

# FAYETTE LEGAL JOURNAL

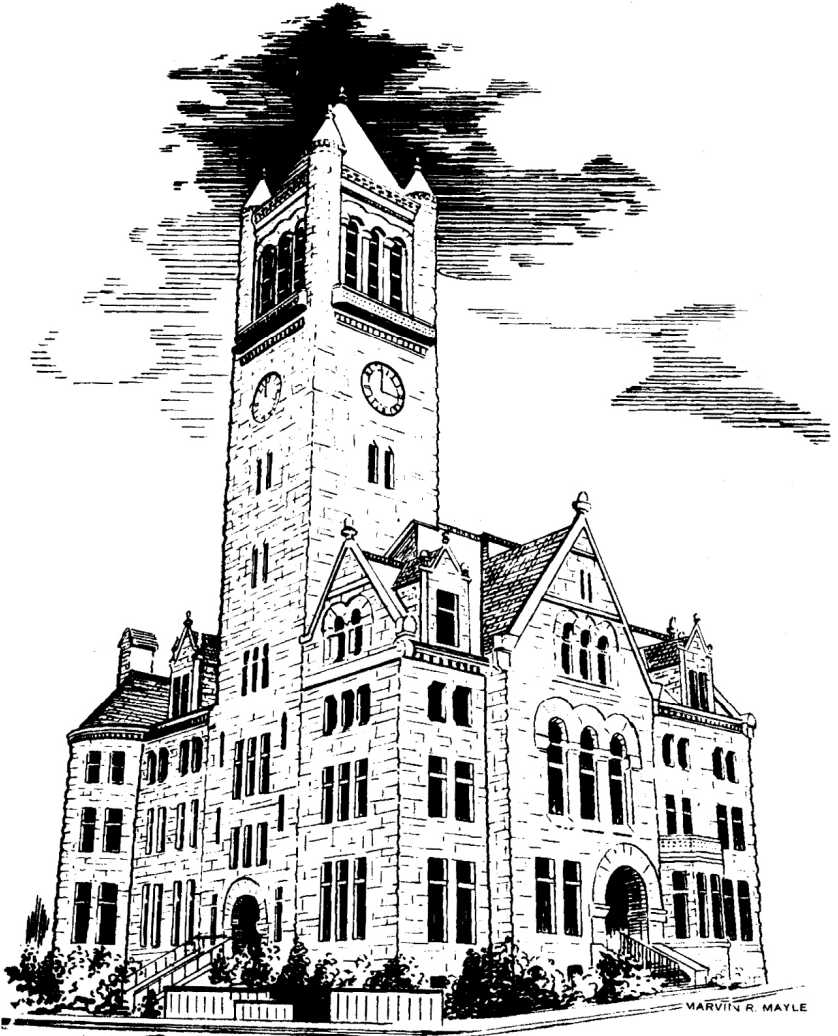
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## FAYETTE LEGAL JOURNAL

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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

**PAULINE BUNGARD, a/k/a PAULINE FLEMING BUNGARD**, late of Ohiopyle, Fayette County, PA (3)

*Administrator:* Troy Bungard  
c/o 815A Memorial Boulevard  
Connellsville, PA 15425  
*Attorney:* Margaret Zylka House

**STELLA BURROWS, a/k/a STELLA M. BURROWS**, late of Everson, Fayette County, PA (3)

*Executor:* Neil E. Yoder  
c/o Stewart, McArdle, Sorice, et.al., LLC  
229 South Maple Avenue  
Greensburg, PA 15601  
*Attorney:* Brian Cavanaugh

**LINDA COBB, a/k/a LINDA M. COBB, a/k/a LINDA MARGARET COBB**, late of Connellsville, Fayette County, PA (3)

*Executrix:* Lorelei M. Kazulen  
37 Grand Street  
Uniontown, PA 15401  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**RICHARD FEARER, a/k/a RICHARD P. FEARER, a/k/a RICHARD PAUL FEARER**, late of North Union Township, Fayette County, PA (3)

