably one step removed from *Appeal of Hansford* since Lay's annual tax bill was not sent to her post office box, but to a former address, and the Tax Claim Bureau had no reasonable means of obtaining her current one. But *Appeal of Hansford* does not mince words. It states unequivocally that "the burden is not on the taxpayer to prove that [s]he is an owner occupant, but for the Bureau to prove that it satisfied the notice requirements under circumstances wherein the General Assembly included heightened protection for the owner occupant." *Appeal of Hansford*, 218 A.3d at 1001 n.12. Even if it were so inclined, the Court cannot disregard such categorical language as a matter of stare decisis. *See Commonwealth v. Randolph*, 718 A.2d 1242, 1245 (Pa. 1998) ("It is a fundamental precept of our judicial system that a lower tribunal may not disregard the standards articulated by a higher court.").

The Tax Claim Bureau argues that *Appeal of Hansford* is distinguishable because the bureau there did not seek waiver and did not argue that waiver could be granted by a court post-sale; it also argues that the holding of *Appeal of Hansford* should be limited to the issue of whether an incarcerated individual qualifies as an owner occupant, a scenario clearly not applicable here. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 15. Bolla similarly argues that *Appeal of Hansford* "went far afield in its analysis, contorting the plain language of the statute and rules of logic in reaching its decision." Post-Hearing Brief of Respondent Daniel Bolla, as Executor of the Estate of Lawrence C. Bolla, p. 13. Bolla asserts that *Appeal of Hansford* "cast aside mandatory rules of statutory

interpretation," citing to 1 Pa. C.S. § 1921(b) for the proposition that when the words of a statute are free of any ambiguity, the letter of the law is not to disregarded under the pretext of pursuing the spirit of the law. Post-Hearing Brief of Respondent Daniel Bolla, as Executor of the Estate of Lawrence C. Bolla, p. 15.

The Court agrees that much of the analysis in *Appeal of Hansford* relies on extra-textual considerations. However, as the Court has taken great pains to explain, the only truly grammatical reading of the definition of owner occupant supports Lay's reading. Furthermore, Bolla fails to explain how a properly conducted analysis of the rules of statutory interpretation would lead to a different result under the Statutory Construction Act. In the end, *Appeal of Hansford* was ultimately correct in its holding that the focus of the definition is on the owner, not the address of the owner, even putting aside any extra-textual considerations. 218 A.3d at 1000. That *Appeal of Hansford* did not concern the separate issue of waiver is irrelevant for purposes of its analysis of the definition of owner occupant and its stare decisis effect on this case. That it also dealt with the issue of incarceration does not render its discussion of the definition of owner occupant *dicta* as that issue would have been mooted had the Court accepted the argument of the bureau that annual tax bill must be sent to a particular address. It was thus necessary to the result in that case, and its analysis remains binding on this Court.

Bolla further argues that *Appeal of Hansford*'s holding is in conflict with that of *Appeal of Neff*, a case decided by the Commonwealth Court sitting *en banc*. Bolla correctly notes that under Pa.R.A.P. 3103(b), an opinion of the court en banc is binding on subsequent panels, and as such, *Appeal of Hansford* should be "limited to its unique facts." Post-Hearing Brief of Respondent Daniel Bolla, as Executor of the Estate of Lawrence C. Bolla, p. 15. However, Bolla fails to explain how *Appeal of Neff* is in any way inconsistent with *Appeal of Hansford*. In the context of Section 601(a)(3), *Appeal of Neff* held that the common pleas court did not abuse its discretion by granting waiver of the personal service requirement, and did not consider whether the appellant actually met the definition of owner occupant in Section 102. *Appeal of Neff*, 132 A.3d at 651. In fact, the definition of owner occupant appears nowhere in the opinion.

Even if there were some conflict between the cases, any prior published panel decision of an appellate court is binding on a subsequent panel regardless of whether the decision is en banc or not. Pa.R.A.P. 3103(b) merely codifies the idea that a party seeking to overrule a previous decision of an intermediate appellate court must request en banc consideration to do so; it does not imbue an en banc decision with any greater precedential weight on a court of common pleas than a published panel decision. Precisely because a panel of one intermediate appellate cannot overturn a panel of that same court, courts of common pleas are required to attempt to reconcile seemingly conflicting precedents of an intermediate appellate court. *Commonwealth v. Karash*, 175 A.3d 306, 307-10 (Pa. Super. 2017); *see also DeGrossi v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 174 A.3d 1187, 1191 (Pa. Cmwlth. 2017) (noting "this Court, sitting as three-judge panel, is bound to follow and apply the outcome of [a prior three-judge panel]."); *Williams v. Aguirre*, 965 F.3d 1147, 1163 (11th Cir. 2020) (courts are "obligated, if at all possible, to distill from apparently conflicting prior panel decisions a basis of reconciliation and to apply that reconciled rule.") (internal quotation omitted); *In re LIBOR-Based Financial Instruments Antitrust Litigation*, 2015 WL 6243526, *86 (S.D. N.Y. 2015) ("[w]hile we suppose that





one could reduce these two cases — or any case — to their particular facts, we continue to believe that a district court has a duty to synthesize holdings into a coherent doctrine."). Sometimes, perhaps, appellate courts ignore prior precedent, and no reasonable reconciliation can be made. *See Morrison Informatics, Inc. v. Members 1st Federal Credit Union*, 139 A.3d 1241, 1250 (Wecht, J., concurring) ("Lawyers and judges might read today's decision as forcing them to strive mightily in an attempt to reconcile disparate precedents, including this one. They need not do so. No principled reconciliation is available."). In such cases "controlling precedent is to be discerned from developmental accretions in the decisional law, attributing due and substantial weight to pronouncements made in the most recent decision." *Hammons v. Ethicon, Inc.*, 240 A.3d 537, 564 (Pa. 2020) (Saylor, C.J., dissenting); *see also D'Alessandro v. Berk*, 46 Pa. D. & C. 588, 601 (Phila. Co. 1943) ("Being thus confronted by apparently conflicting decisions by our appellate courts, we have no choice but to follow that which is both last in time and supreme in point of ultimate authority."). Here, that is clearly *Appeal of Hansford*.

Bolla also asserts that *Appeal of Hansford* has "not been cited in another appellate decision since and should be disregarded by this Court[.]" Post-Hearing Brief of Respondent Daniel Bolla, as Executor of the Estate of Lawrence C. Bolla, p. 16. However, just prior to the filing of Bolla's brief, in *Marshall v. East Township Board of Supervisors*, — A.3d —, 2021 WL 608273, *6 (Pa. Cmwlth. 2021), the Commonwealth Court cited the case for the proposition that an incarcerated individual can be an owner occupant for purposes of the RETSL, albeit in the context of an unrelated zoning issue. While not directly relevant to the case at bar, *Marshall* at least indicates that *Appeal of Hansford* is not some disfavored decision whose continuing validity should be called into question. Accordingly, the Tax Claim Bureau and Bolla's attempts at distinguishing *Appeal of Hansford* are unpersuasive, and this Court would independently come to the same conclusion about the meaning of the definition of owner occupant in Section 102 absent any appellate case law on the subject.

In sum, the definition of owner occupant contains four necessary elements: (1) an owner occupant must be an owner of the property; (2) the property must have improvements constructed thereon; (3) the annual tax bill for that property must be mailed to an owner; and (4) such owner referenced in prong three must reside at the property. Having determined the meaning of the definition, the analysis is rather straightforward.

During the relevant timeframe, Lay was the owner of the Lakefront Property. The Lakefront Property had improvements constructed thereon. The annual tax bill was mailed to Lay, an owner. The only issue of any substance is whether Lay resided at the Lakefront Property. At the evidentiary hearing, Richard McCray, a carpenter who has done work for Lay, testified that the Lakefront Property was Lay's "home." Evid. Hr'g Tr., Day 3, pp. 42, 47. Richard Seidel, a friend of Lay, testified she lived at the Lakefront Property, and that he was a frequent visitor there. Evid. Hr'g Tr., Day 3, pp. 103-04. David Briggs, a former classmate and longtime acquaintance of Lay, testified that she appeared to live at the Lakefront Porperty and that he visited her there ten times between July and September of 2019. Evid. Hr'g Tr., Day 3, pp. 122-25. Brian Johnson, a realtor, testified that Lay informed him she resided at Lakefront Property during a walk through and that it appeared to be lived in. Evid. Hr'g Tr., Day 4, pp. 24-26. He also indicated that during the period of July and August of 2019, the Lakefront Property was "her primary residence" and that [s]he was busy there cleaning up the beach,

plating flowers, organizing her garage. She had a lot of things in the home." Evid. Hr'g Tr., Day 4, p. 31. Even the exhibits of the opposing parties indicate the existence of potted plants and patio furniture, further suggesting the Lakefront Property was lived in throughout the year. Evid. Hr'g Tr., Day 2, pp. 85-86; Bolla Ex. 2; Tax Claim Bureau Ex. 10.

Based upon this evidence, the Court finds that Lay did indeed reside at the Lakefront Property. She therefore satisfied all the necessary conditions of the definition of owner occupant under Section 102 and the Court holds she was an owner occupant under the RETSL as a matter of law. Accordingly, the Court must next consider whether the Tax Claim Bureau met its obligations under Section 601(a)(3) to personally serve her with notice of the upset tax sale, or alternatively, to seek waiver of the personal service requirement from the court of common pleas.

**B. Personal Service under Section 601(a)(3)**

Absent waiver, the Tax Claim Bureau must show an owner occupant was given "written notice of [the] sale at least ten (10) days prior to the date of actual sale by personal service[.]" 72 P.S. § 5860.601(a)(3). The 2019 Posting Protocol in Tax Claim Bureau Exhibit 19 indicates that three attempts at personal service should be made. Tax Claim Bureau Ex. 19. The Protocol in Tax Claim Bureau Exhibit 19, also introduced as evidence as Petitioner's Exhibit B, states that "[i]f the 'Mail Address' and the 'Property Address' do not match Personal Service attempts are not required. This will be denoted in the record as 'Personal Service Not Required' and 'Not Owner Occupied.'" Tax Claim Bureau Ex 19; Petitioner's Ex. B. However, "[i]f the 'Mailing Address' and the 'Property Address' match Personal Service attempts are required according to the county's protocol." Tax Claim Bureau Ex 19; Petitioner's Ex. B. "If the 'Mail Address' is a PO Box it is to be treated as a matching address." Tax Claim Ex. 19; Petitioner's Ex. B.

When asked whether personal service was obtained on the Lakefront Property, Steven Letzelter answered "I knew after the fact that it was not[.]" Evid. Hr'g Tr., Day 1, p. 32. He further testified to the steps the Tax Claim Bureau takes in order to determine whether a property is owner occupied. First, they look to records maintained by the Office of Assessment to ascertain whether a home is covered by the Homestead Exclusion Act because only owner occupied properties can qualify for a homestead exclusion. Evid. Hr'g Tr., Day 1, p. 32. Second, they allow field agents, when posting the property to "look at the physical address versus the mailing address. And if they do not find anybody when they first knock — when they knock on the door to put the posting on, then they will list it as not owner occupied and then there is no — again, no reason to go back a second and third time." Evid. Hr'g Tr., Day 1, p. 33. He later reiterated that "[t]hey [Palmetto Postings] attempt once while they're there. But then they do not have to go back for the second or third additional attempts if it's not owner occupied." Evid. Hr'g Tr., Day 1, p. 87.

The field report in Tax Claim Bureau Exhibit 10 indicates that personal service was attempted once at 9:35 a.m. on July 26, 2019. Tax Claim Bureau Ex. 10. There is no indication that any further attempts at personal service were made. The field report in Tax Claim Bureau Exhibit 10 also describes the Lakefront Property in the comment section as "Not Owner Occupied" and in the disposition section as "Personal Service Not Required." Tax Claim Bureau Ex. 10. This is consistent with Letzelter's testimony that field agents would not make any further attempt at personal service because the address of the Lakefront





Property did not correspond with her address of record on Bridlewood Drive.

Accordingly, the Court finds that an attempt at personal service was made on July 26, 2019, by Palmetto Postings field agent Roger Petty, but that no further attempts at personal service were made because, pursuant to the Tax Claim Bureau's own procedure for determining whether a property was owner occupied, it determined that the Lakefront Property was not. Although three attempts at personal service are required when a property is deemed to be owner occupied per the 2019 Protocol, the Protocol also assumes a property is not owner occupied if the assessment records do not indicate a Homestead exemption on the property and the mailing address on record for the property does not match the actual address of the property, in which case only one attempt at personal service is attempted at the time of posting. That is precisely what happened here. Because Palmetto Posting and the Tax Claim Bureau assumed, per its protocol, that the Lakefront Property was not owner occupied, only one attempt at personal service was made on July 26, 2019, which proved unsuccessful. Thus, Lay never received personal service of the upset tax sale notice.

**C. Waiver of Personal Service**

This does not necessarily mean that the Tax Claim Bureau did not meet its statutory obligation under Section 601(a)(3). That provision further provides that "[i]f such personal notice cannot be served within twenty-five (25) days of the request by the bureau to make such personal service, the bureau may petition the court of common pleas to waive the requirement of personal notice for good cause shown." 72 P.S. § 5860.601(a)(3). In anticipation of the 2019 upset tax sale, the Tax Claim Bureau did file a Petition to Waive Personal Service for numerous properties on September 12, 2019, at docket number 12440-2019. Petitioner's Ex. C-1. Those properties for which the Tax Claim Bureau sought waiver are listed in an attachment labeled as Exhibit A. Petitioner's Ex. C-1. That same day, the Honorable Stephanie Domitrovich signed an Order waiving the personal service requirements for any of "the properties identified in Exhibit A[.]" Petitioner's Ex. C-1. Notably absent from Exhibit A is a description of the Lakefront Property.[9]

The Lakefront Property is described in a separate attachment to the Waiver Petition, a compact disc labeled as Exhibit B, which includes the field report previously referenced in Tax Claim Bureau Exhibit 10. Bolla Ex. 3. Paragraph 9 to the Waiver Petition describes Exhibit B as being 5,716 pages and containing "all of the information on posting of the various properties to be exposed at the 2019 Upset Tax Sale by Palmetto Postings." Petitioner's Ex.

