04-1092-CD
WACHOVIA BANK NATIONAL ASSOCATION F/K/A FIRST UNION NATIONAL B
VS NICHOLAS R GRAY, etal

Wachovia Bank et al vs Nicholas Gray et al
2004-1092-CD

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. NICHOLAS R. GRAY AND ANGELA L. GRAY, A/K/A ANGELA L. BARBAZZENI, Defendants	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW ACTION OF MORTGAGE FORECLOSURE 2004-1092-CD

THIS FIRM IS A DEBT COLLECTOR AND WE ARE ATTEMPTINGTO COLLECT A DEBT OWED TO OUR CLIENT. ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THE PURPOSE OF COLLECTING THE DEBT.

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 TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
DAVID S. MEHOLICK, COURT ADMINISTRATOR CLEARFIELD CO COURTHOUSE, 230 EAST MAIN STREET
CLEARFIELD, PA 16830
814-765-2641 *5982

AVISO

LE HAN DEMANDADO A USTED EN LA CORTE. SI DESEA DEFENDERSE CONTRA LAS QUEJAS PERESENTADAS, ES ABSOLUTAMENTE NECESSARIO QUE USTED RESPONDA DENTRO DE 20 DIAS DESPUES DE SER SERVIDO CON ESTA DEMANDA Y AVISO. PARA DEFENDERSE ES NECESSARIO QUE USTED, O SU ABOGADO, REGISTRE CON LA CORTE EN FORMA ESCRITA, EL PUNTO DE VISTA DE USTED Y CUALQUIER OBJECCION CONTRA LAS QUEJAS EN ESTA DEMANDA.

RECUERDE: SI USTED NO REPONDE A ESTA DEMANDA, SE PUEDE PROSEGUIR CON EL PROCESO SIN SU PARTICIPACION. ENTONCES, LA COUTE PUEDE, SIN NOTIFICARIO, DECIDIR A FAVOR DEL DEMANDANTE Y REQUERIRA QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. POR RAZON DE ESA DECISION, ES POSSIBLE QUE USTED PUEDA PERDER DINERO, PROPIEDAD U OTROS DERECHOS IMPORTANTES.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATEAMENTE.

SI NO CONOCE A UN ABOGADO, LLAME AL "LAWYER REFERENCE SERVICE" (SERVICIO DE REFERENCIA DE ABOGADOS), (215) 238-6300.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
DAVID S. MEHOLICK, COURT ADMINISTRATOR CLEARFIELD CO COURTHOUSE, 230 EAST MAIN STREET
CLEARFIELD, PA 16830
814-765-2641 *5982

FILED
JUL 20 2004
M 11:30 [illegible]
William A. Shaw
Prothonotary
3 cert to Atty

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. NICHOLAS R. GRAY AND ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI, Defendants	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW ACTION OF MORTGAGE FORECLOSURE

THE FOLLOWING NOTICE IS BEING PROVIDED PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. 1601

The undersigned attorney is attempting to collect a debt owed to the Plaintiff, and any information obtained will be used for that purpose. The amount of the debt is stated in this Complaint. Plaintiff is the creditor to whom the debt is owed. Unless the Debtor, within thirty (30) days after your receipt of this notice disputes the validity of the aforesaid debt or any portion thereof owing to the Plaintiff, the undersigned attorney will assume that said debt is valid. If the Debtor notifies the undersigned attorney in writing with the said thirty (30) day period that the aforesaid debt, or any portion thereof, is disputed, the undersigned attorney shall obtain written verification of the said debt from the Plaintiff and mail same to Debtor. Upon written request by Debtor to the undersigned attorney within said thirty (30) day period, the undersigned attorney will provide debtor with the name and address of the original creditor if different from the current creditor.

PURCELL, KRUG & HALLER
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178
Attorney I.D.# 15700
Attorney for Plaintiff

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY,
Plaintiff

vs.

NICHOLAS R. GRAY AND ANGELA L. GRAY, A/K/A ANGELA L. BARBAZZENI,
Defendants

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

ACTION OF MORTGAGE FORECLOSURE

COMPLAINT IN MORTGAGE FORECLOSURE

1. Plaintiff, WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, pursuant to a Trust indenture dated as of April 1, 1982 ("Trust"), is a National Association with a servicing agent of Pennsylvania Housing Finance Agency, with an address is 211 NORTH FRONT STREET, HARRISBURG, PENNSYLVANA 17101 .

2. Defendant, NICHOLAS R. GRAY, is an adult individual, whose last known address is 129 STATE STREET, SAINT MARYS, PENNSYLVANIA 15857. Defendant, ANGELA L. GRAY, A/K/A ANGELA L. BARBAZZENI, is an adult individual whose last known address is 43 MONROE STREET, BYRNEDALE, PENNSYLVANIA 15827.

3. On or about, June 22, 2001, the said Defendants executed and delivered a Mortgage Note in the sum of $40,092.00 payable to TOWNE & COUNTRY MORTGAGE CORP., which Note is attached hereto and marked Exhibit "A".

4. Contemporaneously with and at the time of the execution of the aforesaid Mortgage Note, in order to secure payment of the same, Defendants made, executed, and delivered to original Mortgagee, a certain real estate Mortgage which is recorded in the Recorder of Deeds Office of the within County and Commonwealth, Instrument Number 200109661 conveying to original Mortgagee the subject premises. The Mortgage was subsequently assigned to PENNSYLVANIA HOUSING FINANCE AGENCY and was recorded in the aforesaid County, Instrument Number 200109662. The Said Mortgage was subsequently assigned to WACHOVIA BANK, NATIONAL ASSOCIATION, F/K/A FIRST UNION

NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY and will be sent for recording. Said Mortgage and Assignments are incorporated herein by reference.

5. The land subject to the Mortgage is: RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849 and is more particularly described in Exhibit "B" attached hereto.

6. The said Defendants are the real owners of the property.

7. The Mortgage is in default due to the fact that Mortgagors have failed to pay the installment due on April 01, 2004 and all subsequent installments thereon, and the following amounts are due on the Mortgage:

UNPAID PRINCIPAL BALANCE	$38,710.45
Interest at $6.45 per day From 03/01/2004 To 08/01/2004 (based on contract rate of 6.0000%)	$1,170.24
Accumulated Late Charges	$33.86
Late Charges $9.62 From 04/01/2004 to 08/01/2004	$48.10
Escrow Balance	$($221.07)
Attorney's Fee at 5% of Principal Balance	$1,935.52
TOTAL	$41,677.10

**Together with interest at the per diem rate noted above after August 01, 2004 and other charges and costs to date of Sheriff's Sale.

The attorney's fees set forth above are in conformity with the Mortgage documents and Pennsylvania law, and will be collected in the event of a third party purchaser at Sheriff's Sale. If the Mortgage is reinstated prior to the sale, reasonable attorney's fees will be charged that are actually incurred by Plaintiff.

8. No judgment has been entered upon said Mortgage in any jurisdiction.

9. Notice of Intention to Foreclose has been sent to Defendants by Certified Mail, as required by Act 6 of 1974 of the Commonwealth of Pennsylvania, on the date set forth in the true and correct copies of such notices attached hereto as Exhibit "C".

10. Defendants are not members of the Armed Forces of the United States of America, nor engaged in any way which would bring them within the Soldiers and Sailors Relief Act of 1940, as amended.

11. The within Mortgage is insured by the Federal Housing Administration under Title II of the National Housing Act and, as such, is not subject to the Provisions of Pennsylvania Act No. 91 of 1983.

WHEREFORE, Plaintiff demands judgment in mortgage foreclosure **"IN REM"** for the aforementioned total amount due together with interest at the rate of 6.0000% ($6.45 per diem), together with other charges and costs including escrow advances incidental thereto to the date of Sheriff's Sale and for foreclosure and sale of the property within described.

By: L Haller

PURCELL, KRUG & HALLER
Leon P. Haller, Esquire
Attorney for Plaintiff
I.D. # 15700
1719 N. Front Street
Harrisburg, PA 17102
(717-234-4178)

964098

Loan #00-070

Multistate

NOTE

FHA Case No.
442-2217172-703

June 22, 2001
[Date]

R.R. 1, Box 159 Main Street, Penfield, PA 15849
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means

TOWNE & COUNTRY MORTGAGE CORP.

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of
Forty Thousand Ninety Two and 00/100

Dollars (U.S. $ 40,092.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of Six and no/100 percent (6.000 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on August 1 , 2001 . Any principal and interest remaining on the first day of July , 2031 , will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 150 ROBBINS STATION ROAD, SUITE 8, NORTH HUNTINGDON, PA 15642 or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. $ 240.38 . This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

Initials: DS NRG

EXHIBIT A

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of Four percent (4.00 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

_______________ (Seal) -Borrower	Nicholas R. Gray (Seal) -Borrower
_______________ (Seal) -Borrower	Angela L. Barbazzeni (Seal) -Borrower
_______________ (Seal) -Borrower	_______________ (Seal) -Borrower
_______________ (Seal) -Borrower	_______________ (Seal) -Borrower

ADDENDUM ATTACHED TO AND MADE A PART OF THAT CERTAIN MORTGAGE FROM NICHOLAS R. GRAY , unmarried, and ANGELA L. BARBAZZENI, unmarried TO TOWNE & COUNTRY MORTGAGE CORP. DATED June 22, 2001 AND COVERING PROPERTY KNOWN AS R.R. 1, Box 159 Main Street, Penfield, PA 15849.

****

ALL that certain lot or piece of land situate in the Village of Penfield, Huston Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a post in the South line of the State Highway at a point 15 feet Westerly from the Northwest corner of land of Annie M. Lowell;

THENCE along said Highway South 51° West 80 feet to a post near a white oak;

THENCE South 39° East 610 feet, more or less, to a post in the Southern line of the tract of which this piece was a part;

THENCE North 15° East about 8 feet to a corner of R.F. Horning;

THENCE North 30 ½ ° West 379 feet, more or less, to a post;

THENCE Easterly, 10 or 12 feet, to lands of Lowell;

THENCE Northerly along the Lowell lands, 228 feet to the place of beginning.

CONTAINING sixty-five one-hundredths (65/100) of an acre, be it more or less.

BEING identified as Tax Parcel Number 119-G2-80.

Instrument. #200109660

ALB NRG

EXHIBIT B

CERTIFIED MAIL

Pennsylvania Housing Finance A

11 NORTH FRONT STREET
BOX 15057
ARRISBURG, PA 17105-5057

HARRISBURG '04

PB METER 7039888

4.65 U.S. POSTAGE

7160 3901 9848 4339 4681

RETURN RECEIPT REQUESTED

1st NOTICE 5/26
2nd NOTICE 6-1
RETURNED 6-11

FORWARD

NICHOLAS R GRAY

A ☐ INSUFFICIENT ADDRESS
C ☐ ATTEMPTED NOT KNOWN
S ☐ NO SUCH NUMBER/ STREET
☐ NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD
☐ OTHER

unclaimed

RTS RETURN TO SENDER

129 STATE ST
1
Rys PA 15857

Pennsylvania Housing Finance Agency

11 NORTH FRONT STREET
BOX 15057
ARRISBURG, PA 17105-5057

HARRISBURG MAY 21 '04 PA

PB METER 7039888

0.37 U.S. POSTAGE

ANGELA L GRAY
RR1 BOX 159 MAIN STREET
PENFIELD, PA 15849

GRAY001* 15849202 1103 07 05/25/04
FORWARD TIME EXP RTN TO SEND
GRAY'ANGELA
51 MADISON ST
BYRNEDALE PA 15827-9723

RETURN TO SENDER

17155419743 01

EXHIBIT C

Pennsylvania Housing Finance Agency

211 NORTH FRONT STREET
PO BOX 15057
HARRISBURG, PA 17105-5057

HARRISBURG PA
MAY 21 '04

PB METER 7039888
0.37 U.S. POSTAGE

NICHOLAS R GRAY
RR1 BOX 159 MAIN STREE
PENFIELD, PA 15849

GRAY001* 15849202 1103 07 05/25/04
FORWARD TIME EXP RTN TO SEND
GRAY'NICHOLAS
129 STATE ST #1
SAINT MARYS PA 15857-1625
RETURN TO SENDER

17155843959743 01

CERTIFIED MAIL

Pennsylvania Housing Finance Ag

211 NORTH FRONT STREET
PO BOX 15057
HARRISBURG, PA 17105-5057

HARRISBURG PA
'04

PB METER 7039888
4.65 U.S. POSTAGE

7160 3901 9848 4339 4711

RETURN RECEIPT REQUESTED

NAME
1st Notice 5/25
2nd Notice 6-1
Return 6-11

NICHOLAS R GRAY

Fwd TO
129 STATE ST APT 1
ST MARYS PA 15857

A C S
- ☐ INSUFFICIENT ADDRESS
- ☐ ATTEMPTED NOT KNOWN
- ☐ NO SUCH NUMBER/ STREET
- ☐ NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD
- ☐ OTHER

unclaimed

RTS
RETURN TO SENDER

1st Notice
2nd Notice
Returned

7160 3901 9848 4339 4711

TO:
NICHOLAS R GRAY
RIVER ROAD, BOX 43
WEEDVILLE, PA 15868

SENDER:

F1

REFERENCE: 964098

PS Form 3800, June 2000

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	.60
	Return Receipt Fee	2.30
	Restricted Delivery	1.75
	Total Postage & Fees	4.65

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS
MAY 21 2004
PA KEYS...

7160 3901 9848 4339 4698

TO: ANGELA L GRAY
RR1 BOX 159 MAIN STREET.
PENFIELD, PA 15849

SENDER: FI

REFERENCE: 964098

PS Form 3800, June 2000

RETURN RECEIPT SERVICE	Postage	.60
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	
	Total Postage & Fees	4.65

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS PA KEYSTONE MAY 21

7160 3901 9848 4339 4681

TO: NICHOLAS R GRAY
RR1 BOX 159 MAIN STREET.
PENFIELD, PA 15849

SENDER: FI

REFERENCE: 964098

PS Form 3800, June 2000

RETURN RECEIPT SERVICE	Postage	.60
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	
	Total Postage & Fees	4.65

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS PA KEYSTONE MAY 21

7160 3901 9848 4339 4704

TO: ANGELA L GRAY
RIVER ROAD, BOX 43
WEEDVILLE, PA 15868

SENDER: FI

REFERENCE: 964098

PS Form 3800, June 2000

RETURN RECEIPT SERVICE	Postage	.60
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	
	Total Postage & Fees	4.65

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS PA KEYSTONE MAY 21

```
                          Print Key Output
  5722SS1 V5R2M0 020719                          Pl

  Display Device . . . . . :   QPADEV001
  User . . . . . . . . . . :   FISSEL

Loan#: 0000964098           Asum: Y Inv: 17
NICHOLAS    R GRAY          Loan Type/Sub:
ANGELA      L GRAY          Rate:   6.000
RR1 BOX 159 MAIN STREET.    #Pmts Delq: 000
PENFIELD     PA 15849       Msg: #1: 14 #2:
Phone 1: H                 W 814-371-2880  Pl
FCBA Code:                  W/Ext:
Potential Del: 003        Risk Score: 000
Risk Profiler: 000        Early Ind:   000

* Entered  By             Target   Class -----
  05/20/04 FISSEL         05/20/04   CL  SENT

Cl  Code      Entered       Time       Targe
CL  SRAL    5/20/04   8:38 00:00:01 052004
By  FISSEL
Asn FISSEL               SENT REQUEST FOR ACT LE
                         MR'S SS# 199-64-0244  /
 * UPDATE *

F3=Exit                                      F6=Ca
Page Up/Dn=Next/Prev Comments                F9=Lo
F8=Prev Loan
```

2. Article Number

7160 3901 9848 4339 4698

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

ANGELA L GRAY
~~RR1 BOX 159 MAIN STREET.~~ 43 MONROE St.
~~PENFIELD, PA 15849~~ BYRNEDALE, PA 15827

964098 FI

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Angela Barbazzeni

B. Date of Delivery 5-28-04

C. Signature X Angela L Barbazzeni ☐ Agent ☒ Addressee

D. Is delivery address different from item 1? ☒ Yes ☐ No
If YES, enter delivery address below: 43 MONROE St ~~51 MADISON ST~~
BYRNEDALE PA 15827

[redacted] Domestic Return Receipt

2. Article Number

7160 3901 9848 4339 4704

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

ANGELA L GRAY
RIVER ~~ROAD, BOX 43~~
~~WEEDVILLE, PA 15868~~ 43 MONROE St.
BYRNEDALE PA 15827

964098 FI

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Angela Barbazzeni

B. Date of Delivery 5-28-04

C. Signature X Angela L Barbazzeni ☐ Agent ☒ Addressee

D. Is delivery address different from item 1? ☒ Yes ☐ No
If YES, enter delivery address below:
43 MONROE St
BYRNEDALE, PA 15827

PS Form 3811, July 2001 Domestic Return Receipt

P E N N S Y L V A N I A   H O U S I N G   F I N A N C E   A G E N C Y
Single Family Programs Division
211 North Front Street
P.O. Box 15057
Harrisburg, Pennsylvania 17105-5057
(717) 780-3870/TTY (717) 780-1869

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
May 21, 2004

RE: Account NO: 964098

NICHOLAS R GRAY
ANGELA L GRAY
RIVER ROAD, BOX 43
WEEDVILLE PA 15868

RE: RR1 BOX 159 MAIN STREET.
PENFIELD PA 15849

Dear Borrower(s):

NOTICE OF INTENTION TO FORECLOSE MORTGAGE

The MORTGAGE held by PENNSYLVANIA HOUSING FINANCE AGENCY (hereinafter we, us, or ours) on your property located at RR1 BOX 159 MAIN STREET. PENFIELD PA 15849 IS IN SERIOUS DEFAULT because the house is no longer occupied by the original mortgagor as required by your mortgage loan documents. If the house is reoccupied by the the original mortgagor or the current occupant is eligible to assume the mortgage, if permitted to do so by us, the default will be cured if payment of the loan is up-to-date. The outstanding balance of the mortgage debt of 38,710.45 and including interest, cost and expenses. Your delinquency totals $880.64 which includes outstanding charges of $54.72.

You may cure this default within thirty (30) DAYS of the date of this letter. Payment of all sums must be made either by cash, cashier's check, certified check or money order and made at:

PENNSYLVANIA HOUSING FINANCE AGENCY
211 NORTH FRONT STREET/P.O. BOX 8029
HARRISBURG, PA 17105-5057
(717) 780-3870/3871 or 1-800-346 3597
or TTY (800) 346-3597

If you do not cure the default within THIRTY (30) DAYS, we intend to exercise our right to accelerate the mortgage payments. This means that whatever is owing on the original amount borrowed will be considered due immediately and you may lose the chance to pay off the original mortgage in monthly installments. If full payments of the amount of default is not made within THIRTY (30) DAYS, we also intend to instruct our attorneys to start a lawsuit to foreclose your mortgage property.

If the mortgage is foreclosed, your mortgaged property will be sold by the Sheriff to pay off the mortgage debt. If we refer your case to our attorneys, but you cure the default before they begin legal proceedings against you, you will still have to pay the reasonable attorney's fees, actually incurred, up to $50.00. However, if legal proceedings are started against you, you will have to pay the reasonable attorney's fees, even if they are over $50.00. Any attorney's fee will be added to whatever you owe us, which may also include our reasonable costs. <u>If you cure the default within the thirty day period, you will not be required to pay attorney's fees.</u>

We may also sue you personally for the unpaid principal balance and all other sums due under the mortgage. If you have not cured the default within the thirty day period and foreclosure proceedings have begun, <u>you still have the right to cure the default and prevent the sale at any time up to one hour before the Sheriff's foreclosure sale.</u> <u>You may do so by paying the total amount of the unpaid monthly payments and any late or other charges then due, as well as the reasonable attorney's fees and costs connected with the foreclosure sale and perform any other requirements under the mortgage.</u> It is estimated that the earliest date that such a Sheriff's sale could be held would be approximately five months from the date of this Notice. A notice of the date of the Sheriff sale will be sent to you before the sale. Of course, the amount needed to cure the default will increase the longer you wait. You may find out at any time exactly what the required payment will be by calling us at the following number: 717-780-3870. This payment must be made payable in cash, cashier's check, certified check or money order and made payable to us at the address stated above.

You should realize that a Sheriff's sale will end your ownership of the mortgaged property and your right to remain in it. If you continue to live in the property after the Sheriff's sale, a lawsuit could be started to evict you.

You have additional rights to help protect your interest in the property. YOU HAVE THE RIGHT TO SELL THE PROPERTY TO OBTAIN MONEY TO PAY OFF THIS MORTGAGE DEBT, OR TO BORROW MONEY FROM ANOTHER LENDING INSTITUTION TO PAY OFF THIS DEBT. YOU MAY HAVE THE RIGHT TO SELL OR TRANSFER THE PROPERTY SUBJECT TO THE MORTGAGE TO A BUYER OR TRANSFEREE WHO WILL ASSUME THE MORTGAGE DEBT, PROVIDED THAT ALL THE OUTSTANDING PAYMENTS, CHARGES AND ATTORNEY'S FEES AND COSTS ARE PAID PRIOR TO OR AT THE SALE AND THAT THE OTHER REQUIREMENTS UNDER THE MORTGAGE ARE SATISFIED. CONTACT US TO DETERMINE UNDER WHAT CIRCUMSTANCES THIS RIGHT MIGHT EXIST. YOU HAVE THE RIGHT TO HAVE THIS DEFAULT CURED BY ANY THIRD PARTY ACTING ON YOUR BEHALF.

<u>If you cure the default, the mortgage will be restored to the same position as if no default had occured.</u> However, you are not entitled to this right to cure your default more than three times in any calendar year.

You have the right to assert in any foreclosure proceeding or any other lawsuit instituted under the mortgage documents, the nonexistence of a default or any other defense you believe you may have to any such action.

If you maintain credit life or disability insurance in connection with your mortgage loan, your failure to pay premiums with your payments may have already resulted or may result in the future in the lapse or a cancellation of that insurance by the insurance company. If the insurance lapses or is cancelled, reinstatement of the loan will not reinstate the insurance, and you will have to apply to the insurance company and qualify for replacement insurance if you wish to retain it.

If you make partial payments on account of the delinquencies, we may accept them and apply them to the delinquencies. <u>However,</u> such partial payments <u>will not</u> cure your default of reinstate your loan unless we receive the entire amount required to cure the default.

Sincerely,

Mr. Thomas L. Gouker
Manager of Collections
PENNSYLVANIA HOUSING FINANCE AGENCY
211 North Front Street/ P.O. Box 15057
Harrisburg, PA 17105-5057

TLG/km

2LS,1

P E N N S Y L V A N I A   H O U S I N G   F I N A N C E   A G E N C Y
Single Family Programs Division
211 North Front Street
P.O. Box 15057
Harrisburg, Pennsylvania 17105-5057
(717) 780-3870/TTY (717) 780-1869

N O T I C E

May 21, 2004

NICHOLAS R GRAY
RR1 BOX 159 MAIN STREET.
PENFIELD PA 15849

RE: Account#: 964098

TO: NICHOLAS R GRAY
RIVER ROAD, BOX 43
WEEDVILLE PA 15868

FROM: PENNSYLVANIA HOUSING FINANCE AGENCY

The Federal Housing and Development Act of 1987 (as amended) directs creditors to notify homeowners who are delinquent in their mortgage obligation of the availability of homeownership counseling provided by nonprofit organizations approved by the Secretary of the Department of Housing and Urban Development ("HUD") and experienced in the provision of homeownership counseling.

Attached is a current list of HUD-approved counseling agencies for Pennsylvania.

If these agencies are not near you, you can call HUD's toll free #800-569-4287 for financially distressed mortgagors for information concerning HUD-approved housing counseling agencies.

Enclosure Housing Counseling List

VERIFICATION

Anthony J. Julian hereby states that he is the Director of Accounting and Loan Servicing Program of the Pennsylvania Housing Finance Agency, mortgage servicing agent for Plaintiff in this matter, that he is authorized to take this Verification, and that the statements made in the foregoing Civil Action in Mortgage Foreclosure are true and correct to the best of his knowledge, information and belief. The undersigned understands that this statement is made subject to the penalties of 18 PA. C.S. Sec. 4904 relating to unsworn falsification to authorities.

Anthony J. Julian

Anthony J. Julian
Director of Accounting & Loan Servicing
PENNSYLVANIA HOUSING FINANCE AGENCY, SERVICING AGENT FOR WACHOVIA BANK, NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS SUCCESSOR TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY

Date: 7/16/04

WACHOVIA BANK NATIONAL ASSOCIATION
F/K/A FIRST UNION NATIONAL BANK AS
TRUSTEE FOR PENNSYLVANIA HOUSING
FINANCE AGENCY,
PLAINTIFF

VS.

NICHOLAS R. GRAY AND
ANGELA L. GRAY AKA ANGELA L. BARBAZZENI,
DEFENDANT(S)

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW

NO. 2004-01092-CD

IN MORTGAGE FORECLOSURE

PRAECIPE

TO THE PROTHONOTARY OF THE WITHIN COUNTY:

Please enter **JUDGMENT** in rem in favor of the Plaintiff and against Defendant(s) **NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI** for failure to plead to the above action within twenty (20) days from date of service of the Complaint, and assess Plaintiff's damages as follows:

Unpaid Principal Balance	$38,710.45
Interest	$1,170.24
Per diem of $6.45	
From 04/01/2004	
To 08/01/2004	
Accumulated Late Charges	$33.86
Late Charges	$48.09
($9.62 per month to	
08/01/2004)	
Escrow Credit	$221.07
5% Attorney's Commission	$1,935.52
TOTAL	**$41,677.10**

**Together with additional interest at the per diem rate indicated above from the date herein, based on the contract rate, and other charges and costs to the date of Sheriff's Sale.

