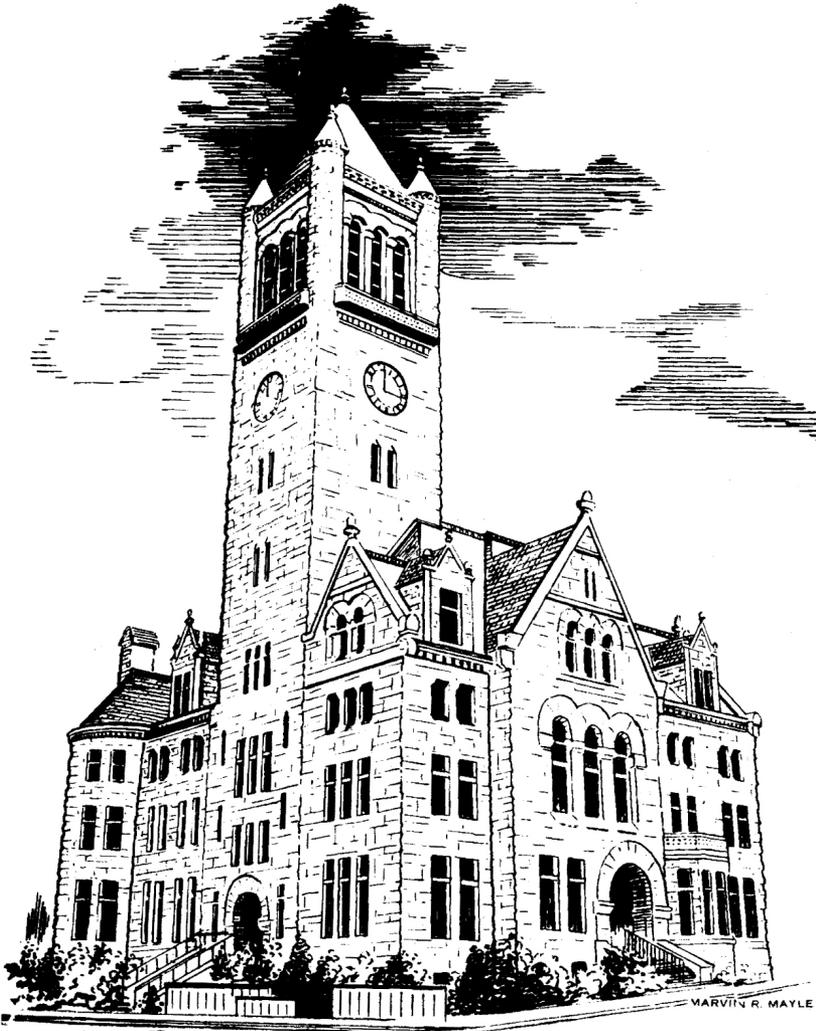


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

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## ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

### Third Publication

**CHARLES R. NEWELL**, late of South Union Township, Fayette County, PA (3)

*Executor:* Charles O. Newell  
38 Woodlawn Street  
Uniontown, PA 15401  
c/o 310 Grant Street, Suite 1109  
Pittsburgh, PA 15219  
*Attorney:* Rosalie P. Wisotzki

**VERA M. ROGERS**, late of North Union Township, Fayette County, PA (3)

*Personal Representative:*  
Barbara Jean Rozgony  
c/o George Port & George  
92 East Main Street  
Uniontown, PA 15401  
*Attorney:* G.T. George

**SUE A. THOMAS, A/K/A SUE ANN THOMAS**, late of German Township, Fayette County, PA (3)

*Personal Representative:*  
Herbert G. Thomas, III  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

## Second Publication

**SAM BILL, JR. a/k/a SAMUEL J. BILL, JR., a/k/a SAMUEL JOSEPH BILL, JR.**, late of Redstone Township, Fayette County, PA (2)

*Personal Representative:* Patricia Ann Bill  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

**PAUL M. GABELT**, late of Bullsken Township, Fayette County, PA (2)

*Executrix:* Carolyn W. Maricondi  
c/o P. O. Box 760  
Connellsville, PA 15425  
*Attorney:* Carolyn W. Maricondi

**CAROL ANN MIHALLIK, a/k/a CAROL A. MIHALLIK**, late of Masontown, Fayette County, PA (2)

*Executrix:* Andrea Sue Mihallik  
c/o Zebley Mehalov & White, P.C.  
18 Mill Street Square  
P.O. Box 2123  
Uniontown, PA 15401  
*Attorney:* Daniel R. White