*Executor:* Clyde E. Fearer  
10 River Marsh Court  
Oklatie, SC 29909  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**ELSIE FLEMING**, late of Ohiopyle, Fayette County, PA (3)

*Administrator:* Troy Bungard  
c/o 815A Memorial Boulevard  
Connellsville, PA 15425  
*Attorney:* Margaret Zylka House

**TRELLIS MELLINGER, a/k/a TRELLIS R. MELLINGER**, late of Lower Tyrone Township, Fayette County, PA (3)

*Executrix:* Pamela R. Philburn  
136 Chaintown Road  
Dawson, PA 15428  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**ANNA NOVAK**, late of North Union Township, Fayette County, PA (3)

*Executor:* David P. Novak  
370 Manor Road  
Wexford, PA 15090  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**MARIO PORRECA**, late of Menallen Township, Fayette County, PA (3)

*Personal Representative:* Linda Alexander  
P.O. Box 953  
Uniontown, PA 15401  
c/o P.O. Box 953  
Uniontown, PA 15401  
*Attorney:* Ricardo J. Cicconi

**DOROTHY V. WEITZEL**, late of Washington Township, Fayette County, PA (3)

*Executrix:* Louise Ann Horrell  
407 Ella Street  
Belle Vernon, PA 15012  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

## Second Publication

**GEORGE F. ANSELL, a/k/a GEORGE F. ANSELL, III**, late of Dawson, Fayette County, PA (2)

*Executrix:* Carol L. Ansell  
319 Laughlin Street  
Dawson, PA 15428  
c/o 208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**VIVIAN BERNARDO**, late of Belle Vernon, Fayette County, PA (2)

*Executrix:* Janet Gavazzi  
1913 Ivanhoe Drive  
North Huntingdon, PA 15642  
c/o 300 Fallowfield Avenue  
Charleroi, PA 15022  
*Attorney:* Richard C. Mudrick

**MARY LOUISE CHOMIAK**, late of Uniontown, Fayette County, PA (2)

*Personal Representative:*  
Robert Thomas Chomiak  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

**BETTY LEE GASKILL**, late of Uniontown, Fayette County, PA (2)

*Administrator:* Kathryn A. Kiger  
c/o Dentons Cohen & Grigsby, P.C.  
625 Liberty Avenue, 7th. Floor  
Pittsburgh, PA 15222-3152  
*Attorney:* Nicole L. Phatak

**LAWRENCE D. LEMMON**, late of North Union Township, Fayette County, PA (2)

*Personal Representative:* Sheri Gregg  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

**BETTY M. MILLS, a/k/a BETTY MAE MILLS**, late of Franklin Township, Fayette County, PA (2)

*Personal Representative:*  
Kathy Eileen Hollis  
c/o Watson Mundorff, LLP

720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**PATRICIA A. MORRIS, a/k/a PATRICIA ANN MORRIS**, late of Masontown Borough, Fayette County, PA (2)

*Personal Representatives:* Donald Morris and Susan Schroyer  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

## First Publication

**WINDEL R. HAYES**, late of Lower Tyrone Township, Fayette County, PA (1)

*Personal Representatives:* Jesse O. Ansell  
711 N. Bell View Road  
Connellsville, PA 15425  
Mr. Lon A. Hayes  
289 School Road  
Dawson, PA 15428  
c/o 208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**VIOLA H. HUGHES, a/k/a VIOLA J. HUGHES, a/k/a VIOLA JAYNE HUGHES**, late of Connellsville, Fayette County, PA (1)

*Executor:* Martin Halfhill  
c/o Molinaro Law Offices  
P.O. Box 799  
Connellsville, PA 15425  
*Attorney:* Carmine V. Molinaro, Jr.