PURCELL, KRUG & HALLER

By ______________________
Leon P. Haller PA I.D. # 15700
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

FILED
SEP 09 2004
m/ 12:00(
William A. Shaw
Prothonotary
Notice to Def.
Statement to Atty

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
VS.	CIVIL ACTION LAW
	NO. 2004-01092-CD
NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN MORTGAGE FORECLOSURE

CERTIFICATE OF SERVICE PURSUANT TO PA. R.C.P. 237.1

I hereby certify that on August 24, 2004 I served the Ten Day Notice required by Pa. R.C.P. on the Defendant(s) in this matter by regular first class mail, postage prepaid, as indicated on the attached Notice.

By____________________
Leon P. Haller PA I.D. # 15700
Attorney for Plaintiff
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17102

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY,
Plaintiff

VS.

NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI
Defendant

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 2004-01092-CD

CIVIL ACTION LAW
IN MORTGAGE FORECLOSURE

DATE OF THIS NOTICE: **August 24, 2004**

TO:
NICHOLAS R. GRAY
3050 RIVER ROAD
WEEDVILLE, PA 15868

ANGELA L. GRAY AKA
ANGELA L. BARBAZZENI
43 MONROE STREET
BYRNEDALE, PA 15827

NICHOLAS P. GRAY
129 STATE STREET
ST. MARY'S, PA 15857

THIS LAW FIRM IS A DEBT COLLECTOR AND WE ARE ATTEMPTING TO COLLECT A DEBT OWED TO OUR CLIENT. ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THE PURPOSE OF COLLECTING THE DEBT.

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD CO COURTHOUSE, 230 EAST MAIN STREET
CLEARFIELD, PA 16830
814-765-2641 *5982

PURCELL, KRUG & HALLER

By ______________________
LEON P. HALLER, Attorney for Plaintiff
I.D. # 15700
1719 N. Front St., Harrisburg, PA 17102
(717) 234-4178

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY,
PLAINTIFF

VS.

NICHOLAS R. GRAY AND
ANGELA L. GRAY AKA ANGELA L. BARBAZZENI,
DEFENDANT(S)

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW

NO. 2004-01092-CD

IN MORTGAGE FORECLOSURE

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF DAUPHIN :

I, LEON P. HALLER, Attorney for the Plaintiff in the above matter, being duly sworn according to law, hereby certify that the Mortgage in the above case is insured by the Federal Housing Administration under Title II of the National Housing Act (12 U.S.C.A. Section 707 1715z11) and therefore does not fall within the provisions of PA Act 91 of 1983 (Homeowners' Emergency Mortgage Assistance Payments Program).

Sworn to and subscribed :
before me this 8th day :
of Sept 2004 :

Traci M Bernstein
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Traci M. Bernstein, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires Aug. 21, 2007
Member, Pennsylvania Association of Notaries

LEON P. HALLER, ESQUIRE

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF VS. NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW NO. 2004-01092-CD IN MORTGAGE FORECLOSURE

NON-MILITARY AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF DAUPHIN :

Personally appeared before me, a Notary Public in and for said Commonwealth and County, **LEON P. HALLER, ESQUIRE** who being duly sworn according to law deposes and states that the Defendant (s) above named are not in the Military or Naval Service nor are they engaged in any way which would bring them within the Soldiers and Sailors Relief Act of 1940, as amended.

Sworn to and subscribed :
before me this 8th day :
of Sept 2004 :

Traci M Bernstein
Notary Public

LEON P. HALLER, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Traci M. Bernstein, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires Aug. 21, 2007
Member, Pennsylvania Association of Notaries

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF VS. NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW NO. 2004-01092-CD IN MORTGAGE FORECLOSURE

NOTICE OF ENTRY OF JUDGMENT

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby notified that on Sept. 9, 2004 the following judgment has been entered against you in the above-captioned matter:

$41,677.10 and for the sale and foreclosure of your property located at: **RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849**

Dated: September 8, 2004

PROTHONOTARY

Attorney for Plaintiff:
Leon P. Haller
1719 North Front Street
Harrisburg, PA 17102
Phone: (717) 234-4178

I hereby certify that the following person(s) and their respective addresses are the proper individuals to receive this Notice pursuant to PA R.C.P. No. 236

NICHOLAS R. GRAY
3050 RIVER ROAD
WEEDVILLE, PA 15868

NICHOLAS R. GRAY
129 STATE STREET
ST. MARY'S, PA 15857

ANGELA L. GRAY AKA
ANGELA L. BARBAZZENI
43 MONROE STREET
BYRNEDALE, PA 15827

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF VS. NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW NO. 2004-01092-CD IN MORTGAGE FORECLOSURE

PRAECIPE

TO THE PROTHONOTARY OF THE WITHIN COUNTY:

Please enter **JUDGMENT** in rem in favor of the Plaintiff and against Defendant(s) **NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI** for failure to plead to the above action within twenty (20) days from date of service of the Complaint, and assess Plaintiff's damages as follows:

Unpaid Principal Balance	$38,710.45
Interest Per diem of $6.45 From 04/01/2004 To 08/01/2004	$1,170.24
Accumulated Late Charges	$33.86
Late Charges ($9.62 per month to 08/01/2004)	$48.09
Escrow Credit	$221.07
5% Attorney's Commission	$1,935.52
TOTAL	**$41,677.10**

**Together with additional interest at the per diem rate indicated above from the date herein, based on the contract rate, and other charges and costs to the date of Sheriff's Sale.

PURCELL, KRUG & HALLER

By______________________

Leon P. Haller PA I.D. # 15700
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

WACHOVIA BANK NATIONAL ASSOCIATION
F/K/A FIRST UNION NATIONAL BANK AS
TRUSTEE FOR PENNSYLVANIA HOUSING
FINANCE AGENCY,
PLAINTIFF

VS.

NICHOLAS R. GRAY AND
ANGELA L. GRAY AKA ANGELA L. BARBAZZENI,
DEFENDANT(S)

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW

NO. 2004-01092-CD

IN MORTGAGE FORECLOSURE

NOTICE OF ENTRY OF JUDGMENT

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby notified that on ________________ the following judgment has been entered against you in the above-captioned matter:

$41,677.10 and for the sale and foreclosure of your property located at: **RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849**

Dated: September 8, 2004

____
PROTHONOTARY

Attorney for Plaintiff:
Leon P. Haller
1719 North Front Street
Harrisburg, PA 17102
Phone: (717) 234-4178

I hereby certify that the following person(s) and their respective addresses are the proper individuals to receive this Notice pursuant to PA R.C.P. No. 236

NICHOLAS R. GRAY
3050 RIVER ROAD
WEEDVILLE, PA 15868

NICHOLAS R. GRAY
129 STATE STREET
ST. MARY'S, PA 15857

ANGELA L. GRAY AKA
ANGELA L. BARBAZZENI
43 MONROE STREET
BYRNEDALE, PA 15827

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF VS. NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW NO. 2004-01092-CD IN MORTGAGE FORECLOSURE

PRAECIPE

TO THE PROTHONOTARY OF THE WITHIN COUNTY:

Please enter **JUDGMENT** in rem in favor of the Plaintiff and against Defendant(s) **NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI** for failure to plead to the above action within twenty (20) days from date of service of the Complaint, and assess Plaintiff's damages as follows:

Unpaid Principal Balance	$38,710.45
Interest Per diem of $6.45 From 04/01/2004 To 08/01/2004	$1,170.24
Accumulated Late Charges	$33.86
Late Charges ($9.62 per month to 08/01/2004)	$48.09
Escrow Credit	$221.07
5% Attorney's Commission	$1,935.52
TOTAL	**$41,677.10**

**Together with additional interest at the per diem rate indicated above from the date herein, based on the contract rate, and other charges and costs to the date of Sheriff's Sale.

PURCELL, KRUG & HALLER

By______________________

Leon P. Haller PA I.D. # 15700
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Wachovia Bank National Association
Pennsylvania Housing Finance Agency
Plaintiff(s)

No.: 2004-01092-CD

Real Debt: $41,677.10

Atty's Comm: $

Vs.

Costs: $

Int. From: $

Nicholas R. Gray
Angela L. Gray
Defendant(s)

Entry: $20.00

Instrument: In Rem

Date of Entry: September 9, 2004

Expires: September 9, 2009

Certified from the record this September 9, 2004

____
William A. Shaw, Prothonotary

****

SIGN BELOW FOR SATISFACTION

Received on ________________, ______, of defendant full satisfaction of this Judgment, Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

____
Plaintiff/Attorney

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF VS. NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW NO. 2004-01092-CD IN MORTGAGE FORECLOSURE

PRAECIPE FOR WRIT OF EXECUTION
(MORTGAGE FORECLOSURE)
P.R.C.P. 3180-3183

TO THE PROTHONOTARY:

Issue Writ of Execution in the above matter on the real estate located at **RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849** as follows:

Unpaid Principal Balance	$38,710.45
Interest	$1,763.64
Per diem of $6.45	
To 11/1/04	
Late Charges	$130.06
($9.62 per month to 11/1/04)	
Escrow Deficit	$205.37
5% Attorney's Commission	$1,935.52
TOTAL WRIT	**$42,748.04**

Prothonotary costs $125.00

**Together with any additional interests, charges and costs to the date of Sheriff's Sale.

By
LEON P. HALLER I.D. #15700
ATTORNEY FOR PLAINTIFF
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

Dated: September 8, 2004

Attached is a description of the real estate.

FILED
SEP 09 2004
m/ 12:15/m
William A. Shaw
Prothonotary
6 writs to Sheriff
no cert

WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION – LAW

Wachovia Bank National Association,
Pennsylvania Housing Finance Agency,

Vs. NO.: 2004-01092-CD

Nicholas R. Gray,
Angela L. Gray a/k/a Angela L. Barbazzeni

TO THE SHERIFF OF CLEARFIELD COUNTY:

To satisfy the debt, interest and costs due WACHOVIA BANK NATIONAL ASSOCIATION, PENNSYLVANIA HOUSING FINANCE AGENCY, , Plaintiff(s) from NICHOLAS R. GRAY, ANGELA L. GRAY a/k/a Angela L. Barbazzeni , Defendant(s):

(1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
See Attached Sheet

(2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:

Garnishee(s) as follows:
and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;

(3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.

AMOUNT DUE: $42,748.04
INTEREST: $
PROTH. COSTS: $
ATTY'S COMM: $
DATE: 9/9/2004

PAID: $125.00
SHERIFF: $
OTHER COSTS: $

____
William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this __________ day
of __________ A.D. ________
At __________ A.M./P.M.

____
Sheriff

Requesting Party: Leon P. Haller
1719 N. Front Street
Harrisburg, PA 17101

ALL that certain lot or piece of land situate in the Village of Penfield, Huston Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a post in the South line of the State Highway at a point 15 feet Westerly from the Northwest corner of land of Annie M. Lowell;

THENCE along said Highway South 51° West 80 feet to a post near a white oak;

THENCE South 39° East 610 feet, more or less, to a post in the Southern line of the tract of which this piece was a part;

THENCE North 15° East about 8 feet to a corner of R.F. Horning;

THENCE North 30 ½ ° West 379 feet, more or less, to a post;

THENCE Easterly, 10 or 12 feet, to lands of Lowell;

THENCE Northerly along the Lowell lands, 228 feet to the place of beginning.

CONTAINING sixty-five one-hundredths (65/100) of an acre, be it more or less.

BEING identified as Tax Parcel Number 119-G2-80.

SUBJECT TO all exceptions, reservations, conditions, restrictions, easements and rights-of-way as fully as the same are contained in all prior deeds, instruments or writings or in any other manner touching or affecting the premises hereby conveyed.

HAVING THEREON ERECTED A DWELLING HOUSE KNOWN AS: RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849

BEING THE SAME PREMISES WHICH Cheryl K. Caliari, by Deed dated 6/20/01 and recorded 6/25/01 as Clearfield County Instrument Number 200109660, granted and conveyed unto Nicholas R. Gray and Angela L. Barbazzeni.

Assessment # 119-G02-80

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
VS.	CIVIL ACTION LAW
NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	NO. 2004-01092-CD
	IN MORTGAGE FORECLOSURE

PRAECIPE FOR WRIT OF EXECUTION
(MORTGAGE FORECLOSURE)
P.R.C.P. 3180-3183

TO THE PROTHONOTARY:

Issue Writ of Execution in the above matter on the real estate located at **RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849** as follows:

Unpaid Principal Balance	$38,710.45
Interest	$2,537.64
Per diem of $6.45	
To 3/1/05	
Late Charges	$250.50
($9.62 per month to 3/1/05)	
Escrow Deficit	$830.09
Property Inspections	$3,037.02
5% Attorney's Commission	$1,935.52
TOTAL WRIT	**$47,301.22**
	145.00 **Prothonotary costs**

**Together with any additional interests, charges and costs to the date of Sheriff's Sale.

By
LEON P. HALLER I.D. #15700
ATTORNEY FOR PLAINTIFF
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

Dated: December 1, 2004

Attached is a description of the real estate.

FILED 1CC & 6 writs
m/3:00 64 w/ prop. descr.
to Shff
DEC 08 2004
William A. Shaw
Prothonotary/Clerk of Courts Atty pd. 20.00

ALL that certain lot or piece of land situate in the Village of Penfield, Huston Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a post in the South line of the State Highway at a point 15 feet Westerly from the Northwest corner of land of Annie M. Lowell;

THENCE along said Highway South 51° West 80 feet to a post near a white oak;

THENCE South 39° East 610 feet, more or less, to a post in the Southern line of the tract of which this piece was a part;

THENCE North 15° East about 8 feet to a corner of R.F. Horning;

THENCE North 30 ½ ° West 379 feet, more or less, to a post;

THENCE Easterly, 10 or 12 feet, to lands of Lowell;

THENCE Northerly along the Lowell lands, 228 feet to the place of beginning.

CONTAINING sixty-five one-hundredths (65/100) of an acre, be it more or less.

BEING identified as Tax Parcel Number 119-G2-80.

SUBJECT TO all exceptions, reservations, conditions, restrictions, easements and rights-of-way as fully as the same are contained in all prior deeds, instruments or writings or in any other manner touching or affecting the premises hereby conveyed.

HAVING THEREON ERECTED A DWELLING HOUSE KNOWN AS: RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849

BEING THE SAME PREMISES WHICH Cheryl K. Caliari, by Deed dated 6/20/01 and recorded 6/25/01 as Clearfield County Instrument Number 200109660, granted and conveyed unto Nicholas R. Gray and Angela L. Barbazzeni.

Assessment # 119-G02-80

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF VS. NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW NO. 2004-01092-CD IN MORTGAGE FORECLOSURE

AFFIDAVIT PURSUANT TO RULE 3129.1

The Plaintiff in the above action, by its attorneys, Purcell, Krug & Haller, sets forth as of the date the praecipe for the writ of execution was filed, the following information concerning the real property located at **RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849:**

1. Name and address of the Owner(s) or Reputed Owner(s):

NICHOLAS R. GRAY
3050 RIVER ROAD
WEEDVILLE, PA 15868

NICHOLAS R. GRAY
129 STATE STREET
ST. MARY'S, PA 15857

ANGELA L. GRAY AKA ANGELA L. BARBAZZENI
43 MONROE STREET
BYRNEDALE, PA 15827

2. Name and address of Defendant(s) in the Judgment, if different from that listed. in (1) above: **SAME**

3. Name and address of every judgment creditor whose judgment is a **record lien** on the real property to be sold: **UNKNOWN**

4. Name and address of last recorded **holder of every mortgage** of record:

PLAINTIFF HEREIN (AND ANY OTHERS AS NOTED BELOW):

5. Name and address of every other person who has any **record lien** on the property: **UNKNOWN**

6. Name and address of every other person who has any **record interest** in the property and whose interest may be affected by the sale: **UNKNOWN**

7. Name and address of every other person of whom the Plaintiff has knowledge who has **any interest** in the property which may be affected by the sale:

DOMESTIC RELATIONS
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

TENANT/OCCUPANT
RR1, BOX 159 MAIN STREET
PENFIELD, PENNSYLVANIA 15849

(In the preceding information, where addresses could not be reasonably ascertained, the same is indicated.)

I verify that the statements made in this Affidavit are true and correct to the best of my personal knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 PA C.S. Section 4904 relating to unsworn falsification to authorities.

Leon P. Haller PA I.D. #15700
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF VS. NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW NO. 2004-01092-CD IN MORTGAGE FORECLOSURE

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF DAUPHIN :

I, LEON P. HALLER, Attorney for the Plaintiff in the above matter, being duly sworn according to law, hereby certify that the Mortgage in the above case is insured by the Federal Housing Administration under Title II of the National Housing Act (12 U.S.C.A. Section 707 1715z11) and therefore does not fall within the provisions of PA Act 91 of 1983 (Homeowners' Emergency Mortgage Assistance Payments Program).

Sworn to and subscribed :

before me this 1 day :

of Dec 20 04 :

Traci M Bernstein

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Traci M. Bernstein, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires Aug. 21, 2007
Member, Pennsylvania Association of Notaries

LEON P. HALLER, ESQUIRE

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY,
PLAINTIFF

VS.

NICHOLAS R. GRAY AND
ANGELA L. GRAY AKA ANGELA L. BARBAZZENI,
DEFENDANT(S)

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW

NO. 2004-01092-CD

IN MORTGAGE FORECLOSURE

NON-MILITARY AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF DAUPHIN :

Personally appeared before me, a Notary Public in and for said Commonwealth and County, **LEON P. HALLER, ESQUIRE** who being duly sworn according to law deposes and states that the Defendant (s) above named are not in the Military or Naval Service nor are they engaged in any way which would bring them within the Soldiers and Sailors Relief Act of 1940, as amended.

Sworn to and subscribed :
before me this 1 day :
of Dec 20 04 :

Traci M Bernstein
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Traci M. Bernstein, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires Aug. 21, 2007
Member, Pennsylvania Association of Notaries

LEON P. HALLER, ESQUIRE

WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION – LAW

Wachovia Bank National Association f/k/a
First Union National Bank as Trustee for
Pennsylvania Housing Finance Agency

COPY

Vs. NO.: 2004-01092-CD

Nicholas R. Gray and
Angela L. Gray a/k/a Angela L. Barbazzeni

TO THE SHERIFF OF CLEARFIELD COUNTY:

To satisfy the debt, interest and costs due WACHOVIA BANK NATIONAL ASSOCIATION f/k/a First Union National Bank as Trustee for PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff(s) from NICHOLAS R. GRAY and ANGELA L. GRAY a/k/a Angela L. Barbazzeni, Defendant(s):

(1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
See Attached Description

(2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:

Garnishee(s) as follows:
and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;

(3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.

AMOUNT DUE:.....................................**$47,301.22**	PAID:...**$145.00**
INTEREST per diem of $6.45 to 3/1/05:...**$2,537.64**	SHERIFF: $
PROTH. COSTS: $	OTHER COSTS: $
ATTY'S COMM: $	LATE CHARGES ($9.62 per mo. to 3/1/05):..**$250.50**
PROPERTY INSPECTIONS:....................**$3,037.02**	ESCROW DEFICIT:.......................................**$830.09**
5% ATTY'S COMMISSION:....................**$1,935.52**	DATE: December 8, 2004

William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this __________ day
of ___________ A.D. ________
At ___________A.M./P.M.

Requesting Party: Leon P. Haller, Esq.
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

Sheriff

ALL that certain lot or piece of land situate in the Village of Penfield, Huston Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a post in the South line of the State Highway at a point 15 feet Westerly from the Northwest corner of land of Annie M. Lowell;

THENCE along said Highway South 51° West 80 feet to a post near a white oak;

THENCE South 39° East 610 feet, more or less, to a post in the Southern line of the tract of which this piece was a part;

THENCE North 15° East about 8 feet to a corner of R.F. Horning;

THENCE North 30 ½ ° West 379 feet, more or less, to a post;

THENCE Easterly, 10 or 12 feet, to lands of Lowell;

THENCE Northerly along the Lowell lands, 228 feet to the place of beginning.

CONTAINING sixty-five one-hundredths (65/100) of an acre, be it more or less.

BEING identified as Tax Parcel Number 119-G2-80.

SUBJECT TO all exceptions, reservations, conditions, restrictions, easements and rights-of-way as fully as the same are contained in all prior deeds, instruments or writings or in any other manner touching or affecting the premises hereby conveyed.

HAVING THEREON ERECTED A DWELLING HOUSE KNOWN AS: RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849

BEING THE SAME PREMISES WHICH Cheryl K. Caliari, by Deed dated 6/20/01 and recorded 6/25/01 as Clearfield County Instrument Number 200109660, granted and conveyed unto Nicholas R. Gray and Angela L. Barbazzeni.

Assessment # 119-G02-80

In The Court of Common Pleas of Clearfield County, Pennsylvania

WACHOVIA BANK NATIONAL ASSOCIATION — Sheriff Docket # 15993

vs. — 04-1092-CD

GRAY, NICHOLAS R. and ANGELA L. a/k/a ANGELA L. BARBAZZENI

COMPLAINT IN MORTGAGE FORECLOSURE

SHERIFF RETURNS

NOW JULY 21, 2004,THOMAS KONTES, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON NICHOLAS R. GRAY and ANGELA L. GRAY a/k/a ANGELA L. BARBAZZENI, DEFENDANTS.

NOW JULY 29, 2004 SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON NICHOLAS R. GRAY, DEFENDANT BY DEPUTIZING THE SHERIFF OF ELK COUNTY. THE RETURN OF SHERIFF KONTES IS HERETO ATTCHED AND MADE A PART OF THIS RETURN.

NOW JULY 30, 2004 SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON ANGELA L. GRAY aka ANGELA L. BARBAZZENI, DEFENDANT BY DEPUTIZING THE SHERIFF OF ELK COUNTY. THE RETURN OF SHERIFF KONTES IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

NOW AUGUST 13, 2004 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURN THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE "NOT FOUND" AS TO TENANT/OCCUPANT AT RR#1 BOX 159, MAIN ST., PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA. HOUSE IS EMPTY ACCORDING TO POST OFFICE.

Return Costs

Cost	Description
41.00	SHERIFF HAWKINS PAID BY: ATTY CK# 96743
30.00	SURCHARGE PAID BY: ATTY CK# 96744
75.00	ELK COUNTY SHERIFF PAID BY: ATTY

Sworn to Before Me This

13 Day Of August 2004

William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester Hawkins
by Marilyn Harr

Chester A. Hawkins
Sheriff

FILED
o/3:43pm
AUG 13 2004

William A. Shaw
Prothonotary

Wachovia Bank National Association f/k/a First Union National Bank as Trustee for Pennsylvania Housing Finance Agency	:	IN THE COURT OF COMMON PLEAS ELK COUNTY
vs.	:	No. 04-1092
Nicholas R. Gray and Angela L. Gray, a/k/a Angela L. Barbazzeni	:	

STATE OF PENNSYLVANIA
COUNTY OF ELK

John Gangloff, Deputy Sheriff, being duly sworn according to law, deposes and says, that he served Nicholas R. Gray at 3050 River Rd., Weedville, Elk County, PA by handing to Robert Gray, father, a true and attested copy of the original Complaint in Mortgage Foreclosure and made known to him the contents thereof on July 29, 2004 at 2:55 A.M.

John Gangloff, Deputy Sheriff, being duly sworn according to law, deposes and says, that he served Angela L. Gray a/k/a Angela L. Barbazzeni at 43 Monroe St., Byrnedale, Elk County, PA by handing her a true and attested copy of the original Complaint in Mortgage Foreclosure and made known to her the contents thereof on July 30, 2004 at 11:32 A.M.

Elk County Sheriff's Costs - $75.00 PAID

Sworn to and subscribed before me this 4th

day of August A.D. 2004

Caroline Frey
Prothonotary

My Commission Expires
January 7, 2008

So Answers:

Thomas C. Kontz Sheriff

John Gangloff Deputy

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

Sheriff's Office
Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

CHESTER A. HAWKINS
SHERIFF

ROBERT SNYDER
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 15993

WACHOVIA BANK

TERM & NO. 04-1092-CD

DOCUMENT TO BE SERVED:

VS

COMPLAINT IN MORTGAGE FORECLOSURE

NICHOLAS R. GRAY al

SERVE BY: 08/19/2004

MAKE REFUND PAYABLE TO: *PURCELL, KRUG & HALLER, ESQ.*

SERVE: *NICHOLAS R. GRAY and ANGELA L. GRAY a/k/a ANGELA L. BARBAZZENI*

ADDRESS: *Nicholas--3050 River Road, Weedville, Pa. 15857 or 129 State St., St.Marys, Pa.*
Angela--43 Monroe St., Byrnedale, Pa. 15827 or 51 Madison t., Byrnedale, Pa.

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF *ELK* COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this *21st* Day of *JULY* 2004

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

WACHOVIA BANK NATIONAL ASSOCIATION
F/K/A FIRST UNION NATIONAL BANK AS
TRUSTEE FOR PENNSYLVANIA HOUSING
FINANCE AGENCY,
Plaintiff

vs.

NICHOLAS R. GRAY AND
ANGELA L. GRAY, A/K/A ANGELA L.
BARBAZZENI,
Defendants

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

ACTION OF MORTGAGE FORECLOSURE

2004-1092-CD

THIS FIRM IS A DEBT COLLECTOR AND WE ARE ATTEMPTINGTO COLLECT A DEBT OWED TO OUR CLIENT. ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THE PURPOSE OF COLLECTING THE DEBT.