**WILMA JEAN ORBASH, a/k/a WILMA J. ORBASH**, late of South Union Township, Fayette County, PA (2)

*Executor:* Vaughn J. Orbash  
c/o Radcliffe & DeHaas, L.L.P.  
2 West Main Street, Suite 700  
Uniontown, PA 15401  
*Attorney:* William M. Radcliffe

**MARY LOU SHEPLER**, late of Washington Township, Fayette County, PA (2)

*Executor:* Kenneth L. Shepler  
135 Shepler Lane  
Fayette City, PA 15438  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

## First Publication

**JOANN ALTOMONTE**, late of Hiller, Fayette County, PA (1)

*Administratrix:* Stephanie Altomonte  
739 Shady Drive  
Pittsburgh, PA 15228  
c/o 1322 Fifth Avenue  
Corapolis, PA 15108  
*Attorney:* Max C. Feldman

**RAYMOND SCOTT BARNHART, a/k/a RAYMOND S. BARNHART, a/k/a SCOTT BARNHART**, late of Connellsville, Fayette County, PA (1)

*Executrix:* Brenda Barnhart  
c/o Casini & Gebig, LLC  
615 West Crawford Avenue  
Connellsville, PA 15425  
*Attorney:* Jennifer M. Casini

**MARGARET BROESICKE**, late of Uniontown, Fayette County, PA (1)

*Executor:* Han-Joachim Broesicke  
2320 Bill Howard Place  
El Paso, TX 79936  
c/o 189 West High Street  
Waynesburg, PA 15370  
*Attorney:* J. William Hook

**IRENE P. DEMARCHI**, late of Bullskin Township, Fayette County, PA (1)

*Personal Representative:*  
Kimberly A. DeMarchi  
c/o 17 North Diamond Street  
Mount Pleasant, PA 15666  
*Attorney:* Marvin D. Snyder

**FRANK J. KOPOSKO**, late of North Union Township, Fayette County, PA (1)

*Personal Representatives:* Brenda L. Kopusko and Christine D. Dayton  
c/o George Port & George  
92 East Main Street  
Uniontown, PA 15401  
*Attorney:* Joseph M. George

**DAVID E. MARSHALL**, late of LaBelle, Fayette County, PA (1)

*Administrator:* Cynthia Marshall  
1041 LaBelle Road  
LaBelle, PA 15450  
c/o Phillips, Phillips & Smith-DeLach, P.C.  
29 East Beau Street  
Washington, PA 15301  
*Attorney:* William D. Phillips

**ANN MURPHY, a/k/a ANN CARYL MURPHY**, late of Jefferson Township, Fayette County, PA (1)

*Executor:* William F. Lilley  
c/o Adams & Adams  
55 East Church Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Jason F. Adams

**DELORES REKRUT**, late of Menallen Township, Fayette County, PA (1)

*Executor:* Thomas W. Hunter  
c/o 99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert A. Gordon

**JOHN M. RELOVSKY, a/k/a JOHN M. RELOVSKY, SR.**, late of Luzerne Township, Fayette County, PA (1)

*Executor:* John M. Relovsky, Jr.  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**RICHARD VARGO**, late of Luzerne Township, Fayette County, PA (1)

*Co-Executors:*  
Kathleen Rowe and Angela Stiner  
c/o 99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert A. Gordon

**MARY JO ZAGAR**, late of Perryopolis  
Borough, Fayette County, PA (1)  
*Executor:* Edward A. Barker, Jr.  
15201 Grace Place  
Waterford, VA 20197  
c/o Shire Law Firm  
1711 Grand Boulevard  
Park Centre  
Monessen, PA 15062  
*Attorney:* Mark J. Shire

## LEGAL NOTICES

### NOTICE

Notice is hereby given that a Certificate of Organization, Domestic Limited Liability Company has been approved and filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania for a Limited Liability Company known as Country Hearth Veneer & Landscapes LLC. Said Limited Liability Company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the Limited Liability Company is the creation and maintenance of veneer and landscapes and any and all lawful business related thereto for which Limited Liability Companies may be organized under the Business Corporation Law.

