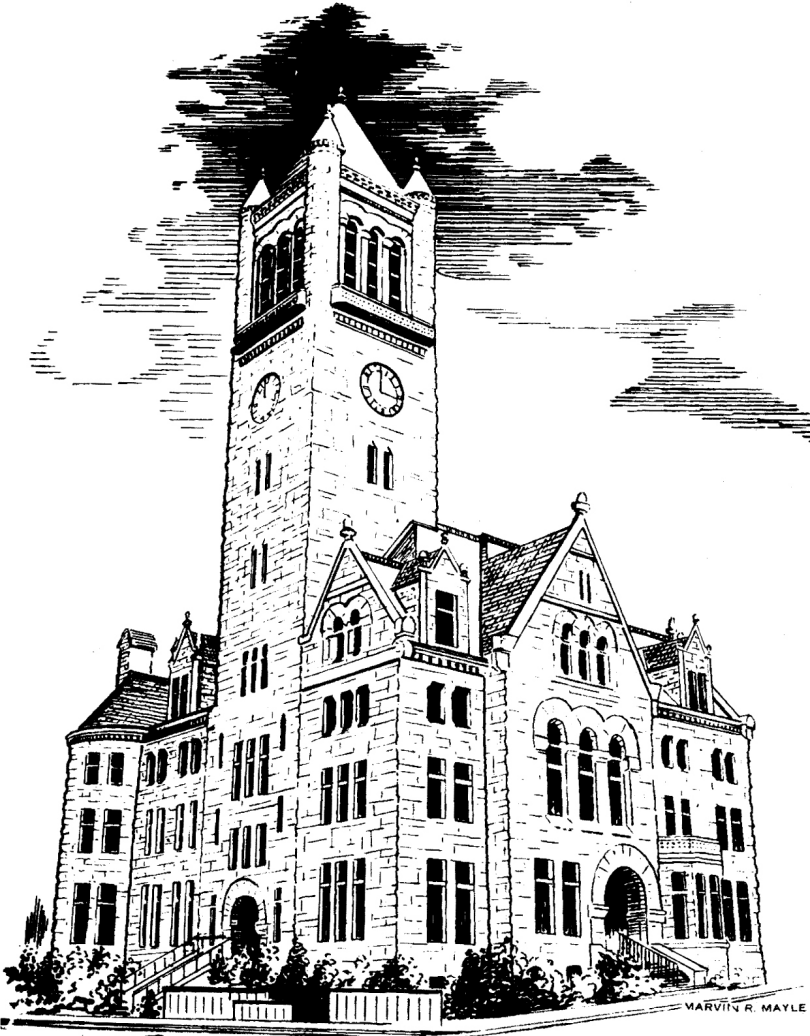


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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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

**BETTY JEAN ANTONUCCI**, late of Luzerne Township, Fayette County, PA (3)

*Personal Representative:*

Linn Kay Buraczewski  
c/o Watson Mundorff Brooks & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
Attorney: Timothy J. Witt

**PATRICIA J. ENDSLEY**, late Luzerne Township, Fayette County, PA (3)

*Co-Administratrix:* Dana L. Zias

*Co-Administrator:* Richard J. Endsley, Jr.  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401  
Attorney: Webster & Webster

**CLARA LEE MANOWN**, late of Washington Township, Fayette County, PA (3)

*Executrix:* Cheryl Ann Belowich

168 Eckstein Road  
Renfrew, PA 16053  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
Attorney: Mark E. Ramsier

**JAMES E. MIDDLETON**, late of Luzerne Township, Fayette County, PA (3)

*Personal Representative:* Gloria McGhee

139 North Morgantown Street  
Fairchance, PA 15423  
c/o P.O. Box 488  
California, PA 15419  
Attorney: Lisa J. Buday

**SHIRLEY A. MISENKO**, late of Luzerne Township, Fayette County, PA (3)

*Administratrix:* Marie A. Beck  
415 Route 88  
Carmichaels, PA 15320  
c/o 1202 West Main Street  
Monongahela, Pa 15063  
Attorney: James W. Haines, Jr.