**AUDREY M. MCDOWELL, a/k/a AUDREY M. WADE, a/k/a AUDREY M. KING**, late of Uniontown, Fayette County, PA (1)

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

**PHYLLIS TRINGES, a/k/a PHYLLIS J. TRINGES**, late of Georges Township, Fayette County, PA (1)

*Personal Representative:* Kathleen Ditmore  
c/o George and George, LLP  
92 East Main Street, Suite 1

Uniontown, PA 15401  
 Attorney: G.T. George

County Courthouse, 61 East Main St.,  
 Uniontown, Pa 15401,

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 Fayette County, PA (1)

*Executrix:* Myra B. Wilkinson  
 c/o Webster and Webster  
 51 East South Street  
 Uniontown, PA 15401  
 Attorney: Webster & Webster

**LEGAL NOTICES**

**NOTICE**

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on July 30, 2020, 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 Mellow Yellow Holdings, LLC having an address of 102 Hutchinson Street, Uniontown, Pennsylvania 15401.

James E. Higinbotham, Jr., Esq.  
 HIGINBOTHAM LAW OFFICES  
 45 East Main Street, Suite 500  
 Uniontown, PA 15401  
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IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY, PENNSYLVANIA  
 ORPHANS' COURT DIVISION  
 NO. 36 ADOPT 2020

IN RE: ADOPTION OF  
 BRAYLEM FOSTER, a/k/a  
 BRALYNN FOSTER, a/k/a  
 BRAYLEM DESTINY FOSTER

NOTICE

TO: Unknown Father

A petition has been filed asking the Court to put an end to all rights you have to your child, Braylem Foster, a/k/a Bralynn Foster, a/k/a Braylem Destiny Foster. The court has set a hearing to consider ending your rights to your child. That hearing will be held on Friday, November 13 at 11:30 a.m. in Courtroom No. 3 before the Honorable Linda R. Cordaro, Fayette

## Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and  
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

**Monday, November 2, 2020, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2619-0660	MARY CHECK	Donald L. Check and Paul R. Check, Co-Executors

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

**Monday, November 16, 2020, at 9:30 A.M.**

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

**Monday, November 2, 2020, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2619-0345	JANET E. PETLEVICH	Rosemary Wesdock, Administratrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

**Monday, November 16, 2020, at 9:30 A.M.**

in Courtroom No. 5 of the **Honorable Joseph M. George Jr.** or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

**JUDICIAL OPINION**

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

IN RE:	:	
UPSET SALE OF PROPERTY HELD	:	
SEPTEMBER 16, 2019 FOR DELINQUENT	:	
TAXES BY THE FAYETTE COUNTY	:	
TAX CLAIM BUREAU	:	
	:	
RLJ PROPERTIES, LLC,	:	
Exceptant/Petitioner	:	
V.	:	
FAYETTE COUNTY TAX CLAIM BUREAU,	:	
Respondent,	:	
V.	:	No. 2218 of 2019 G.D.
JAMES WINSCHHEL,	:	Honorable President Judge
Intervenor.	:	John F. Wagner, Jr.

OPINION AND ORDER

Wagner, P.J.

April 22, 2020

Before the Court are the Objections and Exceptions to the Upset Tax Sale and Petition to Set Aside or/ Void Upset Tax filed by the Petitioner RLJ Properties, LLC, (hereinafter “RLJ”), a Maryland Limited Liability Company.

BACKGROUND

The present action involves the tax sale of a parcel of real property situated at 380 Fearer Road, Markleysburg, Fayette County, Pennsylvania designated as Parcel ID 16-16-0097-01 (hereinafter “Property”), The Property was placed on the Upset Tax Sale List by the Fayette County Tax Claim Bureau, as the result of the nonpayment of the property taxes due for the year 2017. The property was sold at the September 16, 2019 Tax Upset Sale to James Winschel, intervenor. RLJ purchased the property on March 1, 2010 from Markleysburg Enterprises, LLC, a Pennsylvania Limited Liability Company. RLJ’s sole member is Ricky Jones.

The property consists of 76.19 acres of land upon which is situate a race track, multiple buildings, and a parking area. The property is known as Roaring Knob Raceway. The raceway is open only for part of the year. There is an entrance to the property off Pennsylvania Route 40 via a driveway easement to the raceway. There is an undeveloped gravel pathway at the rear of the property that touches Fearer Road however it is not utilized by any vehicles.