Robert A. Gordon, Esquire  
Gordon Law PLLC  
99 East Main Street  
Uniontown, PA 15401  
724-438-3560

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
ACTION TO QUIET TITLE  
CIVIL ACTION - LAW  
No. 2658 of 2017, G.D.  
Judge Steve P. Leskinen

### UNIONTOWN MASONIC BUILDING CORPORATION,

**Plaintiff,**

**vs.**

**HUGH A. BURCHINAL, the Estate of  
HUGH A. BURCHINAL, and the heirs,  
executors and assigns of HUGH A.  
BURCHINAL,**

**Defendants.**

### NOTICE

TO: Hugh A. Burchinal, the Estate of Hugh A. Burchinal, and the heirs, executors, and assigns of Hugh A. Burchinal:

You are hereby notified that Uniontown Masonic Building Corporation filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that it is the owner in possession of that certain lot of land situate in the City of Uniontown, Fayette County, Pennsylvania being located off McCormick Avenue, Uniontown, Pennsylvania, bearing tax parcel number 38-10-0318.

Title to the above described property was conveyed to Uniontown Masonic Building Corporation, by a deed from Robert J. Tran, Successor to Donald M. Miller, Sr., as Trustee of Fayco Building Corporation, a non-profit corporation formed by Fayco Forest No. 152, being recorded at the Recorder of Deeds Office at Record Book 1628, Page 205.

Said complaint sets forth that the Plaintiff is the owner in fee simple of the said premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

The within named Defendants appeared to have an interest in said premises which creates a cloud upon Plaintiff's title, whereupon the Plaintiff has filed its Complaint as aforesaid asking the Court to enter a Decree terminating all rights that the Defendants may have in said premises and decree that it has the full and free use and occupancy of said premises, released and forever discharged on any right, lien title or

interest of said Defendants herein.

The service of this Complaint by publication is made pursuant to an Order of Court dated December 29, 2017, and filed at the above number and term.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS NOTICE 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.**

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100 South Street  
P.O. Box 186  
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800-692-7375

Ewing D. Newcomer, Esquire  
NEWCOMER LAW OFFICES  
4 North Beeson Boulevard  
Uniontown, PA 15401  
(724)438-8766

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## SHERIFF'S SALE

Date of Sale: March 15, 2018

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, March 15, 2018, at 2:00 p.m. in Courtroom Number Five at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (2 of 3)

James Custer  
Sheriff Of Fayette County

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Phelan Hallinan Diamond & Jones, LLP

No. 2199 of 2017 GD  
No. 351 of 2017 ED

**U.S. Bank National Association, as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-Efc5,**

**Plaintiff,**  
**v.**

**Timothy J. Bechtold A/K/A Timothy Bechtold**

**Raecyne W. Bechtold,**  
**Defendant(s).**

By virtue of a Writ of Execution No. 2199 OF 2017 GD, U.S. Bank National Association, as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-Efc5 v. Timothy J. Bechtold A/K/A Timothy Bechtold Raecyne W. Bechtold, owner(s) of property situate in the CONNELLSVILLE CITY, Fayette County, Pennsylvania, being 504 South Pittsburgh Street, Connellsville, PA 15425-4013  
Parcel No.: 05 07-0209

Improvements thereon: RESIDENTIAL DWELLING

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STERN & EISENBERG PC  
EDWARD J. MCKEE, ESQUIRE

No. 2389 of 2013 GD  
No. 344 of 2017 ED

**Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-QS14,**

**Plaintiff,**  
**v.**

**Randy Canose and Kelly Canose,**  
**Defendant(s).**

SITUATE IN FRANKLIN TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 772 VIRGIN RUN ROAD, FRANKLIN, PA 15486.

PARCEL NO. 13-06-0058

IMPROVEMENTS - RESIDENTIAL REAL ESTATE

SOLD AS THE PROPERTY OF- RANDY CANOSE AND KELLY CANOSE

Phelan Hallinan Diamond & Jones, LLP

No. 197 of 2017 GD  
No. 350 of 2017 ED

**Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP**

**Plaintiff**  
**v.**

**Lisa M. Collins,**  
**Defendant(s).**

By virtue of a Writ of Execution No. 197 OF 2017 GD, Bank of America, N.A., as Successor by Merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP v. Lisa M. Collins, owner(s) of property situate in the MENALLEN TOWNSHIP, Fayette County, Pennsylvania, being 110 Postoffice rd, Waltersburg, PA 15488 -1019

Parcel No.: 22-02-0046

Improvements thereon: RESIDENTIAL DWELLING

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STERN AND EISENBERG, PC  
JESSICA N. MANIS, ESQ.