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 TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
DAVID S. MEHOLICK, COURT ADMINISTRATOR CLEARFIELD CO COURTHOUSE, 230 EAST MAIN STREET
CLEARFIELD, PA 16830
814-765-2641 *5982

AVISO

LE HAN DEMANDADO A USTED EN LA CORTE. SI DESEA DEFENDERSE CONTRA LAS QUEJAS PERESENTADAS, ES ABSOLUTAMENTE NECESSARIO QUE USTED RESPONDA DENTRO DE 20 DIAS DESPUES DE SER SERVIDO CON ESTA DEMANDA Y AVISO. PARA DEFENDERSE ES NECESSARIO QUE USTED, O SU ABOGADO, REGISTRE CON LA CORTE EN FORMA ESCRITA, EL PUNTO DE VISTA DE USTED Y CUALQUIER OBJECCION CONTRA LAS QUEJAS EN ESTA DEMANDA.

RECUERDE: SI USTED NO REPONDE A ESTA DEMANDA, SE PUEDE PROSEGUIR CON EL PROCESO SIN SU PARTICIPACION. ENTONCES, LA COUTE PUEDE, SIN NOTIFICARIO, DECIDIR A FAVOR DEL DEMANDANTE Y REQUERIRA QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. POR RAZON DE ESA DECISION, ES POSSIBLE QUE USTED PUEDA PERDER DINERO, PROPIEDAD U OTROS DERECHOS IMPORTANTES.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATEAMENTE.

SI NO CONOCE A UN ABOGADO, LLAME AL "LAWYER REFERENCE SERVICE" (SERVICIO DE REFERENCIA DE ABOGADOS), (215) 238-6300.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
DAVID S. MEHOLICK, COURT ADMINISTRATOR CLEARFIELD CO COURTHOUSE, 230 EAST MAIN STREET
CLEARFIELD, PA 16830
814-765-2641 *5982

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JUL 20 2004

Attest. [signature]
Prothonotary/
Clerk of Courts

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY,

Plaintiff

vs.

NICHOLAS R. GRAY AND ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI,

Defendants

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION LAW
ACTION OF MORTGAGE FORECLOSURE

THE FOLLOWING NOTICE IS BEING PROVIDED PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. 1601

The undersigned attorney is attempting to collect a debt owed to the Plaintiff, and any information obtained will be used for that purpose. The amount of the debt is stated in this Complaint. Plaintiff is the creditor to whom the debt is owed. Unless the Debtor, within thirty (30) days after your receipt of this notice disputes the validity of the aforesaid debt or any portion thereof owing to the Plaintiff, the undersigned attorney will assume that said debt is valid. If the Debtor notifies the undersigned attorney in writing with the said thirty (30) day period that the aforesaid debt, or any portion thereof, is disputed, the undersigned attorney shall obtain written verification of the said debt from the Plaintiff and mail same to Debtor. Upon written request by Debtor to the undersigned attorney within said thirty (30) day period, the undersigned attorney will provide debtor with the name and address of the original creditor if different from the current creditor.

PURCELL, KRUG & HALLER
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178
Attorney I.D.# 15700
Attorney for Plaintiff

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. NICHOLAS R. GRAY AND ANGELA L. GRAY, A/K/A ANGELA L. BARBAZZENI, Defendants	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW ACTION OF MORTGAGE FORECLOSURE

COMPLAINT IN MORTGAGE FORECLOSURE

1. Plaintiff, WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, pursuant to a Trust indenture dated as of April 1, 1982 ("Trust"), is a National Association with a servicing agent of Pennsylvania Housing Finance Agency, with an address is 211 NORTH FRONT STREET, HARRISBURG, PENNSYLVANA 17101 .

2. Defendant, NICHOLAS R. GRAY, is an adult individual, whose last known address is 129 STATE STREET, SAINT MARYS, PENNSYLVANIA 15857. Defendant, ANGELA L. GRAY, A/K/A ANGELA L. BARBAZZENI, is an adult individual whose last known address is 43 MONROE STREET, BYRNEDALE, PENNSYLVANIA 15827.

3. On or about, June 22, 2001, the said Defendants executed and delivered a Mortgage Note in the sum of $40,092.00 payable to TOWNE & COUNTRY MORTGAGE CORP., which Note is attached hereto and marked Exhibit "A".

4. Contemporaneously with and at the time of the execution of the aforesaid Mortgage Note, in order to secure payment of the same, Defendants made, executed, and delivered to original Mortgagee, a certain real estate Mortgage which is recorded in the Recorder of Deeds Office of the within County and Commonwealth, Instrument Number 200109661 conveying to original Mortgagee the subject premises. The Mortgage was subsequently assigned to PENNSYLVANIA HOUSING FINANCE AGENCY and was recorded in the aforesaid County, Instrument Number 200109662. The Said Mortgage was subsequently assigned to WACHOVIA BANK, NATIONAL ASSOCIATION, F/K/A FIRST UNION

NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY and will be sent for recording. Said Mortgage and Assignments are incorporated herein by reference.

5. The land subject to the Mortgage is: RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849 and is more particularly described in Exhibit "B" attached hereto.

6. The said Defendants are the real owners of the property.

7. The Mortgage is in default due to the fact that Mortgagors have failed to pay the installment due on April 01, 2004 and all subsequent installments thereon, and the following amounts are due on the Mortgage:

UNPAID PRINCIPAL BALANCE	$38,710.45
Interest at $6.45 per day From 03/01/2004 To 08/01/2004 (based on contract rate of 6.0000%)	$1,170.24
Accumulated Late Charges	$33.86
Late Charges $9.62 From 04/01/2004 to 08/01/2004	$48.10
Escrow Balance	$($221.07)
Attorney's Fee at 5% of Principal Balance	$1,935.52
TOTAL	$41,677.10

**Together with interest at the per diem rate noted above after August 01, 2004 and other charges and costs to date of Sheriff's Sale.

The attorney's fees set forth above are in conformity with the Mortgage documents and Pennsylvania law, and will be collected in the event of a third party purchaser at Sheriff's Sale. If the Mortgage is reinstated prior to the sale, reasonable attorney's fees will be charged that are actually incurred by Plaintiff.

8. No judgment has been entered upon said Mortgage in any jurisdiction.

9. Notice of Intention to Foreclose has been sent to Defendants by Certified Mail, as required by Act 6 of 1974 of the Commonwealth of Pennsylvania, on the date set forth in the true and correct copies of such notices attached hereto as Exhibit "C".

10. Defendants are not members of the Armed Forces of the United States of America, nor engaged in any way which would bring them within the Soldiers and Sailors Relief Act of 1940, as amended.

11. The within Mortgage is insured by the Federal Housing Administration under Title II of the National Housing Act and, as such, is not subject to the Provisions of Pennsylvania Act No. 91 of 1983.

WHEREFORE, Plaintiff demands judgment in mortgage foreclosure **"IN REM"** for the aforementioned total amount due together with interest at the rate of 6.0000% ($6.45 per diem), together with other charges and costs including escrow advances incidental thereto to the date of Sheriff's Sale and for foreclosure and sale of the property within described.

By: L. Haller

PURCELL, KRUG & HALLER
Leon P. Haller, Esquire
Attorney for Plaintiff
I.D. # 15700
1719 N. Front Street
Harrisburg, PA 17102
(717-234-4178)

964098

Loan #00-070

Multistate

NOTE

FHA Case No.
442-2217172-703

June 22, 2001
[Date]

R.R. 1, Box 159 Main Street, Penfield, PA 15849
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means

TOWNE & COUNTRY MORTGAGE CORP.

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of Forty Thousand Ninety Two and 00/100

Dollars (U.S. $ 40,092.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of Six and no/100 percent (6.000 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on August 1 , 2001 . Any principal and interest remaining on the first day of July , 2031 , will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 150 ROBBINS STATION ROAD, SUITE 8, NORTH HUNTINGDON, PA 15642 or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. $ 240.38 . This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

Initials: [signature] NRG

EXHIBIT A

6. BORROWER'S FAILURE TO PAY

(A) Late Charge for Overdue Payments

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of Four percent (4.00 %) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

_______________ (Seal) -Borrower	Nicholas R. Gray (Seal) -Borrower
_______________ (Seal) -Borrower	Angela L. Barbazzeni (Seal) -Borrower
_______________ (Seal) -Borrower	_______________ (Seal) -Borrower
_______________ (Seal) -Borrower	_______________ (Seal) -Borrower

ADDENDUM ATTACHED TO AND MADE A PART OF THAT CERTAIN MORTGAGE FROM NICHOLAS R. GRAY, unmarried, and ANGELA L. BARBAZZENI, unmarried TO TOWNE & COUNTRY MORTGAGE CORP. DATED June 22, 2001 AND COVERING PROPERTY KNOWN AS R.R. 1, Box 159 Main Street, Penfield, PA 15849.

****

ALL that certain lot or piece of land situate in the Village of Penfield, Huston Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a post in the South line of the State Highway at a point 15 feet Westerly from the Northwest corner of land of Annie M. Lowell;

THENCE along said Highway South 51° West 80 feet to a post near a white oak;

THENCE South 39° East 610 feet, more or less, to a post in the Southern line of the tract of which this piece was a part;

THENCE North 15° East about 8 feet to a corner of R.F. Horning;

THENCE North 30 ½ ° West 379 feet, more or less, to a post;

THENCE Easterly, 10 or 12 feet, to lands of Lowell;

THENCE Northerly along the Lowell lands, 228 feet to the place of beginning.

CONTAINING sixty-five one-hundredths (65/100) of an acre, be it more or less.

BEING identified as Tax Parcel Number 119-G2-80.

Instrument. # 200109660

OOLB NRG

EXHIBIT B

CERTIFIED MAIL

Pennsylvania Housing Finance A

11 NORTH FRONT STREET
BOX 15057
ARRISBURG, PA 17105-5057

HARRISBURG '04

PB METER 7039888

4.65 U.S. POSTAGE

7160 3901 9848 4339 4681

RETURN RECEIPT REQUESTED

1st NOTICE 5/26
2nd NOTICE 6-1
RETURNED 6-11

FORWARD

129 STATE ST
Reys PA 15857

NICHOLAS R GRAY

A C S

☐ INSUFFICIENT ADDRESS
☐ ATTEMPTED NOT KNOWN
☐ NO SUCH NUMBER/ STREET
☐ NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD
☐ OTHER

unclaimed

RTS RETURN TO SENDER

Pennsylvania Housing Finance Agency

11 NORTH FRONT STREET
BOX 15057
ARRISBURG, PA 17105-5057

HARRISBURG PA MAY 21'04

PB METER 7039888

0.37 U.S. POSTAGE

ANGELA L GRAY
RR1 BOX 159 MAIN STREET
PENFIELD, PA 15849

GRAY001X 158492027 1103 07 05/25/04
FORWARD TIME EXP RTN TO SEND
GRAY'ANGELA
51 MADISON ST
BYRNEDALE PA 15827-9723
RETURN TO SENDER

1715584585743 01

EXHIBIT C

Pennsylv... Housing Finance Agency

211 NORTH FRONT STREET
PO BOX 15057
HARRISBURG, PA 17105-5057

HARRISBURG PA
MAY 21 '04
PB METER 7039888
$0.37
U.S. POSTAGE

NICHOLAS R GRAY
RR1 BOX 159 MAIN STREE
PENFIELD, PA 15849

GRAY001* 15849202/ 1103 07 05/25/04
FORWARD TIME EXP RTN TO SEND
GRAY'NICHOLAS
129 STATE ST #1
SAINT MARYS PA 15857-1625
RETURN TO SENDER

17105+5057 01

CERTIFIED MAIL

Pennsylvania Housing Finance A...

211 NORTH FRONT STREET
PO BOX 15057
HARRISBURG, PA 17105-5057

HARRISBURG PA
PB METER 7039888
$4.65
U.S. POSTAGE

7160 3901 9848 4339 4711

RETURN RECEIPT REQUESTED

NAME
1st Notice 5/25
2nd Notice 6-1
Return 6-11

Fwd TO
129 STATE ST APT 1
ST MARYS PA 15857

NICHOLAS R GRAY

- A ☐ INSUFFICIENT ADDRESS
- C ☐ ATTEMPTED NOT KNOWN
- S ☐ NO SUCH NUMBER/ STREET
- ☐ NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD
- ☐ OTHER

unclaimed

RTS
RETURN TO SENDER

7160 3901 9848 4339 4711

TO:

NICHOLAS R GRAY
RIVER ROAD, BOX 43
WEEDVILLE, PA 15868

SENDER:

FI

REFERENCE: 964098

PS Form 3800, June 2000

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	.60
	Return Receipt Fee	2.30
	Restricted Delivery	1.75
	Total Postage & Fees	4.65

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS
2004
21
MAY
PA KEYS

7160 3901 9848 4339 4698

TO: ANGELA L GRAY
RR1 BOX 159 MAIN STREET.
PENFIELD, PA 15849

SENDER: FI

REFERENCE: 964098

PS Form 3800, June 2000

RETURN RECEIPT SERVICE		
	Postage	.60
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	
	Total Postage & Fees	4.65

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS
21 MAY
PA KEYSTONE

7160 3901 9848 4339 4681

TO: NICHOLAS R GRAY
RR1 BOX 159 MAIN STREET.
PENFIELD, PA 15849

SENDER: FI

REFERENCE: 964098

PS Form 3800, June 2000

RETURN RECEIPT SERVICE		
	Postage	.60
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	
	Total Postage & Fees	4.65

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS
21 MAY
PA KEYSTONE

7160 3901 9848 4339 4704

TO: ANGELA L GRAY
RIVER ROAD, BOX 43
WEEDVILLE, PA 15868

SENDER: FI

REFERENCE: 964098

PS Form 3800, June 2000

RETURN RECEIPT SERVICE		
	Postage	.60
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	
	Total Postage & Fees	4.65

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS
21 MAY
PA KEYSTONE

```
                          Print Key Output
5722SS1 V5R2M0 020719                                      P

Display Device . . . . . :    QPADEV001
User . . . . . . . . . . :    FISSEL

Loan#: 0000964098         Asum: Y Inv: 17
NICHOLAS    R GRAY        Loan Type/Sub:
ANGELA      L GRAY        Rate:   6.000
RR1 BOX 159 MAIN STREET.  #Pmts Delq: 000
PENFIELD     PA 15849     Msg: #1: 14 #2:
Phone 1: H               W 814-371-2880  P
FCBA Code:                W/Ext:
Potential Del: 003      Risk Score: 000
Risk Profiler: 000      Early Ind:  000

* Entered  By           Target   Class ----
  05/20/04 FISSEL       05/20/04   CL  SENT

Cl  Code      Entered        Time       Targ
CL  SRAL   5/20/04   8:38 00:00:01 052004
By  FISSEL
Asn FISSEL            SENT REQUEST FOR ACT LE
                      MR'S SS# 199-64-0244   /

 * UPDATE *

F3=Exit                                      F6=Ca
Page Up/Dn=Next/Prev Comments                F9=Lo
F8=Prev Loan
```

2. Article Number

7160 3901 9848 4339 4698

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

ANGELA L GRAY
~~RR1 BOX 159 MAIN STREET.~~ 43 MONROE St.
PENFIELD, PA 15849
BYRNEDALE, PA
15827

964098 FI

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) ANGELA BARBAZZENI
B. Date of Delivery 5-28-04
C. Signature
X Angela L Barbazzeni ☐ Agent ☒ Addressee
D. Is delivery address different from item 1? ☒ Yes
If YES, enter delivery address below: ☐ No
43 MONROE St
~~61 MADISON ST~~
BYRNEDALE PA 15827

Domestic Return Receipt

[redacted]

2. Article Number

7160 3901 9848 4339 4704

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

ANGELA L GRAY
~~RIVER ROAD, BOX 43~~
~~WEEDVILLE, PA 15868~~
43 MONROE St.
BYRNEDALE, PA 15827

964098 FI

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) ANGELA BARBAZZENI
B. Date of Delivery 5-28-04
C. Signature
X Angela L Barbazzeni ☐ Agent ☒ Addressee
D. Is delivery address different from item 1? ☒ Yes
If YES, enter delivery address below: ☐ No
43 MONROE St
BYRNEDALE, PA 15827

PS Form 3811, July 2001 Domestic Return Receipt

PENNSYLVANIA HOUSING FINANCE AGENCY
Single Family Programs Division
211 North Front Street
P.O. Box 15057
Harrisburg, Pennsylvania 17105-5057
(717) 780-3870/TTY (717) 780-1869

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
May 21, 2004

RE: Account NO: 964098

NICHOLAS R GRAY
ANGELA L GRAY
RIVER ROAD, BOX 43
WEEDVILLE PA 15868

RE: RR1 BOX 159 MAIN STREET.
PENFIELD PA 15849

Dear Borrower(s):

NOTICE OF INTENTION TO FORECLOSE MORTGAGE

The MORTGAGE held by PENNSYLVANIA HOUSING FINANCE AGENCY (hereinafter we, us, or ours) on your property located at RR1 BOX 159 MAIN STREET. PENFIELD PA 15849 IS IN SERIOUS DEFAULT because the house is no longer occupied by the original mortgagor as required by your mortgage loan documents. If the house is reoccupied by the the original mortgagor or the current occupant is eligible to assume the mortgage, if permitted to do so by us, the default will be cured if payment of the loan is up-to-date. The outstanding balance of the mortgage debt of 38,710.45 and including interest, cost and expenses. Your delinquency totals $880.64 which includes outstanding charges of $54.72.

You may cure this default within thirty (30) DAYS of the date of this letter. Payment of all sums must be made either by cash, cashier's check, certified check or money order and made at:
PENNSYLVANIA HOUSING FINANCE AGENCY
211 NORTH FRONT STREET/P.O. BOX 8029
HARRISBURG, PA 17105-5057
(717) 780-3870/3871 or 1-800-346 3597
or TTY (800) 346-3597

If you do not cure the default within THIRTY (30) DAYS, <u>we intend to exercise our right to accelerate the mortgage payments.</u> This means that whatever is owing on the original amount borrowed will be considered due immediately and you may lose the chance to pay off the original mortgage in monthly installments. If full payments of the amount of <u>default</u> is not made within THIRTY (30) DAYS, <u>we also</u> intend to instruct our attorneys to start a lawsuit to foreclose your mortgage property.

If the mortgage is foreclosed, your mortgaged property will be sold by the Sheriff to pay off the mortgage debt. If we refer your case to our attorneys, but you cure the default before they begin legal proceedings against you, you will still have to pay the reasonable attorney's fees, actually incurred, up to $50.00. However, if legal proceedings are started against you, you will have to pay the reasonable attorney's fees, even if they are over $50.00. Any attorney's fee will be added to whatever you owe us, which may also include our reasonable costs. If you cure the default within the thirty day period, you will not be required to pay attorney's fees.

We may also sue you personally for the unpaid principal balance and all other sums due under the mortgage. If you have not cured the default within the thirty day period and foreclosure proceedings have begun, you still have the right to cure the default and prevent the sale at any time up to one hour before the Sheriff's foreclosure sale. You may do so by paying the total amount of the unpaid monthly payments and any late or other charges then due, as well as the reasonable attorney's fees and costs connected with the foreclosure sale and perform any other requirements under the mortgage. It is estimated that the earliest date that such a Sheriff's sale could be held would be approximately five months from the date of this Notice. A notice of the date of the Sheriff sale will be sent to you before the sale. Of course, the amount needed to cure the default will increase the longer you wait. You may find out at any time exactly what the required payment will be by calling us at the following number: 717-780-3870. This payment must be made payable in cash, cashier's check, certified check or money order and made payable to us at the address stated above.

You should realize that a Sheriff's sale will end your ownership of the mortgaged property and your right to remain in it. If you continue to live in the property after the Sheriff's sale, a lawsuit could be started to evict you.

You have additional rights to help protect your interest in the property. YOU HAVE THE RIGHT TO SELL THE PROPERTY TO OBTAIN MONEY TO PAY OFF THIS MORTGAGE DEBT, OR TO BORROW MONEY FROM ANOTHER LENDING INSTITUTION TO PAY OFF THIS DEBT. YOU MAY HAVE THE RIGHT TO SELL OR TRANSFER THE PROPERTY SUBJECT TO THE MORTGAGE TO A BUYER OR TRANSFEREE WHO WILL ASSUME THE MORTGAGE DEBT, PROVIDED THAT ALL THE OUTSTANDING PAYMENTS, CHARGES AND ATTORNEY'S FEES AND COSTS ARE PAID PRIOR TO OR AT THE SALE AND THAT THE OTHER REQUIREMENTS UNDER THE MORTGAGE ARE SATISFIED. CONTACT US TO DETERMINE UNDER WHAT CIRCUMSTANCES THIS RIGHT MIGHT EXIST. YOU HAVE THE RIGHT TO HAVE THIS DEFAULT CURED BY ANY THIRD PARTY ACTING ON YOUR BEHALF.

If you cure the default, the mortgage will be restored to the same position as if no default had occured. However, you are not entitled to this right to cure your default more than three times in any calendar year.

You have the right to assert in any foreclosure proceeding or any other lawsuit instituted under the mortgage documents, the nonexistence of a default or any other defense you believe you may have to any such action.

If you maintain credit life or disability insurance in connection with your mortgage loan, your failure to pay premiums with your payments may have already resulted or may result in the future in the lapse or a cancellation of that insurance by the insurance company. If the insurance lapses or is cancelled, reinstatement of the loan will not reinstate the insurance, and you will have to apply to the insurance company and qualify for replacement insurance if you wish to retain it.

If you make partial payments on account of the delinquencies, we may accept them and apply them to the delinquencies. <u>However,</u> such partial payments <u>will not</u> cure your default of reinstate your loan unless we receive the entire amount required to cure the default.

Sincerely,

Thomas L. Gouker

Mr. Thomas L. Gouker
Manager of Collections
PENNSYLVANIA HOUSING FINANCE AGENCY
211 North Front Street/ P.O. Box 15057
Harrisburg, PA 17105-5057

TLG/km

2LS,1

P E N N S Y L V A N I A   H O U S I N G   F I N A N C E   A G E N C Y

Single Family Programs Division
211 North Front Street
P.O. Box 15057
Harrisburg, Pennsylvania 17105-5057
(717) 780-3870/TTY (717) 780-1869

N O T I C E

May 21, 2004

NICHOLAS R GRAY
RR1 BOX 159 MAIN STREET.
PENFIELD PA 15849

RE: Account#: 964098

TO: NICHOLAS R GRAY
RIVER ROAD, BOX 43
WEEDVILLE PA 15868

FROM: PENNSYLVANIA HOUSING FINANCE AGENCY

The Federal Housing and Development Act of 1987 (as amended) directs creditors to notify homeowners who are delinquent in their mortgage obligation of the availability of homeownership counseling provided by nonprofit organizations approved by the Secretary of the Department of Housing and Urban Development ("HUD") and experienced in the provision of homeownership counseling.

Attached is a current list of HUD-approved counseling agencies for Pennsylvania.

If these agencies are not near you, you can call HUD's toll free #800-569-4287 for financially distressed mortgagors for information concerning HUD-approved housing counseling agencies.

Enclosure Housing Counseling List

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. NICHOLAS R. GRAY AND ANGELA L. GRAY, A/K/A ANGELA L. BARBAZZENI, Defendants	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION - LAW ACTION OF MORTGAGE FORECLOSURE

THIS FIRM IS A DEBT COLLECTOR AND WE ARE ATTEMPTINGTO COLLECT A DEBT OWED TO OUR CLIENT. ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THE PURPOSE OF COLLECTING THE DEBT.

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 TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
DAVID S. MEHOLICK, COURT ADMINISTRATOR CLEARFIELD CO COURTHOUSE, 230 EAST MAIN STREET
CLEARFIELD, PA 16830
814-765-2641 *5982

AVISO

LE HAN DEMANDADO A USTED EN LA CORTE. SI DESEA DEFENDERSE CONTRA LAS QUEJAS PERESENTADAS, ES ABSOLUTAMENTE NECESSARIO QUE USTED RESPONDA DENTRO DE 20 DIAS DESPUES DE SER SERVIDO CON ESTA DEMANDA Y AVISO. PARA DEFENDERSE ES NECESSARIO QUE USTED, O SU ABOGADO, REGISTRE CON LA CORTE EN FORMA ESCRITA, EL PUNTO DE VISTA DE USTED Y CUALQUIER OBJECCION CONTRA LAS QUEJAS EN ESTA DEMANDA.

RECUERDE: SI USTED NO REPONDE A ESTA DEMANDA, SE PUEDE PROSEGUIR CON EL PROCESO SIN SU PARTICIPACION. ENTONCES, LA COUTE PUEDE, SIN NOTIFICARIO, DECIDIR A FAVOR DEL DEMANDANTE Y REQUERIRA QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. POR RAZON DE ESA DECISION, ES POSSIBLE QUE USTED PUEDA PERDER DINERO, PROPIEDAD U OTROS DERECHOS IMPORTANTES.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATEAMENTE.

SI NO CONOCE A UN ABOGADO, LLAME AL "LAWYER REFERENCE SERVICE" (SERVICIO DE REFERENCIA DE ABOGADOS), (215) 238-6300.

CLEARFIELD COUNTY LAWYER REFERRAL SERVICE
DAVID S. MEHOLICK, COURT ADMINISTRATOR CLEARFIELD CO COURTHOUSE, 230 EAST MAIN STREET
CLEARFIELD, PA 16830
814-765-2641 *5982

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. NICHOLAS R. GRAY AND ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI, Defendants	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW ACTION OF MORTGAGE FORECLOSURE

THE FOLLOWING NOTICE IS BEING PROVIDED PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. 1601

The undersigned attorney is attempting to collect a debt owed to the Plaintiff, and any information obtained will be used for that purpose. The amount of the debt is stated in this Complaint. Plaintiff is the creditor to whom the debt is owed. Unless the Debtor, within thirty (30) days after your receipt of this notice disputes the validity of the aforesaid debt or any portion thereof owing to the Plaintiff, the undersigned attorney will assume that said debt is valid. If the Debtor notifies the undersigned attorney in writing with the said thirty (30) day period that the aforesaid debt, or any portion thereof, is disputed, the undersigned attorney shall obtain written verification of the said debt from the Plaintiff and mail same to Debtor. Upon written request by Debtor to the undersigned attorney within said thirty (30) day period, the undersigned attorney will provide debtor with the name and address of the original creditor if different from the current creditor.