[9] In the Tax Claim Bureau's Answer and New Matter, as well as their Amended Answer and New Matter, containing a notice to plead, it asserts that the Lakefront Property "was included in the [Waiver] Petition" and "the waiver was granted with regard to the Petitioner as owner of the Subject Property." Amended Answer and New Matter of Respondent, the County of Erie Tax Claim Bureau, ¶ 52. In her Reply to New Matter, Lay mistakenly admits that fact. *See* Reply to New Matter of Erie County Tax Claim Bureau, ¶ 52. "Generally, statements made by a party in the pleadings … are treated as judicial admission[s]." *Duquesne Light Co. v. Woodland Hills School District*, 700 A.2d 1038, 1054 (Pa. Cmwlth. 1997). "Judicial admissions … are formal concessions in the pleadings in the case … that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact. Thus, the judicial admission, unless allowed by the court to be withdrawn, is conclusive in the case[.]" *Bartholomew v. State Ethics Commission*, 795 A.2d 1073, 1078 (Pa. Cmwlth. 2002); *see also Tops Apparel Manufacturing Co. v. Rothman*, 244 A.2d 436, 438 (Pa. 1968) ("Admissions … contained in pleadings, stipulations, and the like, are usually termed 'judicial admissions' and as such cannot later be contradicted by the party who has made them."). However, at trial both counsel for the Tax Claim Bureau and Bolla waived any reliance on this clearly erroneous admission. Evid. Hr'g Tr., Day 3, p. 8. In any event, because the mistaken admission was made as a result of a misrepresentation by the Tax Claim Bureau that waiver was in fact obtained (attaching Judge Domitrovich's Order in support), this Court also explicitly grants the withdrawal of that admission for good cause.

C-1. It continues "[t]his file also documents the three attempts at personal service, including the date and time of each of the three attempts to obtain personal service." Petitioner's Ex. C-1. But as the Court has already found, only one attempt at personal service was made at the time of posting and no further attempts were made because Palmetto Postings and the Tax Claim Bureau believed the property was not owner occupied per its own protocol. Paragraph 9 of the Waiver Petition clarifies that Exhibit B was only provided for the purpose of showing that three attempts at personal service were made per the protocol for those properties listed in Exhibit A. As the prayer for relief in the Waiver Petition and Judge Domitrovich's Order make clear, however, the waiver only applied to those properties listed in Exhibit A. Simply put, the Lakefront Property's inclusion in Exhibit B did not achieve waiver of personal service on that property. In order to be waived, the property would have had to be included in Exhibit A, and it was not included in Exhibit A because the Tax Claim Bureau did not believe it was an owner occupied residence for which personal service was required. As such, the Court finds the September 12, 2019, Order did not waive the personal service requirement pursuant to Section 601(a)(3) as to the Lakefront Property.

Bolla and the Tax Claim Bureau argue that this Court may now, after-the-fact, waive personal service for good cause shown. For their position, the Tax Claim Bureau and Bolla rely heavily on *Famageltto v. County of Erie Tax Claim Bureau*, 133 A.3d 337 (Pa. Cmwlth. 2016) (en banc). In *Famageltto*, the Honorable William Cunningham waived the personal service requirement for the subject property. *Id*. at 342. Subsequently, the subject property was sold at an upset tax sale, and the owners brought suit challenging the validity of the sale. *Id*. at 338. An evidentiary hearing was held before the Honorable Ernest DiSantis, Jr. *Id*. at 340. The owners argued that the waiver petition signed by Judge Cunningham did not satisfy the good cause requirement for waiver under Section 601(a)(3). *Id*. at 346. Judge DiSantis ruled that it was not his "role to second guess or overrule Judge Cunningham's ruling as it [was] binding on [the] Court under the coordinate jurisdiction doctrine." *Id*. at 347 (quoting Trial Court Opinion at p. 5) (changes in original).

On appeal, the Commonwealth Court disagreed. It noted that "[u]pon receiving the Waiver Petition, Judge Cunningham made an initial determination of good cause to waive personal service of notice based on the averments in the Waiver Petition and the attachments thereto, which are clothed in a presumption of regularity that attaches to all official acts." *Id*. at 348 (citing *Hughes v. Chaplin*, 132 A.2d 200, 202 (Pa. 1957)). Based on the limited information Judge Cunningham had available when he signed such a petition, the Court could not say that the waiver was facially defective or that Judge Cunningham in any way abused his discretion, particularly since the proceeding "was necessarily one-sided." *Id*. "It was only later in the statutory tax sale process that [the owners] could become involved" by filing exceptions. *Id*. (citing Section 607(b)). In turn, the filing of exceptions "rebuts the presumption of regularity of the Bureau's activities" and Judge DiSantis was not later precluded from later reviewing the good cause determination in an adversarial proceeding where the "evidence can be presented and tested … at the same time all the other notice requirements are tested." *Id*. "Because this second judge can be presented with additional and different evidence from both parties regarding the tax claim bureau's efforts to comply with the Law's personal service of notice requirement, the second judge is not deciding the same questions as the first judge and the coordinate jurisdiction doctrine should not apply." *Id*. at 349.





What distinguishes this case from *Famageltto*, however, is that a waiver of the personal service requirement was simply never granted for the Lakefront Property in the first place. Had it been, then Lay would have been entitled to challenge the presumption of regularity and the Tax Claim Bureau and Bolla would have been permitted to counter this claim with evidence of their own that good cause existed for the waiver. But waiver was never sought, so whether good cause may have existed for such a waiver is ultimately a hypothetical question. This Court has no power under the RETSL to grant its imprimatur on a waiver that never occurred. To do so would not be to review in an adversarial context a prior determination which had previously been cloaked in a presumption of regularity, but to grant waiver post-hoc where the Tax Claim Bureau failed to seek it prior to the sale.

Such post-sale waiver of the personal service requirement is not contemplated by the RETSL, and would permit a tax claim bureau to avoid seeking a pre-sale waiver so long as it was willing to risk litigating the good cause requirement at a later hearing. This would turn the waiver provision of Section 601(a)(3) on its head. If the General Assembly had intended such a result, it could have merely permitted the Tax Claim Bureau to forego personal service for good cause without the need for filing a petition for waiver with the court of common pleas, allowing the parties to litigate whether such good cause existed at a later hearing. To adopt the Tax Claim Bureau and Bolla's position would be to read the requirement that a tax claim bureau file a petition with the common pleas court out of the statute and in contravention of the Statutory Construction Act. *See* 1 Pa.C.S. § 1922(2) ("In ascertaining the intention of the General Assembly in the enactment of a statute," a court may presume that "the General Assembly intends the entire statute to be effective and certain"); *see also Commonwealth by Shapiro v. Golden Gate National Senior Care LLC*, 194 A.3d 1010, 1034 (Pa. 2018) ("When interpreting a statute, courts must presume that the legislature did not intend any statutory language to exist as mere surplusage; consequently, courts must construe a statute so as to give effect to every word."). Accordingly, the Court holds that it has no authority under Section 601(a)(3) to determine post-sale whether good cause existed to waive the personal service requirement where no waiver was originally granted prior to the sale.

Furthermore, because the Court finds as a factual matter that the Tax Claim Bureau did not consider the Lakefront Property to be owner occupied, it emphatically rejects its assertion that "the Petition to Waive Personal Service was intended to include the Subject Property." Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 8. To the contrary, the Court finds that the Tax Claim Bureau intended to waive personal service for those properties which it assumed were owner occupied pursuant to its 2019 Protocol, which in turn, were those properties listed in Exhibit A. The Tax Claim Bureau's mere desire to waive personal service for any number of properties it cannot know are owner occupied cannot excuse it of its statutory obligations. Section 601(a)(3) does not permit blanket waiver of any and all properties which may or may not conceivably be owner occupied. Such an interpretation would simply allow a bureau to file a *pro forma* waiver of any such property without any reference to a specific parcel number. In that case, a court would not be in a position to determine whether good cause existed as to the property, even under the inherently deferential standard applicable to an *ex parte* petition.

Ultimately, the Tax Claim Bureau's frustration lies with the difficulty in designing a protocol that will capture every owner occupied property, particularly where, as here, the

owner takes willful steps to evade service. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 8. The Tax Claim Bureau would put the onus on the taxpayer to either change their tax billing address with the Assessment Office or apply for a homestead exclusion, but such an obligation on the taxpayer appears nowhere in the RETSL. The text of Section 601(a)(3) ostensibly places the duty on the Tax Claim Bureau to correctly determine whether a property is owner occupied, thus requiring waiver, or if owner occupancy status cannot be ascertained, to continue to attempt personal service prior to conducting an upset tax sale. In other words, the plain language of the statute places the risk of loss upon the Tax Claim Bureau, not the taxpayer.

The case law interpreting the RETSL appears to confirm that the burden is on the Tax Claim Bureau to personally serve an owner occupant or seek a waiver without exception. *See Appeal of Hansford*, 218 A.3d at 1001 n.12 ("the burden is not on the taxpayer to prove that he is an owner occupant, but for the Bureau to prove that it satisfied the notice requirements under circumstances wherein the General Assembly included heightened protection for the owner occupant."). This system certainly places the Tax Claim Bureau at a disadvantage, but in difficult cases such as this, one of the parties — either the owner or the Tax Claim Bureau — must bear the risk of loss. The text of the statute and prior precedential cases interpreting it all point to the Tax Claim Bureau. *See Smith v. Tax Claim Bureau of Pike County*, 834 A.2d 1247, 1251 (Pa. Cmwlth. 2003) ("The Law, however, imposes duties not upon owners but upon the agencies responsible for real estate tax sales.").

Although not necessary to the Court's holding in this regard, the legislative history of Section 601(a)(3) confirms this result. It appears the impetus for Section 601(a)(3), part of the changes to the RETSL enacted in 1980, was public outcry over the sale of certain properties in Bucks County, some being the homes of senior citizens claiming they were never given notice of the sale, and which, although valued between $50,000 and $70,000, were sold for between $12 and $500. *House Legislative Journal*, 163rd Session of the General Assembly, Vol 1. No. 74, p. 2067, Remarks of Representative Burns and Representative Gallagher (October 17, 1979). The original version of Senate Bill 316 included in Section 602, in addition to the publication notice, a requirement that notice be given "by United States certified mail, personal addressee only, return receipt requested, postage prepaid, to *each owner* as defined by this act and by posting on the property" just as the RETSL does today. Senate Bill 316, Printer's No. 320, p. 5, lines 4-17 (emphasis added). However, the bill went on to provide that:

> If no return receipt is received pursuant to the provisions of clause (1), then, at least thirty (30) days before the date of the sale, similar notice of the sale shall be served by the sheriff of the county in person to the owner of such property and by posting a similar notice on the property. If the sheriff is unable to affect personalized service after the expiration of twenty (20) days, the bureau shall petition the court of common pleas to waive the personalized service requirement.

Senate Bill 316, Printer's No. 320, p. 5, lines 18-26. Thus, the bill would have required personal service, or waiver thereof, on the owner of any property, whether owner occupied or not, whose return receipt was not received by the bureau. The bill also would have required





personal service of the post-sale notice under Section 607. Senate Bill 316, Printer's No. 320, p. 7, lines 16-22.

Several county tax claim bureaus expressed concerns with the bill. *Senate Legislative Journal*, 163rd Session of the General Assembly, Vol. 1, No. 26, p. 446, Remarks of Senator Kury (May 21, 1979). By September of 1979, the House had removed the pre-sale personal service requirement language in Section 602 from the draft bill and replaced it with a second attempt at "similar" notice by certified mail. Senate Bill 316, Printer's No. 1079, p. 7, lines 21-30. The post-sale personal service requirement of Section 607 remained, but appears to have been the subject of much debate. One legislator raised concerns over the ability of sheriff departments in rural counties to "have the manpower to go out and find these individuals." *House Legislative Journal*, 163rd Session of the General Assembly, Vol 1. No. 82, p. 2294, Remarks of Representative Brandt (November 27, 1979). Another responded that "it is only fair, when a person is about to lose his home, that he ought to at least know that he is about to lose it." (although he later made a point to clarify for the Chamber they were "not trying to protect the deadbeats.") *House Legislative Journal*, 163rd Session of the General Assembly, Vol 1. No. 82, p. 2294-95, Remarks of Representative Burns (November 27, 1979).

Senate Bill 316 underwent several amendments and was eventually sent to a conference committee; a conference report was adopted, but controversy still enveloped it. *House Legislative Journal*, 164th Session of the General Assembly, No. 30, p. 1006, Remarks of Representative Brandt (April 30, 1980). The House overwhelmingly rejected the recommendations made in the conference report by a vote of 110-69. *House Legislative Journal*, 164th Session of the General Assembly, No. 30, p. 1007-08, (April 30, 1980). One legislator noted "[i]n the legislature as in the courts, hard cases will often make bad law. This legislation is the product of some, perhaps, harsh cases." *House Legislative Journal*, 164th Session of the General Assembly, No. 30, p. 1006, Remarks of Representative W.D. Hutchinson (April 30, 1980).

The General Assembly went back to the drawing board. Eventually, a new conference committee report was adopted which would subsequently be enacted into law. The post-sale personal service requirement in Section 607 was dropped, as was the requirement that the second attempt at "similar" service in Section 602 be by certified mail; instead, the drafters added the now familiar personal service requirement and waiver provision to the new Section 601(a)(3), which only applied to owners who were owner occupants of the property. Senate Bill 316, Printer's No. 1890. The bill was passed by the Senate on June 10, 1980, by a vote of 48-0, passed in the House on June 30, 1980, by a vote of 170-8, and was signed into law by Governor Thornburgh on July 10, 1980. 1980 Pa. Laws 423; Pennsylvania General Assembly, Bill Information — History, Senate Bill 316, Regular Session, 1979-1980, available at https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=1979&sind=0&body=S&type=B&bn=316 (last viewed May 11, 2021).

This final version of the bill represents a careful balance between the benefits of a personal service requirement on the one hand, and on the other, the cost it exacts on a tax claim bureau. In adopting the personal service requirement of Section 601(a)(3), the General Assembly was well aware of the "harsh" results it might permit in hard cases, but it chose to cabin the costs of such an approach by limiting this requirement to owner occupants only and by requiring personal service only in the context of pre-sale notice to such individuals. In light of the

careful calibration and compromise undertaken by the General Assembly, the Court cannot say this statutory scheme is absurd or unreasonable. 1 Pa.C.S. § 1922(1). Nor can this Court second-guess the policy choices of the General Assembly. *In re Adoption of L.B.M.*, 161 A.3d 172, 180 (Pa. 2017) ("It is not our role to second-guess the policy choice made and expressed by the General Assembly."); *Insurance Federation of Pennsylvania, Inc. v. Commonwealth of Pennsylvania, Insurance Department*, 970 A.2d 1108, 1122 n.15 (Pa. 2009) (plurality) ("Our role is distinctly not to second-guess the policy choices of the General Assembly.").