**BETTY RAFAIL, a/k/a BETTY M. RAFAIL, a/k/a BETTY MARIE RAFAIL**, late of Uniontown, Fayette County, PA (3)

*Executrix:* Mary Jane Artis  
c/o John & John  
96 East Main Street  
Uniontown, PA  
Attorney: Anne N. John

**TWILA J. THURBY, a/k/a TWILA J. THURBY**, late of Uniontown, Fayette County, PA (3)

*Personal Representative:*  
Kathy Thurby-Hazelton  
c/o George Port & George  
92 East Main Street  
Uniontown, PA 15401  
Attorney: Joseph M. George

**CHARLES WILLIAMS, a/k/a CHARLES R. WILLIAMS**, late of Menallen Township, Fayette County, PA (3)

*Co-Executors:*  
Neal B. Williams and Wes P. Williams  
c/o 45 East Main Street, Suite 500  
Uniontown, PA 15401  
Attorney: James E. Higinbotham, Jr.

### Second Publication

**VERNA CULLEN, a/k/a VERNA WOZNIAK CULLEN**, late of Point Marion Borough, Fayette County, PA (2)

*Executor:* Colleen Cullen  
410 Highland Avenue  
Point Marion, PA 15474  
c/o 76 East Main Street  
Uniontown, PA 15401  
Attorney: Douglas S. Sholtis

**RAYMOND FRANK DALZELL, a/k/a****RAYMOND F. DALZELL, a/k/a****RAYMOOND DALZELL**, late of Georges Township, Fayette County, PA (2)

*Co-Administrices CTA:* Evelyn J. Simmons  
and Louanne Nicholson  
c/o Zebley Mehalov & White, P.C.  
18 Mill Street Square  
P.O. Box 2123  
Uniontown, PA 15401  
*Attorney:* Daniel R. White

**JOSEPH G. FRIEDHOF**, late of Uniontown, Fayette County, PA (2)

*Administratrix:* Margaret Friedhof  
c/o Radcliffe & DeHaas, L.L.P.  
2 West Main Street, Suite 700  
Uniontown, PA 15401  
*Attorney:* Ernest P. DeHaas, III

**MADELEINE P. JOHN**, late of South Union Township, Fayette County, PA (2)

*Executrix:* Simone L. John  
c/o Fitzsimmons and Barclay  
55 East Church Street, Suite 102  
Uniontown, PA 15401  
*Attorney:* James N. Fitzsimmons, Jr.

**BERTHA E. FISHER SANTINI, a/k/a****BERTHA E. SANTINI**, late of Washington Township, Fayette County, PA (2)

*Executrix:* Sharon L. Valentine  
c/o 382 West Chestnut Street, Suite 102  
Washington, PA 15301  
*Attorney:* Frank C. Roney, Jr.

**JAMES FARNELLA**, late of Uniontown, Fayette County, PA (1)

*Executrix:* Tammy Boyle  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James E. Higinbotham, Jr.

**GEORGIA M. PETROSKY**, late of South Union Township, Fayette County, PA (1)

*Administrators:* Edna E. Petrosky and  
Keith O. Petrosky  
c/o Proden & O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

**LINDA L. STEWART**, late of Newell Borough, Fayette County, PA (1)

*Administrator:* Mark D. Stewart  
PO Box 202  
Newell, PA 15466  
c/o 1747 Rostraver Road  
Belle Vernon, PA 15012  
*Attorney:* Megan A. Kerns

**ANN WALLS, a/k/a KATHY WALLS, a/k/a ANN KATHERINE WALLS, a/k/a ANN K. WALLS**, late of Georges Township, Fayette County, PA (1)

*Executor:* Judy M. Rode  
c/o 556 Morgantown Road  
Uniontown, PA 15401  
*Attorney:* John A. Kopas, III

**First Publication****DANIEL K. CONTI, a/k/a DANIEL K.****CONTI, SR.**, late of Belle Vernon, Fayette County, PA (1)

*Executrix:* Elaine F. Conti  
415 Market Street  
Belle Vernon, PA 15012  
c/o Bassi, Vreeland & Associates, P.C.  
P.O. Box 144  
111 Fallowfield Avenue  
Charleroi, PA 15022  
*Attorney:* Bradley M. Bassi

## LEGAL NOTICES

In the Court of Common Pleas of Fayette  
County, Pennsylvania

Orphans' Court Division  
No. 62 ADOPT 2017

**In Re: Adoption of Arielle Dawn Foster,  
a minor child**

To: Unknown Father of Arielle Dawn Foster

A petition has been filed asking the Orphans' Court Division of the Court of Common Pleas of Fayette County, Pennsylvania, at No. 62 ADOPT 2017, to put an end to all rights you have to your child, Arielle Dawn Foster, born June 26, 2017 to Desiray Foster. The Court has set a hearing to consider ending your rights to your child. That hearing will be held in the Fayette County Courthouse, Uniontown, Fayette County, Pennsylvania, in Courtroom No. 1, on November 1, 2017 at 1:30 P.M. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the hearing by a lawyer.