PURCELL, KRUG & HALLER
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178
Attorney I.D.# 15700
Attorney for Plaintiff

VERIFICATION

Anthony J. Julian hereby states that he is the Director of Accounting and Loan Servicing Program of the Pennsylvania Housing Finance Agency, mortgage servicing agent for Plaintiff in this matter, that he is authorized to take this Verification, and that the statements made in the foregoing Civil Action in Mortgage Foreclosure are true and correct to the best of his knowledge, information and belief. The undersigned understands that this statement is made subject to the penalties of 18 PA. C.S. Sec. 4904 relating to unsworn falsification to authorities.

Anthony J Julian

Anthony J. Julian
Director of Accounting & Loan Servicing
PENNSYLVANIA HOUSING FINANCE AGENCY, SERVICING AGENT FOR WACHOVIA BANK, NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS SUCCESSOR TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY

Date: 7/16/04

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20012
NO: 04-1092-CD

PLAINTIFF: WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY

vs.

DEFENDANT: NICHOLAS R. GRAY AND ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI

Execution REAL ESTATE

SHERIFF RETURN

FILED
01:3:36 BL
APR 04 2005
William A. Shaw
Prothonotary/Clerk of Courts

DATE RECEIVED WRIT: 09/09/2004

LEVY TAKEN 12/08/2004 @ 10:12 AM

POSTED 12/08/2004 @ 10:12 AM

SALE HELD 02/04/2005

SOLD TO WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY

SOLD FOR AMOUNT $1.00 PLUS COSTS

WRIT RETURNED 04/04/2005

DATE DEED FILED 04/04/2005

PROPERTY ADDRESS RR 1, BOX 159 MAIN STREET PENFIELD , PA 15849

SERVICES

01/04/2005 @ 4:27 PM SERVED NICHOLAS R. GRAY

ELK COUNTY SERVED NICHOLAS R. GRAY AT 129 STATE STREET, APT A. ST. MARYS, ELK COUNTY, PA (HIS GIRLFRIED'S APARTMENT) BY HANDING TO NICHOLAS R. GRAY

A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF EXECUTION, NOTICE OF SALE, AND COPY OF THE LEVY AND BY MAKING KNOW TO HIM / HER THE CONTENTS THEREOF.

@ SERVED NICHOLAS R. GRAY

01/03/2005 @ 2:01 PM SERVED ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI

ELK COUNTY, SERVED ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI, DEFENDANT, AT 43 MONROE ST., BYRNEDALE, ELK COUNTY, PENNSYLVANIA, BY HANDING TO ANGELA L. GRAY

A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF EXECUTION, NOTICE OF SALE, AND COPY OF THE LEVY AND BY MAKING KNOW TO HIM / HER THE CONTENTS THEREOF.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20012
NO: 04-1092-CD

PLAINTIFF: WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY
vs.
DEFENDANT: NICHOLAS R. GRAY AND ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI

Execution REAL ESTATE

SHERIFF RETURN

SHERIFF HAWKINS	$192.04		
SURCHARGE	$40.00	PAID BY	ATTORNEY

Sworn to Before Me This

______ Day of ______________ 2005

____

So Answers,

Chester Hawkins
By Cynthia Butler-Aughenbaugh

Chester A. Hawkins
Sheriff

WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION – LAW

Wachovia Bank National Association,
Pennsylvania Housing Finance Agency,

Vs. NO.: 2004-01092-CD

Nicholas R. Gray,
Angela L. Gray a/k/a Angela L. Barbazzeni

TO THE SHERIFF OF CLEARFIELD COUNTY:

To satisfy the debt, interest and costs due WACHOVIA BANK NATIONAL ASSOCIATION, PENNSYLVANIA HOUSING FINANCE AGENCY, , Plaintiff(s) from NICHOLAS R. GRAY, ANGELA L. GRAY a/k/a Angela L. Barbazzeni , Defendant(s):

(1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
See Attached Sheet

(2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:

Garnishee(s) as follows:
and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;

(3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.

AMOUNT DUE: $42,748.04
INTEREST: $
PROTH. COSTS: $
ATTY'S COMM: $
DATE: 9/9/2004

PAID: $125.00
SHERIFF: $
OTHER COSTS: $

William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this 9th day
of September A.D. 2004
At 3:15 A.M./P.M.

Chester A. Hawkins
Sheriff by Cynthia Butler-Aughenbaugh

Requesting Party: Leon P. Haller
1719 N. Front Street
Harrisburg, PA 17101

ALL that certain lot or piece of land situate in the Village of Penfield, Huston Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a post in the South line of the State Highway at a point 15 feet Westerly from the Northwest corner of land of Annie M. Lowell;

THENCE along said Highway South 51° West 80 feet to a post near a white oak;

THENCE South 39° East 610 feet, more or less, to a post in the Southern line of the tract of which this piece was a part;

THENCE North 15° East about 8 feet to a corner of R.F. Horning;

THENCE North 30 ½ ° West 379 feet, more or less, to a post;

THENCE Easterly, 10 or 12 feet, to lands of Lowell;

THENCE Northerly along the Lowell lands, 228 feet to the place of beginning.

CONTAINING sixty-five one-hundredths (65/100) of an acre, be it more or less.

BEING identified as Tax Parcel Number 119-G2-80.

SUBJECT TO all exceptions, reservations, conditions, restrictions, easements and rights-of-way as fully as the same are contained in all prior deeds, instruments or writings or in any other manner touching or affecting the premises hereby conveyed.

HAVING THEREON ERECTED A DWELLING HOUSE KNOWN AS: RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849

BEING THE SAME PREMISES WHICH Cheryl K. Caliari, by Deed dated 6/20/01 and recorded 6/25/01 as Clearfield County Instrument Number 200109660, granted and conveyed unto Nicholas R. Gray and Angela L. Barbazzeni.

Assessment # 119-G02-80

REAL ESTATE SALE
SCHEDULE OF DISTRIBUTION

NAME NICHOLAS R. GRAY NO. 04-1092-CD

NOW, February 04, 2005, by virtue of the Writ of Execution hereunto attached, after having given due and legal notice of time and place of sale by publication in a newspaper published in this County and by handbills posted on the premises setting for the date, time and place of sale at the Court House in Clearfield on February 04, 2005, I exposed the within described real estate of Nicholas R. Gray And Angela L. Gray A/K/A Angela L. Barbazzeni to public venue or outcry at which time and place I sold the same to WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY he/she being the highest bidder, for the sum of $1.00 plus costs and made the following appropriations, viz:

SHERIFF COSTS:

RDR	15.00
SERVICE	
MILEAGE	
LEVY	15.00
MILEAGE	12.00
POSTING	15.00
CSDS	10.00
COMMISSION	0.00
POSTAGE	5.04
HANDBILLS	15.00
DISTRIBUTION	25.00
ADVERTISING	15.00
ADD'L SERVICE	
DEED	30.00
ADD'L POSTING	
ADD'L MILEAGE	
ADD'L LEVY	
BID AMOUNT	1.00
RETURNS/DEPUTIZE	9.00
COPIES	15.00
	5.00
BILLING/PHONE/FAX	5.00
CONTINUED SALES	
MISCELLANEOUS	
TOTAL SHERIFF COSTS	**$192.04**

DEED COSTS:

ACKNOWLEDGEMENT	5.00
REGISTER & RECORDER	30.00
TRANSFER TAX 2%	0.00
TOTAL DEED COSTS	**$30.00**

PLAINTIFF COSTS, DEBT AND INTEREST:

DEBT-AMOUNT DUE	38,710.45
INTEREST @ 6.4500 %	606.30
FROM 11/02/2004 TO 02/04/2005	
PROTH SATISFACTION	
LATE CHARGES AND FEES	130.06
COST OF SUIT-TO BE ADDED	
FORECLOSURE FEES	
ATTORNEY COMMISSION	
REFUND OF ADVANCE	
REFUND OF SURCHARGE	40.00
SATISFACTION FEE	
ESCROW DEFICIENCY	205.37
PROPERTY INSPECTIONS	
INTEREST	1,763.64
MISCELLANEOUS	
TOTAL DEBT AND INTEREST	**$43,391.34**

COSTS:

ADVERTISING	367.62
TAXES - COLLECTOR	
TAXES - TAX CLAIM	
DUE	
LIEN SEARCH	100.00
ACKNOWLEDGEMENT	5.00
DEED COSTS	30.00
SHERIFF COSTS	192.04
LEGAL JOURNAL COSTS	232.00
PROTHONOTARY	125.00
MORTGAGE SEARCH	40.00
MUNICIPAL LIEN	
TOTAL COSTS	**$1,091.66**

DISTRIBUTION WILL BE MADE IN ACCORDANCE WITH THE ABOVE SCHEDULE UNLESS EXCEPTIONS ARE FILED WITH THIS OFFICE **WITHIN TEN (10) DAYS FROM THIS DATE.**

CHESTER A. HAWKINS, Sheriff

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

Sheriff's Office
Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

CHESTER A. HAWKINS
SHERIFF

ROBERT SNYDER
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

WACHOVIA BANK NATIONAL ASSOCIATION
F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE
FOR PENNSYLVANIA HOUSING FINANCE AGENCY
vs

NICHOLAS R. GRAY AND ANGELA L. GRAY
A/K/A ANGELA L. BARBAZZENI

TERM & NO. 04-350-CD

DOCUMENTS TO BE SERVED:

NOTICE OF SALE
WRIT OF EXECUTION
COPY OF LEVY

SERVE BY:

ASAP

MAKE REFUND PAYABLE TO: ATTORNEY- RETURN TO BE SENT TO THIS OFFICE

SERVE: NICHOLAS R. GRAY AND ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI

ADDRESS: NICHOLAS (3050 RIVER ROAD, WEEDVILLE, PA 15868 OR 129 STATE STREET, ST. MARY'S, PA 15857) ANGELA (43 MONROE STREET, BYRNEDALE, PA 15827)

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY PENNSYLVANIA to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 29 Day of DECEMBER 2004.

Respectfully,

CHESTER A. HAWKINS,

Wachovia Bank National Assocation f/k/a First Union National Bank as Trustee for Pennsylvania Housing Finance Agency	:	IN THE COURT OF COMMON PLEAS
	:	OF ELK COUNTY
vs.	:	
	:	No. 04-1092
Nicholas R. Gray and Angela L. Gray a/k/a Angela L. Barbazzeni	:	

STATE OF PENNSYLVANIA
COUNTY OF ELK

Heath Boyer, Deputy Sheriff, being duly sworn according to law, deposes and says, that he served Angela L. Gray a/k/a Angela L. Barbazzeni at 43 Monroe St., Byrnedale, Elk County, PA by handing her a true and attested copy of the original Writ of Execution and Notice of Sheriff Sale and made known to her the contents thereof on January 3, 2005 at 2:01 P.M.

Theresa L. Nicklas, Deputy Sheriff, being duly sworn according to law, deposes and says, that she served Nicholas R. Gray of 3050 River Rd., Weedville, Elk County, PA at 129 State St., Apt. A, St. Marys, Elk County, PA (his girlfriend's apartment) by handing him a true and attested copy of the original Writ of Execution and Notice of Sheriff Sale and made known to him the contents thereof on January 4, 2005 at 4:27 P.M.

Elk County Sheriff's Costs - $48.60 PAID

Rec 1/10/05

So Answers:

Thomas C. Kontz Sheriff

Theresa L. Nicklas Deputy

H. Boyer Deputy

Sworn to and subscribed before me this 6th

day of Jan A.D. 2005

Carolee A. Fox

Prothonotary My Commission Expires January 7, 2008

PURCELL, KRUG & HALLER
1719 N. FRONT STREET
HARRISBURG, PA 17102
PH: 717-234-4178 X 126
FAX: 717-234-1206

fax transmittal

To: **SHERIFF'S OFFICE**

Clearfield County Sheriff
230 E. Market St.
Clearfield, PA 16830

Fax: 814-765-5915

Phone: 814-765-2641, Ext. 5989

Re: **SHERIFFS SALE**

NICHOLAS R. GRAY ANGELA L. GRAY AKA ANGELA L. BARBAZZENI

2004-01092-CD

From: Purcell, Krug & Haller
1719 N. Front Street
Harrisburg, PA 17102
Ph: 717-234-4178
Fax: 717-234-1206
PAM ELDRIDGE
Date: October 14, 2004

Pages: 1 PAGE

PROPERTY: RR1, BOX 159 MAIN STREET

X Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Notes PLEASE STOP THE SALE PROCESS OR IF THE SALE IS SET, STAY THE SHERIFF SALE DUE TO DEFENDANT ANGELA FILING CHAPTER13 ON 09/27/04, CASE#04-12539.

IF THERE IS ANY TROUBLE IN TRANSMISSION PLEASE DIAL THE ABOVE REFERENCED SENDER IMMEDIATELY.

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
VS.	CIVIL ACTION LAW
	NO. 2004-01092-CD
NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN MORTGAGE FORECLOSURE

RETURN OF SERVICE

I hereby certify that I have deposited in the U.S. Mails at Harrisburg, Pennsylvania on 12/15/04, a true and correct copy of the Notice of Sale of Real Estate pursuant to PA R.C.P. 3129.1 to the Defendants herein and all lienholders of record by regular first class mail (Certificate of Mailing form in compliance with U.S. Postal Form 3817 is attached hereto as evidence), and also to the Defendants by Certified Mail, which mailing receipts are attached. Service addresses are as follows:

NICHOLAS R. GRAY
3050 RIVER ROAD
WEEDVILLE, PA 15868

NICHOLAS R. GRAY
129 STATE STREET
ST. MARY'S, PA 15857

ANGELA L. GRAY AKA ANGELA L. BARBAZZENI
43 MONROE STREET
BYRNEDALE, PA 15827

DOMESTIC RELATIONS
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

TENANT/OCCUPANT
RR1, BOX 159 MAIN STREET
PENFIELD, PENNSYLVANIA 15849

FILED
FEB 03 2005 6k
m/ 1:00 /cu
William A. Shaw
Prothonotary
no c/c

By ______________________
PURCELL, KRUG & HALLER
Attorneys for Plaintiff
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

LAW OFFICES

Purcell, Krug & Haller

1719 NORTH FRONT STREET
HARRISBURG, PENNSYLVANIA 17102-2392
TELEPHONE (717) 234-4178
FAX (717) 234-1206

HOWARD B. KRUG
LEON P. HALLER
JOHN W. PURCELL JR.
JILL M. WINKA
BRIAN J. TYLER
NICHOLE M. STALEY O'GORMAN

HERSHEY
(717)533-3836
JOSEPH NISSLEY (1910-1982)
JOHN W. PURCELL
VALERIE A. GUNNOF
COUNSEL

NICHOLAS R. GRAY
3050 RIVER ROAD
WEEDVILLE, PA 15868

NICHOLAS R. GRAY
129 STATE STREET
ST. MARY'S, PA 15857

ANGELA L. GRAY AKA ANGELA L. BARBAZZENI
43 MONROE STREET
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DOMESTIC RELATIONS
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

TENANT/OCCUPANT
RR1, BOX 159 MAIN STREET
PENFIELD, PENNSYLVANIA 15849

NOTICE IS HEREBY GIVEN to the Defendants in the within action and those parties who hold one or more mortgages, judgments or tax liens against the real estate which is the subject of the Notice of Sale pursuant to Pennsylvania Rule of Civil Procedure 3129.1 attached hereto.

YOU ARE HEREBY NOTIFIED that by virtue of a Writ of Execution issued out of the Court of Common Pleas of the within county on the judgment of the Plaintiff named herein the said real estate will be exposed to public sale as set forth on the attached Notice of Sale.

YOU ARE FURTHER NOTIFIED that the lien you hold against the said real estate will be divested by the sale and that you have an opportunity to protect your interest, if any, by being notified of said Sheriff's Sale.

By:____________________
Leon P. Haller PA I.D. 15700
Attorney for Plaintiff

WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF VS. NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI, DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA CIVIL ACTION LAW NO. 2004-01092-CD IN MORTGAGE FORECLOSURE

NOTICE OF SHERIFF'S SALE OF REAL ESTATE PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 3129.1

TAKE NOTICE:

That the Sheriff's Sale of Real Property (real estate) will be held:

DATE: **FRIDAY, FEBRUARY 4, 2005**

TIME: **10:00 O'CLOCK A.M. PREVAILING LOCAL TIME**

LOCATION: Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830

THE PROPERTY TO BE SOLD is delineated in detail in a legal description mainly consisting of a statement of the measured boundaries of the property, together with a brief mention of the buildings and any other major improvements erected on the land. (SEE DESCRIPTION ATTACHED)

THE LOCATION of your property to be sold is:

RR1, BOX 159 MAIN STREET
PENFIELD, PENNSYLVANIA 15849

THE JUDGMENT under or pursuant to which your property is being sold is docketed in the within Commonwealth and County to:

No. 2004-01092-CD **JUDGMENT AMOUNT $41,677.10**

THE NAMES OF THE OWNERS OR REPUTED OWNERS of this property is:

NICHOLAS R. GRAY AND ANGELA L. GRAY AKA ANGELA L. BARBAZZENI

A SCHEDULE OF DISTRIBUTION, being a list of the persons and/or governmental or corporate entities or agencies being entitled to receive part of the proceeds of the sale received and to be disbursed by the Sheriff **(for example, to banks that hold mortgages and municipalities that are owed taxes)** will be filed by the Sheriff of this County thirty (30) days after the sale and distribution of the proceeds of sale in accordance with this schedule will, in fact, be made unless someone objects by filing exceptions to it within ten (10) days of the date it is filed.

Information about the Schedule of Distribution may be obtained from the Sheriff of the Court of Common Pleas of the within County at the Courthouse address specified herein.

THIS PAPER IS A NOTICE OF THE TIME AND PLACE OF THE SALE OF YOUR PROPERTY.

IT HAS BEEN ISSUED BECAUSE THERE IS A JUDGMENT AGAINST YOU.

IT MAY CAUSE YOUR PROPERTY TO BE HELD, TO BE SOLD OR TAKEN TO PAY THE JUDGMENT

You may have legal rights to prevent your property from being taken away. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, **YOU MUST ACT PROMPTLY.**

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET FREE LEGAL ADVICE:

Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 (Ext. 5982)

THE LEGAL RIGHTS YOU MAY HAVE ARE:

1. You may file a petition with the Court of Common Pleas of the within County to open the judgment if you have a meritorious defense against the person or company that has entered judgment against you. You may also file an petition with the same Court if you are aware of a legal defect in the obligation or the procedure used against you.

2. After the Sheriff's Sale you may file a petition with the Court of Common Pleas of the within County to set aside the sale for a grossly inadequate price or for other proper cause. This petition **MUST BE FILED BEFORE THE SHERIFF'S DEED IS DELIVERED.**

3. A petition or petitions raising the legal issues or rights mentioned in the preceding paragraphs must be presented to the Court of Common Pleas of the within County. The petition must be served on the attorney for the creditor or on the creditor before presentation to the court and a proposed order or rule must be attached to the petition.

If a specific return date is desired, such date must be obtained from the Court Administrator's Office - Civil Division, of the within County Courthouse, before a presentation of the petition to the Court.

PURCELL, KRUG & HALLER
Attorneys for Plaintiff
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

ALL that certain lot or piece of land situate in the Village of Penfield, Huston Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a post in the South line of the State Highway at a point 15 feet Westerly from the Northwest corner of land of Annie M. Lowell;

THENCE along said Highway South 51° West 80 feet to a post near a white oak;

THENCE South 39° East 610 feet, more or less, to a post in the Southern line of the tract of which this piece was a part;

THENCE North 15° East about 8 feet to a corner of R.F. Horning;

THENCE North 30 ½ ° West 379 feet, more or less, to a post;

THENCE Easterly, 10 or 12 feet, to lands of Lowell;

THENCE Northerly along the Lowell lands, 228 feet to the place of beginning.

CONTAINING sixty-five one-hundredths (65/100) of an acre, be it more or less.

BEING identified as Tax Parcel Number 119-G2-80.

SUBJECT TO all exceptions, reservations, conditions, restrictions, easements and rights-of-way as fully as the same are contained in all prior deeds, instruments or writings or in any other manner touching or affecting the premises hereby conveyed.

HAVING THEREON ERECTED A DWELLING HOUSE KNOWN AS: RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849

BEING THE SAME PREMISES WHICH Cheryl K. Caliari, by Deed dated 6/20/01 and recorded 6/25/01 as Clearfield County Instrument Number 200109660, granted and conveyed unto Nicholas R. Gray and Angela L. Barbazzeni.

Assessment # 119-G02-80

7160 3901 9848 6924 4526

TO: NICHOLAS R. GRAY
129 STATE STREET
ST. MARY'S, PA 15857

SENDER:

REFERENCE:

PS Form 3800, June 2000

RETURN RECEIPT SERVICE		
	Postage	.6
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	3.50
	Total Postage & Fees	8.15

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

HARRISBURG PA. 17105 FEDERAL SQ. STA
DEC 15 2004

7160 3901 9848 6924 4519

TO: ANGELA L. GRAY AKA ANGELA L. BARBAZZENI
43 MONROE STREET
BYRNEDALE, PA 15827

SENDER:

REFERENCE:

PS Form 3800, June 2000

RETURN RECEIPT SERVICE		
	Postage	.6
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	3.50
	Total Postage & Fees	8.15

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS HARRISBURG PA. 17105 FEDERAL SQ. STA
DEC 15 2004

7160 3901 9848 6924 4533

TO: NICHOLAS R. GRAY
3050 RIVER ROAD
WEEDVILLE, PA 15868

SENDER:

REFERENCE:

PS Form 3800, June 2000

RETURN RECEIPT SERVICE		
	Postage	.6
	Certified Fee	2.30
	Return Receipt Fee	1.75
	Restricted Delivery	3.50
	Total Postage & Fees	8.15

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

USPS HARRISBURG PA. FEDERAL SQ. STA
DEC 15 2004

PENNSYLVANIA HOUSING FINANCE AGENCY v. NICHOLAS R. GRAY ANGELA L. GRAY AKA ANGELA L. BARBAZZENI
Clearfield County Sale 2-4-05

U. S. POSTAL SERVICE
CERTIFICATE OF MAILING
(In compliance with Postal Service Form 3877)

Received from:
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17102

Postage:

One piece of ordinary mail addressed to:
NICHOLAS R. GRAY
3050 RIVER ROAD
WEEDVILLE, PA 15868

Postmark:

U. S. POSTAL SERVICE
CERTIFICATE OF MAILING
(In compliance with Postal Service Form 3877)

Received from:
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17102

Postage:

One piece of ordinary mail addressed to:
ANGELA L. GRAY AKA ANGELA L. BARBAZZENI
43 MONROE STREET
BYRNEDALE, PA 15827

Postmark:

U. S. POSTAL SERVICE
CERTIFICATE OF MAILING
(In compliance with Postal Service Form 3877)

Received from:
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17102

Postage:

One piece of ordinary mail addressed to:
DOMESTIC RELATIONS
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Postmark:

USPS FEDERAL SQ STA HARRISBURG PA 17108
DEC 15 2004

UNITED STATES POSTAGE
PITNEY BOWES
02 1A $ 00.90[0]
0004353871 DEC 15 2004
MAILED FROM ZIP CODE 17102

PENNSYLVANIA HOUSING FINANCE AGENCY v. NICHOLAS R. GRAY ANGELA L. GRAY AKA ANGELA L. BARBAZZENI
Clearfield County Sale

U. S. POSTAL SERVICE
CERTIFICATE OF MAILING
(In compliance with Postal Service Form 3877)

Received from:
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17102

Postage:

One piece of ordinary mail addressed to:
TENANT/OCCUPANT
RR1, BOX 159 MAIN STREET
PENFIELD, PENNSYLVANIA 15849

Postmark:

U. S. POSTAL SERVICE
CERTIFICATE OF MAILING
(In compliance with Postal Service Form 3877)

Received from:
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17102

Postage:

One piece of ordinary mail addressed to:
NICHOLAS R. GRAY
129 STATE STREET
ST. MARY'S, PA 15857

Postmark:

USPS FEDERAL SQ STA HARRISBURG PA. 17108
DEC 15 2004

UNITED STATES POSTAGE
PITNEY BOWES
02 1A $ 00.90⁰
0004353871 DEC 15 2004
MAILED FROM ZIP CODE 17102

04-1090-CD

A

Faxed Tues., May 3, 2005

Lezzer vs. Kobie-Koyer

#04-1090-CD

Arbitration for May 10, 2005

From: Jackie Rafferty

To: James Naddeo, Esq.
(814) 765-1601

Court Administrator
(814) 765-7649

Joseph Colavecchi, Esq.
(814) 765-4570

J. Richard Lhota, Esq.
(814) 765-9503

Christopher Mohney, Esq.
(814) 375-1088

RECEIVED

MAY 0 3 2005

COURT ADMINISTRATOR'S OFFICE

Sorry for the handwriting, but everything was typed on my computer and, of all the times, it crashed. Hard drive is burned up!

So here goes...

(a) the case is fairly summarized in Ms. Royer's letter to Mr. Lezzer on May 3, 2004 and marked Exhibit "A".