Moreover, it is not entirely clear to the Court that the duty of due diligence imposed on the Tax Claim Bureau is quite as burdensome as it claims. At the Evidentiary Hearing the Tax Claim Bureau noted "I think what she would want us to do in this case is sit outside of every residence in Erie County and note when they sell the property. We can't do that. We have a staff of seven people and a supervisor that are conducting the tax sale. We rely on deeds. We rely on changes of address. We rely on the tax bill address." Evid. Hr'g Tr., Day 2, pp. 235-36. However, the Tax Claim Bureau outsources its posting and notice responsibilities to Palmetto Postings. There is no reason why the Protocol cannot be changed to allow the field agents to make an assessment of whether those properties appear to be owner occupied residences. Indeed, all the pictures of the Lakefront Property entered into evidence, including the pictures from the July 26 field report included in Tax Claim Bureau Exhibit 10, show a property that appears to be lived-in, with cared-for plants and shrubbery. Tax Claim Bureau Ex.10. As Lay points out in her Reply to New Matter, that photograph appears to show a garden hose on the property. Reply to New Matter of Erie County Tax Claim Bureau, ¶ 46; Evid. Hr'g Tr., Day 1, p. 221.

When questioned about this at the Evidentiary Hearing, the Tax Claim Bureau responded "the fact that the property is maintained or has plants outside it is evidence that somebody may attend or appear there. But that doesn't say necessarily that they're living there … and I know some of these properties down by this beach front are weekend venues." Evid. Hr'g Tr., Day 2, pp. 237-38. Fair enough, but as the Tax Claim Bureau has also noted to the Court during these proceedings, a property such as this is rarely subject to a tax sale to begin with. If the 2019 Protocol had required the field agent to note those properties which appeared to be lived in, and required a full three attempts at personal service on those properties, the Tax Claim Bureau would have had to do little more than add those properties where personal service by Palmetto Postings was unsuccessful to the list in the Waiver Petition's Exhibit A. Any additional labor in making two more attempts at personal service would have been borne by the field agents at Palmetto Postings, not the seven employees of the Tax Claim Bureau, and the Tax Claim Bureau has failed to show that the additional add-ons to Exhibit A would be so voluminous as to seriously inconvenience its staff. And even assuming the Tax Claim Bureau would incur additional costs in adding these properties to the list, pleas of administrative inconvenience never justify departure from a statute's clear meaning. *Niz-Chavez v. Garland*, 593 U.S. ___ (slip op., at 13), 2021 WL1676619, *8 (April 29, 2021) (quoting *Pereira v. Sessions*, 138 S. Ct. 2105, 2118 (2018)).

In sum, the Court holds that under Section 601(a)(3), in the absence of personal service on Lay, the Tax Claim Bureau was required to obtain waiver of the personal service requirement on the Lakefront Property for good cause shown prior to the sale. It did not do that. Bolla and the Tax Claim Bureau's novel argument for this Court's post-sale determination of good cause stretches the plain meaning of Section 601(a)(3) beyond its breaking point and is unmoored





from precedent. The Tax Claim Bureau's appeal to inconvenience is likewise unpersuasive.

Finally, the Court is compelled to address one further issue related to waiver. It does not sit well with the Court that in response to Lay's Petition, the Tax Claim Bureau affirmatively claimed that waiver of personal service for this property was effectuated. Although counsel for Lay bears some blame in failing to exercise due diligence before originally admitting to this fact in the answer, ultimate responsibility rests with the Tax Claim Bureau who first made the misrepresentation to the Court and to opposing counsel. Further adding to the court's concern, is the fact that the Tax Claim Bureau knew that the Order approving waiver of personal service, which it exhibited in its Answer and New Matter as Exhibit F, only applied to the properties identified in the Waiver Petition's Exhibit A (a fact it knew or reasonably should have known since it drafted the Petition). This error was further aggravated by the fact that the Tax Claim Bureau neglected to include the Waiver Petition's Exhibit A as an exhibit to this Court, attaching only a copy of Judge Domitrovich's one-sentence Order. This tactic could easily have misled this Court, and indeed, did mislead opposing counsel to believe that waiver had been obtained. Had a valid waiver been obtained, the outcome of this case would have been quite different.[10]

**D. Actual Notice as a Defense to Lack of Personal Service under Section 601(a)(3)**

Notwithstanding its failure to provide personal service to Lay, the Tax Claim Bureau asserts that Lay had actual notice of the Tax Sale. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, pp. 6-7. The Court has already found that Lay did, in fact, receive actual notice of the sale by virtue of the posting on her property; the ten-day notice addressed to the Lakefront Property, but forwarded to her Millcreek post office box; and her conversation with Kathy Getchell at the Tax Claim Bureau office. The Tax Claim Bureau argues such notice is a defense to lack of personal service under Section 601(a)(3), and as a result, this Court should excuse any defect in the personal service requirement or waiver. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 4.

It has long been recognized by the courts of this Commonwealth that strict compliance with notice provisions of the RETSL is mandatory because the statute "is for the collection of taxes and is not intended to create investment opportunities for others, or to strip taxpayers of their properties." *Brodhead Creek Associates, LLC v. County of Monroe*, 231 A.3d 69, 74 (Pa. Cmwlth. 2020) (citing *Jenkins v. Fayette County Tax Claim Bureau*, 176 A.3d 1038, 1043 (Pa. Cmwlth. 2018)); *Willard v. Delaware County Tax Claim Bureau*, 921 A.2d 1273, 1279 (Pa. Cmwlth. 2007); *Tracy v. County of Chester, Tax Claim Bureau*, 489 A.2d 1334, 1339 (Pa. 1985); *Hess v. Westerwick*, 76 A.2d 745, 748 (Pa. 1950).

In *Tracy* our Supreme Court noted "due process, as we have stated here, requires at a minimum that an owner of land be actually notified by government, if reasonably possible, before his land is forfeited by the state." *Tracy*, 489 A.2d at 1339. To that end, it found that in order to satisfy due process, a Tax Claim Bureau must at least "notify the record owner of property by personal service or certified mail, *and where the mailed notice has not been*

[10] The Court is willing to accept this neglect as an oversight today, but the Tax Claim Bureau is placed on notice that in future advocacy before the Court, should it assert valid waiver of the personal service requirement, it shall: (1) ensure waiver actually applied to the subject property; and (2) include in its pleading not only the order granting waiver, but the petition requesting waiver and any attachment thereto giving rise to the order, highlighting where in such attachment the subject property is listed, in order to firmly establish that waiver applied to the subject property. This approach will avoid even inadvertent misrepresentations.

*delivered because of an inaccurate address*, the authority must make a reasonable effort to ascertain the identity and whereabouts of the owner(s)." *Id*. at 1338-39 (emphases in original). Here, the Tax Claim Bureau arguably satisfied these minimum efforts: it sent out notice to Lay's address of record by certified mail, return receipt requested, and when it was returned undeliverable, it conducted a search of all known addresses of her and her late husband, sending out notices to those addresses as well. But by inserting a personal service requirement for owner occupants into the RETSL in 1980, the General Assembly went above and beyond this minimum floor required by the state and federal constitutions. *Robinson v. Government of the District of Columbia*, 234 F.Supp.3d 14, 24 (D.D.C. 2017) ("In terms of procedural due process, the Constitution sets a floor, not a ceiling: the legislature must craft laws that are sufficiently clear to provide fair notice of what is prohibited and prevent arbitrary and discriminatory enforcement.").

Shortly after *Tracy* was decided, the Commonwealth Court considered whether due process requires strict adherence to the notice requirements of the RETSL where an owner has received actual notice in *In Re Tax Claim Bureau of Lehigh County 1981 Upset Tax Sale (Appeal of Hass)*, 507 A.2d 1294 (Pa. Cmwlth. 1986). In *Appeal of Hass*, the tax claim bureau successfully obtained waiver of the personal service requirement under Section 601(a)(3) prior to the upset tax sale. *Id*. at 1295. Hass later challenged the sale, but the trial court found that, although she received no certified notice of the sale pursuant to Section 602, and despite not having received personal service (because personal service had been waived), she undoubtedly had actual notice since she had hired a lawyer to represent her at the sale. *Id*. at 1296. She subsequently appealed, challenging the validity of the sale, *inter alia*, on procedural due process grounds. *Id*. In its analysis of the procedural due process issue, the Commonwealth Court explained:

> The deprivation of a property right by adjudication must be preceded by notice and an opportunity to be heard. Otherwise it is a deprivation of property without due process of law. It is the notice which is indispensable to due process. Whatever mechanism is used, it must be reasonably calculated to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections. This is why strict compliance is required.

*Id*. at 1296 (citations omitted). However, the Court continued "[b]ut to require strict compliance where, as here, owner had notice, in fact is to exalt form over substance, and ignores the purposes of the requirement." *Id*. Thus, *Appeal of Hass* stands for the proposition that actual notice cures any procedural due process concerns with a lack of formal service of notice.

The Commonwealth Court has since extended this rationale to the statutory mailing and publication requirements of Section 602. In *Appeal of Neff*, it reiterated that "[n]otwithstanding our mandate to strictly construe the notice provisions of the law, the notice requirements of Section 602 of the [RETSL] are not an end in themselves, but are rather intended to ensure a property owner receives actual notice that his or her property is about to be sold due to a tax delinquency." *Appeal of Neff*, 132 A.3d at 645 (citing *Donofrio*, 811 A.2d at 1122). As such, "strict compliance with the notice requirements of Section 602 is not required when the Bureau proves that a property owner received actual notice of a





pending tax sale." *Id*. (citing *Sabbeth*, 714 A.2d at 517).

In the context of both upset and judicial tax sales, the Commonwealth Court has held that actual notice "does not necessarily cure a defect in the posting [requirement] because the purpose of the posting [requirement] is to notify the public at large as well as the record owner." *In re Tax Sale of Real Property Situate in Paint Township, Somerset County (Appeal of Baumgardner)*, 865 A.2d 1009, 1017 (Pa. Cmwlth. 2005) (citing *In re Tax Sale of 2003 Upset (Appeal of Gerholt)*, 860 A.2d 1184, 1190 (Pa. Cmwlth. 2004). Conspicuous posting not only tends "to make the sale well-attended by bidders, but also … informs many people who may be concerned for the welfare of the owners." *Wells Fargo Bank of Minnesota NA v. Tax Claim Bureau of Monroe County*, 817 A.2d 1196, 1199 (Pa. Cmwlth. 2003) (quotation and internal quotation marks omitted) (holding Section 602 not satisfied where published notices and posting of the property did not list correct owners of the property).

Most recently, the Commonwealth Court has considered whether actual notice cures a defect in the personal service requirement of Section 601(a)(3). In *McKelvey v. Westmoreland County Tax Claim Bureau*, 983 A.2d 1271 (Pa. Cmwlth. 2009) the Court held that actual notice is not a defense to lack of personal service under Section 601. *Id*. at 1274. The Court noted the "plain language of section 601(a)(3) unequivocally commands that 'no owner occupied property may be sold' unless the owner occupant has received personal service of notice[,]" creating only one exception for failure to personally serve an owner occupant: waiver for good cause shown. *Id*. It reasoned "[t]he distinction between section 601, requiring personal service of notice to owner occupiers, and section 602, requiring notice by certified mail to all property owners, indicates that the legislature recognized a distinction between an owner who stands to lose his property and one who stands to lose his home as well." *Id*. As such, "[b]y enacting section 601, the legislature expressed a desire to provide a qualitatively different type of notice to an owner occupant and afford such owner increased protection by way of additional notice." *Id*.

The Tax Claim Bureau relies on several cases for its argument that Lay's actual notice can cure any defect in personal service, including *Appeal of Hass*, *Sabbeth*, *Casady v. Clearfield County Tax Claim Bureau*, 627 A.2d 257 (Pa. Cmwlth. 1993), and *Appeal of Gerholt*. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, pp. 4-5. As previously noted, *Appeal of Hass* concerned a procedural due process challenge, not a statutory one, where the Tax Claim Bureau had obtained waiver under Section 601(a)(3) prior to the upset sale. Thus, it has no bearing on the question of whether actual notice cures any defect in the statutory notice requirements of Section 601(a)(3) where waiver has not been obtained. *Sabbeth* and *Appeal of Gerholt* both concerned challenges to actual notice under Section 602 and there is no indication from those cases the properties were owner occupied. *Sabbeth*, 714 A.2d 516 n.2; *Appeal of Gerholt*, 860 A.2d at 1191. Likewise, *Casady* considered challenges to actual notice under both Section 602 and due process, but did not contemplate whether actual notice cures defect in service under Section 601. *Casady*, 627 A.2d at 258-60.

Bolla, while conceding that actual notice is not a defense to personal service under Section 601(a)(3), suggests *McKelvey* represented a departure from the prior case law. *See* Post-Hearing Brief of Respondent, Daniel Bolla, Executor of the Estate of Lawrence C. Bolla, p. 6 n.4. Bolla cites to two cases for this assertion. The first, *Appeal of Hass*, this court has already explained, could not have considered actual notice in the context of Section 601

since personal service had been waived. The second, however, *In re Return and Report of an Upset Tax Sale (Appeal of Black)*, 2009 WL9101156 (Pa. Cmwlth. 2009) (unpublished) is the only case that any party has cited to accurately reflect the view that actual notice can cure a defect in personal service under Section 601(a)(3).

In *Appeal of Black*, a non-precedential case, the Court relied on *Appeal of Hass* and *In re Sale of Real Estate Northampton County Tax Claim Bureau (Appeal of Beneficial Consumer Discount Company)*, 874 A.2d 697 (Pa. Cmwlth. 2005) for the proposition that "actual notice of the tax sale can cure any defect in personal service." *Appeal of Black*, 2009 WL9101156 at *4. It reasoned that "the purpose of personal service is to make sure that actual notice is received by the landowner. Where the interested party actually receives notice of the sale, the purpose underlying the personal service requirement is accomplished, and so the court may excuse the defect." *Id*. (citations omitted). In doing so it relied on *Appeal of Beneficial Consumer Discount Company*, a case concerning a judicial tax sale, for the notion that "[t]he purpose of personal service or mailed notice is specifically to notify an interested party." *Appeal of Beneficial Consumer Discount Company*, 874 A.2d at 701. But *Appeal of Beneficial Consumer Discount Company* dealt with a publication requirement, not personal service, and so its discussion of the effect of actual notice on personal service is *dicta*. And whatever persuasive appeal *Appeal of Black* may hold, it remains an unpublished decision, and so, cannot overcome the clear precedential holding of *McKelvey*. *DeGrossi*, 174 A.3d at 1191 ("It is well-settled that unpublished decisions from this Court are not binding … and neither is *dicta*.") (citing *Duke Energy Fayette II, LLC v. Fayette County Board of Assessment Appeals*, 116 A.3d 1176, 1182 (Pa. Cmwlth. 2015); *Rendell v. Pennsylvania State Ethics Commission*, 983 A.2d 708, 714 (Pa. 2009)).