**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.**

PENNSYLVANIA LAWYER REFERRAL  
100 South Street  
P.O. Box 186  
Harrisburg, PA 17108  
(800) 692-7375

Sheryl R. Heid, Esquire  
4 N. Beeson Blvd.  
Uniontown, PA 15401  
724-437-4700

(1 of 3)

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION-DIVORCE  
No. 549 of 2017 G.D.

TINA M. CONAWAY,  
PLAINTIFF,  
vs.

HERBERT D. CONAWAY, JR.,  
DEFENDANT.

### NOTICE TO DEFEND AND CLAIM RIGHTS

You, Herbert D. Conaway, Jr., Defendant herein, have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the court. A judgment may also be entered against you for any other claim or relief requested in these papers by the plaintiff. You may also lose money or property or other rights important to you, including custody or visitation of your children.

When the grounds for the divorce are indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Prothonotary at the Fayette County Courthouse, 61 E. Main Street, Uniontown, PA 15401.

**IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE DECREE OR ANNULMENT IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM. 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.**

Lawyer Referral Service  
P.O. Box 186  
Harrisburg, PA 17108  
Telephone No. (800) 932-0311

Southwestern PA Legal Services  
45 E. Main Street  
Uniontown, PA 15401

Court of Common Pleas  
Fayette County  
Civil Action – Law  
No. 1701 of 2017 GD

Notice of Action in Mortgage Foreclosure

Ditech Financial LLC f/k/a Green Tree  
Servicing LLC,  
Plaintiff,  
vs.  
Stephen Lambing, Mortgagor and Real Owner,  
Defendant.

To: Stephen Lambing, Mortgagor and Real Owner, Defendant, whose last known address is 2113 Isabella Road Ext. a/k/a P.O. Box 86, Isabelle Road, Connellsville, PA 15425. This 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. You are hereby notified that Plaintiff, Ditech Financial LLC f/k/a Green Tree Servicing LLC, has filed a Mortgage Foreclosure Complaint endorsed with a notice to defend against you in the Court of Common Pleas of Fayette County, Pennsylvania, docketed to No. 1701 of 2017 GD, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located, 2113 Isabella Road Ext. a/k/a P.O. Box 86, Isabelle Road, Connellsville, PA 15425, whereupon your property will be sold by the Sheriff of Fayette County. 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 claimed in the Complaint for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a Lawyer, this office may be able to provide you with information about agencies that may offer legal services to

eligible persons at a reduced fee or no fee. PA Lawyer Referral Service, PA Bar Assn., 100 South Street, P.O. Box 186, Harrisburg, PA 17108, 800.692.7375. Michael T. McKeever, Atty. for Plaintiff, KML Law Group, P.C., Ste. 5000, Mellon Independence Center, 701 Market St., Phila., PA 19106-1532, 215.627.1322.

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IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
NO: 1619 of 2017 GD

**LSF9 MASTER PARTICIPATION TRUST,**  
**Plaintiff,**  
**v.**  
**JOHN MARTIN JR, KNOWN HEIR OF**  
**FREEDA MARTIN AND ANY UNKNOWN**  
**HEIRS OF FREEDA MARTIN,**  
**Defendants.**

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 this 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 claimed in the Complaint or 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

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

LAWYER REFERRAL SERVICE  
PA BAR ASSOCIATION

100 SOUTH STREET, P.O. BOX 186  
HARRISBURG, PA 17108  
(800) 692-7375

SUIT FILED DATE: 07/27/2017  
WELTMAN, WEINBERG & REIS CO., L.P.A.  
Kevin J. Cummings, Esq  
436 7th Ave, Ste 2500  
Pgh, PA 15219  
412 434-7955

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IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
ACTION TO QUIET TITLE  
CIVIL ACTION - LAW  
No. 1323 of 2017, G.D.  
President Judge John F. Wagner, Jr.