No. 478 of 2017 GD  
No. 337 of 2017 ED

**Wilmington Savings Fund Society, FSB DBA Christiana Trust as Trustee for HLSS Mortgage Master Trust for the benefit of the holders of the Series 2014-1 Certificates issued by HLSS M011gag Master Trust c/o Ocwen Loan Servicing, LLC,**

**Plaintiff,**  
**v.**

**Robert Deline a/k/a Robert Jesse Deline and Christina Deline a/k/a Christiana A. Deline,**  
**Defendant(s).**

SITUATE IN THE THIRD WARD OF THE BULLSKIN TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING

KNOWN AS 208 Hammondville Street, Mount Pleasant, PA 15666

PARCEL NO. 04-01-0034

IMPROVEMENTS - RESIDENTIAL REAL ESTATE

SOLD AS THE PROPERTY OF - Robert Deline a/k/a Robert Jesse Deline and Christina Deline a/k/a Christiana A. Deline

Richard M. Squire & Associates, LLC

By: Richard M. Squire, Esquire

Bradley J. Osborne, Esquire

Sarah K. McCaffery, Esquire

ID. Nos. 04267 / 312169 / 311728

One Jenkintown Station, Suite 104

115 West Avenue

Jenkintown, PA 19046

Telephone: 215-886-8790

Fax: 215-886-8791

No. 1643 of 2017 GD

No. 352 of 2017 ED

No. 2046 of 2017 GD

No. 339 of 2017 ED

**CITTMORTGAGE, INC.**

vs.

**KRIS GASTER**

ALL THAT CERTAIN PIECE OR PARCEL OF LAND SITUATE IN GEORGES TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA

BEING THE SAME PREMISES which Cindy Gaster a/k/a Cindy S. Gaster, an unmarried widow, by her Attorney in Fact, Chad W. Gaster, by Deed dated September 29, 2016 and recorded October 17, 2016 in the Office of the Recorder of Deeds in and for Fayette County in Deed Book Volume 3322, Page 676, granted and conveyed unto KRIS GASTER.

BEING THE SAME PREMISES which Cindy Gaster a/k/a Cindy S. Gaster, an unmarried widow, by her Attorney in Fact, Chad W. Gaster, by Deed dated September 29, 2016 and recorded October 17, 2016 in the Office of the Recorder of Deeds in and for Fayette County in Deed Book Volume 3322, 680, granted and conveyed unto KRIS GASTER.

BEING KNOWN AS: 56 EAST ELM STREET, FAIRCHANCE, PA 15436

PARCEL #14-29-002202 AND 14-29-002301

**U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT,**

**PLAINTIFF**

**V.**

**Patricia Georgiana, solely as Heir to the Estates of Susanna B. Tuning, a/k/a Susanna M. Tuning, deceased**

**Unknown Heirs of the Estate of Susanna B. Tuning, a/k/a Susanna M. Tuning, deceased**  
**DEFENDANT(S).**

TAX PARCEL NO.: 34-24-0143

PROPERTY ADDRESS: 409 Derrick Road Uniontown, PA 15401

IMPROVEMENTS: Single Family Dwelling

SEIZED AND TAKEN in execution as the property of Patricia Georgiana, solely as Heir to the Estates of Susanna B. Tuning, a/k/a Susanna M. Tuning, deceased and Unknown Heirs of the Estate of Susanna B. Tuning, a/k/a Susanna M. Tuning, deceased

ALL THAT CERTAIN lot or parcel of land situate in South Union Township, Fayette County, Pennsylvania, being Lot No. 14 in the High Hills Plan of Lots as recorded in the Office of the Recorder of Deed of Fayette County, Pennsylvania, in Plan Book Volume 8, Page 250.

EXCEPTING AND RESERVING, thereout and therefrom all coal and mining rights as heretofore conveyed or reserved by deed or deeds of record.

UNDER AND SUBJECT to all those certain protective covenants and building restrictions on the High Hill Plan of Lots as set forth in Declaration dated May 15, 1952 and recorded in the recorder's Office of Fayette

County, Pennsylvania, in Deed Book Volume 753, Page 203.

BEING THE SAME PREMISES which Edward J. Sullivan and Nannie E. Sullivan, husband and wife, by Deed dated December 8, 1959 and recorded December 8, 1959 in the Office of the Recorder of Deeds in and for the County of Fayette, in Deed Book 923, Page 613, granted and conveyed unto Fred W. Tuning and Susanna B. Tuning, husband and wife, in fee.