Rental monies were put in a Savings Account for Escrow Only. Copy of deposit receipts attached and marked Exhibit "B".

Inspection Report is enclosed from Harris Environmentals with a copy of the Report on Stachybotrys. I'm still waiting for reports on other spores.

Also waiting on response from Housing Authority. Understand there was a sewrage problem in past on Overlook Drive which could have initiated the problem.

(b) Cases I will be citing are in Copy of Purdon's enclosed. Again I had them all typed out but lost.

(C) No witnesses will be called.

(d) Asking for ~~$850.~~ $825.00 Security Deposit, ~~$850.~~ $825.00 pd. to Coldwell Banker, $412.00 to Harris Environmentals for inspection, all rental monies paid and in escrow. If court sees fit, would appreciate an allowance for items disposed of due to odor but no receipts as not yet replaced. Also would ask for $750.00 for reimbursement to Mother, Jackie Rafferty for preparing paperwork, time in research, copying expenses, long distance calls (phone - fax) time and travel to Clearfield and misc. other expenses. Would appreciate Court figuring a fair and equitable amount. Also for additional electrical expense for running 3 dehumidifiers which may have also contributed to the problem.

Again I apologize for this unprofessional manner of submission of the important paperwork. Even though it will be late. I will submit the typewritten copy if we can salvage it out of the computer once repaired.

Respectfully Submitted,

Jacki Rafferty

164 Rock Pool Road
Acme, PA. 15610

(724) 542-9005 home
(724) 542-9716 fax
(412) 582-9536 cell
(724) 430-1253 work
c/o Clerk of Courts Office
Fayette County
Uniontown, PA.

The mold is continually getting worse and my daughters and my allergies are in an uproar. We have itched since we moved in. My daughter Brittney has been put on allergy medicine since we have moved in and her migraines are worse. Our living conditions have been reported to our doctor's in DuBois and Pittsburgh Childrens Hospital.

I was told I could not move out without losing my security deposit of $825.00 because of this problem. I moved out of a $325,000 house to pay $825.00 a month to smell, ruin my furniture and clothes, lose half the space here, and have allergies. Along with the security deposit, I paid $825.00 commission to the realtor, which is usually split. I feel the security and commission should be returned (at the end of lease) in full for what I have to put up with in our everyday living conditions.

As stated before, all monies will be deposited into an escrow account until all problems are solved. I will also be consulting w/my attorney.

Thank You

[illegible]

7003 2260 0001 2036 3979

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ 37
Certified Fee	23c
Return Reciept Fee (Endorsement Required)	175
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 442

Postmark Here

MAY 4 USPS

Sent To KCL ENTERPRISES

Street, Apt. No.; or PO Box No. PO Box 21

City, State, ZIP+4 Curwensville PA 16833

PS Form 3800, June 2002 — See Reverse for Instructions

CHANGE .00

*** THANK YOU ***

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

KCL Enterprises
PO Box 21
Curwensville, PA
16833

2. Arti
(Tra

PS Fo

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) K.C. Lezzer C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

CURWENSVILLE 16833 MAY 5 2004 USPS

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2ACPRI-03-P-4081

Exhibit "B"

IMII 08/16/04 DDA STATEMENT HISTORY 14.31.31 PAGE 1

ROBIN A ROYER
32 OVERLOOK DR
DUBOIS PA 15801-3622

ACCOUNT 001-000-0000-7120061560
DATE LAST STATEMENT 07/02/04
DATE THIS STATEMENT 08/16/04

*****DDA TRANSACTIONS*****

CHECKS/OTHER DEBITS NBR	TOTAL AMOUNT	DEPOSITS/OTHER CREDITS NBR	TOTAL AMOUNT
0	0.00	2	825.35

DATE	CK NBR	AMOUNT	TP	TRANSACTION DESCRIPTION
07/02		825.00		DDA DEPOSIT
07/30		0.35	CR	IOD INTEREST PAID

FIRST Commonwealth
First Commonwealth Bank

Banking
Insurance
Trust
Financial Management
Investments

THIS IS YOUR RECEIPT

THE BANK SYMBOL, TRANSACTION NUMBER, DATE AND AMOUNT OF YOUR DEPOSIT ARE SHOWN BELOW OR ON REVERSE.

CHECKS AND OTHER ITEMS AS RECEIVED FOR DEPOSIT ARE SUBJECT TO THE TERMS AND CONDITIONS OF THIS BANK.

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

ACCOUNT NUMBER: ____________ DATE: ________

RECEIPT FOR DEPOSIT TO CHECKING UNLESS MARKED BELOW

☐ SAVINGS ☐ LOANS ☐ OTHER ________ AMOUNT: ________

7120061560# 004 031 400 60404#111D $825.000P

FIRST Commonwealth
First Commonwealth Bank

Banking
Insurance
Trust
Financial Management
Investments

THIS IS YOUR RECEIPT

THE BANK SYMBOL, TRANSACTION NUMBER, DATE AND AMOUNT OF YOUR DEPOSIT ARE SHOWN BELOW OR ON REVERSE.

CHECKS AND OTHER ITEMS AS RECEIVED FOR DEPOSIT ARE SUBJECT TO THE TERMS AND CONDITIONS OF THIS BANK.

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

ACCOUNT NUMBER: ____________ DATE: ________

RECEIPT FOR DEPOSIT TO CHECKING UNLESS MARKED BELOW

☐ SAVINGS ☐ LOANS ☐ OTHER ________ AMOUNT: ________

7120061560# 007 042 437 80304#068 $825.000P

Exhibit "C"

KCL CORPORATION

P.O. Box 21, Curwensville PA 16833

June 19, 2004

Robin A. Royer
32 Overlook Drive
DuBois, PA 15801

Ms. Royer:

I received your letter from May 3rd, 2004 about the problems you claim you are having at 32 Overlook Drive. Let me clarify a couple of things.

1. The basement is <u>not</u> intended to be used as living space. You rented a 2-bedroom apartment that allows up to 4 people to occupy the apartment.
2. The basement is heated and run's off the upstairs heating / cooling zone. The thermostat to control the heating / cooling for the basement is at the top of the steps.
3. I have provided you with three dehumidifiers to help control the moisture in your apartment. If the dehumidifiers are used properly you will not have a moisture issue in your apartment.

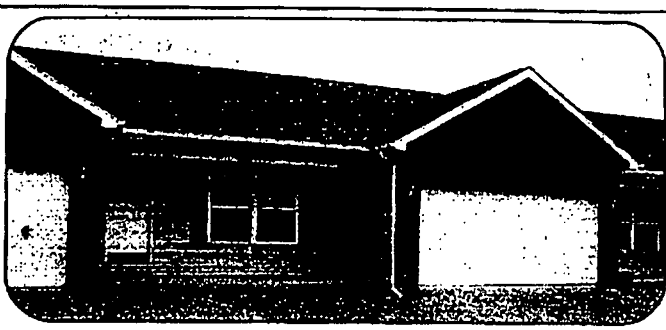
If I do not receive your June rent payment by June 28th, 2004 I will start the eviction process and we will file with the district magistrate to recover any lost rent that is due under the lease that you signed on February 24th, 2004. If you have any questions you can call me during the day at 814-236-0220.

Sincerely,

K.C. Lezzer

Cc: Rob DeSalve, Coldwell Banker

Exhibit "D"



DUBOIS..

Overlook Condos for Rent: Brand new 2 bedroom, 2 bathroom, 2 car garage condominium, central air, vaulted ceilings, finished basement. Beautiful view, conveniently located.

RENTALS: DUBOIS AREA

Call office for details.

Conveniently located 2 bedroom, 2 bath condo, one-car garage, central air - rents for $685/mon. plus utilities.

Three bedroom, 3 bath condo with one-car garage, central air rents for $785/mon. plus utilities

Two bedroom, 1 bath apartment with off-street parking, living room, dining room and kitchen, air conditioned and washer/dryer hookups.

Overlook Condos: Brand new 2 bedroom, 2 bathroom, 2 car garage condominium, central air, vaulted ceilings, finished basement. Beautiful view, conveniently located.

ACREAGE, LOTS, BUILDING SITES

Bradford Twp. - 75 acres +/-	Wooded open fields	$440,000
Sandy Twp. Rt	219 1.88 acres	$125,000
Boggs Twp., Phillipsburg	160 Acres	$104,800
Sandy Ridge Rd.	175 acres	$105,000
Greenwood Twp.	48.5 acres near Bells Landing - very private	$ 69,000
Brookville	25.13 Acres - wooded	$ 59,900
Mountain Run Road	5 acres with water and sewer	$ 34,900
Warsaw Twp.	7.9 acres	$ 31,000
Winslow Twp.	15.6 acres	$ 18,720
Falls Creek	Rt. 830 G-1 .75 acres	$ 15,000
Elk County	Boone Mountain Lot 14 .5 acres	$ 12,000
Falls Creek	Rt. 830, Lot G2	$ 11,000
Falls Creek	Rt. 830	$ 7,500
Elk County	Boone Mountain Lot 14 .5 acres	$ 12,000
Falls Creek	Lot A Wetlands. 4.94 acres Washington Twp.	$ 19,000
Falls Creek	Lot B1 McConnell Ave and Railroad 0.92 acres	$ 9,500
Falls Creek	Lot B3 McConnell Ave and Railroad 6.81 acres	$ 55,000
Falls Creek	Lot B4 3.89 acres	$ 32,000
Falls Creek	Lot C 6.46 acres Wetlands Trades	$ 19,000
Falls Creek	Lot F4 1.38 acres next to Lot F5 200x300	$ 22,000
Falls Creek	Lot F5 1.38 acres Next to Lot 4 200 x 300	$ 20,000
Falls Creek	Lot F6 1.5 acres	$ 12,500
Falls Creek	Lot F10 1.66 acres Frontage on Rt. 830	$ 13,500
Falls Creek	Lot E1 19.33 acres Frontage on T-701 Washington Twp	$149,000
Falls Creek	Lot E2 8.44 acres Washington Twp.	$ 68,000
Falls Creek	Lot G1 0.75 acres 136f Frontage on Rt. 830	$ 15,000
Falls Creek	Lot G2 0.54 acres 150f Frontage on Rt. 830	$ 11,000
Falls Creek	Lot H 0.34 acres 92f frontage on Rt. 830	$ 7,500

TREASURE LAKE LOTS

SECTION	LOTS(S)	ROAD	DESCRIPTION	PRICE
16A	4	Acorn Hills	Natural gas available	$87,500
2	107	Lakefront		$55,000
13	79	Montego Bay Road		$15,000
9	40/43/44	Miramar Road	All three lots for $9,999.00	$ 9,999
9	107/108	Hogsty Reef Lane		$ 2,000/both.
7A	52C	Barbary Coast Ct.	Lakeview lot	$ 6,000
18	13	Bay Road 75f x 175f		$ 6,000
8	201	Pieces of Eight		$ 6,000
6A	28	Smugglers Rd		$ 5,000
6A	29	Smugglers Rd		$ 5,000
4	108/109	Captain Jack		$6,000 for both lots
				$ 3,500 ea.
8	290	Pieces of Eight		$ 1,400

Exhibit 13 "E"

Robin A. Royer
Independent Beauty Consultant
5 Larissa Court
Dubois, PA 15801
814-375-9888

1149

60-682/433

July 30, 2004

BALANCE FORWARD	
THIS CHECK	412.00
BALANCE	
DEPOSIT	
BALANCE FORWARD	

Harris Communication

Four hundred twelve dollars

Deposit Bank
A Division of First Commonwealth Bank

Lot 33 Dunlock Dr.

[redacted]

⑆043306826⑆ 711001052⑈ 1149

❑ TAX DEDUCTIBLE

Exhibit "F"

Harris Environmental, Inc.

Stan Sowl, CES
600 Stone House Road
Clarion, PA 16214
Phone: (814) 764-5316
Fax (814) 764-5311

-Environmental Consulting
-Environmental Investigation
-UST & AST Facility Inspections
-Certified UST/AST Work
-Radon Testing

August 17, 2004

Ms. Robin Royer
32 Overlook Drive
DuBois, Pa 15801

RE: Mold Laboratory Analytical Results, 32 Overlook Drive, City of DuBois, Clearfield County

Dear Robin:

On July 30, 2004 I met with you at your residence at 32 Overlook Drive to collect two (2) swab samples as well as air samples from the residence to submit to a laboratory for mold testing. Two (2) swab material samples were collected and two (2) air samples were collected from the following locations:

1. Swab sample from the upper level front main entrance door and the front (west) window latch area (Laboratory Sample 001).
2. Swab sample from the baseboard area at the bottom of the lower level (bedroom area) steps and the south wall of the lower level steps (Laboratory Sample 002).
3. Indoor air filter sample from the lower level bedroom area (Laboratory Sample 003).
4. Outdoor air filter sample from the back lower level entrance of the residence (Laboratory Sample 004).

Swab sample collection consisted of rubbing a cotton swab dipped in solution over the affected areas, obtaining approximately 10 square inches of coverage for each swab sample collected.

Air sample collection consisted of drawing air via vacuum pump through a particulate filter. One (1) air sample was collected from the lower level area in the approximate vicinity of the lower level Swab Sample 002 described above to identify and quantify airborne mold particulates collected on the filter that may be detrimental to human health. One (1) outdoor air sample was collected as a background comparison sample to the indoor air sample.

The laboratory analyzed the upper level (sample 001) swab sample to identify the presence of molds, fungi or mildews. Although Stachybotrys was not found in the sample collected, Penicillium, Cladosporium and Mucor were identified, although not quantified, in the swab sample.

The laboratory analyzed the lower level (sample 002) swab sample. Although Stachybotrys was not found in the sample collected, Penicillium, Basidiospores and Mucor were identified, although not quantified, in the swab sample.

The laboratory reports that Penicillium, Cladosporium are common household molds and are generally nonpathogenic. Basidiospores are associated with mushrooms, toad stools and other common fungi. Environmentally sensitive persons could very well have a reaction to these constituents. Mucor, associated with decaying organic material, could be a concern to the environmentally sensitive individual. Copies of the laboratory analytical results are attached. The results also provide notations for the health issues regarding the reported species.

The swab constituents of concern would be the source of the airborne constituents in the residence. The laboratory analyzed the lower level indoor air sample (003) for 26 parameters. Eight (8) distinct spores species were identified and three (3) substances from other fungi, pollen, or background debris were reported for a total of 3,304 spores/M^3. Aspergillus/Penicillium (1,316 spores/M^3) and Zygomycetes(Amerospores) (448 spores/M^3) and Stachybotrys (56 spores/M^3) were the three (3) entities which were found in reportable quantities in the air samples.

To determine if a specific mold may be of concern, the indoor and outdoor quantity of a specific mold species are compared. If the indoor air concentration of a specific constituent is less than the outdoor control concentrations of the same mold species, there is no implied health or environmental concern. The laboratory analyzed the outdoor air sample for the same 26 parameters as the indoor air sample, to compare with the indoor air sample. In the outdoor air sample 004, eight (8) distinct spores were identified and three (3) substances from other fungi, pollen or background debris were also reported for a total of 7,840 spores/M^3. Aspergillus/Penicillium (1,316 spores/M^3 indoor) compared to (28 spores/M^3 outdoor), Zygomycetes(Amerospores) (448 spores/M^3 indoor) compared to [zero (0) spores/M^3 outdoor], and Stachybotrys (56 spores/M^3 indoor) compared to [zero (0) spores/M^3 outdoor] were identified as a potential constituent of indoor air quality concern.

This office is not aware of published threshold, action limit values, or concentrations wherein a constituent sample result exceedance would be required to be mitigated by the Department of Environmental Protection nor the Environmental Protection Agency. In other words, there is no published threshold that if a mold is above a certain level that the structure be mitigated. Where radon has a published threshold of 4 pCi/l that would require mitigation, molds do not have such a threshold action limit.

Stachybotrys was identified by the laboratory in the lower level air sample and may be considered a source of potential human health risk. Although Stachybotrys was found in the air sample collected, it was not identified in the swab samples. The source of the Stachybotrys was not identified in this sampling event. The source could be from an unsampled location or could be found in the air conditioning/HVAC ductwork or system, including a dehumidifier. It is suggested that mitigation measures, including Stachybotrys source identification, should be considered or implemented in the home due to the presence of Stachybotrys.

A copy of the laboratory analytical results for the air samples are enclosed for your reference. The report contained herein only identifies the areas tested and does not imply that these conditions may or may not be present throughout the remainder of the residence.

Thank you for contacting Harris Environmental, Inc. If you have any questions, please feel free to call.

Sincerely,
Harris Environmental, Inc.

Stan H. Sowl, CES

os.moldltrs.doc.14

Microbac

® Microbac Laboratories, Inc.
ERIE DIVISION
1962 WAGER ROAD
ERIE, PA 16509
(814) 825-8533 FAX (814)825-9254
CHRISTOPHER P SOLAN, LAB DIRECTOR
http://www.microbac.com E-Mail: erie@microbac.com

STATE CERT ID.
25-067, 10121
C-PA-05

CHEMISTRY · MICROBIOLOGY · FOOD SAFETY · CONSUMER PRODUCTS
WATER · AIR · WASTES · FOOD · PHARMACEUTICALS · NUTRACEUTICALS

CERTIFICATE OF ANALYSIS

HARRIS ENVIRONMENTAL, INC.
STAN SOWL
600 STONEHOUSE ROAD
CLARION,PA 16214

Date Reported	8/17/2004
Date Received	8/2/2004
Order Number	0407-03480
Invoice No.	41174
Cust #	008139
Sample Date	7/30/2004
Sample Time	0:00

Permit No.
Cust P.O.

Subject: ROYER SAMPLES FOR ANALYSIS RCVD 8-2-04

SMP Test	Method	Result	Date	Time	Tech
003 LOWER LEVEL AIR					
AIR-O-CELL	NIOSH 0800/MCCRONE INST.		8/17/2004	7:30	JMG
ALTERNARIA		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
ASPERGILLUS/PENICILLIUM		1,316 SPORES/M3	8/17/2004	7:30	JMG
ASCOSPORES		56 SPORES/M3	8/17/2004	7:30	JMG
BASIDIOSPORES		924 SPORES/M3	8/17/2004	7:30	JMG
BIPOLARIS/DRESCHLERA		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
BOTRYTIS		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
CHAETOMIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
CLADOSPORIUM		448 SPORES/M3	8/17/2004	7:30	JMG
CURVULARIA		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
EPICICCUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
FUSARIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
MUCOR/RHIZOPUS		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
NIGROSPORA		28 SPORES.M3	8/17/2004	7:30	JMG
PITHOMYCES		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
RUSTS		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
SMUTS, MYXOMYCETES		28 SPORES/M3	8/17/2004	7:30	JMG
STACHYBOTRYS		56 SPORES/M3	8/17/2004	7:30	JMG
STEMPHYLIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
TORULA		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
ULOCLADIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
VERTICILLIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
ZYGOMYCETES(AMEROSPORES)		448 SPORES/M3	8/17/2004	7:30	JMG
OTHER FUNGI		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
UNKNOWN		NONE FOUND	8/17/2004	7:30	JMG
POLLEN		<7	8/17/2004	7:30	JMG
BACKGROUND DEBRIS		2	8/17/2004	7:30	JMG
TOTAL SPORE COUNT		3,304 SPORES/M3	8/17/2004	7:30	JMG

Microbac

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Subject: ROYER SAMPLES FOR ANALYSIS RCVD 8-2-04

SMP	Test	Method	Result	Date	Time	Tech
001	DOOR FIRST LEVEL FRONT WINDOW LATCH					
	MOLD IDENTIFICATION		SEE BELOW	8/17/2004	7:30	JMG

CLADOSPORIUM, PENICILLIUM, AND MUCOR WERE PRESENT IN THIS SAMPLE.

CLADOSPORIUM IS COSMOPOLITAN AND MAY BE ISOLATED FROM SOIL, PLANT DEBRIS, AND LEAF SURFACES. CLADOSPORIUM IS FREQUENTLY ISOLATED FROM AIR, ESPECIALLY DURING SEASONS OF ELEVATED HUMIDITY. INDOORS IT MAY BE FOUND IN THE BOTTOM OF REFRIGERATORS AND REFRIGERATOR DRIP PANS, ON MOIST WINDOW FRAMES, AND ON PAINTED SURFACES WHICH ARE MOIST OR ARE IN HIGH HUMIDITY LOCATIONS. IT IS ONE OF THE MOST IMPORTANT FUNGAL AIRWAY ALLERGENS.

PENICILLIUM IS COSMOPOLITAN AND IS A COMMON CONTAMINANT ON VARIOUS SUBSTANCES. IT IS PREDOMINANT IN REGIONS OF TEMPERATE CLIMATE AND IS AMONG THE MOST COMMON FUNGI ISOLATED FROM THE ENVIRONMENT. PENICILLIUM IS USED AS AN INDICATOR ORGANISM FOR DAMPNESS IN BUILDINGS.

MUCOR IS COSMOPOLITAN AND MAY BE ISOLATED FROM DECAYING ORGANIC MATERIAL AND MOST NORMAL STOOL SPECIMENS. MUCOR IS ALMOST ALWAYS PRESENT IN HOUSE DUST. IT IS CONSIDERED AN OPPORTUNISTIC PATHOGEN IN THE IMMUNOCOMPROMISED PATIENT.

SMP	Test	Method	Result	Date	Time	Tech
002	LOWER LEVEL WALL BELOW STEPS BASEBOARD @ BOTTOM OF STEPS					
	MOLD IDENTIFICATION		SEE BELOW	8/17/2004	7:30	JMG

BASIDIOSPORES, PENICILLIUM, AND MUCOR WERE PRESENT IN THIS SAMPLE.

BASIDIOSPORES ARE PRIMARILY THE MUSHROOMS, TOAD STOOLS, PUFF BALLS, RUSTS, AND SMUTS. BASIDIOSPORES ARE USUALLY ASSOCIATED WITH THE OUTDOORS, HOWEVER HIGH LEVELS OF THESE SPORES IN THE INDOOR ENVIRONMENT MAY CONTRIBUTE TO ALLERGY

PENICILLIUM IS COSMOPOLITAN AND IS A COMMON CONTAMINANT ON VARIOUS SUBSTANCES. IT IS PREDOMINANT IN REGIONS OF TEMPERATE CLIMATE AND IS AMONG THE MOST COMMON FUNGI ISOLATED FROM THE ENVIRONMENT. PENICILLIUM IS USED AS AN INDICATOR ORGANISM FOR DAMPNESS IN BUILDINGS.

MUCOR IS COSMOPOLITAN AND MAY BE ISOLATED FROM DECAYING ORGANIC MATERIAL AND MOST NORMAL STOOL SPECIMENS. MUCOR IS ALMOST ALWAYS PRESENT IN HOUSE DUST. IT IS CONSIDERED AN OPPORTUNISTIC PATHOGEN IN THE IMMUNOCOMPROMISED PATIENT.

SMP	Test	Method	Result	Date	Time	Tech
003	LOWER LEVEL AIR					

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Permit No.
Cust P.O.

Subject: ROYER SAMPLES FOR ANALYSIS RCVD 8-2-04

004 OUTDOOR CONTROL

SMP Test	Method	Result	Date	Time	Tech
AIR-O-CELL	NIOSH 0800/MCCRONE INST.		8/17/2004	7:30	JMG
ALTERNARIA		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
ASPERGILLUS/PENICILLIUM		28 SPORES/M3	8/17/2004	7:30	JMG
ASCOSPORES		308 SPORES/M3	8/17/2004	7:30	JMG
BASIDIOSPORES		6,384 SPORES/M3	8/17/2004	7:30	JMG
BIPOLARIS/DRESCHLERA		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
BOTRYTIS		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
CHAETOMIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
CLADOSPORIUM		868 SPORES/M3	8/17/2004	7:30	JMG
CURVULARIA		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
EPICICCUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
FUSARIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
MUCOR/RHIZOPUS		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
NIGROSPORA		28 SPORES.M3	8/17/2004	7:30	JMG
PITHOMYCES		28 SPORES/M3	8/17/2004	7:30	JMG
RUSTS		28 SPORES/M3	8/17/2004	7:30	JMG
SMUTS, MYXOMYCETES		84 SPORES/M3	8/17/2004	7:30	JMG
STACHYBOTRYS		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
STEMPHYLIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
TORULA		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
ULOCLADIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
VERTICILLIUM		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
ZYGOMYCETES(AMEROSPORES)		NONE FOUND SPORES/M3	8/17/2004	7:30	JMG
OTHER FUNGI		84 SPORES/M3	8/17/2004	7:30	JMG
UNKNOWN		NONE FOUND	8/17/2004	7:30	JMG
POLLEN		<7	8/17/2004	7:30	JMG
BACKGROUND DEBRIS		1	8/17/2004	7:30	JMG

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SMP	Test	Method	Result	Date	Time	Tech
004	OUTDOOR CONTROL					
	TOTAL SPORE COUNT		7,840 SPORES/M3	8/17/2004	7:30	JMG

OTHER FUNGI= ARTHRINIUM

Christopher P. Solan
Managing Director

Pediatric Pulmonary
Dorr G. Dearborn, Ph.D., M.D.
Michael D. Infeld, M.D.

Pediatric Critical Care
Paul G. Smith, D.O.

Environmental Hygiene
Terrence M. Allan, M.P.H.
Cuyahoga County Board of Health


Stachybotrys (dark area) as found on drywall.