**GEORGE RIGGAR,**  
**Plaintiff,**  
vs.

**VIOLET MASLANKA, the Estate of  
VIOLET MASLANKA, the heirs of VIOLET  
MASLANKA, ANTHONY MASLANKAJR.,  
TIMOTHY W. MASLANKA, THOMAS F.  
MASLANKA, and TODD M. MASLANKA,**  
**Defendants.**

NOTICE

TO: Thomas F. Maslanka, Anthony Maslanka and Todd M. Maslanka and their respective heirs, successors and/or assigns.

You are hereby notified that George Riggarr, has 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 he is the owner in possession of that certain lot of land situate in the City of Uniontown, Fayette County, Pennsylvania having a mailing address of 27 West Coffey Street, Uniontown, Pennsylvania.

Title to the above described property was conveyed to George Riggarr, by a deed from Fayette County Tax Claim Bureau, being recorded at the Recorder of Deeds Office at Record Book 3147, Page 245.

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 his Complaint as aforesaid asking the Court to enter a Decree terminating all rights that the Defendants may have in said premises and decree that he 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 August 25, 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.

PENNSYLVANIA LAWYER REFERRAL  
100 South Street  
P.O. Box 186  
Harrisburg, PA 17108  
800-692-7375

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

---

IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY, PENNSYLVANIA  
 ACTION TO QUIET TITLE  
 CIVIL ACTION - LAW  
 No. 1805 of 2017, G.D.  
 Judge Joseph M. George, Jr.

**MINDY LOWTHER and CINDY  
 TOMASEK,**

**Plaintiffs,**  
 vs.

**KENNETH W. LEE, the Estate of  
 KENNETH W. LEE and the heirs executors  
 and assigns of KENNETH W. LEE,  
 Defendants.**

NOTICE

TO: Kenneth W. Lee, the estate of  
 Kenneth W. Lee and their heirs, executors and  
 assigns of Kenneth W. Lee:

You are hereby notified that Mindy  
 Lowther and Cindy Tomasek, have 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 they are the owners in  
 possession of that certain lot of land situate in  
 Franklin Township, Fayette County,  
 Pennsylvania having a mailing address of 115  
 Shaffer Street, Smock, Pennsylvania.

Title to the above described property was  
 conveyed to Mindy Lowther and Cindy  
 Tomasek, by a deed from Castle 2016 LLC,  
 being recorded at the Recorder of Deeds Office  
 at Record Book 3345, Page 548.

Said complaint sets forth that the Plaintiffs  
 are the owners 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 Plaintiffs' title, whereupon the  
 Plaintiffs have filed their Complaint as aforesaid  
 asking the Court to enter a Decree terminating  
 all rights that the Defendants may have in said  
 premises and decree that they have 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 September 6, 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.

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 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 Harrisburg, PA 17108  
 800-692-7375

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

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NOTICE

Notice is hereby given that a Certificate of  
 Organization was filed with the Pennsylvania  
 Department of State, on October 25, 2012, for a  
 Limited Liability Company, organized under the  
 Limited Liability Company Law of 1994, as  
 from time to time amended. The name of the  
 Company is Haines Farming and Meat  
 Processing LLC, having an address of 425  
 Wirsing Road, Gibbon Glade, Pennsylvania,  
 15440.

HIGINBOTHAM LAW OFFICES  
 45 East Main Street, Suite 500  
 Uniontown, PA 15401  
 Telephone: 724-437-2800

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**NOTICE OF ACTION IN MORTGAGE  
FORECLOSURE**

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
No. 1002 OF 2017 GD

**PNC BANK, NATIONAL ASSOCIATION,  
successor by merger to National City Bank,  
Plaintiff,**

**vs.**

**ALL KNOWN AND UNKNOWN HEIR OF  
ERIKA I. WARD A/K/A EIRKA WARD,  
AND JAMES EARL WARD, JOYCE  
GRIMM, MICHAEL R. WARD, AND  
CHRISTINE IRENE FIONO, SOLELY IN  
THEIR CAPACITY AS POSSIBLE HEIRS  
OF ERIKA I. WARD A/K/A ERIKA WARD,  
Defendant.**

TO: ALL KNOWN AND UNKNOWN HEIR  
OF ERIKA I. WARD A/K/A EIRKA WARD,  
AND JAMES EARL WARD, JOYCE GRIMM,  
MICHAEL R. WARD, AND CHRISTINE  
IRENE FIONO, SOLELY IN THEIR  
CAPACITY AS POSSIBLE HEIRS OF ERIKA  
I. WARD A/K/A ERIKA WARD

You are hereby notified that on May 10,  
2017, PNC Bank, National Association,  
successor by merger to National City Bank, filed  
a Complaint in Action of Mortgage Foreclosure,  
endorsed with a Notice to Defend, against the  
above Defendants at the above number.