Sarah Minnich, Director of the Fayette County Tax Claim Bureau, testified that the sale of the property was published and that notice was sent to RLJ by certified mail restricted delivery which was returned with a signature. However, the signature on the notice is indecipherable.

The Tax Claim Bureau records indicate that the property was posted on July 5, 2019 on Fearer Road. However, the posting for the tax sale listed 370 Fearer Road, not 380 Fearer Road, as the property to be sold and the posting notice was not placed on the property of RLJ but on the parcel next to it. No one from the out-of-state agency which posted the property under contract with the Bureau testified at the hearing so no explanation was given as to why the posting was placed at a location other than on RLJ's property. Fearer Road was described as a seldom used roadway.

### ISSUE

Should the sale of taxpayer's property, that occurred on September 16, 2019, be set aside and did the Fayette County Tax Claim Bureau comply with the constitutionally required notice provisions of 72 P.S. § 5860.602.

### ANALYSIS

A property owner's right to notice prior to commencing an upset tax sale is established pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The provisions of the Pennsylvania Real Estate Tax Sale Law, 72 Pa. P.S. §5860.101-5860-803, provide for the sale of real estate when taxes on the property are delinquent. The United States Supreme Court has held that due process is implicated in any taking of property for the collection of taxes stating that people must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property. Before forcing a citizen to satisfy his debt by forfeiting his property, due process requires the government to provide adequate notice of the impending taking. Due process is satisfied when the Tax Claim Bureau (hereinafter "Bureau"), before commencing a tax sale, provides notice reasonably calculated, under all the circumstances, to apprise the taxpayer and interested parties of the pendency of the action and afford them an opportunity to present objections. Appeal of Neff, 132 A.3d 617 (Pa. Super. 2016). In the absence of actual notice to the taxpayer, the Bureau must prove strict compliance with the notice requirements of the Real Estate Tax Law. 72 Pa. S.A. § 5860.602. Further, and notwithstanding whether a taxpayer received actual notice, the Tax Claim Bureau must demonstrate that it personally served notice on the owner of the property subject to the upset tax sale or obtained a waiver of personal service from the trial court. Id.

The Real Estate Tax Sale Law requires the Bureau to publish notice of the sale, to also send notice of a pending upset tax sale by mail, and to post the property. First, it mandates that the Bureau send notice by certified mail, restricted delivery, return receipt requested, postage prepaid. 72 Pa. S.A. § 5860.602(e). If the certified mail is returned unsigned or signed by someone other than the owner of record, then at least ten days before the date of the sale, a similar notice of the sale shall be given to each owner who failed to acknowledge the first notice by United States first class mail, proof of mailing, at his last known post office address.



In reviewing the validity of a tax sale, the court must focus “not on the alleged neglect of the owner, which is often present in some degree, but on whether the activities of the (tax claim bureau) comply with the requirements of the statute.” In *re Consolidated Reports and Return by Tax claims Bureau of Northumberland Cty. Of Properties*, 132 A.3d 637 (Pa. Commw. Ct. 2015). It is the conduct of the tax claim bureau that is determinative of compliance with the statutory notice provisions. The Bureau bears the constitutional duty to provide notice to the property owner of a tax sale of their property. The due process rights of the property owner to notice requires that the practicalities and peculiarities of the case are considered and given due regard. *Id.* The Real Estate Tax Sale Law requires notice to the property owner prior to an upset tax sale in the form of publication, mail and posting; if any of the three types of notice is defective then the tax sale is void. *Id.*

With regard to posting, the statute states that property scheduled for sale shall be posted at least ten (10) days prior to the sale. 72 Pa. P.S. §5860.602(e)(3). However, the posting of the tax sale notice must be reasonable, meaning conspicuous to the owner and public. The posting must be conspicuous which is defined as posting such that will be seen by the property owner and general public. *Wiles v. Washington County Tax Claim Bureau*. 972 A.2d 24 (Pa. Commw. Ct. 2009). These provisions are to be strictly construed and compliance with said provisions is essential to prevent the deprivation of property without due process. *Id.*