And the said Fred W. Tuning departed this life on June 3, 2017 And the said Susanna B. Tuning departed this life on June 28, 2014

---

UDREN LAW OFFICES, P.C.  
 WOODCREST CORPORATE CENTER  
 111 WOODCREST ROAD, SUITE 200  
 CHERRY HILL, NJ 08003-3620  
 856-669-5400

No. 1296 of 2016 GD  
 No. 345 of 2017 ED

**PNC Bank, National Association**  
**Plaintiff**

**V.**  
**PATRICIA L. JOHNSON, INDIVIDUALLY**  
**AND AS A KNOWN HEIR OF THOMAS H.**  
**JOHNSON UNKNOWN HEIRS,**  
**SUCCESSORS, ASSIGNS AND ALL**  
**PERSONS, FIRMS OR ASSOCIATIONS**  
**CLAIMING RIGHT, TITLE OR INTEREST**  
**FROM OR UNDER THOMAS H.**  
**JOHNSON**

**Defendant(s).**

ALL THAT CERTAIN LOT OF LAND SITUATE IN PERRY TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA:

BEING KNOWN AS 202 Main Street, Perryopolis, PA 15473

PARCEL NUMBER: 27-08-0036  
 IMPROVEMENTS: Residential Property

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Phelan Hallinan Diamond & Jones, LLP

No. 310 of 2017 GD  
 No. 338 of 2017 ED

**Lsf9 Master Participation Trust**  
**Plaintiff**

**V.**  
**Janice M. Luft**  
**Defendant(s)**

By virtue of a Writ of Execution No. 310-OF-2017-GD Lsf9 Master Participation Trust v. Janice M. Luft, owner( s) of property situate in the UPPER TYRONE TOWNSHIP, Fayette County, Pennsylvania, being 118 Broad Street, Scottdale, PA 15683-1808

Parcel No.: 39040018  
 Improvements thereon: RESIDENTIAL DWELLING

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No. 1580 of 2017 GD  
 No. 334 of 2017 ED

**The Bank of New York Mellon F/K/A The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Indenture Trustee for Newcastle Mortgage Securities Trust 2006-1**

**Plaintiff,**  
**vs.**  
**Shelley L. Machesky; William P. Machesky**  
**Defendants.**

ALL that certain parcel of land lying and being situate in the City of Uniontown, County of Fayette, and Commonwealth of Pennsylvania, known as 57 Pershing Avenue, Uniontown, PA 15401 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 38030017

BEING the same premises which Ruth Murphy, an unmarried widow, by Deed dated February 26, 1979 and recorded in and for Fayette County, Pennsylvania in Deed Book 1250, Page 802, granted and conveyed unto William P. Machesky and Shelley L. Machesky, his wife.

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Phelan Hallinan Diamond & Jones, LLP

No. 1017 of 2016 GD  
No. 361 of 2017 ED

No. 2100 of 2017 GD  
No. 354 of 2017 ED

**THE UNITED FEDERAL CREDIT UNION,  
Plaintiff,  
vs.  
DALE REAM, also known as DALE S.  
REAM and KELLEY REAM,  
Defendants.**

**Wells Fargo Bank, NA  
Plaintiff  
V.  
David A. Miller  
Tiffany L. Miller  
Defendant(s)**

By virtue of a Writ of Execution No. 2100-OF-2017-GD, Wells Fargo Bank, NA v. David A. Miller, Tiffany L. Miller, owner(s) of property situate in the NORTH UNION TOWNSHIP, Fayette County, Pennsylvania, being 59 Reppert Boulevard, Uniontown, PA 15401-2515  
Parcel No.: 25-39-0069  
Improvements thereon: RESIDENTIAL DWELLING

TRACT ONE: ALL that certain lot or parcel situate in the Borough of Fairchance, Fayette County, Pennsylvania, described as Tax Parcel No. 11-06-0025 and more particularly described in a deed dated October 25, 2005 and recorded in Record Book 2838, page 1194.  
TRACT TWO: ALL those certain three lots situate in Fairchance Borough, Fayette County, Pennsylvania, described as Tax Parcel No. 11-06-0026 and more particularly described in a deed dated January 5, 2004 and recorded in Record Book 2891, page 419.

The street address of the subject property is 80 and 82 N. Morgantown Street, Fairchance, Pennsylvania 15436.

Seized and taken in execution as the property of Dale Ream, also known as Dale S. Ream and Kelley Ream, owners or reputed owners of the property, at the suit of The United Federal Cred it Union in the Court of Common Pleas of Fayette County, Pennsylvania at No. 1015 of 2016, G.D.

No. 1015 of 2016 GD  
No. 362 of 2017 ED

**THE UNITED FEDERAL CREDIT UNION,  
Plaintiff,  
vs.  
DALE REAM, also known as DALE S.  
REAM and KELLEY REAM,  
Defendants.**

TRACT ONE: ALL that certain lot or parcel situate in the Borough of Fairchance, Fayette County, Pennsylvania, described as Tax Parcel No. 11-06-0025 and more particularly described in a deed dated October 25, 2005 and recorded in Record Book 2838, page 1194.