Property Subject to Foreclosure: 2208 2nd  
Street, South Connellsville, PA 15425

**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 this 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 claimed in the Complaint or 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  
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AFFORD ONE, GO TO OR TELEPHONE THE  
OFFICE SET FORTH BELOW. THIS OFFICE  
CAN PROVIDE YOU WITH INFORMATION  
ABOUT HIRING A LAWYER.**

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

Lawyer Referral Service  
Fayette County Bar Association  
Courthouse, 2nd Floor  
Uniontown, PA 15401  
Telephone: (724) 430-1227

Brett A. Solomon, Esquire

Pa. I.D. #83746

Michael C. Mazack, Esquire

Pa. I.D. #205742

Tucker Arensberg, P.C.

1500 One PPG Place

Pittsburgh, PA 15222

412-566-1212

Attorneys for PNC Bank, National Association,  
Plaintiff



**JUDICIAL OPINION**

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

NULL LAND, INC., a Pennsylvania Corporation,	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
AM UNIONTOWN HOTEL, L.P., a Pennsylvania	:	
limited partnership, W2001 EASTERN HOTEL	:	
REALTY, L.P., a Delaware limited partnership and	:	
CANTOR COMMERCIAL REAL ESTATE	:	
LENDING, L.P., a Delaware limited partnership, and	:	
WELLS FARGO BANK, National Association, as	:	
Trustee, for Benefit of the Holders of COMM 2014-	:	
CCRE18 Mortgage Trust Commercial Mortgage	:	
Pass-Through Certificates,	:	No. 116 of 2017, G.D.
Defendants.	:	Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J.

Plaintiff, Null Land, Inc., filed an Action for Declaratory Judgment on January 19, 2017 seeking to have this Court declare provision two (2) of the restrictive covenant contained in Plaintiff’s Deed invalid. By Deed dated September 12, 1978, Plaintiff obtained a 10.0372 acres piece of property from the dominant tract originally owned by Crown American Corporation. In 1978, when the restrictive covenants were first included in the Deed by Crown American, the Holiday Inn was existing on the property which included a restaurant and lounge serving alcoholic beverages. The purpose of the restrictive covenant numbered (2) was to eliminate competition in the restaurant and lounge business.

Specifically, the second restriction reads:

UNDER AND SUBJECT nevertheless that the hereby granted piece or parcel of land and any building which should thereafter be erected thereon, shall be and remain subject to the following conditions and restrictions:

1. That no building shall be erected for or used or occupied as a restaurant, commercial cafeteria or quick-service limited menu type food services operation, or for the manufacture, bottling or sale of malt, vinous or spirituous liquors.

Plaintiff is alleging that in the past thirty-nine (39) years, the neighborhood of the area has radically changed in character thereby invalidating the restrictive covenant and no longer inuring to the benefit of the Defendant, AM Uniontown Hotel, L.P.

AM Uniontown Hotel, L.P. is a holding corporation for a hotel situate presently on the premises known as the Park Inn by Radisson. Additional Defendant include Defendant W2001 Eastern Hotel Realty, L.P. that owns a vacant piece of real estate derived from the dominant Deed as well and contiguous to the AM Uniontown Hotel parcel. By the terms of a stipulation, this additional Defendant (W2001) has no objection to the relief requested. The stipulation is entered as Exhibit 1. Wells Fargo Bank {1} has also been added as a corporate Defendant as a mortgage provider of the Park Inn property. Wells Fargo did not appear at the hearing nor has it responded to the Complaint.