Contrary to the Tax Claim Bureau's position, it appears the rule announced in *McKelvey* is settled precedent. Since the decision, the Commonwealth Court has cited to the rule approvingly in *Montgomery County Tax Claim Bureau v. Queenan*, 108 A.3d 947, 953 (Pa. Cmwlth. 2015). The Court sitting *en banc* subsequently cited to the rule approvingly in *Appeal of Neff*, 132 A.3d at 646. Most recently, in *Harris v. County of Lycoming Tax Claim Bureau*, 2021 WL 56409 (Pa. Cmwlth. 2021) (unpublished), the Court again reaffirmed the rule. There the purchaser relied on *Cruder v. Westmoreland County Tax Claim Bureau*, 861 A.2d 411 (Pa. Cmwlth. 2004) for its argument that actual knowledge of a tax sale waives any defect in personal service, but the Court distinguished that case on the grounds that "the personal service requirement in Section 601(a)(3) of the RETSL was not at issue in Cruder." *Harris*, 2021 WL 56409, at *7. Instead, it noted "Section 601(a)(3) of the RETSL requires this Court to focus on the Bureau's actions (rather than Harris's) relative to the *impending* Tax Sale of the Property" and invalidated the sale as "the record evidence is clear that the Bureau did not personally serve [notice.]" *Id*. at *8.

The Tax Claim Bureau argues that *McKelvey* has not been cited significantly, Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 6, but that there is not a plethora of cases citing *McKelvey* may reflect that fact that there is not an abundance of failure-to-obtain-or-waive-personal-service cases in the first place. As this Court has shown, those that have considered the issue cite approvingly to *McKelvey*, and the Court is aware of no case since *McKelvey* to reject it. The Tax Claim Bureau invokes *Appeal of Neff*, noting its language that the "practicalities and peculiarities of the case" be given their "due





regard" and imploring the Court to factor in its extensive efforts to notify Lay as well as Lay's actual notice of the sale. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 12 (citing *Appeal of Neff*, 132 A.3d at 644). But the language quoted by the Tax Claim Bureau from *Appeal of Neff* is taken out of context as the full sentence states "[d]ue process requires that the 'practicalities and peculiarities of the case' are considered and given their 'due regard.'" *Appeal of Neff*, 132 A.3d at 644 (quoting *Mullane*, 339 U.S. at 314. Clearly this language refers to the more flexible constitutional requirements of due process, not the strict statutory requirements of Section 601(a)(3).

Lastly, the Tax Claim Bureau essentially asks the Court to disregard *McKelvey* because its reasoning "exalts form over substance." Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 6. The Court, admittedly, has reservations that *McKelvey* is correct as an original matter. And it cannot be denied that *McKelvey*'s holding quite literally exalts form over substance. The only question for courts to consider, however, is whether that is what the General Assembly intended. 1 Pa. C.S. § 1921(a). *McKelvey* looked to the plain meaning of Section 601(a)(3), which states "[n]o owner-occupied property may be sold unless" personal service is provided to an owner or the tax claim bureau obtains waiver. 72 P.S. § 5860.601(a)(3). This language on its face appears to suggest that no exceptions will be made for formal personal service other than the waiver exception explicitly set forth in the provision. And under the canon of *expressio unius est exclusio alterius*, where the General Assembly enumerates specific exceptions into a statute, additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent. *Sivick v. State Ethics Commission*, 238 A.3d 1250, 1264 (Pa. 2020) (citation omitted); *Harrisburg Area Community College v. Pennsylvania Human Relations Commission*, 245 A.3d 283, 292 (Pa. Cmwlth. 2020) ("Under the principle of *expressio unius est exclusio alterius*, the express mention of a specific matter in a statute implies the exclusion of others not mentioned.") (quotation and bracket omitted); *Commonwealth v. Scattone*, 672 A.2d 345, 347 n.3 (Pa. Super. 1996) ("Under such a maxim, if a statute specifies one exception to a general rule … other exceptions … are excluded.") (citation omitted).

Yet, Section 602(e) speaks in similarly unequivocal terms when it states "similar notice of the sale shall also be given by the bureau[.]" 72 P.S. § 5860.602(e). And courts typically presume the word "shall" to indicate a mandatory requirement, although its ultimate meaning is always dependent on context. *Chanceford Aviation Properties, L.L.P. v. Chanceford Township Board of Supervisors*, 923 A.2d 1099, (Pa. 2007) ("The word 'shall' by definition is mandatory, and it is generally applied as such … [h]owever, the context in which 'shall' is used may leave its precise meaning in doubt.") (citations omitted); *see also In re Canvass of Absentee and Mail-in Ballots of Nov. 3, 2020 General Election*, 241 A.3d 1058, 1071 (Pa. 2020) (plurality) ("It has long been part of the jurisprudence of this Commonwealth that the use of "shall" in a statute is not always indicative of a mandatory directive; in some instances, it is to be interpreted as merely directory."). It seems odd then, at first blush, that the rule of actual notice would differ from each section.

However, *McKelvey* did not merely rely on the text of the statute, but also gleaned the General Assembly's intent from its decision to include a personal service requirement in Section 601(a)(3), but not Section 602(e), which found demonstrated a legislative "desire to provide a qualitatively different type of notice to an owner occupant[.]" *McKelvey*,

982 A.2d 1274. The confusion brought about by the inconsistent application of the actual notice defense is likely sufficient to permit a court to resort to principles beyond plain meaning in answering this question pursuant to the Statutory Construction Act. *See King v. Burwell*, 576 U.S. 473, 486 (2015) (noting "oftentimes the meaning — or ambiguity — of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme. Our duty, after all, is to construe statutes, not isolated provisions.") (internal quotation marks and citations omitted).

In this regard, *Appeal of Goldstein* is also instructive. That decision held "where an owner occupant is served with notice pursuant to Section 601(a)(3), the fact that the secondary notice provided for in Section 602(e)(2) is not given, will not vitiate the sale." 651 A.2d at 1160. In doing so, it came to a similar conclusion on legislative intent, noting:

> Under Section 601, personal service, properly affected, assures notice to the owner occupant of the crucial aspects of the tax sale. Service by certified or first class mail as required by Section 602 does not. It would appear that such a distinction was made because of the legislature's heightened concern for owner occupants being divested of the very property in which they are residing.

*Appeal of Goldstein*, 651 A.2d at 1159. This is evident from the fact that, unlike Section 601, under Section 602 "whether mail notice of the tax sale has been or has not been received by the owner is not material to the validity of the tax sale." *Id*. at 1160. The Court further explained that the Section 601 and 602 must be read in *pari materia*, meaning they "apply to the same persons or things or the same class of persons or things … and, as such, should be read together where reasonably possible." *Id*. at 1159; *DeForte v. Borough of Worthington*, 212 A.3d 1018, 1022 (Pa. 2019); *see also* 1 Pa.C.S. § 1932(b) ("Statutes in *pari materia* shall be construed together, if possible, as one statute"). Thus, although confronting a different issue, *Appeal of Goldstein* ultimately came to a similar conclusion as to the heightened concern for owner occupants under Section 601(a)(3).

This Court agrees that the two provisions should be read in *pari materia* pursuant to the Statutory Construction Act. It also agrees generally with the proposition that the General Assembly intended heightened protections for owner occupants under Section 601 than it did for all other owners, to which only the requirements of 602 apply. But it is not at all clear from the text, context, or legislative history of the RETSL that the General Assembly intended to require formal personal service even where the taxpayer already has actual knowledge of the sale. The General Assembly certainly intended for one added layer of protection for owner occupants: personal service of the notice of sale. And it required personal service precisely because it meant to ensure that owner occupants had actual knowledge of the sale prior to its commencement. But once actual notice has been provided, those concerns are apparently assuaged. Furthermore, it has long been held that courts "hold no brief, and … have consistently given short shrift" to "wilful [sic], persistent, [and] long standing delinquents[.]" *In re Return of Sale of Tax Claim Bureau*, 76 A.2d 749, 753 (Pa. 1950). Those taxpayers who have actual notice of an upcoming tax sale cannot innocently claim surprise when the tax sale occurs, and it is doubtful the legislature intended to protect this





group of individuals when it enacted Section 601(a)(3). These considerations make the Tax Claim Bureau's appeal to form over substance a persuasive argument.

Nevertheless, there is one aspect of Section 601(a)(3) that no court appears to have mentioned, and which may lend some credence to the rationales in *McKelvey* and *Appeal of Goldstein*. Section 601(a)(3) expressly requires that "[t]he sheriff or his deputy shall make a return of service to the bureau, or the persons appointed by the county commissioners in lieu of the sheriff or his deputy shall file with the bureau written proof of service, setting forth the name of the person served, the date and time and place of service, and attach a copy of the notice which was served." 72 P.S. § 5860.601(a)(3). This, in fact, suggests the General Assembly was concerned with requiring that "written proof of service" be provided in order that there be definitive evidence that actual notice occurred, rather than relying on courts to make post-hoc credibility determinations whether a taxpayer had prior actual knowledge of a sale. Indeed, the draft version of what would become Section 601(a)(3), and originally placed in Section 602, merely required that "similar notice of the sale shall be served by the sheriff of the county in person to the owner of such property[.]" Senate Bill 316, Printer's No. 320, p. 5, lines 20-22. Thus, at some point, the drafters of Section 601(a)(3), specifically added the written proof of service requirement, evincing a heightened concern not merely of implied actual knowledge, but proof of actual knowledge in the form of formal service.

This Court must give effect to the General Assembly's explicit inclusion of the written proof of service language. *S & H Transport*, 140 A.3d at 7; 1 Pa.C.S. § 1922(2). The written proof of service requirement is also markedly different from Section 602(e), which does not concern itself with "whether mail notice of the tax sale has been or has not been received by the owner." *Appeal of Goldstein*, 651 A.2d at 1160. This reading further comports with prior case law emphasizing the significance of the affidavit of personal service. *Appeal of JUL Realty Corp.*, 836 A.2d at 1041 ("The affidavit of personal service for the residential property states, 'Would not come to door, left as refused.' On its face, the affidavit does not demonstrate that the deputy sheriff effected personal service[.]"). On this basis, the Court must reject the Tax Claim Bureau's form-over-substance argument as the text and legislative history of Section 601(a)(3) make clear it was the intent of the General Assembly to require that written proof of formal service be obtained by the Tax Claim Bureau in order to satisfy the provision, not simply that the taxpayer have actual knowledge of the sale.

Even if this Court were to agree with the Tax Claim Bureau on this point, it would be bound to follow the Commonwealth Court's holding in *McKelvey*. Whether this Court agrees with a decision of a Pennsylvania appellate court or not, it is bound as a matter of *stare decisis* to apply its precedential decisions. *Walnut Street Associates, Inc. v. Brokerage Concepts, Inc.*, 20 A.3d 468, 480 (Pa. 2011) (holding a lower court is "duty-bound" to effectuate law from a higher court); Pennsylvania Association of *Milk Dealers v. Pennsylvania Milk Marketing Board*, 685 A.2d 643, 647 (Pa. Cmwlth. 1996) ("The rule of *stare decisis* declares that for the sake of certainty, a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different."); *Lowery v. Pittsburgh Coal Co.*, 268 A.2d 212, 215 (Pa. Super. 1970) (holding courts of common pleas are not authorized to contradict established appellate court rulings).

Lastly, it has often been repeated that the law curries no favor with "willful, persistent, and long-standing tax delinquent[s]." *Appeal of JUL Realty Corp.*, 836 A.2d at 1042. The Court

finds Lay to be such an individual, and providing her the benefit of the RETSL personal service provision, a system she intentionally set out to game, arguably runs counter to the intent of the General Assembly. While prior court pronouncements of an analytical canon (such as a no-special-solicitude-for-tax-delinquents canon) may be relevant to discerning the meaning of ambiguous provisions in the RETSL, the best indicator is the language of the RETSL itself, and where the General Assembly has not seen fit to explicitly include a serial delinquent exception in the RETSL, this Court is hesitant to impute one based on its supposed intentions. *See In re Canvass of Absentee and Mail-in Ballots* of Nov. 3, 2020 General Election, 241 A.3d 1058, 1073 (Pa. 2020) (Wecht, J., concurring and dissenting) (noting his "increasing discomfort with this Court's willingness to peer behind the curtain of mandatory statutory language in search of some unspoken directory intent").

It is true the precise contours of the Section 601(a)(3) actual notice requirement have yet to be completely defined. *See Harris*, 2021 56409 at *8 ("[Purchaser argues] this Court has not considered whether the RETSL requires strict compliance for a continued sale, or as in this case, two continued sales, of which the property owner had been properly noticed, but where the owner had strategically and intentionally acted to stay the previous sale. While that may be true, the instant matter is not the test case for this Court to decide that issue.") (internal quotation marks and brackets omitted). However, no such an exception is not explicit in the statute, and given the unequivocal language of *McKelvey*, if such an exception is to be recognized, the pronouncement must come from the Commonwealth Court sitting *en banc*, our Supreme Court, or better yet, the General Assembly. Accordingly, the Court holds that Lay's actual knowledge of the upset tax sale does not cure the Tax Claim Bureau's failure to personally serve her with notice of the sale as an owner occupant of the Lakefront Property. The September 30, 2019, sale of the Lakefront Property to Lawrence Bolla is therefore invalid.

## V. ADDITIONAL STATUTORY CLAIMS: ANALYSIS

That alone is enough to decide this case. Nevertheless, the Court will briefly consider the additional claims raised by Lay in these proceedings related to stay of sale agreements under Section 603 of the RETSL. Before delving deeper into these issue though, the Court must first address whether these claims are even properly before it.