TRACT TWO: ALL those certain three lots situate in Fairchance Borough, Fayette County, Pennsylvania, described as Tax Parcel No. 11-06-0026 and more particularly described

in a deed dated January 5, 2004 and recorded in Record Book 2891, page 419.

The street address of the subject property is 80 and 82 N. Morgantown Street, Fairchance, Pennsylvania 15436.

Seized and taken in execution as the property of Dale Ream, also known as Dale S. Ream and Kelley Ream, owner s or reputed owner s of the property, at the suit of The United Federal Credit Union in the Court of Common Pleas of Fayette County, Pennsylvania at No. 1015 of 2016, G.D.

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**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF :  
PENNSYLVANIA :  
V. :  
DAVID LINCOLN LEE, : Case No. 32 of 2017  
DEFENDANT : Judge Linda R. Cordaro

**OPINION AND ORDER**

CORDARO, J.

January 10, 2018

Following a trial by jury, David Lincoln Lee ("Appellant") was found guilty of, inter alia, Homicide by Vehicle While Driving Under the Influence (75 Pa. C.S.A. § 3735), at Count 1; Accident Involving Death or Personal Injury (75 Pa. C.S.A. § 3742), at Count 2; and Driving Under the Influence, Highest Rate (75 Pa. C.S.A. § 3802(c)), at Count 8, on October 5, 2017. The Appellant was sentenced on October 20, 2017, to four to ten (10) years for the Homicide by Vehicle While Driving Under the Influence, and to three (3) to seven (7) years for the Accident Involving Death or Personal Injury (concurrent with Count 1). On November 2, 2017, Appellant filed a direct appeal to the Superior Court of Pennsylvania.

The complaints contained in Appellant's "Concise Issues" are as follows:

1. Whether the Trial Court committed reversible error in permitting evidence of the results of a chemical test of Defendant's blood when the sample was taken more than two hours after operation of a vehicle.
2. Whether the evidence was legally and factually sufficient to prove that Defendant committed the crime of Homicide by Vehicle While Driving Under the Influence beyond a reasonable doubt.
3. Whether the Trial Court erred in sentencing Defendant at Count 2: Accident Involving Death or Injury, when a fact that increased the mandatory minimum (Death of the Victim) was not an element of the crime that was submitted to the jury.

**1. Whether the Trial Court erred in admitting evidence in violation of the two-hour rule?**

The Court did not err by allowing evidence of the results of Appellant's blood sample because the Commonwealth met the requirements for the exception to the two-hour rule under 75 Pa.C.S.A. 3802(g).

Under Pennsylvania's DUI scheme, "An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount

of alcohol such that the individual is rendered incapable of safely driving... [a] vehicle." 75 Pa.C.S.A. § 3802. The statute contains three levels of intoxication. {1} However,

Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:

(1) where the Commonwealth shows good cause explaining why the chemical test sample could not be obtained within two hours; and

(2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained.

75 Pa. C.S.A. § 3802(g).

*Com. v. Eichler*, *infra*, is analogous to the issue at hand. In *Eichler*, police were dispatched to a hit and run accident involving a black Nissan pickup truck hitting a pedestrian in a wheelchair at 5:57 p.m. *Com. v. Eichler*, 133 A.3d 775, 781 (Pa. Super. 2016). {2} At 7:16 p.m., Sgt. Gillingham, West Newton Police Department, went to Mr. Eichler's home to investigate if he was the driver of the Nissan pickup truck that struck the pedestrian. *Id.*, at 781. (Sgt. Gillingham had known the Defendant all his life, and he knew that Eichler drove a black Nissan pickup truck and lived in proximity of the scene of the accident). *Id.* As Sgt. Gillingham examined damage on the right front corner of the pickup truck, Eichler emerged from his home "staggering with a strong odor of alcohol and visibly highly intoxicated." *Id.*, at 782. Eichler admitted to leaving the scene of the accident because he had been drinking. *Id.* He was arrested and transported to the hospital where his blood was obtained at 8:12 p.m.-more than two hours after Eichler had last driven. *Id.* Eichler was convicted; he appealed. On appeal, he argued that the trial court erred in not suppressing the results of the blood draw because the blood was obtained outside the "two-hour rule."