Table of Contents:

- THE CLEVELAND OUTBREAK
- IS MY MOLD STACHYBOTRYS?
- HOW TO CLEAN UP MOLD
- DOES MY INFANT OR CHILD HAVE PULMONARY HEMOSIDEROSIS?
- PHYSICIAN INFORMATION CONTACT
- REPORTING A CASE
- RESPONSE TO MMWR REPORT:
    - Investigator Team's Response to MMWR Report
    - Letters to the editor of the Cleveland Plain Dealer
- IDIOPATHIC PULMONARY HEMOSIDEROSIS: NATIONAL ORGANIZATION
- ADULT HEALTH CONCERNS
- ADDITIONAL INFORMATION AND PUBLICATIONS

Introduction

Over the past several years, there have been a number of young infants (most under 6 months old), in the eastern neighborhoods of Cleveland, who have been coughing up blood due to bleeding in their lungs. Some infants have died and more infants continue to

- **THE CLEVELAND OUTBREAK**
- **IS MY MOLD STACHYBOTRYS?**
- **HOW TO CLEAN UP MOLD**
- **DOES MY INFANT OR CHILD HAVE PULMONARY HEMOSIDEROSIS?**
- **PHYSICIAN INFORMATION CONTACT**
- **REPORTING A CASE**
- **RESPONSE TO MMWR REPORT:**
  - **Investigator Team's Response to MMWR Report**
  - **Letters to the editor of the Cleveland Plain Dealer**
- **IDIOPATHIC PULMONARY HEMOSIDEROSIS: NATIONAL ORGANIZATION**
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Introduction

Over the past several years, there have been a number of young infants (most under 6 months old), in the eastern neighborhoods of Cleveland, who have been coughing up blood due to bleeding in their lungs. Some infants have died and more infants continue to to get ill. This bleeding, a disorder called Pulmonary Hemorrhage appears to be caused by something in their home environments, most likely toxins produced by an unusual fungus called *Stachybotrys chartarum* or similar fungi.

What is Pulmonary Hemosiderosis?

Bleeding in the lungs.

What Are The Symptoms?

Severe bleeding can cause coughing up blood or nose bleeds. This is particularly concerning in infants under 6 months old. Chronic, low grade bleeding can cause chronic cough and congestion with anemia.

What Causes The Bleeding?

Most likely, toxins made by an unusual fungus or mold *Stachybotrys*. When infants breathe in the toxins, the blood vessels in their lungs may become fragile. The weak vessels may be bothered by cigarette smoke or stresses from other illnesses and start to bleed. You cannot see the toxins in the air rather they are carried in the microscopic fungal spores.

How Do I Know If The Fungus Or Mold Is In My House?

This fungus or mold grows only on wood or paper that have gotten very wet for more than a few days or so. (It does **NOT** grow on plastic, vinyl, concrete products, or ceramic tiles). If the wood/paper gets wet and is not cleaned up and dried, the fungus may grow and spread. The fungus is black and slimy when wet. It is **NOT** found in the green mold on bread or the black mold on the shower tiles (but the shower tiles should be kept clean too). If you have had plumbing leaks, roof leaks, flooding in the basement (even if you don't use the basement), or sewer backup in the past year, look for mold or a musty odor.

Common Areas for This Mold Growth:

Water soaked wood, ceiling tiles, wall paneling, unpainted plaster board surfaces, cotton items, cardboard boxes, and stacks of newspapers. If these areas have been very wet, usually for longer than one week, check for mold. After the area dries, the fungus will not continue to grow, but the black dust caused by the fungus can be sucked up by the furnace blower and spread throughout the house. Be sure and check your basement for the black mold. If you do not have access to the basement, ask your landlord for assistance. **Note: not all black mold is *Stachybotrys*, but moldy homes are not healthy homes.**

Heating Systems:

If you have mold in your basement, check to see if there is any way that your forced air furnace can send the mold dust up to the living spaces. Is there ductwork connecting the cold air returns to your furnace or does your furnace pull air from the basement? The latter is the case if you can seen the furnace filter face on (rather than just the edge).

How To Clean-up Fungal Growth:

Click here for more detailed instructions on how to clean-up the mold. If you have more than two square feet of mold growth you should seek professional advice on how to perform the clean-up.

• The source of the water problem must first be corrected. All roof or plumbing leaks/flooding must be fixed.

• All moldy surfaces should be cleaned with a household bleach (like Clorox) and **water mix = 1 cup of bleach mixed in 1 gallon of water.** You can add a little dish soap to the bleach water to cut dirt and oil on the wall that can hold mold. With good ventilation, apply the bleach water mix to the surface with a sponge, let it sit for 15 minutes, then thoroughly dry the surface. **Be sure to wear a dust mask, rubber gloves and open lots of windows when cleaning with bleach water.**

• If the area cannot be cleaned (like some wet broken ceiling tiles), is too damaged, or is disposable (like cardboard boxes) discard them and replace with new ones.

• It may be necessary to do more clean up in the home (carpets, crawl spaces, heating ducts) if you have a bad mold problem.

Call your city or county health department if you have questions or need assistance.

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THE CLEVELAND OUTBREAK

Over the past seven years in the Cleveland, Ohio area there have been 45 cases of pulmonary hemorrhage (PH) in young infants. Sixteen of the infants have died. Thirty-two of the infants have been African American. Most of these cases have occurred within ten contiguous zip codes area in the eastern portion of the metropolitan area. In November/December, 1994, the Centers for Disease Control and Prevention (CDC) lead a case-control investigation on the first ten cases. This study found an epidemiological association of PH in these infants with water-damaged homes containing the toxic fungi, predominantly *Stachybotrys*. Several lines of evidence suggest that the most likely causal agents are fungal toxins from a fungus called *Stachybotrys atra*. This somewhat unusual fungus was found in high quantity in the home environments of the affected infants but also to a lesser degree in some of the comparison homes. *Stachybotrys* requires water soaked cellulose to grow, and was found in homes where there had been water damage from flooding, plumbing leaks or roof leaks involving wood or paper products (e.g. insulation, gypsum board, ceiling tile). The spores of this fungus contain very potent mycotoxins which appear to be particularly toxic to the rapidly growing lungs of young infants. The linkage of *Stachybotrys* to PH in infants is on the basis of epidemiological data and has not been conclusively demonstrated. Other factors such as environmental tobacco smoke appear to be important triggers in precipitating overt pulmonary hemorrhage.

More cases continue to occur, a few infants having had only very subtle initial symptoms such as nose bleeds and chest congestion. Concern that there may be a larger number of undetected young infants with this disorder, led to the examination of all infant coroner cases over a three year period, 1993-1995. This revealed seven "SIDS" (sudden infant death syndrome) cases with evidence of preexisting major pulmonary bleeding. All but one of these infants had lived in the ten zip code cluster area.

This disorder is likely to extend beyond Cleveland since an informal national survey of all pediatric pulmonary centers and continued reporting has identified over 100 similar cases of pulmonary hemorrhage in infants across the country over the last seven years.

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IS MY MOLD *STACHYBOTRYS*?

While *Stachybotrys chartarum (atra)* occurs widely in North America, it is probably rather uncommon to find it in homes. It requires water soaked cellulose (wood, paper, and cotton products) to grow. While wet it looks black and slimy perhaps with the edges white, and when dry it looks less shiny. **It is not the only or the most common black mold to be found in these conditions.** If your clean-up is not simple, i.e. your water damage and mold growth is extensive and/or involves structural materials, contact your city or county health department for assistance in assessing the problem. They can put you in contact with environmental laboratories capable of identifying *Stachybotrys* and with abatement contractors familiar with the precautions and other specifics important for extensive clean-up. If you have a large area of mold growth (greater than two square feet or so), seek professional assistance in the clean-up. You can get quite ill yourself if you inhale a large quantity of the fungal dust or get it on your skin.

Testing for Mold

For a more detailed discussion on the assessment and remediation of *Stachybotrys* in indoor environments, please refer to The Proceedings of the International Conference held on October 6-7, 1994 in Sarasota Springs, NY entitled "*Fungi and Bacteria in*

Indoor Environments", pages 201-207, published by the Eastern New York Occupational Health Program [(518)436-5511].

In cases of minor mold contamination, small isolated areas (2 to 10 sq.ft.), testing is usually not necessary. In most of these cases, the area can be addressed by using the clean-up recommendations given elsewhere on this home page.

In cases of more extensive contamination, testing may be necessary. Some private environmental consulting firms may have the ability to conduct home assessments and sample for mold identification. Please refer to the section of your yellow pages entitled "Environmental Consultants" to find a company in your area that might be capable of performing these tasks effectively. Ask if the company has experience with mold testing; it is recommended that several price quotes be obtained for field work and analysis. Consulting firms should be familiar with the American Industrial Hygiene Association (AIHA) document entitled "*Field Guide for the Determination of Biological Contaminants in Environmental Samples*". This document provides guidelines for the sampling of mold in indoor environments. For a list of accredited labs, please see the AIHA web site.

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DOES MY INFANT OR CHILD HAVE PULMONARY HEMOSIDEROSIS?

Pulmonary hemosiderosis is a rare lung disorder which can also occur as part of other medical conditions. If your infant or child is coughing blood, you need to seek medical attention immediately. If your young infant (<6 months old) is having nose bleeds without any injury, you should seek medical attention right away. If your infant or child has chronic cough and chest congestion and is anemic, ask your physician to consider the possibility of pulmonary hemosiderosis among all the other more common diagnostic possibilities.

If your physician would like more information about looking for pulmonary hemosiderosis, have them contact:

Dorr G. Dearborn, Ph.D., M.D.
Pediatric Pulmonary Division
Rainbow Babies & Childrens Hospital
11100 Euclid Avenue
Cleveland, Ohio 44106
FAX (216) 844-5916

Purdon's PA Consolidated Statutes

uninhabitable and the tenant can exercise remedies. The prerequisites are 1) notice, and 2) an opportunity to cure the defect. There is no requirement that the tenant's condition be put on hold until the landlord effects a cure. The landlord needs only to be given a reasonable opportunity to cure the condition that led to the breach of the implied warranty of habitability. The test is that the landlord either is *unwilling or unable* to make the leased premises right after notice and an opportunity to cure the defective condition.

d. Tenant Remedies for Breach of the Implied Warranty of Habitability

After the landlord has been notified of the condition or defect that has made the premises uninhabitable, and the landlord has given an opportunity to cure, if the condition still exists, the tenant has a number of options.

(1.) Termination of the lease

The tenant has the option of terminating the lease agreement and leaving the premise. Since the rights and duties of both landlord and tenant are mutually dependent, if the landlord has breached the implied warranty of habitability, the tenant's obligation to pay rent ceases. The theory is that the tenant is under no duty to pay for a contract right that is not being received.

Termination of the lease must be accompanied by notice to the landlord of lease termination and a surrender of the leased premises. *The tenant cannot terminate the lease and continue to occupy the premises.*

For tenants who wish to exercise the remedy of lease termination, it is very important to indicate clearly to the landlord or the landlord's agent that the lease has been terminated because of the breach of the implied warranty of habitability. If the tenant removes from the leased premises without notice to the landlord, then the landlord may assume that the tenant has breached the lease by abandonment rather than surrender. The landlord could take the position that the lease was ongoing and any security deposit might be applied by the landlord toward unpaid rent. This leaves the tenant in a vulnerable position legally. If the landlord has been put on notice in writing of the lease termination for breach of the implied warranty of habitability, the tenant is in a better legal position to claim that the landlord wrongfully withheld repayment of a security deposit.

As stated above, any termination remedy must be accompanied by an immediate surrender of the leased premises back to the landlord. Tenants should follow any "checkout" procedures that the landlord may have and surrender all keys. Tenants should also make sure that the landlord has been given a forwarding address in writing at the time of surrender and acceptance.

If the landlord refuses to accept surrender of the premises, then the tenant should transfer custody of the keys and follow up the unaccepted surrender with written notice of surrender. The burden is upon the tenant to make a good faith effort to comply with all check-out procedures even if the landlord indicates an unwill-

ingness to accept that surrender. Being able to show an attempt to transfer possession to the landlord in a businesslike manner enhances the tenant's legal position.

Termination of the lease is not an exclusive remedy. The tenant has the right to terminate the lease and employ the remedy of suit for damages (see *infra*).

(2.) Repair and Deduct

This remedy permits the tenant to repair the defect or correct the conditions that cause the uninhabitability. The tenant then may deduct the cost of the repair from the rental. The tenant does not have to terminate the lease and may remain in possession. The theory is that the tenant may stand in the shoes of the landlord for the purpose of repairing or correcting the condition.

There are limitations for this remedy. The first is that the amount of money that can be applied on the repair and deduct method is limited to the rental over the remaining lease term. The tenant is not authorized by this remedy to expend more than is ultimately owed to the landlord. In addition, the repairs must be *necessary*. That is, they are limited in scope to the quantity of repair that would restore the habitability of the leased premises. The tenant would not be authorized to expend funds that might make the premise more desirable. Finally, the cost of the repairs ordered to be done by the tenant must be *reasonable*. Any expenses cannot exceed what the reasonable cost of the repairs would be in that particular market.

This would appear to be an expedient remedy for a tenant. For one thing, the costs are deducted from money that was going toward rent. However, the remedy has certain drawbacks. First, the repairs cannot exceed the balance of the rent. Depending on the circumstances of the case, the tenant cannot expend unlimited funds to make the repairs. Second, the burden would be on the tenant to prove that the scope of the repairs was necessary to restore the habitability of the premises. Third, the tenant would also have to sustain the burden of proving that the cost of the repairs was reasonable and not excessive. All this could become an issue if the landlord brings suit against the tenant for damages or for eviction. The tenant would be placed in the legal position of having to prove the necessity and reasonableness of the repairs.

Another drawback for the repair and deduct method is that the tenant must assume responsibility for implementing the repairs. That is, the tenant must order the repair, supervise its completion and advance the funds for those repairs.

The repair and deduct method would be viable for conditions and defects that can be cured with a limited amount of money. For example, the tenant might do the repair of a water heater with a minimum effort and at a cost that is less than one month's rent. However, the replacement of a roof might involve substantial effort and cost. In this latter circumstance, the tenant assumes more risk than might be warranted.

For any remedy for breach of the implied warranty of habitability, it is essential that the landlord be notified of the condition or defect and that the landlord be given an opportunity to restore the habitability of the premise. These requirements must be met before any remedy may be implemented. In order to use the repair and deduct remedy, the tenant should put the landlord on notice of the tenant's intention before any repairs are made. In addition, good judgment dictates that copies of all repair estimates be forwarded to the landlord. After the repairs are completed, the billings should also be sent.

It cannot be assumed that the landlord will accept this tenant remedy. A lawsuit might erupt for unpaid rent once the landlord realizes that the rental has not been paid in full. For tenants who choose to exercise the remedy of repair and deduct, it is important to be able to prove that the repairs were necessary. This might be done through a code enforcement report that indicates the defects within the rental unit. Secondly, the tenant should obtain cost estimates from known service providers before ordering the repairs. This will demonstrate that good commercial practices were employed when ordering the repairs and that the cost of the repairs was reasonable.

(3.) Suit for Damages

The above remedies of lease termination and repair and deduct are nonjudicial remedies. That is, they do not automatically result in a court case. With the remedy of suit for damages, the tenant is obligated to file a claim in court against the landlord for the compensatory damages caused by reason of the uninhabitability. For example, if the heating system in a unit were to break during a cold period in January, the tenant could incur substantial expense in either installing a temporary heat source in the unit or leaving the premises to find appropriate shelter in another place.

An element of damages that the tenant might incur would be the cost of repairs that the tenant incurs in order to make the premises habitable. This could include the out-of-pocket expenses incurred by the tenant. The tenant might also claim as damages the excess rent paid for a premise that was not habitable. Since rent is usually paid in advance, the tenant could seek a retroactive rental abatement that reflects the loss of use of the entire leased premises during the period of uninhabitability. The tenant may have incurred costs at the leased premise as a consequence of the uninhabitability. These could include charges for utilities supplied to the leased premises for which the tenant received no benefit because the premises could not be occupied.

A final category of damage that might be suffered could involve the results of unreasonable landlord conduct in failing or refusing to make repairs. No one would like to have his or her home rendered uninhabitable. There is a substantial inconvenience that is forced upon someone who cannot occupy his or her abode. If the landlord's conduct was such that it made the situation worse, a claim for in-

tentional infliction of emotional distress might be warranted. For this type of damage to accrue to a tenant, the landlord's conduct must be extreme and there must be some bodily harm to the tenant (see *Fair v. Negley,* 257 Pa. Super. 50, 390 A.2d 240, 1979).

A suit for damages involves the use of judicial process. The *Holmes* case seems to indicate that before the tenant can sue for damages, the prerequisite notices must be sent and the landlord must be given an opportunity to cure the default. However, it is likely that this remedy could be instituted without the requisite notice and opportunity to cure. This is so because a breach of the implied warranty of habitability is a breach of contract. The remedy for breach of contract is a suit for damages regardless of the type of breach. It is unlikely that the court intended to impose a safeguard for a landlord who breached the implied warranty of habitability when the landlord could be sued for any other breach without notice and an opportunity to cure.

Tenants will still have to sustain the burden of proving their case in a suit for damages. In addition, they will still have to advance a filing and service fee and move the case forward by filing a complaint. However, a suit for damages can be brought in the District Justice Court or Municipal Court in Philadelphia with a minimum of legal expertise required. In addition, the tenant's possession of the premises is not risked unless the tenant has breached the lease so the legal risks of facing a counterclaim for damages or possession might not be significant.

(4.) Specific Performance

Specific performance is a remedy that also involves judicial process. The tenant seeks equitable relief in the form of an order issued by the court directed to the landlord to make necessary repairs. If the landlord fails or refuses to honor the terms of the court order, the landlord would be in contempt of court. The court could order a broad range of sanctions against the landlord for failure to comply. The *Holmes* case specifically authorized this remedy when the landlord breaches the implied warranty of habitability. The theory is that leases are contracts and specific performance is a contract remedy for circumstances when monetary damages will not provide adequate relief to an injured party. Instead, the court recognizes the unique nature of the subject matter of the contract and orders the breaching party to comply with the duties imposed by the lease agreement.

Presumably, the tenant would have to comply first with the overall requirements of the implied warranty of habitability. The tenant must give the landlord notice of the nature of the condition or defect that creates the uninhabitability and the landlord must have an opportunity to repair the condition or defect. In appropriate cases, the tenant could go to Common Pleas Court to seek an order directed to the landlord to make the necessary repairs.

This is an extraordinary remedy that should be used only in extreme circumstances. Because specific performance is an equitable remedy, the court may impose the requirement that there is no other adequate or satisfactory remedy available to the tenant. In some cases this may be a more viable remedy. For one thing, the defect or condition may create an unreasonable risk of danger and be expensive to mitigate so repair and deduct would not be available. If the tenant does not have another place to live, a suit for damages or lease termination would not suffice either. Finally, withholding rent from the landlord might not achieve the desired result. By seeking equitable relief, the tenant may be able to move on a faster judicial track by filing a request for a rule to show cause why the landlord should not be ordered to make emergency repairs.

Because of the extraordinary nature of this judicial remedy, the court may be reluctant to sanction this remedy. Specific performance has been used by the courts as a remedy only when monetary damages could not compensate the injured party. It would be up to the tenant to show that there was no other authorized remedy that would be effective to abate the condition or repair the defect that led to the uninhabitability. Ultimately, a court might be reluctant to issue an order against the landlord to repair a defect or abate a condition within the leased premises. Any such order would be difficult for the court to enforce and would require continuing jurisdiction over the situation. There is no case reported that has tested this remedy so it has not yet been determined if this is a practical remedy even though the highest court in the state authorized it.

(5.) Withholding of Rent

Another remedy is withholding of rental payments to the landlord.

WITHHOLDING OF RENTAL PAYMENTS IS NOT A REMEDY AUTHORIZED BY THE *HOLMES* CASE.

Tenants cannot just stop paying rent. The only circumstance when the tenant can withhold rent is in connection with ongoing litigation between the landlord and the tenant over the issue of the habitability of the leased premise. Then, a court might order that a percentage of the rent be placed under the control of an independent party.

Even though the remedy of withholding payment of rent is not authorized, a sound legal argument might be crafted by the tenant outside the scope of the judicially installed remedies under *Holmes*.

If residential leases are consumer contracts, the breach by one party may cause a suspension of the corresponding duty of the non-breaching party. So, if the landlord fails or refuses to perform the duty to repair, then the tenant's obligation to pay rent for the uninhabitable portion of the leased premises is suspended. The percentage of rent that may be withheld should equal the loss in the tenant's use and enjoyment of the leased premises. Of course, if the entire leased premise is uninhabitable, then the entire rent could be withheld. This is tantamount to lease

termination that permits the tenant to cancel the lease and cease payment of rent to the landlord (see #1 above.) This remedy is different from that authorized by the Rent Withholding Act that authorizes the tenant to pay all rent into an escrow account until the defect is corrected or the landlord abates the condition.

If the tenant were to withhold payment of rent, it would be better to have this rent paid into an escrow account until the resolution of the dispute with the landlord. Courts have not looked with favor upon people who suspend their obligations and seek court assistance in enforcing the other party to comply. If a court were to determine that there has been no breach of the implied warranty of habitability, without the escrow, the court might order the tenant to be evicted for non-payment of rent. It always is better for the tenant to demonstrate "clean hands" when requesting a remedy or defending a suit for eviction and damages.

There is no judicial sanction for the remedy of rent withholding. However, tenants who live within municipalities where the rent-withholding act is in force can consider using that statutory remedy. Otherwise, tenants and their attorneys should carefully consider whether rent withholding is the best course of action. In cases when tenants choose to employ this remedy, any contested rent should be placed into escrow. This will demonstrate the willingness and ability for the tenant to meet the contractual duties under the lease agreement.

(6.) Declaratory Judgment

Another potentially useful judicial remedy available to a tenant might be a declaratory judgment. A declaratory judgment is a remedy that involves the filing of a lawsuit seeking a court determination of the rights of the parties. Declaratory judgments often are used in situations where a court is asked to "declare" the rights before an actual breach of contract occurs. The idea is that a breach would be injurious to the parties and they could not be returned to their respective positions if the breach occurs and damages result. Courts are reluctant to give "advisory" opinions until a case or controversy is ripe for judicial determination. However, courts also recognize that there are circumstances where the rights of the parties could be determined judicially without a breach of contract that results in substantial economic harm.

This remedy has not been specifically authorized by the *Holmes* case. However, language in the decision refers to "other contract remedies" which would include declaratory judgments.

In order to implement this remedy to have the court declare that there has been a breach of the implied warranty of habitability, the tenant would have to comply with the requisite notice and opportunity to cure. Declaratory judgment actions have the benefit of allowing the tenant to remain in possession of the premises until there is a ruling on the condition or defect that creates the alleged uninhabitability. From a practical point of view the implementation of this remedy may delay the repair of the defect or abatement of the condition.

Since the rules of civil procedure allow a tenant to seek alternative remedies, attorneys may consider using declaratory judgment as an alternate remedy when seeking a judicial determination concerning a breach of the implied warranty of habitability.

(7.) Consumer Protection Law Claim

There is ample recent authority that residential leases are consumer contracts and are subject to the provision of the Unfair Trade Practices and Consumer Protection Laws (UTPCPL found at 73 P.S. §202-1 *et seq.*) In earlier editions of this text, it was stated that tenants attorneys should be aware that continuous and systematic violations of the implied warranty of habitability might indicate bad faith on the part of the landlord. As such, it could be argued that the landlord conduct might sink to the level of fraud thereby denying the tenant the benefit of the bargain for a habitable premise.

Much has changed. In the case of *Wallace v. Pastore*, 742 A.2d 1090 (Pa. Super. 1999), the protections of the UTPCPL were extended to residential leases. The case involved the failure to return a security deposit. It was clear that continuous and systematic violations of the law are not a prerequisite for the court to find breach of UTPCPL.

Taken to its logical extension, what could be more violative of the tenant's rights than the failure to repair a defect or abate a condition that denies the tenant a habitable premise in which to live? This is even more basic than the UTPCPL law umbrella that the court erected over security deposits that are merely a matter of money. The future is bright for UTPCPL claims involving breaches of the implied warranty of habitability. The advantage of this type of claim is that the court can order treble damages and reasonable attorneys fees in UTPCPL cases.

Here again, counsel for tenants in habitability cases could assert an alternative claim under the UTPCPL if the landlord, after notice has failed or refused to abate the condition or repair the defect. Obviously, the more deliberate the failure or refusal, the stronger the consumer protection claim might be.

e. Sample Forms

Notice to Landlord of defect or condition at the leased premises

HAND DELIVERED 12/23/XX

Mr. Rex Galoar
Ace Management Co.
555 Broken Arrow Drive
Slurry Line, PA

Dear Mr. Galoar:

This letter is to advise you that the hot water heater in our apartment, Number 34, Harry Arms Apartments is broken and no longer produces hot water.

We cannot wash our dishes, cooking utensils, our clothing, and ourselves. We believe that the lack of hot water makes the premises uninhabitable.

We request your immediate attention to fix the water heater. If it is not repaired as soon as practical, you will be breaching the implied warranty of habitability.

Thank you for your prompt action.

I.M. Tidy

Comment: The purpose of this letter is to place the landlord on notice of the defect or condition at the leased premise. Notice is a prerequisite for the tenant who wishes to exercise remedies. Note that up to this point there is no breach of the implied warranty of habitability since the landlord had no knowledge of the defect or condition. It is not necessary that this letter be mailed unless remedial action by the landlord is not required immediately. The purpose of the writing is to provide documentary evidence of compliance with the requirements as set forth in the *Holmes* case.

Notice to the landlord of failure to repair

HAND DELIVERED 12/26/XX

Mr. Rex Galoar
Ace Management Co.
555 Broken Arrow Drive
Slurry Line, PA

Dear Mr. Galoar:

This letter is to advise you that the hot water heater in our apartment, Number 34, Harry Arms Apartments is broken and no longer produces hot water. We advised you of this by letter dated December 23, 20XX. You have not taken steps to repair the water heater. The purpose of this letter is to advise you that you have breached the implied warranty of habitability.