Sarah Minnich, Director of the Bureau, testified as to the publication of the upset tax sale in the Herald Standard newspaper and the Fayette County Legal Journal. She testified that notice was sent out certified mail, return receipt, by United States mail and that a signed card was returned. However, no evidence was presented that the indecipherable signature on the card was that of the RLJ’s sole member, Ricky Jones. She testified that posting is done by an out-of-state posting agency and she was provided with documentation from that agency. The Bureau did not present any testimony from the person who posted the notice. As a result, no explanation was provided related to the location of the posting. The posting was not placed on RLJ’s property. Instead, the posting was located on a neighbor’s parcel, the notice listed a different address for the parcel that was to be sold, and the notice was placed on the side of the property which had no access to the roadway where the posting was placed, and on a roadway that was not routinely traveled by the public.

Ricky Jones, the only named member of RLJ, provided testimony that he never received any notice as to the sale of the property. He testified that the signature on the return receipt was not his signature. He testified that his attorney, who generally paid the taxes, had the necessary money on hand to pay the delinquent taxes. He was never made aware that the taxes had not been paid. Additionally, he stated that he was not aware that there was any track off of Fearer Road on his property and never used it to enter or exit his property. He testified that he only learned of the sale of his property when his friend called him after the sale had occurred.

RLJ presented the testimony of two witnesses, Gary Sisson and James Hauger, who frequented the raceway during the time of the posting. Both witnesses described the property, Fearer Road, and access to the raceway. They testified that Fearer Road was not generally traveled and the entrance to the property was only from Route 40. Each

testified that they were there on a weekly basis competing or watching the races. They also testified that they never saw any notice or sign of the pending tax sale. Mr. Sisson testified that if he had known about the sale, he would have bid on the property himself. Their testimony made it clear that the posting was not conspicuous as required by the law. The posting notice listed an incorrect address for the parcel to be sold, was placed on an adjacent parcel of property that was not the parcel at issue in the pending upset tax sale, and the notice was not placed in a conspicuous location so that both the property owner and the public would have notice of the pending sale.

The notice provision of the Real Estate tax sale Law was enacted with the primary purpose of insuring the collection of taxes, and not to strip away citizens' property rights. The due process rights of the property owner are to be protected by strict compliance with the strict notice requirements placed on the Bureau. The Court finds testimony of Ricky Jones to be credible that he failed to receive notice of the sale of his property. The Bureau has failed to establish that he received actual notice of the pending upset sale of his property. Additionally, the posting of the property failed to comply with the strict notice requirements of the statute. With the incorrect address on the posting notice, placing the notice on an adjacent parcel of land rather than the parcel to be sold, placing the notice on a roadway seldom traveled by the owner or the public resulted in the notice being inadequate, and certainly not conspicuous to either the owner or the public. As the Bureau has failed to meet the notice requirements of the law, the upset sale of the property shall be set aside.

ORDER

AND NOW, this 22nd day of April, 2020, upon consideration of the Exceptions and Objections to Tax Sale filed by the property owner, RLJ Properties, LLC, it is hereby ORDERED and DECREED that the Petitioner's request to set aside the September 19, 2019 tax sale of the subject real estate located at 380 Fearer Road, Markleysburg, and designated for tax purposes as Parcel ID 16-16-0097-01 is GRANTED and the sale is set aside and declared to be null and void. The Fayette County Tax Claim Bureau shall refund the purchase price to the purchaser, James Winschel. It is further ORDERED and DIRECTED that RLJ Properties, LLC shall within thirty days of the date of this order pay in full to the Fayette County Tax Claim Bureau all delinquent taxes including penalties, costs and fees.

BY THE COURT:  
WAGNER, P.J.

ATTEST:  
Prothonotary

## **WARMAN ABSTRACT & RESEARCH LLC**

**JOHN F. WARMAN**

**518 Madison Drive**

**Smithfield, PA 15478**

**724-322-6529**

**johnfranciswarman@gmail.com**

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