### A. Failure to File Amended Petition to Set Aside Tax Sale

Lay's claims as to the Tax Claim Bureau's failure to offer her a stay of sale agreement do not appear in her original Petition; they were developed at trial, and counsel for Lay made a motion for leave to file an amended complaint. Evid. Hr'g Tr., Day 2, pp. 224-29; Evid. Hr'g Tr., Day 3, pp. 7-10; Evid. Hr'g Tr., Day 4, pp. 96-97. Lay subsequently filed a post-trial motion for leave to file an amended petition as well as a memorandum of law in support thereof as requested by the Court. See Motion for Leave to File an Amended Petition for Additional Grounds for Relief, 12/7/202; Petitioner's Post-Trial Memorandum of Law in Support of its Motion for Leave to File an Amended Petition for Additional Grounds for Relief, 12/7/2020. Those filings contained a proposed amended petition and a proposed amended reply to new matter with the changes from the originals underlined. The Court granted the Motion for leave to file on December 11, 2020. *See* Order, 12/11/2020. Although granted leave to file, no such separate amended pleadings were ever filed. Bolla now objects at Lay's efforts to raise these new issues, arguing Lay failed to properly file





the amended pleadings. Post-Hearing Brief of Respondent Daniel Bolla, as Executor of the Estate of Lawrence C. Bolla, p. 1.[11]

Most of the case law dealing with delay in filing an amended pleading appears to arise in the preliminary objection context, where parties served with preliminary objections have twenty days to file an amended pleading as of right. *New Foundations, Inc. v. Commonwealth, Department of General Services*, 893 A.2d 826, 828 (Pa. Cmwlth. 2005) (citing Pa. R.C.P. No. 1028(c)(1)). Generally, "every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading" if endorsed with a notice to plead, but this does not appear to apply to filings in response to court orders. Pa.R.C.P. 1026(a). Unfortunately, the Court did not state a time period in which Lay must file her amended pleadings as part of its December 11, 2020, order granting leave to file.

Rule 126 of the Pennsylvania Rule of Civil Procedure states "[t]he rules shall be liberally construed … [and t]he court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." Pa.R.C.P. 126. In some cases, the failure to file an amended pleading will clearly not constitute a technical defect. For instance, in *Burger v. Borough of Ingram*, 697 A.2d 1037 (Pa. Cmwlth. 1997), the plaintiff was granted leave to file an amended complaint, but failed to file an amended complaint with the prothonotary to add new defendants, and the Court held the trial court did not err in excluding those defendants from the cause of action as neither they nor their attorneys had ever accepted service of process on their behalf. *Id*. at 1041.

In *City of Philadelphia v. White*, 727 A.2d 627 (Pa. Cmwlth. 1997), a municipal demolishment action, the plaintiff similarly failed to file an amended complaint as to new properties after being granted leave to amend as to new causes of action for properties unrelated to the original complaint. *Id*. at 630. Moreover, "[t]he City's petition to amend the complaint did not have attached to it any document entitled "amended complaint." *Id*. at 628 n.1. The court held that, although the trial court had personal jurisdiction over the defendant, it could not allow additional causes of action to be brought against the defendant without filing a new action with the prothonotary because "[t]o do so deprives that defendant of an opportunity to prepare and file preliminary objections or an answer in defense of his property." *Id*.

These cases are distinguishable. No new respondents have been added and there is no question the Court has jurisdiction. Critically, Lay did file proposed amended filings (although she did not caption them as such) with all changes from the original noted. *See Holmes v. City of Allentown*, 2018 WL 3763534 at *4 (Pa. Cmwlth. 2018) (unpublished) ("Holmes actually attached his proposed amended complaint to the Petition to Amend. As against the County, therefore, the trial court should have treated the Petition to Amend as an amended complaint[.]"). The Court also ordered extensive briefing on many of the issues raised in the amended pleadings, and there can be no question that Bolla and the Tax Claim Bureau were given ample opportunity to respond to these claims both at the evidentiary hearing and in their post-trial briefs, which were filed after service of the proposed amended pleadings. The Court's failure to state a specific time in which Lay had to file new pleadings likely

[11] However, Bolla cannot object to the admission made in Lay's Reply to New Matter at ¶ 52, related to waiver of personal service, as Bolla and the Tax Claim Bureau had previously waived any reliance on this previous admission at the evidentiary hearing. Evid. Hr'g Tr., Day 3, p. 8. Moreover, as previously indicated in Footnote 9, the Court authorizes the withdrawal of that admission for good cause based upon the Tax Claim Bureau's misrepresentation.

also added to the confusion. As such, the failure of Lay to file new amended pleadings after this Court's December 11, 2020, Order granting leave to file, constituted a technical error or defect of procedure, and the Court treats the proposed amended pleadings attached to Lay's December 7, 2020, filings as an Amended Petition to Set Aside Tax Sale and an Amended Reply to New Matter pursuant to Pa.R.C.P. 126.

**B. The Tax Claim Bureau's Failure to Offer a Stay of Sale Agreement under Section 603 of the RETSL**

"Prior to sale of real property for unpaid taxes, a tax claim bureau must give a taxpayer notice and opportunity to cure the unpaid taxes." *Jenkins*, 176 A.3d at 1044 (emphasis in original). The RETSL accomplishes this statutorily through Section 603, which permits "at the option of the bureau" any owner to enter into a written stay of sale agreement, wherein they agree to pay "the balance of said claims and judgments and the interest and costs thereon in not more than three (3) instalments all within one (1) year of the date of said agreement" once they pay "25% of "the amount due on all tax claims and tax judgments filed or entered against such property and the interest and costs on the taxes returned to date[.]" 72 P.S. § 5860.603. "So long as said agreement is being fully complied with by the taxpayer, the sale of the property covered by the agreement shall be stayed." 72 P.S. § 5860.603. "[W]here an owner has paid at least 25% of the taxes due, the tax authority is required to inform the owner of the option to enter into an installment agreement and that a failure to do so is a violation of the owner's due process rights." *Moore v. Keller*, 98 A.3d 1, 5 (Pa. Cmwlth. 2014).

"A long line of [Commonwealth Court] precedent holds that a taxing authority has a duty to notify a taxpayer of the availability of an installment payment plan under section 603 of the Tax Sale Law only when the taxpayer pays at least 25% of the taxes due." *In re Consolidated Return of Tax Claim Bureau of Indiana County from September 16, 2019 Upset Tax Sale (Appeal of Burba)*, — A.3d —, 2021 WL 865358, *4 (Pa. Cmwlth. 2021) (emphasis added). However, because the agreement may only be entered at the option of the Bureau "the Bureau is not under any affirmative duty to enter into an installment agreement, but is only required to notify [t]axpayers of the possibility after 25% of the delinquent tax liability is paid." *Matter of Tax Sale 2018-Upset, 227 A.3d 957, 961 (Appeal of Kemmler)* (Pa. Cmwlth. 2020).

At various times during the evidentiary hearing, Lay suggested the interest on her delinquent balance had not been correctly calculated such that her $5,000 payment on August 29 amounted to more than 25% of her delinquent tax liability. *See* Evid. Hr'g Tr., Day 4, pp. 4-23. Letzelter testified that "after the fact" he determined that Lay's payment of $5,000 was approximately $260 short of the 25% necessary to trigger notification of the possibility of a stay of sale agreement. Evid. Hr'g Tr., Day 1, p. 44. Getchell could not herself recall whether the $5,000 was below the 25% threshold, Evid. Hr'g Tr., Day 2, p. 43. Lay attempted to offer an expert to opine on the interest calculations, but the Court did not permit that witness to take the stand due to a lack of proper notice to the other side about the interest calculation issue. Evid. Hr'g Tr., Day 4, pp. 22-23. And while Lay includes a chart of interest calculations in her Amended Petition, in her post trial brief, she appears to concede the point, stating "[t]he 25% of the delinquent taxes calculated by Steve Letzelter was $5,262.27. Petitioner had paid 23.754% of her delinquent taxes owed ($5,000/$21,094.08)." Amended Petition, ¶ 61; Petitioner's Post-Trial Briefs, p. 13. In the end, the Court finds there to be insufficient evidence that the Tax Claim Bureau failed to properly calculate the interest, and it further





finds Letzelter's testimony to be credible that he accurately calculated the delinquent balance as required by the RETSL.[12] The Court thus finds that Lay did not tender at least "25% of "the amount due on all tax claims and tax judgments filed or entered against [the Lakefront Property] and the interest and costs on the taxes returned to date[.]" 72 P.S. § 5860.603.

Next, Lay argues the fact that her payment was close to the 25% threshold should have triggered the obligation to notify her of the possibility of an installment agreement under Section 603. Petitioner's Post-Trial Briefs, pp. 10-11. But as the Tax Claim Bureau correctly notes, only the payment of 25% triggers the requirement under Section 603. *See In re Upset Sale Tax Claim Bureau of Wayne County Held September 12, 1994 (Appeal of Pitti)*, 672 A.2d 846 (Pa. Cmwlth. 1996) (exchange of letters and telephone conversation between taxpayer and tax claim bureau not sufficient to trigger Section 603 where payment was not received by mail by tax claim bureau until three days after tax sale). And the fact that another Tax Claim Bureau employee, Jennifer Turner, suggested that she might have or could have notified Lay of the possibility of a stay, does not change the fact that the Bureau is only required as a matter of law to notify the taxpayer upon the payment of 25%. Evid. Hr'g Tr., Day 3, p. 14.

Lay further argues that a tax claim bureau has an affirmative obligation to calculate whether 25% is due in order to determine whether it must inform the taxpayer of the possibility of entering into an installment agreement, relying on the *Jenkins* decision, and that the Tax Claim Bureau failed to do so here. Petitioner's Post-Trial Briefs, p. 10. Indeed, in *Appeal of Kemmler*, the Court noted of *Jenkins*:

> We concluded that where a taxpayer made a payment toward a delinquent tax liability and the tax claim bureau did not determine whether the taxpayer paid 25% of the delinquent liability, the tax claim bureau violated its duty under Section 603. Thus, *Jenkins* establishes that the bureau *must determine if a payment meets the 25% threshold*, and if so, the taxpayer must be notified of the possibility to enter into an installment agreement.

*Appeal of Kemmler*, 227 A.3d at 962 (citation omitted). Here, Getchell testified she never made the calculation. Evid. Hr'g Tr., Day 2, pp. 40, 56. But *Jenkins* does not specify when the calculation must be made. It merely states a determination must be made whether the amount offered by the taxpayer meets that threshold, and if it does, the taxpayer must be informed of the possibility of a stay agreement or the tax sale is invalid. This rule logically follows from Section 603 since, if no determination was ever made whether a payment meets the 25% threshold, then a tax claim bureau would never know if an obligation to inform arose in close cases such as this where the calculation cannot be easily computed. In such a

[12] Getchell also testified that Letzelter informed her at a later date, likely on September 10, that Lay "could have had a stay agreement." Evid. Hr'g Tr., Day 2, pp. 42-43. There was some uncertainty whether Getchell meant they should have offered Lay a stay agreement because she met either the 25% or the 10% senior citizen discount threshold, but the Court interprets Getchell's testimony to mean it was in the Bureau's discretion to offer her an agreement, and that Letzelter felt the balance of equities favored notifying her of the option. Indeed, as a matter of law, the Court finds that the Bureau did have such discretion. *In re Public Sale of Properties (Appeal of Tappenden)*, 841 A.2d 619, 622 (Pa. Cmwlth. 2004) (citing 72 P.S. § 5860.208). As such, the Court rejects Letzelter's understanding that he has "extremely little" discretion to deviate below the 25% threshold, which he only exercises in nominal amounts of approximately $100 below the total balance due for that year subject to the tax sale. Evid. Hr'g Tr., Day 1, pp. 60-61, 118-19. But if the Bureau had discretion to notify her of the possibility of a stay of sale agreement, despite Lay not having tendered 25%, it naturally follows that the Bureau also had discretion not to notify her of the possibility of a stay agreement at that time since she did not, in fact, pay the required amount.

scenario, a bureau could too easily evade its statutory obligation to inform through plausible deniability of the fact that the threshold payment was made.

Here, Getchell chose not to make a determination as to whether the $5,000 payment met the 25% threshold since Lay told her she would be back the following week to make another payment. Evid. Hr'g Tr., Day 2, p. 21.[13] A determination was eventually made by Letzelter on September 10 that the $5,000 did not meet the 25% percent threshold. If it had, then Letzelter would have been required under Section 603 to offer Lay an installment agreement or remove the Lakefront Property from the sale list. As it happened, it did not, and Getchell's failure to determine whether Lay was entitled to a stay the moment she tendered the $5,000 check was not a violation of the RETSL or contrary to the Jenkins decision.

Additionally, the Court finds that the Tax Claim Bureau did notify Lay of the possibility of a stay of sale upon payment of 25% by virtue of the ten-day notice sent to the Lakefront Property. That notice states:

> The sale of the below described real property may be stayed by payment in full of taxes which have been paid absolute and of all charges and interest due on those taxes or by entering into a stay of sale agreement and paying at least 25% of the amount due on all tax claim and tax judgments filed or entered and the interest and costs on the taxes returned to date pursuant to the Act.

Tax Claim Bureau Ex. 8. Given the Court's prior finding that Lay received actual notice of the sale via the same ten-day notice on August 28, the night before she turned up at the Bureau office, she cannot now claim foul that the Tax Claim Bureau did not do so again the following day. Similar to the mailed notice under Section 602, the duty to inform a taxpayer of the possibility of a tax sale under Section 603 is not an end in itself. *Appeal of Neff*, 132 A.3d at 645. Requiring strict compliance with the Section 603 requirement where a taxpayer has actual notice of the possibility of a stay agreement would make even less sense than in the Section 602 context since the ultimate decision of whether to allow a taxpayer to enter into an installment contract still rests solely with the Tax Claim Bureau. Consequently, Lay's Section 603 claim must fail.

**C. The Tax Claim Bureau's Failure to Offer a Stay of Sale Agreement at 10% under Erie County's Senior Citizen Policy.**

Lay argues that, Section 603 notwithstanding, it is the practice or policy of the Erie County Tax Claim Bureau to offer a stay of sale to senior citizens upon payment of 10% of the total amount due. Petitioner's Post-Trial Briefs, p. 11. There is no doubt that the $5,000 tendered by Lay was well in excess of 10%. Evid. Hr'g Tr., Day 2, p. 55-56. Letzelter testified that "I believe this was from county council who approved this decades ago, that a senior citizen can get 10% down. But that's not statutory, that's a — more of a home rule thing, as far as I know." Evid. Hr'g Tr., Day 1, p. 63. He further testified that it applied to those "65 and older." Evid. Hr'g Tr., Day 1, p. 64. That such a policy exists, at least in practice, was confirmed by both Getchell and Turner. Evid. Hr'g Tr., Day 2, p. 41; Evid. Hr'g Tr., Day 3, pp. 14-15, 18. However, Letzelter noted there is "not a written policy on that." Evid. Hr'g Tr., Day 1, p. 97.