The Superior Court disagreed. The Court stated that although the blood draw had taken place more than two hours after Eichler had last driven, the defendant's flight and the delay in finding him constituted good cause for the delay in obtaining a blood sample. *Id.*, at 786. The Court also found that the Commonwealth had shown that Eichler had not imbibed alcohol from the time he was arrested to when the blood sample was collected. *Id.*, at 786-87. {3} Thus, the Commonwealth successfully met the requirements of the two-hour exception.

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{1} See Section § 3802 (a)(2),(b), and (c): general impairment 0.08%-0.10%; high rate 0-10%-0.16%; and higher rate 0.16 or higher, respectively.

{2} *Eichler*, *supra*, at 780-81: Witnesses observed a black pickup truck driving erratically, and debris of a fender well with the Nissan logo was found at the scene of the accident.

In our case, the Appellant hit a pedestrian at approximately 12:15 a.m. {4} He left the scene of the accident, {5} which resulted in a delay in finding him. Troopers finally located Appellant's vehicle at 210 Youngstown Road, Lemont Furnace, PA (Appellant's girlfriend's residence), TT 1, p. 67-68, at approximately 1:50 a.m., TT 1, p.79: 17 - 19. They knocked on the door of the residence approximately 35 to 40 minutes after finding the vehicle. TT 1, p.79: 22-25. Betty George (Appellant's girlfriend) opened the door and granted the troopers entrance to the residence. TT 1, p.76: 2-22. Troopers found the Appellant sleeping on a sofa; he smelled like alcohol, had slurred speech, appeared to have urinated his pants, and the keys to his pickup truck were on the coffee table immediately in front of him. TT 1, p.78: 12 - 25. The troopers, at this point, despite suspicion, did not know who had driven, so they transported the Appellant and Ms. George to the barracks for further investigation. While at the barracks, Ms. George gave police a written statement placing Appellant behind the wheel. In light of this information, the troopers transported Appellant to the hospital for a blood draw. The blood sample was obtained at approximately 4:10 a.m. TT 2, p.86 - 88.

Here, good cause exists for the delay in obtaining a blood sample because: 1) troopers were delayed in finding the Appellant after he fled the scene of the accident; and 2) even after finding him, troopers did not have enough information for a DUI charge until Ms. George provided them with a written statement at approximately 4:00 a.m. Likewise, the Commonwealth also met the other requirement of § 3802 (g) as the testimony proved that Appellant did not imbibe alcohol from the time the troopers came into contact with the Appellant to the time when the Appellant's blood sample was obtained. See TT 3, p. 84: 15 - 17.

For the foregoing reasons, this Court's ruling to admit the blood sample into evidence should be affirmed.

## **2. Whether the evidence was sufficient to support a conviction of homicide by Vehicle While Driving Under the Influence?**

Appellant next contests that the Commonwealth did not provide sufficient evidence to support his Conviction for Homicide by Vehicle While Driving Under the Influence.

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{3} Eichler, *supra*, at 786-87:

Eichler's blood draw took place more than two hours after he drove, operated or was in actual physical control of his vehicle, but under section 3802(g), the blood test results still were admissible in Eichler's section 3802(c) prosecution. Eichler's flight from the accident scene, and the consequential delay in finding him, constituted good cause for the failure to obtain his blood test within two hours after he stopped driving. The Commonwealth fulfilled section 3802(g) by presenting the testimony of three officers during trial that Eichler did not drink alcohol between the time of his arrest and the time of his blood test.

{4} TT 1, p.24: 9-10 ("Shortly after midnight."), and TT 2, p. 143: 11-13 (time video shows Victim being struck at 12:14 a.m.)

{5} Betty George, TT 3, p. 62-63: Appellant said he hit the victim, I asked him to stop, he did not. He went home, said he was not going back because he felt it was "too late."

The standard of review for a challenge to the sufficiency of the evidence is to determine:

whether, when viewed in the light most favorable to the verdict winner, the evidence at trial and all reasonable inferences therefrom is sufficient for the trier of fact to find that each element of the crimes charged is established beyond a reasonable doubt. Any doubt raised as to the accused's guilt is to be resolved by the fact-finder. [In this context, appellate courts] do not assess credibility nor assign weight to any of the testimony of record. Therefore, [the verdict will not disturbed] unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.

Commonwealth v. Vogelsang, 90 A.3d 717, 719 (Pa.Super. 2014).

In its relevant parts, the Homicide by Vehicle While Driving Under the Influence reads:

Any person who unintentionally causes the death of another person as the result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and who is convicted of violating section 3802 is guilty of a felony of the second degree when the violation is the cause of death.