Accordingly, we intend to take the following action in response to your breach of the lease agreement:

We are terminating the lease effective on December 31, 20XX. We will deliver the keys to your office on that date together with a written forwarding address where you may forward the security deposit to us.

Or

We have contacted three plumbing companies about repairing the water heater. Bill "The Pipe" Bender's bid of $387.52 was the lowest. We have engaged Mr. Bender to complete the work and the costs of repair will be deducted from our next rental payment on January 1, 20XX

Or

> Because of your failure to make timely repairs to the water heater, we have incurred resulting expenses in the amount of $534.67. A list of these expenses is included with this letter. Please be advised that we request that you reimburse us for these expenses. If you fail or refuse to do so, we intend to seek a remedy against you in court for damages.
>
> I.M. Tidy

Comment: This letter speaks to the second prerequisite for implementing remedies against a landlord who has breached the implied warranty of habitability. The landlord must be given an opportunity after notice to correct the defect or abate the condition that has caused the uninhabitability. No hard-and-fast rules can be applied to judge the length of time that is "reasonable" for a landlord to repair a defect or abate a condition. The above example of a broken hot water heater is the kind of defect that is easily mitigated and it is a major inconvenience for the tenant not to have access to hot water within the premises.

Tenants should be concise about the remedy that they intend to employ. If the remedy of lease termination is used, the tenant is required to surrender possession of the premise to the landlord. Other remedies may be used without having to leave the premises.

If non-payment of rent is involved, tenants should prepare for a possible suit for eviction by the landlord. The landlord's breach of the implied warranty of habitability is a good defense. It is essential to be able to prove that all of the prerequisites have been complied with. Tenants should also be alert for any retaliatory conduct by the landlord (see § 4.23).

f. Breach of Implied Warranty of Habitability as a Defense

A dispute could erupt between the landlord and tenant over the landlord's duty to repair with the tenants exercising one of the court-authorized, non-judicial remedies. The landlord may bring suit against the tenant for non-payment of rent and tenant may claim that the landlord has breached the implied warranty of habitability. Breach of the implied warranty of habitability as a defense was specifically authorized by the *Holmes* case. Subsequent cases also have recognized the defense of breach of the implied warranty of habitability (*e.g.* See *Burr v. Callwood*, 374 Pa. Super. 502, 543 A.2d 583 (1988)). The tenant would have the obligation of proving compliance with the prerequisites of notice and opportunity to cure.

For tenants and their attorneys, if the defense of uninhabitability is used, it might be important for the court to enter a judgment that the landlord has breached the implied warranty of habitability. This could help minimize the possibility that

costs and attorneys fees would be assessed against the tenant. Tenants should remember that the option to "pay and stay" exists when the landlord has sued only for non-payment of rent. The tenant would have the option of ending the landlord's case by paying the amount of unpaid rent and costs.

SUMMARY OF TENANT'S REMEDIES FOR LANDLORD'S BREACH OF THE IMPLIED WARRANTY OF HABITABILITY

Remedy	*Judicial/ Non-Judicial*	*Court Approved Remedy*	*Notice to Landlord Before Use*
Termination of Lease	Non-Judicial	Yes	Yes, required
Deduct and Repair	Non-Judicial	Yes	Yes, required
Suit for Damages	Judicial	Yes	No
Specific Performance	Judicial	Yes	No
Withholding of Rental Payment	Non-Judicial	No	Yes, desirable
Declaratory Judgment	Judicial	Yes, by implication	No
Breach of Warranty as a Defense	Judicial	Yes	No

g. Calculation of Damages

A person fettered with a logical mind might assume that a dwelling unit is either habitable or uninhabitable. As such, the calculation of damages would not be difficult. The rental would abate and the injured party would be entitled to recover out-of-pocket costs associated with the landlord's breach of the implied warranty of habitability. However, the courts have determined that it is possible for a partial inhabitability to occur. The theory is that when only a portion of the leased premises is not habitable, there would be a partial abatement of the tenant's rental obligation. Because a partial uninhabitability may occur, it is necessary to calculate damages.

There are three primary methods which may be used to calculate the portion of the rental that should be abated during a period of uninhabitability. The first method is the *fair market value* approach. This method of calculation is fairly simple. The damages are the difference between the fair rental value of the leased premises if fully tenantable and the value of the leased premises in their condition as partially uninhabitable.

The fair rental approach to damages assumes that there is a fair market value attached to the rental unit which is totally habitable and that there is a fair market rental for a dwelling unit that is only partially habitable. This reasoning was employed by the Superior Court when considering the issue of damages in the *Pugh v. Holmes* case.[46]

With the theory of bargaining, the contract rental between the landlord and tenant in the lease agreement may be some evidence of the fair rental value of the leased premises as a habitable dwelling unit. This theory would apply only if the assumption is accepted that the landlord and tenant freely bargain for the rental. The fair value of the leased premises with the defect or condition rendering the unit uninhabitable cannot be easily assumed. Extrinsic evidence outside the agreement must be used to provide the fair rental value of a partially uninhabitable unit.[47]

PRACTICAL CONSIDERATIONS:

In order for the tenant to prove the damages incurred by reason of the partial uninhabitability, the burden will be upon the tenant to prove the fair value without the defect or condition and the fair value of the leased premises with the defect or condition. This may involve the testimony of expert witnesses and statistical data about the rental market of which the leased premises is a part. This may be expensive if expert witnesses are required to testify in support of the tenant's position.

The second method of determining the tenant's damages is the *percentage reduction in use* method. The agreed-upon rental is assumed to be the value of the tenant's bargain and the percentage by which the dwelling unit has become uninhabitable is the percentage by which the contract rental should be reduced. This

46. *Pugh v. Holmes*, 384 A.2d 1234 (Superior Court decision).

47. *Id.*

method was adopted by the Supreme Court when it decided *Pugh v. Holmes*. The damages or rental abatement as the case may be will be based upon the percentage of use that is "lost" during a period of inhabitability. The burden would be upon the tenant to prove the percentage of the dwelling unit that is uninhabitable.

For tenants and their attorneys, the issue in each case will be the percentage of the leased premises that is lost. A square footage calculation would be applicable in cases where there has been a partial destruction of the leased premises. But with habitability, the issue is not square footage, but lost use. Lost use must be proved. Testimony of the tenant and family members will be helpful in establishing the scope of the uninhabitability. It would be important to establish that the deprivation of some important feature or aspect of the dwelling unit and the resulting impact upon the life, safety or health of the occupants. The attorney must be able to bridge the gap between a showing in court of the impact of the uninhabitability of the leased premises and an actual percentage in loss of use of the dwelling unit. It is not sufficient to show the loss of use and the inconveniences suffered and the risks assumed by the tenant. These facts must be translated through testimony into a percentage of loss of use. Without establishing a percentage of loss of use, the tenant might not be able to obtain either a rental abatement or damages for a partial refund of rental.

The percentage loss method of damage calculation has been approved by the court and it can be assumed that the tenant or the tenant's attorney should use this method rather than the fair rental method when defending a suit for rental or affirmatively trying to collect damages from a landlord.

A third method of calculation of damages includes the concept of fair rental value. This method assumes that the tenant is occupying the leased premises as a dwelling and not as a business. Therefore, the tenant will suffer inconvenience and annoyance that cannot be adequately compensated for through determining the loss of fair rental value. If the landlord breaches the implied warranty of habitability, it is true that the tenant suffers loss of all or a portion of what is being paid for use of the leased premises. However, because the leased premises is a habitation rather than a business, monetary calculations do not compensate the tenant adequately for annoyance and inconvenience. This method assumes a fair rental value loss by reason of the uninhabitability, but includes an additional consideration for the tenant's inconvenience and annoyance.

This "inconvenience and annoyance" method has *not* been accepted in Pennsylvania as an appropriate method of calculating damages for the landlord's breach of the implied warranty of habitability. However, this method has been recognized as a means of compensating a tenant for additional and more subjective damages caused by the landlord's breach.

PRACTICAL CONSIDERATIONS:

This third method is not yet recognized in Pennsylvania. However, there is logic to the position that the tenant cannot be adequately compensated solely by receiving a refund of the rental or a rental abatement. For example, if the dwelling unit has no hot water and the tenant must shower at the gymnasium of the nearby university, there may be no actual out-of-pocket cost involved. However, there is a clear inconvenience in being unable to cleanse oneself at home. There is no sound basis for assuming that the tenant is not entitled to some compensation for the inconveniences and annoyances of the landlord's breach of contract. Tenants and tenants' attorneys should not overlook the possibility that the Pennsylvania courts will recognize that additional damages incurred by the landlord's breach should be compensable other than a refund or abatement of all or a portion of the rental.

The Pennsylvania courts have not yet extended punitive damages to landlords who breach the implied warranty of habitability under a lease agreement. Punitive damages are damages awarded to an injured party, not as compensation of loss, but as punishment against the person perpetrating the wrong against the injured party. Punitive damages awards may also include the awarding of reasonable attorney's fees to the injured party. Punitive damages are used when required or permitted by statute or when the conduct of the one party is so malicious that civil punishment is appropriate.

§ 3.7 COVENANT OF QUIET ENJOYMENT.

One of the most important provisions of the lease agreement for the tenant is the covenant of quiet enjoyment. "Quiet Enjoyment" is a legal term which relates to the ability of the tenant to fully use and possess the leased premises without disturbance from the landlord or anyone acting for or through the landlord. The covenant of quiet enjoyment is either expressed in the lease agreement as the tenant's right or, in cases where it is not expressed, the covenant is implied by law. The implication of the covenant arises through words in the lease agreement such as "let" or "lease."[48] Every lease in Pennsylvania now includes the covenant of quiet enjoyment, either express or implied.[49] Therefore, even if the landlord and tenant do not specifically bargain for the tenant's covenant of quiet enjoyment, it is part of the lease agreement.

48. *Hamphill v. Eckfeldt*, 5 Whar. 274 (1840); *Minnich v. Kauffman*, 265 Pa. 321, 108 A. 597 (1919).

49. *Pollock v. Morelli*, 245 Pa.Super. 388, 369 A.2d 458 (1976).

instance] new issues of fact will be raised which will necessitate the taking of testimony before the propriety of the venue can be determined.

2 Goodrich-Amram 2d *Standard Pennsylvania Practice* § 1028(c): 2 (1976).

Moreover, in *Luria v. Luria*, 220 Pa.Super. 168, 286 A.2d 922 (1971), we were presented with a factually similar situation, in which the non-registered foreign corporation filed preliminary objections asserting lack of in personam jurisdiction. In that case, however, plaintiff alleged in their answer to preliminary objections the existence of sufficient contacts to render defendant amenable to jurisdiction in Pennsylvania, and the trial court overruled the preliminary objections on that basis. We vacated and remanded, holding that the lower court should have taken evidence before making the factual determination of jurisdiction. As in the present case, the order of the lower court was based upon its own view of controverted facts.

Similarly, in *Luitweiler v. Northchester Corp.*, 456 Pa. 530, 319 A.2d 899 (1974), our Supreme Court vacated an order sustaining preliminary objections to a class action, and remanded the case for a factual determination of the propriety of maintaining the suit as a class action. "When factual issues are created on preliminary objections, the trial court should resolve the dispute by receiving evidence thereon through interrogatories, depositions or an evidentiary hearing." 456 Pa. at 535, 319 A.2d at 902.

In the case before us, the Bank's preliminary objections described its activities narrowly, in the precise terms of the statutory exception. The Trustee, on the other hand, averred a much broader scope of banking and business activities within Pennsylvania, and attempted to prove his allegations by deposing the Bank's president. When the court below suppressed the notice of deposition pending resolution of preliminary objections, it precluded determination of the jurisdictional question raised upon preliminary objections.[4] Although we need not determine how the court should resolve the jurisdictional issue, we hold that it must evaluate the propriety of venue consistent with Rule 1028(c).

Accordingly, the order of the lower court sustaining preliminary objections is vacated, and the case remanded for proceedings consistent with this opinion.

WATKINS, former President Judge, did not participate in the consideration or decision of this case.

4. In suppressing the notice of deposition, the court below gave no reason for its action, stating only that the deposition "is prohibited until such time as a decision on the Preliminary Objections has been rendered by the Court." It may be helpful to note that Pa.R.C.P. 4007(a) permits taking of the deposition of any person regarding any matter relevant to the subject matter involved in the action which substantially aid in preparation of the pleadings or preparation or trial of the case. Furthermore, Pennsylvania has adopted the Uniform Interstate and International Procedure Act. Act of July 9, 1976, P.L. 586, No. 142, 42 Pa.C.S. §§ 5321–29 (1977).

Lewis FAIR and Grace Fair, Appellants,

v.

Alexander NEGLEY, Appellee.

Superior Court of Pennsylvania.

Argued Nov. 14, 1977.

Decided July 12, 1978.

Tenants brought action against landlord to recover for breach of implied warranty of habitability and intentional infliction of emotional distress. The Court of Common Pleas, Butler County, Civil Division, Law, at A.D. No. 76–534, Book 107, Page 344, Dillon, J., sustained landlord's demurrers, and tenants appealed. The Superior Court, No. 485 April Term, 1977,

Jacobs, President Judge, held that: (1) clause in rental agreement providing that premises were taken in "as is" condition and that tenants had knowledge of leak in roof did not constitute a waiver of implied warranty of habitability; purported waiver violated public policy and was ineffective, since such a waiver would be counter to statutory and regulatory provisions concerning public health and safety, record demonstrated disparity of bargaining power between landlord and tenant, the "as is" clause was a part of boiler plate lease agreement, and lease agreement, as written, imposed unreasonable burdens on persons ill equipped to assume such burdens, and (2) complaint sufficiently alleged cause of action against landlord for intentional infliction of emotional distress as result of landlord's alleged breach of implied warranty of habitability.

Reversed and remanded.

Spaeth, J., concurred specially and filed opinion.

Cercone, J., concurred in result.

Price, J., dissented and filed opinion in which Van der Voort, J., joined in part.

1. Landlord and Tenant ⇐125(1)

Implied warranty of habitability may be used as the basis for a complaint; just as with a counterclaim, standard contract remedies are available should tenants prove that landlord breached implied warranty of habitability. (Per Jacobs, P. J., with two Judges concurring, one Judge concurring specially, and one Judge concurring in result.)

2. Landlord and Tenant ⇐125(1)

For any time period during which finder of fact determines that leased premises were in an uninhabitable state, tenants may recover the difference between the amount of rent they paid and the reasonable rental value of premises; furthermore, tenants may recover any amount they spent on reasonable reparation and replacement in making the dwelling habitable. (Per Jacobs, P. J., with two Judges concurring, one Judge concurring specially, and one Judge concurring in result.)

3. Landlord and Tenant ⇐125(1)

If finder of fact determines that tenants' utility bills were excessive because of uninhabitable condition of leased premises, tenants may be reimbursed for amount paid in excess of what their utility bills should have been had the premises been habitable. (Per Jacobs, P. J., with two Judges concurring, one Judge concurring specially, and one Judge concurring in result.)

4. Landlord and Tenant ⇐125(1)

In order to succeed on complaint alleging breach of implied warranty of habitability, tenants must prove that they gave notice to landlord of defective conditions, that landlord had reasonable opportunity to correct the defects, and that he failed to do so. (Per Jacobs, P. J., with two Judges concurring, one Judge concurring specially, and one Judge concurring in result.)

5. Landlord and Tenant ⇐125(1)

Clause in rental agreement providing that premises were taken in "as is" condition and that tenants had knowledge of leak in roof did not constitute a waiver of implied warranty of habitability; purported waiver violated public policy and was ineffective, since such a waiver would be counter to statutory and regulatory provisions concerning public health and safety, record demonstrated disparity of bargaining power between landlord and tenants, the "as is" clause was a part of boiler plate lease agreement, and lease agreement, as written, imposed unreasonable burdens on persons ill equipped to assume such burdens. (Per Jacobs, P. J., with two Judges concurring, one Judge concurring specially, and one Judge concurring in result.)

6. Torts ⇐7

Complaint filed by tenants sufficiently alleged cause of action against landlord for intentional infliction of emotional distress as result of landlord's alleged breach of implied warranty of habitability. (Per Jacobs, P. J., with one Judge concurring, one Judge concurring specially, and one Judge concurring in result.)

Michael J. Kearney, Jr., Braddock, with him Matthew L. Vadnal, Butler, for appellants.

No appearance entered nor brief submitted for appellee.

Before WATKINS, President Judge, and JACOBS, HOFFMAN, CERCONE, PRICE, VAN der VOORT and SPAETH, JJ.

JACOBS, President Judge:

In the present action, Appellants Lewis and Grace Fair appeal the decision of the Court of Common Pleas of Butler County sustaining the demurrers of Appellee Alexander Negley to both counts of appellants' complaint. In asking us to reverse the trial court, appellants seek an extension of our recent decision to abolish the common law doctrine of *caveat emptor* as it applies to residential leases and to apply an implied warranty of habitability to all such leases. *Pugh v. Holmes*, —— Pa.Super. ——, 384 A.2d 1234 (1978). The two major issues raised by appellants are whether the implied warranty may be used as a basis for a complaint and whether the warranty may be waived by agreement of the parties to the residential lease. We hold that the implied warranty is a valid basis for a complaint and that the warranty may not be waived. Furthermore, we reverse the trial court's decision sustaining appellee's demurrer to the second count of appellants' complaint which alleged intentional infliction of emotional distress.

On March 12, 1974, appellants entered into a written rental agreement with appellee for a six room house in Butler, Pennsylvania. Appellants made rental payments of eighty dollars ($80.) per month until they vacated the premises in September, 1975. The clause in the agreement most at issue in this case stated that "premises taken in 'as is' condition, tenant knows the roof has a leak in the same, ..." Record at 10a and Appendix at 6.

Appellants filed a two count complaint against appellee. In the first count, they alleged that appellee breached the implied warranty of habitability on the rented premises; they sought reimbursement for all past rent paid ($1,560) and for excess water bills ($132) caused by appellee's failure to fix the defective water system. As examples of the alleged breach, appellants cited, *inter alia*, improper ventilation of a gas hot water heater and gas space heaters, lack of heat, falling plaster, defective electrical wiring, a malfunctioning water system, defective windows, broken porch steps and railings, and a leaking roof. Appellant's second count alleged that appellee had intentionally inflicted emotional distress upon them through his refusal to make the premises fit for human habitation; they sought $3,000 damages on the second count.

Appellee filed preliminary objections in the form of a demurrer to appellants' complaint. Argument was held on the demurrer and on January 12, 1977, Judge DILLON sustained appellee's demurrer and dismissed appellants' complaint with prejudice. This appeal followed.

[1-4] We reverse the trial court's action in sustaining appellee's demurrer to the first count and reinstate appellants' complaint. In *Pugh v. Holmes* we held that the implied warranty of habitability may be used as the basis for a defense or for a counterclaim. Here, we hold that the warranty also may be used as the basis for a complaint. Just as with a counterclaim, standard contract remedies are available should appellants prove that appellee breached the implied warranty of habitability. For any time period during which the finder of fact determines that the premises were in an uninhabitable state, appellants may recover the difference between the amount of rent they paid and the reasonable rental value of the premises. Furthermore, they may recover any amount they spent on reasonable reparation and replacement in making the dwelling habitable. Finally, if the fact finder determines that their utility bills were excessive because of the uninhabitable condition of the premises, they may be reimbursed for the amount paid in excess of what their utility bills

should have been had the premises been habitable. Of course, in order to succeed on their complaint, appellants must prove that they gave notice to appellee of the defective conditions, that appellee had a reasonable opportunity to correct the defects, and that he failed to do so. *Pugh v. Holmes*, —— Pa.Super. at ——, 384 A.2d at 1241 and cases therein cited.

[5] The major issue presented by this case is whether the implied warranty may be waived by agreement of the parties. In ruling on the "as is" clause in the lease the trial court adopted Section 2-316 of the Uniform Commercial Code and impliedly found that any warranty of habitability which may have existed had been waived. Act of April 6, 1953, P.L. 3, § 2-316 *as reenacted by* the Act of October 2, 1959, P.L. 1023, § 2, 12A P.S. § 2-316. That section states

> [U]nless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty . . . .

12A P.S. § 2-316(3)(a). While we recognize that our decision in *Pugh v. Holmes* declared that all leases are to be treated as contracts and while we recognize the necessity and value of the freedom to contract between parties, we do not find this language from the Uniform Commercial Code, designed to regulate dealings concerning the sale of goods, controlling in the area of landlord tenant law.[1]

Our initial decision to imply a warranty of habitability in residential leases was based primarily on four factors: the inability of tenants to adequately inspect or repair rental units, the disparity of bargaining power between landlord and tenant, the scarcity of housing in the Commonwealth, and the effect of uninhabitable dwellings on the public health and safety. We must now decide whether, despite the doctrine of freedom to contract, a waiver of the warranty would be so against public policy that it should not be permitted in residential leases.

Although "public policy" is a term which escapes easy definition, we agree with Comment (e) to Section 5.6 of the Restatement (Second) of Property which states that "An agreement or provision may be against public policy if it will materially and unreasonably obstruct achievement of a well defined . . . common law policy." The Restatement lists several factors to be considered in determining whether an agreement violates public policy. Upon consideration of those factors applicable to residential leases like the one here at issue, we hold that a waiver of the implied warranty of habitability does violate the public policy sought to be achieved by the warranty and that, therefore, the warranty may not be waived.

One factor is whether the agreement will be counter to statutory and regulatory provisions concerning public health and safety. As we noted in *Pugh v. Holmes*,

> [A]t least one court has found that the continued letting of "tumbledown" houses is ". . . a contributing cause of such problems as urban blight, juvenile delinquency and high property taxes for conscientious landowners." *Pines v. Perssion*, 14 Wis.2d 590, 596, 111 N.W.2d 409, 413 (1961).

—— Pa.Super. at ——, 384 A.2d at 1239. Furthermore, appellants here attached as

1. If we were to find the language of § 2-316 controlling here, we would find § 2-302 of the Uniform Commercial Code to be controlling, as well. Section 2-302 states that

> If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

The Act of April 6, 1953, P.L. 3, § 2-302, *as reenacted by* the Act of Oct. 2, 1959, P.L. 1023, § 2, 12A P.S. § 2-302(1). On the basis of § 2-302, we would find the "as is" clause of the lease to be an unconscionable and ineffective waiver.

an exhibit to their complaint a "Notice of City Ordinance Violation" from the Housing Code Enforcement Office of Butler, Pennsylvania to appellee/landlord. The Notice listed seven (7) major defects in the rental premises found by the Code Enforcement Office and ordered to be remedied by appellee. Record at 12a. It is clear that if we were to enforce the alleged waiver of the implied warranty of habitability in this case, we would lend support not only to obvious violations of Butler ordinances but also to a situation hazardous to the public health and safety.

A second factor for consideration is the relative strength of the bargaining power held by the respective parties. The Courts of our Commonwealth have recognized that tenants in general have little or no bargaining power. In *Reitmeyer v. Sprecher,* the Supreme Court stated,

> [M]ost frequently today the average prospective tenant vis-a-vis the prospective landlord occupies a disadvantageous position. Stark necessity very often forces a tenant into occupancy of premises far from desirable and in a defective state of repair. The acute housing shortage mandates that the average prospective tenant accede to the demands of the prospective landlord as to conditions of rental, which, under ordinary conditions with housing available, the average tenant would not and should not accept.
>
> No longer does the average prospective tenant occupy a free bargaining status and no longer do the average landlord-to-be and tenant-to-be negotiate a lease on an "arm's length" basis. Premises which, under normal circumstances, would be completely unattractive for rental are now, by necessity, at a premium. If our law is to keep in tune with our times we must recognize the present day inferior position of the average tenant vis-a-vis the landlord when it comes to negotiating a lease.

431 Pa. 284, 289–90, 243 A.2d 395, 398 (1968). In discussing a lease clause which would exculpate a landlord from liability for personal injury, a situation analogous to waiving the implied warranty of habitability, the Court said,

> The exculpatory clause is today contained in every form lease and, understandably enough, landlords are unwilling to strike therefrom that provision which strongly favors them. Thus it is fruitless for the prospective tenant of an apartment to seek a lease having no exculpatory clause. The result is that the tenant has no bargaining power and must accept his landlord's terms. There is no meeting of the minds, and the agreement is in effect a mere contract of adhesion, whereby the tenant simply adheres to a document which he is powerless to alter, having no alternative other than to reject the transaction entirely. It is obvious that analysis of the form lease in terms of traditional contract principles will not suffice, for those rules were developed for negotiated transactions, which embody the intention of both parties. [Citation omitted.]

Galligan v. Arovitch, 421 Pa. 301, 304, 219 A.2d 463, 465 (1966). *See also Commonwealth v. Monumental Properties, Inc.,* 459 Pa. 450, 474–75, 329 A.2d 812, 824 (1974), and *Klein v. Allegheny County Health Department,* 441 Pa. 1, 7, 269 A.2d 647, 651 (1970) for discussions of the housing shortages in the Commonwealth.[2]

2. Even assuming that some tenants may possess limited bargaining power, courts have determined that the public policy behind the implied warranty of habitability is more important than any negotiated waiver of the warranty. In at least one case, a court has found that knowledge of the defective conditions and reduced rent are inadequate bases for waiving the implied warranty:

> It can be argued, however, that the defendant should not be entitled to the protection of an implied warranty of habitability since he knew of a substantial number of defects when he rented the premises and the rent was reduced from $87 per month to $50 per month. We believe this type of bargaining by the landlord with the tenant is contrary to public policy and the purpose of the doctrine of implied warranty of habitability. A disadvantaged tenant should not be placed in a position of agreeing to live in an uninhabitable premises. Housing conditions, such as the record indicates exist in the instant case, are a health hazard, not only to the individual tenant, but to the community which is exposed to said individual.