[13] The Court finds this maneuver to be yet another tactic by Lay to game the tax system by lulling the Tax Claim Bureau into believing she would be back in the hopes they would delay the impending sale.





Neither Lay nor the Tax Claim Bureau have been able to locate the text of any such ordinance.

Section 504 of the RETSL permits local governments to enact legislation to extend the period of discharge or deferment of tax claims for owner occupants age 65 and older. 72 P.S. § 5860.504(a). But there is no express provision in the RETSL permitting local bodies to lower the payment threshold under Section 603 for when an elderly taxpayer must be informed of the possibility of a stay. Be that as it may, another provision of the RETSL, Section 208, vests a tax claim bureau with considerable discretion over the collection of taxes. It states in relevant part:

> The bureau and the director thereof shall, in the administration of this act, be the agent of the taxing districts whose tax claims are returned to the bureau for collection and prosecution under the provisions of this act, and in the management and disposition of property in accordance with the provisions of this act.

72 P.S. § 5860.208. The Commonwealth Court interpreted this provision in *In re Public Sale of Properties (Appeal of Tappenden)*, 841 A.2d 619, 622 (Pa. Cmwlth. 2004). In *Appeal of Tappenden*, the would-be purchaser of a property removed from the judicial tax sale list after the taxing authority entered into an agreement with the owner to pay the delinquent taxes argued that the taxing districts did not have the authority to remove a property from the tax sale list. *Id*. at 622. The Court disagreed, holding that "Section 208 … gives a tax claim bureau broad authority for the management and disposition of property … Logically, management and disposition includes the ability to remove a property from a scheduled judicial tax sale when to do so will advance the collection of delinquent taxes." *Id*. (citation and internal quotation marks omitted). The Court concluded that Section 208 grants local taxing authorities and their agents, the tax claim bureaus, "broad authority" over properties subject to tax sales. *Id*.

Bolla argues that the 10% senior citizen discount is not legally enforceable because it contravenes the 25% threshold of the RETSL, relying heavily on the Commonwealth Court's non-precedential decision in *Sobolewski v. Schuylkill County Tax Claim Bureau*, 2019 WL 3436516 (Pa. Cmwlth. 2019) (unpublished). Post-Hearing Brief of Respondent Daniel Bolla, as Executor of the Estate of Lawrence C. Bolla, pp. 18-19. In that case, a taxpayer claimed she spoke on the phone with a tax claim bureau representative who told her she could enter into a monthly payment plan with minimum payments of $100 per month, and she subsequently made two payments for $100 and $150 before the property was sold. *Sobolewski*, 2019 WL 3436516 at *2. She claimed she had entered into a stay of sale agreement with the bureau and that the property should not have been sold. In dismissing her claim, the Court noted "[u]nfortunately, we are constrained by the plain language of Section 603 … [stating] a payment plan does not stay a sale without tendering a 25% payment on the delinquent taxes. Here, Mrs. Sobolewski's payments represent only 13% of the taxes, which by statute was insufficient to stay the sale." *Id*. at *6.

However, Bolla's reliance on *Sobolewski* for the proposition that the Tax Claim Bureau has no authority to deviate from the 25% threshold is misplaced for two reasons. First, the Court relied on the lack of proof of an agreement, noting "there is no evidence of a written agreement between the Bureau and Mrs. Sobolewski or documentation of Mrs. Sobolewski's alleged phone call to the Bureau. The Bureau's evidence tended to refute that such a phone

call occurred, and the trial court referred to the Bureau's evidence in its opinion." *Id*. Thus, Bolla's characterization of *Sobolewski*'s holding that "a sale cannot be overturned on the basis of an *actual agreement* to an alternate installment plan requiring a less than 25% payment" misses the mark as the Court actually found there was no evidence of an actual agreement in the first place. Post-Hearing Brief of Respondent Daniel Bolla, as Executor of the Estate of Lawrence C. Bolla, p. 19 (emphasis in original).[14] Second, *Sobolewski* did not concern a separate local ordinance, but a straightforward application of Section 603. The 13% was "by statute … insufficient to stay the sale." *Id*. at *6. *Sobolewski* had no occasion to consider the very different question of whether taxing authorities or tax claim bureaus have the discretion to offer stays of sale at a lower threshold than 25%. As such, *Sobolewski* is inapposite here.

In asserting that County Council had no authority to pass such an ordinance, Bolla essentially argues preemption. Generally, Pennsylvania courts recognize three types of situations where state law will supplant local law:

> (1) express or explicit preemption, where the statute includes a preemption clause, the language of which specifically bars local authorities from acting on a particular subject matter; (2) conflict preemption, where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute; and (3) field preemption, where analysis of the entire statute reveals the General Assembly's implicit intent to occupy the field completely and to permit no local enactments.

*Hoffman Mining Co., Inc, v. Zoning Hearing Board of Adams Township, Cambria County*, 32 A.3d 587, 593-94 (Pa. 2011). In the absence of "a clear statement of legislative intent to preempt, state legislation will not generally preempt local legislation on the same issue" and "the mere fact that the General Assembly has enacted legislation in a field does not lead to the presumption that the state has precluded all local enactments in that field[.]" *Mars Emergency Medical Services, Inc. v. Township of Adams*, 740 A.2d 193, 196 (Pa. 1999); *Hoffman*, 32 A.3d at 593 (quoting *Council of Middletown Township v. Benham*, 523 A.2d 311, 313 (Pa. 1987)). There is no provision in the RETSL explicitly preempting local tax sale laws, and as Sections 208 and 504 show, if anything, the RETSL condones it. These provisions also shatter any illusions that the General Assembly intended to preempt the entire field of tax sale regulation.

That leaves conflict preemption. "Where an ordinance conflicts with a statute, the will of the municipality as expressed through an ordinance will be respected unless the conflict between the statute and the ordinance is irreconcilable." *Hoffman*, 32 A.3d at 594-95 (quotation omitted). To that end, "a municipal corporation with subordinate power to act in the matter may make such additional regulations in aid and furtherance of the purpose of the general law as may seem appropriate to the necessities of the particular locality and which are not in themselves unreasonable." *Id*. at 595 (quotation omitted). Here, although Section 603 and the local ordinance allegedly state two different thresholds for a stay, they are not irreconcilable. Section 603 states a statutory minimum amount, at which point a tax claim bureau is obligated to inform the taxpayer of the possibility of a stay agreement. Nothing in Section 603 suggests the General Assembly intended for the 25% threshold to be an exclusive percentage. By setting

[14] To the extent that *Sobolewski* could be read as precluding a tax claim bureau from exercising any discretion over stays of tax sales, that proposition was firmly rejected in *Appeal of Tappenden*. 841 A.2d at 624.





a lower threshold for senior citizens, a category of persons who are likely to be particularly susceptible to good faith mix-ups over tax payments, local government would be acting in aid and furtherance of the purpose of the RETSL to ensure the collection of taxes, not that taxpayers are stripped of their homes. *Appeal of Tappenden*, 841 A.2d 625-26 (citations omitted); *see also Appeal of JUL Realty Corp.*, 836 A.2d at 1040 (invalidating tax sale where elderly taxpayer with poor eyesight misread faintly printed date on sale notice, and as a result, showed up two days late at the tax claim bureau to pay her delinquent taxes, the day she genuinely believed to be the date of the sale). Accordingly, any suggestion of preemption must be denied.

For its part, the Tax Claim Bureau "agrees that local governments may establish different payment thresholds required for installment payment arrangements to avoid a tax sale[,]" citing to *Appeal of Tappenden* and Section 208. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 21. It does argue that Section 208 and *Appeal of Tappenden* make clear that tax claim bureaus act as agents of the taxing authorities, and as there is no evidence that Millcreek Township or Millcreek School District authorized a 10% discounted threshold rate, the 10% rule cannot be applied to the portion of Lay's delinquent tax balance accountable to those entities. Post-Hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 21. Section 208 unequivocally states that "[t]he Bureau ... shall, in the administration of this act, be the agent of the taxing districts whose tax claims are returned to the bureau for collection" and *Appeal of Tappenden* likewise confirms that "the Tax Claim Bureau acted in this matter as the agent of the Taxing Districts." 72 P.S. § 5860.208; *Appeal of Tappenden*, 841 A.2d at 622. As such, this Court may properly look to principles of agency law to determine the scope of the Bureau's authority. It is true that agents may act on behalf of more than one principal. *See* RESTATEMENT (THIRD) OF AGENCY § 3.14 cmt. b (2006) ("A person with relationships of agency with more than one principal may, in any particular matter, act as an agent on behalf of only one principal."). It is also generally true that "[s]everal principals may be bound by the acts and representations of a common agent, but it must appear that authority was given by all the alleged principals, and an agent cannot bind one principal in the separate business of another." *First National Bank of Omaha v. Acceptance Insurance Companies, Inc*., 675 N.W.2d 689, 702 (Neb. App. 2004) (quoting 2A C.J.S. Agency § 245 at 953).

However, the Tax Claim Bureau's argument fails to consider the breadth of agency relationships as well as the unique circumstances created by Section 208. The Tax Claim Bureau relies on express authority[15] for its proposition that Millcreek taxing authorities did not authorize the 10% senior citizen stay threshold, but it fails to discuss whether those Millcreek taxing authorities could alternatively be bound by apparent authority.[16] Moreover, the agency relationship between taxing authorities and tax claim bureaus are created by Section 208 rather than by any independent act of the taxing authorities. Thus, the scope of a tax claim bureau's authority is likewise informed by Section 208. That authority includes

[15] "Express authority exists where the principal deliberately and specifically grants authority to the agent as to certain matters." *Walton v. Johnson*, 66 A.3d 782, 786 (Pa. Super. 2013).

[16] "Apparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the [principal's] manifestations to third persons." *Commonwealth v. One 1991 Cadillac Seville*, 853 A.2d 1093, 1096 (Pa. Cmwlth. 2004) (citation and internal quotation marks omitted) "Apparent authority may result when a principal permits an agent to occupy a position which, according to the ordinary experience and habits of mankind, it is usual for that occupant to have authority of a particular kind." *In re McGlynn*, 974 A.2d 525, 534 n.9 (Pa. Cmwlth. 2009) (citation and internal quotation marks omitted).

the power to manage and dispose of property as it sees fit within the statutory parameters of the RETSL. *Appeal of Tappenden,* 841 A.3d at 624 ("A taxpayer who follows the Section 603 procedure, including an installment plan, may remove a property from sale; however, this does not mean that the taxing authorities cannot agree to another payment plan."); *In Re Sale of Real Estate by Lackawanna County Tax Claim Bureau*, 22 A.3d 308, 315 n.7 (Pa. Cmwlth. 2011) (noting "[o]ur decision in [*Appeal of Tappenden*] presumes some discretionary authority on the part of tax claim bureau[.]"); *Swinka Realty Investments, LLC v. Lackawanna County Tax Claim Bureau*, 2016 WL 3618399, *3 (M.D. Pa. 2016) (affirmed on appeal, 688 Fed. App'x 146 (3d Cir. 2017) (unpublished). As such, whether viewed in terms of express or apparent authority, the Tax Claim Bureau appears to have the power to bind all of the taxing districts which it serves to further the "collection and prosecution" of delinquent tax claims as well as to manage and dispose of property in accordance with the RETSL, the purpose of which is to collect taxes, not strip taxpayers of their homes. 72 P.S. § 5860.208; *Brodhead Creek*, 231 A.3d at 74. This includes the power to implement a county-wide policy to inform of the possibility or offer stay of sale agreements to senior citizens upon payment of 10% of their delinquent balance.[17]

Ultimately, however, the problem with Lay's argument is more rudimentary. Without the text of the purported county ordinance to review, the Court cannot be sure what the law requires or even if it actually exists. The testimony provided at the evidentiary hearing suggests that the Tax Claim Bureau exercises considerable discretion in its enforcement and may only offer a stay at the discounted rate if the taxpayer affirmatively inquiries about the discount. Letzelter testified that "[s]enior citizens can get a discounted rate, but again, *they have to ask for it*." Evid. Hr'g Tr., Day 1, p. 63 (emphasis added). When asked how a senior citizen would know that they could possibly pay only 10% and be offered an installment plan, Letzelter answered "I believe that if they were asking about a stay or they were interested in a stay, we ask if they have proof of Social Security or disability, and that would generate the down payment." Evid. Hr'g Tr., Day 1, p. 64 (emphasis added). If this is the case, then the ordinance operates quite differently than Section 603 of the RETSL, which requires the Tax Claim Bureau to mention the possibility of an installment agreement upon the tendering of the threshold amount, whether or not the taxpayer mentions it. It also could be that the alleged ordinance mirrors Section 603, but over time, the Bureau has misinterpreted and misapplied the law. It could be that no such law is on the books or that Erie County enacted an extension for discharge pursuant to Section 504, which has over time become conflated with a non-enforceable internal policy of the Bureau to offer a 10% discount to senior citizens. But this is all conjecture and any application of this alleged law would involve a significant amount of guesswork.

As the proponent of this claim, Lay has failed to offer sufficient evidence that the policy is an enforceable, codified county ordinance and precisely what the parameters of that ordinance are. In the due process context, courts have explained "[i]t is well settled that legislation can be so vague as to deny due process in its enforcement when it limits the ability of those to

[17] The Court also finds unpersuasive, the Bureau's argument that Lay "presented as a well-dressed woman which gave no indication of her age." Post-hearing Brief Submitted on Behalf of the County of Erie Tax Claim Bureau, p. 23. When asked whether Lay appeared to be over 65, Getchell testified "Possibly. I try to be very respectful of people." Evid. Hr'g Tr., Day 2, p. 40. But she also testified that Lay reminded her of her late mother. The Court thus finds factually that Lay appeared to be over the age of 65 when she came to the Bureau office on August 29, 2019, sufficient to have put the Tax Claim Bureau on notice that the 10% practice applied to her.





whom the statute is directed to understand that which is prohibited or mandated." *Pennsylvania Medical Providers Association v. Foster*, 582 A.2d 888, 892-92 (Pa. Cmwlth. 1990) (en banc) (quoting *Singer v. Sheppard*, 381 A.2d 1007, 1010 (Pa. Cmwlth. 1978) (internal quotation marks omitted)). "[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). These principles of vagueness derived from due process translate well into this evidentiary context. Lay has failed to prove essential facts necessary to the Court's understanding of the law or policy in order for it to make an informed decision as to its application to the facts of this case. As such, her claim is denied.