75 Pa. C.S.A. § 3735.

Section 3802 states that "An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving. . . [a] vehicle." 75 Pa. C.S.A. § 3802.

In the case at bar, Ms. George testified that the Appellant drove his truck after imbibing alcohol at the Sportmen's Club and later at Smitty's Bar and Restaurant. TT 3, p. 58 - 62. Dr. Labay testified that National Medical Services lab received the Appellant's blood sample and performed a [gas] chromatography test on the sample. The test showed that Appellant's BAC at the time of the accident was 0.17%. TT 3, p. 14, 15. Furthermore, she testified that, based on scientific calculations, the Appellant's BAC at the time of the accident was in the range of 0.19% - 0.25%. TT 3, p.24 - 25. {6} Finally, Ms. George testified that Appellant hit the Victim with his vehicle. TT 3, p.62: 14-24. The Victim died from the injuries sustained after being struck by Appellant's vehicle.

In our case, we discern there is no reasonable dispute that the jury could find sufficient evidence to convict Appellant of Section § 3735 based on the testimony that they heard. From the record, we find that the Commonwealth provided sufficient evidence for the trier of fact to make reasonable inferences, beyond a reasonable doubt, of guilt on each element of the crimes charged. Because the evidence here is not so weak or inconclusive that as a matter of law no probability of fact may be drawn from the circumstance, the verdict should be left undisturbed.

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{6} The accident took place at approximately 12:14 a.m., and the blood sample was not obtained until approximately 4:20 a.m.

### **3. Whether the Trial Court erred by increasing Defendant's mandatory minimum without submitting the element of "death" to the jury?**

The Court did not commit a reversible error by increasing the mandatory minimum of Accident Involving Death or Personal Injury (§§ 3742) because the element of death was submitted to the jury and the jury, unanimously, found the Commonwealth met its burden.

Under Pennsylvania law, an accident that results in death increases the penalty from 90 days (accident resulting in injury) to a minimum of three years. 75 Pa. C.S.A. § 3742. According to *Alleyne v. United States*, *infra*, if an element of the crime increases the mandatory minimum punishment, it must be submitted to the jury and found to be true beyond a reasonable doubt. *Alleyne v. United States*, 133 S.Ct. 2151 (2013). Notwithstanding, in interpreting Section 3742 and *Alleyne*, it is not necessary for the Court to abandon its common sense. *Adams v. Metro. Edison Co.*, 46 Pa. D. & C.2d 125, 137 (Pa. Com. Pl. 1968) ("In interpreting these enabling and procedural statutes, we must not abandon common sense.").

Here, the jury found that: 1) the Appellant was driving a vehicle while under the influence; 2) that while he operated the vehicle under the influence he struck the victim; and 3) that the victim died as a result of being struck by the vehicle driven by the Appellant. Based on these factual determinations, a jury convicted the Appellant of Homicide by Vehicle While Driving Under the Influence, and Accident Resulting in Death or Injury. The conviction of Homicide by Vehicle While Driving Under the Influence- inherently- carries the element of death. Consequently, the jury found that the Victim's death resulted from the accident caused by the Appellant. Therefore, Appellant's argument should fail.

### CONCLUSION

Based on a review of the evidence presented and the relevant statutory authority, and for the reasons set forth herein, the Appellant's appeal is without merit, and this Court should be affirmed.

BY THE COURT:  
LINDA R. CORDARO, Judge

ATTEST:  
Janice Snyder  
Clerk of Courts



**LUNCH AND LEARN CLE****Fayette County Drug Court  
2018 Update**

Adult Drug Court has been in effect since September 2017 as a result of the growing population of drug offenders in the county. The purpose of the Adult Drug Court is to reduce recidivism by coordinating community resources and treatment opposed to imposing an incarceration sentence. The purpose of the CLE is to highlight the benefits of Adult Drug Court to attorneys, potential clients and the Commonwealth. Eligibility requirements as well as program requirements will be further explained as well as the referral process. Some changes have had to occur since the Adult Drug Court was first announced and those changes will also be highlighted.

**Presenters:**

Honorable Gerald R. Solomon  
Kendall Friend, Fayette County Problem-Solving Courts

**Thursday, January 25, 2018**

1.0 Substantive CLE Credit

12:00 noon to 1:00 p.m.

First Niagara Building

Lower level - Corporate Training Center

**REGISTRATION:**

Cindy at the Fayette County Bar Association

(724) 437-7994 or [cindy@fcbar.org](mailto:cindy@fcbar.org)

Cost to attend: \$30

\$20 young lawyer

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