AM Uniontown Hotel, L.P. contends that the restrictive covenant should remain because the Plaintiff has improperly broadened the neighborhood characterization and even if this Court should find the vicinity constituting the “neighborhood” has changed in character, the restriction still provides a value to the Defendant AM Uniontown Hotel, L.P. Texas Roadhouse has issued a letter of intent to construct a restaurant on Plaintiff property. {2} See letter of intent marked and entered as Exhibit 5. Plaintiff is desirous of entering into a lease agreement with this national franchise chain specialty steakhouse type restaurant. In addition to food, Texas Roadhouse sells alcoholic beverages.

The law in Pennsylvania in regard to extinguishment of a restrictive covenant is fairly straight forward. Both parties have acknowledged what appears to be the leading case, *Vernon Township Volunteer Fire Department, Inc. v. Connor*, 855 A.2d 873, 579 Pa. 364 (2004). The relevant inquiry concerning changes to the immediate neighborhood is whether such changes alter or eliminate the benefit that the restriction was intended to achieve. Whether the character of the neighborhood surrounding tracts has been altered to the extent that the restrictive covenant is rendered a nullity is the essence of the determination to be rendered by the Court. *Id.* at 879, see also *Benner v. Tacony Athletic Association*, 328 Pa. 577, 196 A.2d 390 (1938).

Our Supreme Court will enforce a restrictive covenant where it is established that the restriction still is of substantial value to the owners of the tract. *Vernon Township, Id.* at 879, P.L.E. Covenant §20. However, changes in the character of a neighborhood may result in the discharge of a restrictive covenant. Generally, the change in the neighborhood has to be so dramatic that it deprives the beneficiary of the benefit from the restrictive covenant. *Daniels v. Notor*, 133 A.2d 520, 523 (Pa. 1957).

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{1} The full name is Wells Fargo Bank, National Association, as Trustee for the Benefit of the Holders of COMM 2014-CCRE Mortgage Trust Commercial Mortgage Pass-Through Certificates

{2} The Filiaggi family owns the holding company of Null Land, Inc. The co-president, Debra Ann Krzysiak, testified that her father, James Filiaggi, is the manager of their business holding and could testify as the designated agent for Null Land, Inc.

In order to ascertain the intention of the parties, the restrictive covenant must be construed in light of (1) their language, (2) the nature of the subject matter, (3) the apparent object or purpose of the parties, and (4) the circumstances or conditions surrounding their execution. *Thomas Wiler v. Maggio*, 452 WDA 2016 (filed February 13, 2017) 2017 WL 571521.

As a general rule in interpreting restrictive covenants, the intention of the parties when the covenant was entered into governs and restrictive covenants are to be strictly construed against persons seeking to enforce them and in favor of the free and unrestricted use of property. *Pocono Summit Reality, LLC v. Ahmad Amer LLC*, 52 A.3d 262, (Pa. Super. 2012), *Baumgardner v. Stuckey*, 735 A.2d 1272, 1274 (Pa. Super. 1999), *Great A&P Tea Co. v. Baily*, 421 Pa. 540, 270 A.2d 1, 2 (1966).

Because restrictive covenants interfere with the property owner's free use and enjoyment of their property, such covenants are not favored by the Courts. *Mishkin v. Temple BethEl of Lancaster*, 429 Pa. 73, 239 A.2d 800 (1968).

Our Courts have invalidated restrictive covenants when they have outlived their usefulness. Land shall not be burdened with permanent or long continued restrictions which have ceased to be of any advantage. *Daniels*, supra at 524-525.

"Neighborhood" is a relative term in the context of restrictive covenants. It is defined as the immediate, not the remote area and should consider the adjoining tracts as well as the restrictive tract. *Daniels*, supra at 523, *Deitch v. Bier*, 460 Pa. 394, 333 A.2d 784, 785 (1975).

The Court in reviewing all the evidence in regard to the character of change in the immediate vicinity agrees with Plaintiff that the growth in the area has altered or eliminated the benefit of the restrictive covenant and rendered it a nullity. The Court further finds that the Defendant no longer receives a substantial benefit from the covenant in terms of the reduction of competition as the area is now filled with twenty-four (24) restaurants and twenty-five (25) business establishments that were not there at the time of the restrictive covenant. Included in these are Applebee's, International House of Pancakes, All Star Asian Buffet, Subway, Sonic, Arby's, Boston Beanery, Shogun and Pizza Addiction in close proximity to Park Inn. In the immediate vicinity of State Route 40, upon which Park Inn is located, are El Patron Mexican restaurant, which is directly across the roadway and Chili's, Fiesta Azteca, Bob Evans, Dairy Queen, Eat 'n Park, Wendy's, Five Guys, Olive Garden, Red Lobster, Burger King, McDonald's and Long John Silver's. Six of these eating establishments sell liquor. But for McDonald's and Burger King, none of these establishments were in existence in 1978 when the restrictive covenant was put into place.