**D. Failure to Comply with Erie County Administrative Code § 14(H)**

Finally, Lay claims that the sale should be set aside because the Tax Claim Bureau failed to publish and post the conditions under which the Tax Claim Bureau would enter into a stay of sale agreement in dereliction of the Erie County Administrative Code. Article IV of the Erie County Administrative Code concerns the Financial Procedures of the County, Section 14 of which is entitled "Procedure for Tax Sales." Subsection H, entitled Stay of Sale Agreements, states:

> The Director of the Tax Claim Bureau, in conjunction with the Director of Finance, shall from time to time, but no later than July 1st of each year, publish and post conditions under which the Bureau will enter an agreement to stay the tax sale of a property pursuant to Section 605 of the Real Estate Tax Sale Law. These conditions shall be posted in the office of the Bureau for the benefit of the public, and a copy of the conditions shall be delivered to the County Executive and County Council.

Erie County Admin. Code, Art. IV, § 14(H). Unlike the prior issue, the Court here has before it the actual language of the provision. However, this claim also suffers from a lack of evidence. Little was offered at trial to show that the publication and posting requirements of Section 14(H) were not satisfied. Jennifer Turner testified she did not know whether the stay policies were posted. Evid. Hr'g Tr., Day 3, pp. 21-22. The only testimony arguably supportive of Lay's claim is Getchell's, who was asked "[t]here wasn't anything hanging up in your office about a stay agreement? There was no way for her to know that, unless you would have told her or unless she already knew it coming in?" to which Getchell answered "[t]hat's correct." Evid. Hr'g Tr., Day 2, p. 41. But corroboration is a "potent factor" to consider when assessing the weight and credibility of testimony. *Commonwealth v. Vicens-Rodriguez*, 911 A.2d 116, 118 (Pa. Super. 2006). Lay presented no further proof, such as her own testimony or photographic evidence of the Tax Claim Bureau office, to show that Article IV, Section 14(H) of the County Code was violated. Her claim thus fails for lack of evidence.

Moreover, even if Lay had presented sufficient evidence, the Court would be constrained to hold that Lay's actual notice of the stay conditions via the ten-day notice cures the violation of the publication and posting requirements of the County Administrative Code. The clear intent of the county publication and posting provision is to provide actual notice of the stay conditions, which Lay had already received. Unlike Section 601(a)(3), which requires a

written return of service to prove that an owner occupant was formally and personally served, there is no indication that Erie County Council intended to elevate form over substance to this degree. The County Code provision is also distinguishable from the posting requirement of the RETSL's Section 602, for which actual notice is not a defense, since the purpose of the posting requirement "is to notify the public at large as well as the record owner." *Appeal of Baumgardner*, 865 A.2d at 1017. Lay stresses that the county provision is likewise "for the benefit of the public" as stated in its text. Petitioner's Post Trial Briefs, p. 13. But unlike posting under Section 602, the county's concern with publishing and posting stay procedures is not directed toward neighbors or friends of a taxpayer who may be concerned with their welfare. *Wells Fargo*, 817 A.2d at 1199. Rather, it is specifically concerned with members of the public who may benefit from a stay, *i.e.* delinquent taxpayers themselves. The County's publication and posting requirement is not an end in itself. *See Appeal of Neff*, 132 A.3d at 645. The only member of the public who may have benefited from a stay of sale here was Lay, and she already received actual notice of the possibility of a stay the night before she entered the Bureau office. Her claim under Section 14(H) of the Erie County Administrative Code is consequently rejected.

## VI. CONSTITUTIONAL CLAIMS

Lay argues that the Tax Claim Bureau's failure to offer her a stay of sale agreement after she paid more than 10% of her delinquent tax balance constituted an arbitrary policy or practice in violation of principles of equal protection and due process enshrined in the Fourteenth Amendment to the Constitution of the United States and Sections 1 and 26 of Article I of the Constitution of the Commonwealth of Pennsylvania. Amended Petition to Set Aside Tax Sale, ¶¶ 58-59; Evid. Hr'g Tr., Day 2, pp. 229-232. The constitutional guarantee of equal protection requires that similarly situated individuals receive similar treatment. *Lohr v. Saratoga Partners, L.P.*, 238 A.3d 1198, 1209-10 (Pa. 2020). Where, as here, a plaintiff does not allege membership in a protected class, she may assert an equal protection claim under the "class of one" theory. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam); *Uniontown Newspapers, Inc. v. Roberts*, 839 A.2d 185, 197-98 (Pa. 2003). A plaintiff alleging a "class of one" claim must demonstrate that (1) the defendant treated her differently from others similarly situated; (2) the defendant did so intentionally; and (3) any differential treatment was without rational basis. *Cornell Narberth, LLC v. Borough of Narberth*, 167 A.3d 228, 243 (Pa. Cmwlth. 2017) (citing *Hill v. Borough of Kutztown*, 455 F.3d 225, 239 (3d Cir. 2006)). A due process challenge implicates similar concerns for "[t]he Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles." *Obergefell v. Hodges*, 576 U.S. 644, 672 (2015).

A "class of one" claim, like any evaluated under rational basis review, cannot succeed "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Cornell Narberth*, 167 A.3d at 243 (citing *Heller v. Doe*, 509 U.S. 312, 320 (1993)). In reviewing a government action, "courts are free to hypothesize" a rational basis for the decision. *Commonwealth v. Albert*, 758 A.2d 1149, 1153 (Pa. 2000). Moreover, there exist some forms of state action "which by their nature involve discretionary decisionmaking based on a vast array of subjective, individualized assessments. In such cases [principles of equal protection and due process] are not violated when one person is treated differently from others, because treating like individuals differently is an accepted consequence of the





discretion granted." *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591, 603 (2008).

However, given that this case can be resolved in Lay's favor on statutory grounds, the Court declines the invitation to delve into these constitutional waters. It is well-settled that courts should avoid reaching constitutional issues when a case may be decided solely on statutory grounds. *Interest of D.R.*, 232 A.3d 547, 559 n.14 (Pa. 2020); *Commonwealth v. Morales*, 80 A.3d 1177, 1179 (Pa. 2013) (noting "[b]ecause the trial court found non-constitutional grounds for relief, it should not have resolved the case on a constitutional basis[.]"); *Mt. Lebanon v. County. Board of Elections of Allegheny County*, 368 A.2d 648, 650 (Pa. 1977) ("[W]e should not decide a constitutional question unless absolutely required to do so."). Accordingly, the Court does not reach the constitutional issues presented here.

## VII. CONCLUSION

Under Section 601(a)(3) of the RETSL, the Tax Claim Bureau is required to personally serve notice of a tax sale on owner occupants, like Darlene Lay, or seek waiver of the personal service requirement for good cause shown from the court of common pleas prior to an upset tax sale of that property. The Tax Claim Bureau did neither. As a result, the September 30, 2019, upset tax sale of the Lakefront Property to Lawrence Bolla, through no fault of his own, was legally invalid. In her hubris, Lay evaded her local tax obligations for years by gaming the system; however, she was entitled to the law's benefit nonetheless.

The Tax Claim Bureau raises a persuasive policy argument as to why it should not be held responsible for its lack of knowledge that the Lakefront Property was owner occupied as Lay failed to notify the Assessment Office of her change of address, but the RETSL itself places no such burden on a taxpayer to do so and prior case law makes clear that "the burden is not on the taxpayer to prove that [she] is an owner occupant, but for the Bureau to prove that it satisfied the notice requirements under circumstances wherein the General Assembly included heightened protection for the owner occupant." *Appeal of Hansford*, 218 A.3d at 1001 n.12. Although the Court finds that Lay ultimately had actual notice of the upcoming sale, it holds that such notice did not cure the defect in personal service under the plain terms of Section 601(a)(3), requiring written proof of personal service, and in accordance with appellate precedent that is binding on this Court. *McKelvey*, 983 A.2d at 1274. As a result, the September 30, 2019, upset tax sale of the Lakefront Property must be, and now is, set aside.

*It is so ordered.*

**BY THE COURT**
/s/ **Marshall J. Piccinini, Judge**

**CHANGE OF NAME NOTICE**

In the Court of Common Pleas of Erie County, Pennsylvania 10841-21 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Wren Brady Dugan to Wren Brady Dugan Holquist.

The Court has fixed the 16th day of June, 2021 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

June 11

**CHANGE OF NAME NOTICE**

In the Court of Common Pleas of Erie County, Pennsylvania 11153-21 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of William Robert McClune to Sophia Mara McClune.

The Court has fixed the 15th day of July, 2021 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

June 11

**FICTITIOUS NAME NOTICE**

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

**FICTITIOUS NAME NOTICE**

1. Fictitious Name: Erie County Community College
2. Address of the principal place of business, including street and number: 1128 State Street, Suite 300, Erie, PA 16501
3. The real names and addresses, including street and number, of the entities who are parties to the registration: Community College of Erie County, 1128 State Street, Suite 300, Erie, PA 16501
4. An application for registration of a fictitious name under the Fictitious Names Act was filed on June 1, 2021, with the Department of State.

June 11

**FICTITIOUS NAME NOTICE**

1. Fictitious Name: Erie County Community College of Pennsylvania
2. Address of the principal place of business, including street and number: 1128 State Street, Suite 300, Erie, PA 16501
3. The real names and addresses, including street and number, of the entities who are parties to the registration: Community College of Erie County, 1128 State Street, Suite 300, Erie, PA 16501
4.An application for registration of a fictitious name under the Fictitious Names Act was filed on June 1, 2021, with the Department of State.

June 11

**INCORPORATION NOTICE**

Guerrilla Kicks, Inc. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

June 11

**LEGAL NOTICE**

IN THE COURT OF COMMON PLEAS
of ERIE COUNTY
CIVIL ACTION - LAW
ACTION OF MORTGAGE FORECLOSURE
Term No. 10826-2021

**NOTICE OF ACTION IN MORTGAGE FORECLOSURE**

COMMONWEALTH OF PENNSYLVANIA, by the COMMONWEALTH FINANCING AUTHORITY, Plaintiff
vs.
GREATER ERIE INDUCTRIAL DEVELOPMENT CORPORATION, Defendants whose last known address is 5240 Knowledge Parkway, Erie, Pennsylvania 16510.

You are hereby notified that Plaintiff, COMMONWEALTH OF PENNSYLVANIA, by the COMMONWEALTH FINANCING AUTHORITY, has filed a Mortgage Foreclosure Complaint endorsed with a notice to defend against you in the Court of Common Pleas of Erie County, Pennsylvania, docketed to No. 10826-2021 wherein Plaintiff seeks to foreclose on the mortgage secured on your property located, 5240 Knowledge Parkway, Erie, Pennsylvania 16510.

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claim in the Complaint of for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL AND INFORMATION SERVICE
P.O. Box 1792
Erie, PA 16507
814-459-4411

Attorney for Plaintiff
Sean Christopher Campbell
Commonwealth Financing Authority
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120
(717) 720-1345

June 11





**SHERIFF SALES**

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

**JUNE 18, 2021**
**AT 10 A.M.**

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they **MUST** possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

John T. Loomis
Sheriff of Erie County

May 28 and June 4, 11

**SALE NO. 1**
**Ex. #10125 of 2021**
**NORTHWEST BANK f/k/a NORTHWEST SAVINGS BANK, Plaintiff**
**v.**
**MATTHEW M. MORELL and PATTY A. MORELL, Defendants**
**DESCRIPTION**

By virtue of a Writ of Execution filed at No. 2021-10125, Northwest Bank vs. Matthew M. Morell and Patty A. Morell, owners of property situate in the City of Erie, Erie County, Pennsylvania being: 1807 West 32nd Street, Erie, Pennsylvania:
40 X 100 X 40 X 100
Assessment Map Number:
(19) 6153-203
Assessed Value Figure: $72,900.00
Improvement Thereon: Residence
Kurt L. Sundberg, Esq.
Marsh Schaaf, LLP
300 State Street, Suite 300
Erie, Pennsylvania 16507
(814) 456-5301

May 28 and June 4, 11

**SALE NO. 4**
**Ex. #12320 of 2019**
**CITIZENS BANK N.A. f/k/a RBS CITIZENS N.A., Plaintiff**
**v.**
**Malikah J. Shabazz, Defendant**
**DESCRIPTION**

By virtue of a Writ of Execution filed to No. 12320-19, CITIZENS BANK N.A. f/k/a RBS CITIZENS N.A. v. Malikah J. Shabazz, owners of property situated in the Township of City of Erie, Erie County, Pennsylvania being 636 West 19th Street, Erie, Pennsylvania 16502
Tax I.D. No. 19060016022800
Assessment: $25,010.72
Improvements:
Residential Dwelling
McCabe, Weisberg & Conway, LLC
123 South Broad Street, Suite 1400
Philadelphia, PA 19109
215-790-1010

May 28 and June 4, 11

**SALE NO. 5**
**Ex. #10180 of 2020**
**J.P. Morgan Mortgage Acquisition Corp., Plaintiff**
**v.**
**Darlene M. Waterhouse and Thomas J. Waterhouse, Defendants**
**DESCRIPTION**

By virtue of a Writ of Execution filed to No. 10180-20, J.P. Morgan Mortgage Acquisition Corp. vs. Thomas J. Waterhouse and Darlene M. Waterhouse, owner(s) of the property situated in the City of Erie, Erie County, Pennsylvania, 1124 West 33rd Street, Erie PA 16508
43X135, 1,152 Square feet,
0.1333 Acreage
Assessment Map Number:
19-061-026.0-240.00
Assessed VaIue Figure: $84,900.00
Improvement thereon: Single Family Dwelling w/ Detached Garage
Emmanuel J. Argentieri, Esquire
Attorney for Plaintiff
ROMANO GARUBO & ARGENTIERI
52 Newton Avenue, P.O. Box 456
Woodbury, NJ 08096
(856) 384-1515

May 28 and June 4, 11

**SALE NO. 7**
**Ex. #10732 of 2020**
**WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE FIRST FRANKLIN MORTGAGE LOAN TRUST 2006-FF15 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-FF15, Plaintiff**
**v.**
**CALVIN W. JORDAN AKA CALVIN JORDAN and MARY E. LOMBARDI AKA MARY LOMBARDI, Defendants**
**DESCRIPTION**

By virtue of a Writ of Execution filed to No. 10732-20, WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE FIRST FRANKLIN MORTGAGE LOAN TRUST 2006-FF15 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-FF15 vs. CALVIN W. JORDAN AKA CALVIN JORDAN and MARY E. LOMBARDI AKA MARY LOMBARDI, owner(s) of the property situated in Erie County, Pennsylvania being 3941 OXER ROAD, ERIE, PA 16505
Assessment Map Number:
(33) 26-149-5/ 33026149000500
Assessed Value Figure: $120,600.00
Improvement Thereon:
A Residential Dwelling
KML LAW GROUP, P.C.
ATTORNEY FOR PLAINTIFF
701 MARKET STREET,
SUITE 5000
PHILADELPHIA, PA 19106
(215) 627-1322