Foisy v. Wyman, 83 Wash.2d 22, 28, 515 P.2d 160, 164 (1973).

A review of the rental agreement in this case gives further support to these particular tenants' lack of bargaining power. Not only did the appellants agree to rent a house with a leaking roof, but also

> as a security for the payment of all rent falling due under this lease [appellants grant all right] to the lessor [in] *all the household and kitchen furniture, and all property, good and merchandise of the lessee upon the premises, or to be brought thereon, without any exceptions.* (Emphasis added.)

Record at 8a and Appendix at 6. Furthermore, the lease contained a clause granting appellee the right to enter a confessed judgment against appellants for any unpaid rent, or for breach of any of the covenants of the lease. Record at 9a–10a and Appendix at 6. In return for giving up substantially all of their rights as tenants, including the rights to sublet or assign without appellee's permission or to prevent appellee from entering onto the property without their permission, appellants received an uninhabitable dwelling place. A clearer case of disparity of bargaining power and disadvantage to the tenant would be difficult to imagine.

Were we to permit waiver of the implied warranty by an express provision in the lease, it would be a rare lease in which the waiver would not appear. As with the exculpatory clause, few, if any, tenants would be able to find housing on which the warranty had not been waived. To allow such wholesale, unbargained for waiver would make the implied warranty of habitability meaningless.

The third criterion is whether the provision is part of "an unduly harsh and unreasonable standard, 'boilerplate' lease document . . . ." A copy of the lease, as it appears in the reproduced record, is, in essence, boilerplate. The only provisions not in standard style and size of type in the lease are the names of the parties, the date, the address, the rental amount, and the "as is" clause. It is clear, then, that these are the only provisions upon which any negotiations *could* have taken place. In most cases, including this one, it would be unreasonable and unconscionable for a landlord and tenant to voluntarily negotiate for a tenant to live in uninhabitable housing. The "as is" clause, therefore, must be viewed simply as a part of the boilerplate lease agreement.

The final consideration applicable, here, is whether the agreement imposes unreasonable liabilities or burdens on persons financially ill equipped to assume the burdens or on persons without significant bargaining power. Such is certainly the case, here. There is no doubt that appellants were burdened by the attempted waiver of the habitability warranty. In addition, the printed lease form provided that appellants would pay for "[a]ny damage to building, fixtures, water or gas pipes, during the term of this lease . . . ." Not only, then, did appellee try to avoid having to rent a habitable house but also attempted to have appellants, without finances or bargaining power, maintain the premises after they rented them.

After considering the bases for our decision in *Pugh v. Holmes,* the public policy sought to be advanced by the implied warranty of habitability, and the factors to be employed in determining whether an agreement violates public policy, we can conclude only that an attempted waiver of the implied warranty of habitability in residential leases is unconscionable and must be held to be ineffective. Therefore, waiver is not a valid defense to a complaint based upon the warranty.

[6] Finally, appellants allege that the trial court erred in sustaining appellee's demurrer to count two of their complaint which alleged intentional infliction of emotional distress. We agree and, therefore, reverse the court's ruling on the demurrer.

As defined by Section 46 of the Restatement (Second) of Torts,

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

While we refuse to hold that a breach of the implied warranty of habitability constitutes intentional infliction of emotional distress as a matter of law, we do hold that appellants have the right to allege and to try to prove that appellee, by breaching the warranty, has intentionally inflicted emotional distress upon the appellants. At least one other court has reached a similar conclusion in the context of a landlord/tenant case. *Aweeka v. Bonds*, 20 Cal.App.3d 278, 97 Cal.Rptr. 650 (1971). The Restatement (Second) of Torts also notes that land lords previously have been held liable for intentional infliction of emotional distress "for extreme abuse of their position." § 46, comment (e).

"Preliminary objections in the nature of a demurrer should be sustained only where it appears with certainty that upon the facts averred the law will not permit the plaintiff to recover." *Papieves v. Kelly*, 437 Pa. 373, 381, 263 A.2d 118, 122 (1970). Upon reviewing the record in this case, we find that appellants alleged sufficient facts in both counts of their complaint to overcome a ruling against them as a matter of law. Accordingly, we reverse the ruling of the lower court, reinstate appellants' complaint, and remand this case for proceedings consistent with this opinion.

VAN der VOORT, J., joins this opinion as to Count I.

CERCONE, J., concurs in the result.

SPAETH, J., files a concurring opinion.

PRICE, J., files a dissenting opinion, in which VAN der VOORT, J., joins as to Count II.

WATKINS, former President Judge, did not participate in the consideration or decision of this case.

SPAETH, Judge, concurring:

I join in the majority opinion. I do not understand it, however, to preclude a bona fide agreement whereby parties of equal bargaining power shift the obligation to render the leased premises habitable. For example, suppose a landlord has obtained residential zoning for the use of loft space. It should not, I think, be impossible for the landlord and a prospective tenant to agree that for a reduced amount of rent, the tenant, rather than the landlord, will make such agreed upon improvements as are necessary to make the premises fit for human habitation. The enforcibility of such an agreement would depend upon a showing of a bona fide understanding, between parties of equal bargaining power, that such improvements will in fact be made. In such circumstances the landlord's obligation to ensure compliance with the warranty would remain in full effect; the agreement would merely shift the obligation of performance of the agreed terms.

PRICE, Judge, dissenting.

Once again, the majority has elected to make a significant change in landlord-tenant law in this Commonwealth in order, in its opinion, to remedy inadequacies in today's residential housing. I dissent for the reasons stated in my dissenting opinion in *Pugh v. Holmes*, ––– Pa.Super. –––, 384 A.2d 1234 (1978).

The law in Pennsylvania has always been that while a landlord may expressly covenant premises as tenantable, there is no implied warranty to that effect, and the landlord has no ongoing duty of repair. *Lopez v. Gukenback*, 391 Pa. 359, 137 A.2d 771 (1958). The majority, however, has deemed it appropriate to adopt an implied warranty of habitability in residential leases. I adhere to my conviction that responsibility for such a change, if it is to be made, rests with the legislature, so that exact standards may be formulated and a rent-withholding mechanism may be established. I can foresee several problems which the *Pugh* majority did not intend, but which will inevitably flow from this court's

adoption of an implied warranty of habitability in residential leases. The purpose of that decision was to reduce the shortage of decent dwellings available, particularly to low income tenants. Most assuredly, the cost of repairs will be passed on to the tenant through increased rent. But a more detrimental result of *Pugh* is that many owners of marginal housing may deem the cost of repairs too substantial and the return on investment too questionable, and they will opt to close dwellings, thereby compounding the housing problem.

Beyond that, I find the further extension of the *Pugh* case by the majority absolutely offensive to contract principles. *Pugh* maintained that a lease should be viewed as a contract, and that the covenants of the two parties thereto must be read as dependent. Yet in this case, the court ignores the contractual provisions of the agreement into which the two parties entered. One clause of the lease provides: "Premises taken in as is condition, tenants know the roof has a leak in the same."

The Uniform Commercial Code, Section 2–316(3)(a) provides:

> "[U]nless the circumstances indicate otherwise, all implied warranties are excluded by expressions like 'as is,' 'with all faults' or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty . . . ."[1]

The majority declares that "an attempted waiver of the implied warranty of habitability in residential leases is unconscionable and must be held to be ineffective." (Majority opn. at 245). Although Article 2 of the Uniform Commercial Code covers only the sale of goods, the freedom of contract which it recognizes in such transactions should likewise be acknowledged in the landlord-tenant relationship, which the majority has dubbed a contractual one. One should be free to bargain for premises of lesser quality to secure housing at a cheaper cost, if that is desired. At the very least, appellants in this case should not be entitled to any relief for alleged damages attributable to the leaking roof, a defect specified in the contract and accepted by appellants from the start of their tenancy. Instead, the majority is holding that as a matter of law, no waiver of the implied warranty of habitability will be upheld by our courts.

An additional problem which I have with the majority's decision in the instant case is that the complaint fails to allege notice to the landlord of the defects or the passage of a reasonable time after notice to permit repairs. Appellants' complaint states:

> "7. The majority of the above defects were reported to the Defendant, Alexander Negley, as violations of the City Ordinances. (A copy of the notice is attached hereto and made a part hereof as 'Exhibit B')."

The attached exhibit is a memorandum from the Housing Code Enforcement Office of Butler, Pennsylvania, enumerating several violations of city ordinances. This notice is dated September 5, 1975. Appellant's complaint alleged that conditions rendering the leased premises uninhabitable entitled them to recovery of all rent which they paid from the inception of the lease, on March 12, 1974, through September, 1975, when they vacated the premises.[2] Even if the implied warranty is applied in this case, the complaint indicates that appellee received no notice of the complained of conditions until September. Thus, he cannot reasonably be held liable for breaching a warranty which requires that the tenant give notice and allow a reasonable time for repairs. The complaint thus fails to allege a cause of action against the landlord, and a demurrer was properly sustained.

Appellants' second contention is that the lower court erred in sustaining the landlord's demurrer to count two of their complaint which alleged intentional infliction of

1. The Act of April 6, 1953, P.L. 3, § 2–316, *as reenacted by* the Act of October 2, 1959, P.L. 1023, § 2 [12A P.S. § 2–316].

2. The complaint does not indicate the exact date on which appellants moved from the premises, but it does state that it was during September.

emotional distress. It is on the basis of the Restatement (Second) of Torts, Section 46, that the majority reverses the lower court's ruling. That section provides:

"(1) One who by *extreme and outrageous conduct* intentionally or recklessly causes *severe emotional distress* to another is subject to liability for such emotional distress. . . ." (Emphasis added).

As recognized in the comments following Section 46, intentional infliction of mental distress is a tort that has not enjoyed very rapid acceptance or enlargement. It is very difficult to prove. Still, in cases in which conduct could be labeled extreme or outrageous, a cause of action has been recognized. In this regard, Comment (d) provides in part:

"It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."

Comment (d) further recognizes that:

"The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."

Regarding the degree of emotional harm necessary to a finding of intentional infliction of emotional distress, Comment (j) provides in part:

"Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and duration of the distress are factors to be considered in determining its severity."

One of the chief difficulties in recovering under Section 46 is establishing that the alleged tortfeasor acted with specific intent to cause emotional distress. *See Forster v. Manchester,* 410 Pa. 192, 189 A.2d 147 (1963). The leasing of low income housing is generally necessitated by the need of indigents and is prompted by landlords' economic interests; it is not motivated by the intent to cause tenants emotional distress. Further, I find the assertion that failure to repair in the landlord-tenant situation constitutes severe and outrageous conduct to be without merit. Such conduct does not rise to the level of other reprehensible actions for which a cause of action has been recognized. *E. g., Papieves v. Kelly,* 437 Pa. 373, 263 A.2d 118 (1970) (parents have cause of action for intentional mishandling of body of deceased son). Additionally, in the instant case, the implied warranty which the majority would read into every residential lease has been disclaimed. Therefore, the landlord had no duty to make the necessary repairs of which appellants complain. From the face of the complaint it is clear that the landlord did not even have notice of the desired repairs until September 5, 1975. It is therefore inconceivable that he was intentionally inflicting emotional distress upon appellants when he did not realize their alleged plight during the months for which appellants seek relief.

The majority cites *Aweeka v. Bonds,* 20 Cal.App.3d 278, 97 Cal.Rptr. 650 (1971), in which the court held that the plaintiff had stated a cause of action by claiming punitive damages for eviction and intentional infliction of emotional distress. I concur in the assessment of Justice Kane, who wrote in his dissent:

"At a time when the judicial system is laboring under a load which includes an inordinate quantity of needless, and often frivolous, vexatious litigation, the effect of the majority's decision is to create yet another breeding ground." *Id.* at 283, 97 Cal.Rptr. at 653.

I would affirm the ruling of the lower court.

VAN der VOORT, J., joins this opinion as to Count II.

Vincent H. SMITH, Jr., an Individual, Appellant,

v.

PORT AUTHORITY TRANSIT.

Superior Court of Pennsylvania.

Argued April 13, 1978.

Decided July 12, 1978.

Motorist sued to recover for injuries sustained when his vehicle was struck by bus and forced into oncoming traffic lane. The Court of Common Pleas, Civil Division, Allegheny County, No. 1203 October Term, 1974, Flaherty, O'Malley and Davis, JJ., entered judgment on jury verdict for defendant and plaintiff appealed following denial of motions for judgment non obstante veredicto and for new trial. The Superior Court, No. 708 April Term, 1977, Hoffman, J., held that: (1) plaintiff, who was proceeding in passing lane and who stayed in such lane when he noticed that following bus, which was in driving lane, was accelerating rapidly, had right to assume that bus driver would act reasonably and prudently and was not required to anticipate that bus would swerve into his lane, and (2) absent testimony that motorist was speeding, that he failed to exercise proper vigilance, that he failed to prevent unavoidable accident or in any other way failed to exercise due care, it was error to submit contributory negligence issue to jury.

Reversed and remanded for new trial.

Price, Spaeth and Hester, JJ., dissented.

1. Appeal and Error ⚿230, 883

Argument that since there was no evidence of contributory negligence it was error to submit the issue to the jury was not waived on ground that it was not raised before jury retired where not only did trial court acquiesce in delayed objection, as did defendant, but the court invited further objection by either counsel. Pa.R.C.P. No. 227, 42 Pa.C.S.A.

2. Automobiles ⚿244(44)

Where motorist who was proceeding in passing lane at posted speed limit noted that following bus, which was in driving lane, was accelerating rapidly and motorist maintained a constant speed, the motorist, whose car was struck when bus changed lanes, could not be found contributorily negligent where there was no testimony that he was speeding, that he failed to exercise proper vigilance, that he failed to prevent an avoidable accident or in any other way failed to exercise due care prior to the accident. 75 P.S. § 1009, Act April 29, 1959, P.L. 58.

3. Automobiles ⚿244(44)

Motorist, who was driving in passing lane and who stayed in that lane when he noticed that following bus, which was in driving lane, was accelerating rapidly had right to assume that bus driver would act reasonably and prudently; motorist, whose vehicle was struck by bus when it changed lanes in front of him, was not required to anticipate the bus driver's negligence. 75 P.S. § 1009, Act April 29, 1959, P.L. 58.

William M. Wycoff, Pittsburgh, with him Thorp, Reed & Armstrong, Pittsburgh, for appellant.

Leo Daniels, Pittsburgh, for appellee.

Before JACOBS, President Judge, and HOFFMAN, CERCONE, PRICE, VAN der VOORT, SPAETH and HESTER, JJ.

HOFFMAN, Judge:

Appellant argues that the trial court erred in submitting the issue of his contributory negligence to the jury. We agree and, therefore, reverse and remand for a new trial.

On July 29, 1974, appellant filed a complaint in trespass against appellee; he sought to recover for injuries sustained during a motor vehicle accident. At a jury trial in Allegheny County Court of Common

PRE-TRIAL STATEMENT

May 3, 2005

TO: Clearfield County Courthouse
Office of Court Administrator
(814) 765-7649 fax

James A. Naddeo
Attorney for Plaintiff
(814) 765-8142 fax

Joseph Colavecchi, Esquire
ARBITRATOR
(814) 765-4570 fax

J. Richard Lhota, Esquire
ARBITRATOR
(814) 765-9503 fax

Christopher E. Mohney, Esquire
ARBITRATOR
(814) 375-1088 fax

All above numbers are fax numbers as I have been waiting for information that I still have not received. Therefore, I am faxing my intentions of what I want to present and I have to continue to push to get the information I have requested.

Kenneth C. Lezzer, t/d/b/a :
Lezzer Enterprises :
:
vs. : No. 04-1090-CD
:
Robin A. Royer :

Arbitration hearing set for 9:00 A.M., May 10, 2005, at Clearfield County Courthouse.

Local Rule 1306A – Pre-trial Statement

a. Defendant did indeed Lease property at 32 Overlook Drive, DuBois, PA. Said Lease was for a period of six (6) months while building a new home. Mr. Lezzer was notified of the problem of Defendant and Defendant's daughters with allergies and the extensive problem they were having since moving to the apartment.

A copy of the letter written by Defendant on May 3, 2004 and marked Exhibit "A" is attached and pretty much sums up the rest of the problem in this case.

"Clean hands" has been demonstrated by the Defendant placing all rental monies into "ESCROW" allowing for time for the Plaintiff to do the correct repairs and make condo habitable (See pg. 193 Legal Issues §3.6d "Purdon's PA. Consolidated Statutes") Copies of the checks deposited into a separate "Escrow" account are also attached.

The report from Harris Environmental, Inc. is attached and I am still waiting on the health risks posed by the various spores found. The one report I have available at the present time is the Stachybotrys spore. It, in itself, is very dangerous. You will also note in the report on the second page that Mr. Sowl indicates that it is considered a source of potential human health risk. It could be found in the air conditioning/HVAC ductwork or system, including a dehumidifier. Yet Mr. Lezzer had three dehumidifiers placed in the condo and states that they would resolve the problem in his letter of June 19, 2004 and marked "Exhibit D". According to the report, this could be the "SOURCE" of the problem. The report on Stachybotrys states on page 4 that "<u>moldy homes are not healthy</u> homes" which means any type of mold; not just Stachybotrys.

As indicated, I am in the process of obtaining reports on all the other spores that were found in the inspection process.

Mr. Lezzer states in his letter that the basement is <u>not</u> intended to be used as living space. Again, please refer to Exhibit D. BUT, note on "Exhibit E" that the listing is represented and it states that the condo has a finished basement. Anyone knows that a finished basement means that it should be able to be used for living space whether it be extra guest room, rec. room, etc.

Therefore, we are asking for the $412.00 for the inspection by Harris Enviromental, Inc., as well as her Security Deposit of $825, $825.00 paid to Coldwell Banker for commission for renting the apartment, all rental monies previously paid and monies in Escrow as well as what court feels fair and equitable for reimbursement on the monthly electric bill for the additional expense of running the dehumidifiers. If the court sees fit, it would be appreciated if an amount was allowed for replacement of many personal items that were disposed of due to the odor. No receipt are available as the items were disposed of and many have not been replaced as yet. Ms. Royer would also request a sum of $750.00 for reimbursement to her Mother for copying expenses, time in research, preparation of documents and attendance at the hearing (time and mileage from Mt. Pleasant, PA.), misc. other expenses such as long distance phone calls, etc.

b. The following cases will be submitted as example to show why the court should find in favor of the Defendant: Research done through "Purdon's PA. Consolidated Statutes" :

Fair v. Negley
Pa.Super., 390 A.2d240 (1977)

Pugh v. Holmes
Pa.Super., 384 A.2d 1234 (1978)

Reitmeyer v. Sprecher

Aweeka v. Bonds
20 Ca. App.3d 278, 97 Cal.Rptr. 650 (1971)

Burr v. Callwood
374 Pa.Super, 502, 543 A.2d583 (1988)

Pollock v. Morelli
245 Pa.Super 388, 369 A.2d 458 (1976

Restatement (Second) of Torts
Section 46

Uniform Commercial Code
Section 2-316(3)(a) as well as any other
Applicable Sections

In the process of obtaining the
Housing Code Enforcements

Also all information is being obtained regarding the effects of the various molds, etc. found by the inspector of the premises and information from the Pennsylvania Department of Health.

Most of the cases above refer to habitability and implied warranties.

c. No witnesses will be called.

d. Damages and copies of bills are not included as explained in part "a". Checks, money paid to Harris, etc. are all included as stated in part "a".

Hopefully this Pre-Trial Statement is appropriately completed. This is the first time that I have done such a thing and I normally would not do it for any one person but this is my only child (my daughter) and I am only assisting family. My paralegal certificate will not be used to do anything for other people as they will have to hire an attorney. I'm only a glorified secretary.

Respectfully Submitted,

Jackie Rafferty

Jackie Rafferty
164 Rock Pool Road
Acme, PA. 15610

(724) 542-9005
(724) 542-9716 fax
(412) 582-9536 cell
(724) 430-1253 work
c/o Clerk of Courts of
Fayette County

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20823
NO: 04-1092-CD

PLAINTIFF: WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNYSLVANIA HOUSING FINANCE AGENCY

vs.

DEFENDANT: NICHOLAS R. GRAY AND ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI

Execution REAL ESTATE

SHERIFF RETURN

DATE RECEIVED WRIT: 12/8/2004

LEVY TAKEN @

POSTED @

SALE HELD

SOLD TO

SOLD FOR AMOUNT PLUS COSTS

WRIT RETURNED 8/25/2008

DATE DEED FILED **NOT SOLD**

FILED
o/12:00 lm
AUG 25 2008
LM
William A. Shaw
Prothonotary/Clerk of Courts

DETAILS

@ SERVED NICHOLAS R. GRAY

DOCKETED ONLY. CHECKS RETURNED VOIDED

@ SERVED ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI

DOCKETED ONLY. CHECKS RETURNED VOIDED.

@ SERVED

NOW, FEBRUARY 15, 2005, FAXED ATTORNEY'S OFFICE INFORMED THEM THE PROPERTY WENT TO SALE ON THE FIRST WRIT ISSUED IN SEPTEMBER OF 2004.

@ SERVED

NOW, AUGUST 25, 2008 RETURN WRIT AS DOCKETED ONLY. THE PROPERTY SOLD ON THE FIRST WRIT ISSUED BY THE ATTORNEY'S OFFICE IN SEPTEMBER 2004.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20823
NO: 04-1092-CD

PLAINTIFF: WACHOVIA BANK NATIONAL ASSOCIATION F/K/A FIRST UNION NATIONAL BANK AS TRUSTEE FOR PENNYSLVANIA HOUSING FINANCE AGENCY

vs.

DEFENDANT: NICHOLAS R. GRAY AND ANGELA L. GRAY A/K/A ANGELA L. BARBAZZENI

Execution REAL ESTATE

SHERIFF RETURN

SHERIFF HAWKINS

SURCHARGE PAID BY

So Answers,

Chester Hawkins
by Cynthia Butler-Aughenbaugh

Chester A. Hawkins
Sheriff

WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION – LAW

Wachovia Bank National Association f/k/a
First Union National Bank as Trustee for
Pennsylvania Housing Finance Agency

Vs. NO.: 2004-01092-CD

Nicholas R. Gray and
Angela L. Gray a/k/a Angela L. Barbazzeni

TO THE SHERIFF OF CLEARFIELD COUNTY:

To satisfy the debt, interest and costs due WACHOVIA BANK NATIONAL ASSOCIATION f/k/a First Union National Bank as Trustee for PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff(s) from NICHOLAS R. GRAY and ANGELA L. GRAY a/k/a Angela L. Barbazzeni, Defendant(s):

(1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
See Attached Description

(2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:

Garnishee(s) as follows:
and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;

(3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.

AMOUNT DUE:.....................................**$47,301.22**	PAID:...**$145.00**
INTEREST per diem of $6.45 to 3/1/05:...**$2,537.64**	SHERIFF: $
PROTH. COSTS: $	OTHER COSTS: $
ATTY'S COMM: $	LATE CHARGES ($9.62 per mo. to 3/1/05):..**$250.50**
PROPERTY INSPECTIONS:....................**$3,037.02**	ESCROW DEFICIT:.......................................**$830.09**
5% ATTY'S COMMISSION:...................**$1,935.52**	DATE: December 8, 2004

William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this 8th day
of December A.D. 2004
At 3:00 A.M./P.M.

Chester A. Hawkins
Sheriff by Cynthia Butler-Aughenbaugh

Requesting Party: Leon P. Haller, Esq.
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

ALL that certain lot or piece of land situate in the Village of Penfield, Huston Township, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a post in the South line of the State Highway at a point 15 feet Westerly from the Northwest corner of land of Annie M. Lowell;

THENCE along said Highway South 51° West 80 feet to a post near a white oak;

THENCE South 39° East 610 feet, more or less, to a post in the Southern line of the tract of which this piece was a part;

THENCE North 15° East about 8 feet to a corner of R.F. Horning;

THENCE North 30 ½ ° West 379 feet, more or less, to a post;

THENCE Easterly, 10 or 12 feet, to lands of Lowell;

THENCE Northerly along the Lowell lands, 228 feet to the place of beginning.

CONTAINING sixty-five one-hundredths (65/100) of an acre, be it more or less.

BEING identified as Tax Parcel Number 119-G2-80.

SUBJECT TO all exceptions, reservations, conditions, restrictions, easements and rights-of-way as fully as the same are contained in all prior deeds, instruments or writings or in any other manner touching or affecting the premises hereby conveyed.

HAVING THEREON ERECTED A DWELLING HOUSE KNOWN AS: RR1, BOX 159 MAIN STREET PENFIELD, PENNSYLVANIA 15849

BEING THE SAME PREMISES WHICH Cheryl K. Caliari, by Deed dated 6/20/01 and recorded 6/25/01 as Clearfield County Instrument Number 200109660, granted and conveyed unto Nicholas R. Gray and Angela L. Barbazzeni.

Assessment # 119-G02-80

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

Sheriff's Office
Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

CHESTER A. HAWKINS
SHERIFF

ROBERT SNYDER
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

YOU CAN WUN, BUT YOU CAN'T HIDE!

DATE FAXED: FEBRUARY 15, 2005

TO: BARB

FROM: CINDY

FAX#: (717)234-1206

FAX#:

PHONE#:

PHONE#:

NUMBER OF PAGES INCLUDING COVER SHEET: 2

MESSAGE: This property went to sale on the first Writ issueddin September. I need you to discontinue this writ with the Prothonotary's Office and give me a copy so I can return the writ. Thank You.