Additionally, twenty-five (25) businesses are now established in the close vicinity and "neighborhood" of Park Inn. They include Hampton Inn, Super Eight Motel, Comfort Inn & Suites, Hilton Garden Inn, Holiday Inn Express and Suites, Dick's Sporting Goods, Hobby Lobby, Verizon, PNC Bank, Sheetz, Community Bank, Walmart, Ford of Uniontown, Fayette Honda, Tri-Star Motors, Game Stop, Sally's Beauty Supply, Uniontown Hospital Out Patient Lab, Laurel Pediatrics, Fayette Regional Eye Care,

DaVita Dialysis, Uniontown Primary Care, McMillen Engineering and the Barre Room. The aerial photo, Exhibit 3, clearly shows as Plaintiff contends, the explosion of business in that area since 1978. Prior thereto, the Uniontown Mall was built in 1972. There existed farm land, the county home, a grocery store, McDonald's, Burger King and Ponderosa.

The Defendant contends that the majority of development is not on the same side of U.S. Route 40 and in different townships. Park Inn is situate on the North Union Township side of Route 40. The state route divides the township. The importance of that argument is miniscule. Restaurants and hotels selling liquor abound, and they abound in close proximity to Park Inn.

Fayette County Commissioner Vincent Vicites testified that he was involved in developing the business park in that area which includes the car dealerships on the North Union side of Route 40. Vicites testified that the area is a growth area and had secured 100 million dollars in private investments and an additional 18 million dollars of investment capital. He testified that El Patron would be approximately the same distance as the potential Texas Roadhouse. He further testified there are no chain steak houses. North and South Union are the same class townships and share the same code.

Representatives from both Texas Roadhouse and AM Uniontown Hotel, L.P. compared the menu offerings and liquor selections of each establishment to illustrate the competitive or non-competitive nature of the steakhouse to the RBG Restaurant at the Park Inn. The Court finds that the Texas Roadhouse is a specialty steakhouse whereas the RBG is the European idea of an American Bistro Grill. As such, Texas Roadhouse is not any more competitive as the similar restaurants and pubs in the area and will not substantially compete for business due to the existing competition which has rendered the purpose of the covenant a nullity. Park Inn no longer benefits from the covenant due to such competition in the immediate vicinity. The Defendant AM Uniontown Hotel, L.P. has placed the Park Inn for sale. It claims that one of the selling points to make it more marketable is the reservation against competition. This Court concludes any prospective purchaser however, will view all the competition reflected in the area which makes that selling point illusory. AM Uniontown Hotel, L.P. is no longer receiving any benefit against competition due to the restrictive covenant. The covenant is a nullity as it exists.

Texas Roadhouse offers six (6) different steaks in four sizes; twenty-four (24) options for steak. RBG offers one steak, a flatiron, which Texas Roadhouse does not offer. The hours of operation are different the Texas Roadhouse offers little or no specials, and is not open for breakfast. The Park Inn offers live entertainment. According to Mike Castro of Texas Roadhouse, Chili's restaurant is more of a competitor to them than RBG Bistro.

Matthew Shollar, a general partner in Great Stay Hospitality Partners, owns a share in a number of investments. AM Uniontown Hotel, L.P. is the holding company for the Park Inn. He discussed the significant investment made to Park Inn in the roof, infrastructure, rooms and facility which totaled over \$800,000 dollars. He states the market has deteriorated due to the loss of the gas drilling industry in the area and the introduc-

tion of other hotels. Fayette County's tourism is down forty percent and the Hilton Garden and Holiday Inn Express are also for sale.

Based upon the evidence of record, this Court finds that the purpose of the covenant no longer exists and the Defendant no longer derives benefit from the antiquated restriction set forth thirty-nine (39) years ago.