May 28 and June 4, 11

**ESTATE NOTICES**

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

**FIRST PUBLICATION**

**CAMPAGNE, CHARLES H., JR., deceased**
Late of the City of Erie, Erie County
*Executrix:* Lisa M. Winschel
*Attorney:* John F. Mizner, Esquire, 311 West Sixth Street, Erie, PA 16507

**CORDIANO, MARIE R., deceased**
Late of the City of Erie, Erie County
*Executrix:* Theresa C. Paterniti
*Attorney:* Edwin W. Smith, Esq., Marsh Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

**DANILCZUK, MAREK, deceased**
Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
*Administratrix:* Magdalena Danilczuk
*Attorney:* David J. Rhodes, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**DAWISON, WILLIAM J., a/k/a WILLIAM DAWISON, deceased**
Late of the Township of Girard, County of Erie, Commonwealth of Pennsylvania
*Executrix:* Billie Jo McCracken, 796 Clark Street, Conneaut, Ohio 44030
*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**KLINE, EUGENE A., deceased**
Late of Washington Township, Erie County, PA
*Executrix:* Natalie J. Kline Stone
*Attorney:* Kimberly S. Foulk, Esq., Cressman Erde Ferguson, LLC, 300 Arch Street, Meadville, PA 16335

**KRYSIAK, BETTY JANE, deceased**
Late of the City of Erie
*Executrix:* Lynn Michelle Krysiak Bresslin
*Attorney:* Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**ROBERTSON, NANCY E., deceased**
Late of Erie City, Erie County, PA
*Administratrix:* Kristen Dobrich, 309 Cascade St., Erie, PA 16507
*Attorney:* Robert Freedenberg, Esquire, Skarlatos Zonarich LLC, 320 Market St., Ste. 600W, Harrisburg, PA 17101

**SCHANZ, JAMES J., a/k/a JAMES SCHANZ, deceased**
Late of the Township of Elk Creek, County of Erie, Commonwealth of Pennsylvania
*Administratrix:* Nellie R. Schanz, 8583 Crane Road, Cranesville, PA 16410
*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**TRABERT, LUDWIG M., a/k/a LOU TRABERT, deceased**
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
*Executor:* Stanley Lewandowski, 3220 Charlotte Street, Erie, PA 16508
*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**ZMIJEWSKI, THADDEUS W., JR., deceased**
Late of the City of Erie
*Executrix:* Ellen E. Benczkowski, 2633 Vandalia Ave., Erie, PA 16511
*Attorney:* Michael A. Fetzner, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**ZYGAI, ESTHER, deceased**
Late of Millcreek Township, County of Erie, Pennsylvania
*Executrix:* Laura L. Yochim, c/o 3939 West Ridge Road, Suite B-27, Erie, PA 16506
*Attorney:* James L. Moran, Esquire, 3939 West Ridge Road, Suite B-27, Erie, PA 16506

**SECOND PUBLICATION**

**COLEMAN, JOHN F., deceased**
Late of the Township of Lawrence Park, County of Erie, and Commonwealth of Pennsylvania
*Executrix:* Michelle T. Gray, c/o 300 State Street, Suite 300, Erie, PA 16507
*Attorney:* Thomas V. Myers, Esquire, Marsh Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

**GOODMAN, MAE I., a/k/a MAE GOODMAN, deceased**
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
*Executrix:* Mary A. Tucholski, 1247 East 26th Street, Erie, Pennsylvania 16504
*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417





**HESS, PATRICIA W., a/k/a PATRICIA HESS, a/k/a PATRICIA K. HESS, deceased**
Late of the City of Erie, Erie County
*Executrix:* Holly K. Hess
*Attorney:* Michael G. Nelson, Esq., Marsh Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

**HOWARD, PATRICK C., deceased**
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
*Administratrix:* Patricia M. Howard, 3428 Allegheny Road, Erie, PA 16509
*Attorneys:* MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**KAZIMIEROWSKI, KAZIMIER E., a/k/a KAZIMIER KAZIMIEROWSKI, deceased**
Late of the Township of Millcreek, Commonwealth of Pennsylvania
*Executor:* Kazimier R. Kazimierowski, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
*Attorney:* Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**MEANS, JAMES A., a/k/a JAMES ANTHONY MEANS, a/k/a J. A. MEANS, deceased**
Late of Millcreek Township, Erie County, Commonwealth of Pennsylvania
*Executrix:* Margaret Ann Means, 4908 Watson Rd., Erie, PA 16505
*Attorney:* None

**MEYER, RICA ANN, a/k/a RICA A. MEYER, deceased**
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
*Executor:* Dan A. Perfetto, Jr., c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
*Attorney:* Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**RABELL, NATALIE, deceased**
Late of the Township of Conneaut, County of Erie, Commonwealth of Pennsylvania
*Co-executors:* Dennis R. Rabell, 2801 Ellsworth Avenue, Erie, PA 16508 and Robert L. Rabell, 10560 East Washington Street, Albion, PA 16401
*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**SHELDON, ROBERT R., a/k/a ROBERT RAY SHELDON, a/k/a ROBERT SHELDON, deceased**
Late of the Township of Girard, County of Erie, Commonwealth of Pennsylvania
*Executor:* Raymond L. Sheldon, 8421 Lexington Rd., Girard, PA 16417
*Attorney:* Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**SZYMECKI, MARCEL, deceased**
Late of the City of Corry, Erie County, Pennsylvania
*Administratrix:* Lorene Burns, c/o Mary Alfieri Richmond, Esq., 502 Parade Street, Erie, PA 16507
*Attorney:* Mary Alfieri Richmond, Esq., 502 Parade Street, Erie, PA 16507

**WAIDE, LAURA ROSE, a/k/a LAURA R. WAIDE, deceased**
Late of the Borough of Waterford, County of Erie, and Commonwealth of Pennsylvania
*Administrator:* David A. Waide
*Attorney:* Patrick J. Loughren, Esquire, Loughren, Loughren & Loughren, P.C., 8050 Rowan Road, Suite 601 Rowan Towers, Cranberry Township, Pennsylvania 16066

**WOLESLAGLE, JAMES B., JR., a/k/a JAMES BERNARD WOLESLAGLE, JR., deceased**
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
*Executrix:* Mary Jane Hand, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
*Attorney:* Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**THIRD PUBLICATION**

**BARNETT, CARMEN J., a/k/a CARMEN BARNETT, deceased**
Late of the City of Erie, County of Erie, State of Pennsylvania
*Administratrix:* Lacei Hubbart, c/o 337 West 10th Street, Erie, PA 16502
*Attorneys:* THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

**COMBS, SOPHIE G., deceased**
Late of the Borough of Union City, County of Erie, Pennsylvania
*Executor:* Herbert J. Combs, c/o Paul J. Carney, Jr., Esq., 43 North Main Street, Union City, PA 16438
*Attorney:* Paul J. Carney, Jr., Esq., 43 North Main Street, Union City, PA 16438

**DEL SOLAR, WILLIAM M., a/k/a WILLIAM MEAD DEL SOLAR, deceased**
Late of Erie County, Pennsylvania
*Executor:* William S. del Solar, 820 State St., Carthage, NY 13619
*Attorney:* William T. Morton, Esquire, 2225 Colonial Ave., Suite 206, Erie, PA 16506

**FISCUS, SHEILA H., a/k/a SHEILA HIMES FISCUS, a/k/a SHEILA B. FISCUS, a/k/a SHEILA FISCUS, deceased**
Late of the Borough of Girard, County of Erie, Commonwealth of Pennsylvania
*Executor:* Augustine Fiscus, 459 Seville St., Philadelphia, PA 19128
*Attorney:* Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**GERMAN, FRANCISCA S., a/k/a FRANCISCA T. GERMAN, deceased**
Late of Millcreek Township, Erie County, Pennsylvania
*Executor:* Daniel F. German, c/o Robert G. Dwyer, Esq., 120 West Tenth Street, Erie, PA 16501
*Attorney:* Robert G. Dwyer, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**HEADLEY, WILLIAM J., a/k/a WILLIAM JOHN HEADLEY, deceased**
Late of the City of Erie, County of Erie, Pennsylvania
*Executrix:* Lynne Chisholm, c/o 502 Parade Street, Erie, PA 16507
*Attorney:* Gregory L. Heidt, Esquire, 502 Parade Street, Erie, PA 16507

**LEGENZOFF, KIMBERLI ANN, a/k/a KIMBERLI A. LEGENZOFF, deceased**
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
*Administrator:* Eric S. Legenzoff, Jr., c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
*Attorney:* John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

**NELSON, RICHARD, a/k/a RICHARD A. NELSON, deceased**
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
*Executrix:* Susan Nelson, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
*Attorney:* James E. Marsh, Jr., Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**OLSON, MALCOLM E., a/k/a MEL OLSON, deceased**
Late of Millcreek Township, Erie County, Pennsylvania
*Executor:* Gary Farner, c/o Thomas C. Hoffman, II, Esq., 120 West Tenth Street, Erie, PA 16501
*Attorney:* Thomas C. Hoffman, II, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**PETAK, THERESA A., a/k/a THERESA O. PETAK, deceased**
Late of the Township of Franklin, County of Erie, Commonwealth of Pennsylvania
*Executrix:* Cynthia A. Gray, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
*Attorney:* Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**REDINGER, ALAN LEE, deceased**
Late of Fairview Township, County of Erie and Commonwealth of Pennsylvania
*Co-executors:* Darlene E. Redinger, PO Box 265, Fairview, PA 16415 and Harold A. Redinger, 14401 Depot Street, Waterford, PA 16441-8519
*Attorneys:* MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**RUNSTEDLER, JACQUELINE K., deceased**
Late of the City of Erie, County of Erie, Pennsylvania
*Co-executors:* Ronald I. Runstedler and Robin V. Stanley, c/o 502 Parade Street, Erie, PA 16507
*Attorney:* Gregory L. Heidt, Esquire, 502 Parade Street, Erie, PA 16507

**STUCZYNSKI, GERALD M., a/k/a JERRY STUCZYNSKI, deceased**
Late of the City of Erie, Erie County, Pennsylvania
*Administrator:* James J. Stuczynski, c/o Adam E. Barnett, Esq., 234 West Sixth Street, Erie, PA 16507
*Attorney:* Adam E. Barnett, Esq., Bernard Stuczynski Barnett & Lager, PLLC, 234 West Sixth Street, Erie, PA 16507

**TURNER, ALONZO G., a/k/a AL TURNER, deceased**
Late of the Township of Venango, Erie County, Pennsylvania
*Executrix:* Mary C. Turner, c/o Adam E. Barnett, Esq., 234 West Sixth Street, Erie, PA 16507
*Attorney:* Adam E. Barnett, Esq., Bernard Stuczynski Barnett & Lager, PLLC, 234 West Sixth Street, Erie, PA 16507





**WESTERLING, LOIS A., deceased**
Late of Millcreek Township, County of Erie, Commonwealth of Pennsylvania
*Executrix:* Susan E. McCall, 3316 Asbury Road, Erie, PA 16506
*Attorney:* None

**WINGENBACH, GERALDINE P., deceased**
Late of the Township of Millcreek, Erie County, Commonwealth of Pennsylvania
*Executrix:* Cynthia A. Butchkosky, c/o Knox Law Firm, 120 W. 10th St., Erie, PA 16501
*Attorney:* Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

## CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

MICHAEL A. MICSKY.....814-870-7717
MacDonald Illig Jones & Britton LLP
100 State Street, Suite 700
Erie, PA 16507 ..... *mmicsky@mijb.com*

Weekly Wrap-up

**June 11, 2021**

**To access a hyperlink to read an article you may have to double click on the link with your mouse.**

**Heartburn hearins** - Speaking of diversity champions: Judge Robin Rosenberg of the Southern District of Florida, who turned heads when she selected 24 lawyers, including 13 women and at least four minority attorneys, to lead multidistrict litigation over Sanofi S.A.'s heartburn drug Zantac, today will preside over the second and possibly final day of hearings on whether to dismiss all the lawsuits, which allege the medication causes a host of cancers.

**Appeals court allows eviction moratorium to continue, says CDC likely to win appeal** - A federal appeals court on Wednesday refused to interfere with an eviction moratorium imposed by the U.S. Centers for Disease Control and Prevention to help stop the spread of COVID-19. Landlords can still begin eviction proceedings against those protected by the moratorium, but enforcement of removal orders is stopped, the appeals court said. And the obligation to pay rent continues. Read more ... Appeals court allows eviction moratorium to continue, says CDC likely to win appeal (abajournal.com)

**Unseen force** - The massive winter storm that disabled Texas's energy grid earlier this year has created what appears to be the perfect storm for a litigation trend energy lawyers say is unlike any they've ever seen. Contract disputes are arising between energy companies that buy and sell natural gas in at least 40 lawsuits filed since the February storm. Companies are arguing about whether Winter Storm Uri was a "force majeure" event, which means an "act of God" or other unforeseen circumstance that excuses their contractual obligations. "It's really the litigation trend now for energy companies in Texas," said Chris Hogan, a Houston energy litigator. "I had thought with COVID-19, we would see a spike in force majeure claims, but it is nothing compared to what is happening now."

**Inspector General report says 'no executive oversight' led to failure of proposed amendment for sex abuse victims** - A new report from the Pennsylvania Department of State (DOS) credits a "lack of executive oversight" as the chief reason why a state constitutional amendment which would have retroactively extended the timeline for victims to file civil actions against their abusers, stalled in a procedural snafu that won't see it be considered as a ballot question until 2023 at the earliest. Read more ... https://pennrecord.com/stories/600969956-inspector-general-report-says-no-executive-oversight-led-to-failure-of-proposed-amendment-for-sex-abuse-victims

**Broken chair leads to lawsuit in Lancaster County** - A minor claims to have suffered a head injury and cut to the leg after a chair broke during a sporting event. O.B., a minor, by and through parent and natural guardian, Jeffery Bausman, filed a complaint on May 11 in the Court of Common Pleas of Lancaster County against Spook Nook Sports, Inc. and American Seating Company for negligence, strict liability and breach of implied warranty of fitness and mechantability. Plantiffs allege that Spooky Nook Sports, Inc. failed to inspect and properly care of seating conditions and allowed hazardous conditions to exist by not removing the chair. Plantiffs seek $50,000, plus interests and cost, as the court deems appropriate.

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