WHEREFORE, the Court will enter the following Order:

#### ORDER

AND NOW, this 26th day of September, 2017, the Complaint for Declaratory Judgment is GRANTED. Paragraph (2) only of the restrictive covenant contained within the Deed of Ira B. Coldren, Jr. and Frances T. Coldren, his wife, to Null Land, Inc., dated September 12, 1978, being part of the same restrictive covenants created by Deed to Ira B. Coldren and Frances T. Coldren, his wife, of September 1, 1978 is hereby EXTINGUISHED and DECLARED NULL AND VOID only as to the property found at Deed Book 1243, page 1002 of record in the Recorder of Deeds Office of Fayette County, Pennsylvania. All remaining portions of the restrictive covenants set forth in said Deed shall remain in full force and effect. The portion of the restrictive covenant that is EXTINGUISHED on property conveyed in Deed Book 1243, page 1002 is as follows:

2. That no building shall be erected for or used or occupied as a restaurant, commercial cafeteria or quick-service, limited menu type food service operation, or for the manufacture, bottling or sale of malt, vinous or spirituous liquors.

BY THE COURT:  
NANCY D. VERNON, JUDGE

ATTEST:  
Nina Capuzzi Frankhouser  
PROTHONOTARY

**LOCAL RULE - PUBLIC ACCESS POLICY****RULE 102****PUBLIC ACCESS POLICY:  
CASE RECORDS OF THE TRIAL COURTS**

All filings in the Court of Common Pleas of Fayette County shall comply with the Public Access Policy of the Unified Judicial System of Pennsylvania. Information that is confidential as defined by the Public Access Policy shall not be included in any document filed in the Court of Common Pleas of Fayette County, except on a Confidential Information Form filed contemporaneously with the document.

Confidential information filed in accordance with the Public Access Policy shall be on a standardized Confidential Information Form provided by the Administrative Office of Pennsylvania Courts. The form shall be available in each filing office as well as on the Court's website at [www.co.fayette.pa.us](http://www.co.fayette.pa.us). Failure to comply with the requirements may result in the matter being before the court for hearing or sanctions.

A copy of this policy shall be continuously available for public inspection in the custodian's office, in the Administrative Office of Fayette County Courts and on the Court's website at [www.co.fayette.pa.us](http://www.co.fayette.pa.us).



## LOCAL RULE - PUBLIC ACCESS POLICY

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY,  
PENNSYLVANIA

IN RE: PUBLIC ACCESS POLICY: :  
CASE RECORDS OF THE TRIAL COURTS :  
F.C.R.J.A. 102 : No. 2062 of 2017

### ORDER

AND NOW, this 18th day of September, 2017, it is hereby Ordered that a Public Access Policy: Case Records of the Trial Courts, is adopted as a local rule of judicial administration as attached.

The Prothonotary is directed as follows:

- (1) A copy of the order and rule shall be filed with the Administrative Office of Pennsylvania Courts via email to [adminrules@pacourts.us](mailto:adminrules@pacourts.us).
- (2) Two copies and CD-ROM of the order and rule shall be distributed to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
- (3) One copy of the order and rule shall be sent to the Fayette County Law Library and the Editor of the Fayette Legal Journal.

The Administrative Office of Fayette County Courts is directed as follows:

- (1) Publish a copy of this rule on the website of Administrative Office of Fayette County Courts at [www.co.fayette.pa.us](http://www.co.fayette.pa.us).
- (2) Compile the rule within the complete set of local rules no later than 30 days following publication in the Pennsylvania Bulletin.

The Public Access Policy: Case Records of the Trial Courts shall become effective on January 6, 2018.

BY THE COURT,  
JOHN F. WAGNER, JR.  
President Judge

ATTEST:  
Nina Capuzzi Frankhouser  
Prothonotary



## BENCH BAR CONFERENCE

### Fayette County Bar Association Bench Bar Conference

will include the following presentations and speakers:

Driver's License Suspension Appeals  
Judge Joseph M. George Jr.  
(1 Substantive credit)

Trending Legal Ethics Issues  
Bridget M. Gillespie, PBA Director of Western PA Services  
Judge Linda R. Cordaro  
(1 Ethics credit)

Public Access Policy  
Administrative Office of Pennsylvania Courts  
(1 Ethics credit)

Schedule: 8:30 - Meet the Sponsors/Full Breakfast Buffet  
9:00 to 12:15 - Seminar CLE Presentations  
12:15 - Remarks by Justice Debra Todd  
12:30 - Lunch

**Wednesday, October 11, 2017**

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