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A Reply

Louis J. Sirico Jr.

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DEFICIENCY JUDGMENTS IN PENNSYLVANIA:
A REPLY

LOUIS J. SIRICO, JR.†

I. INTRODUCTION

When the Pennsylvania legislature enacted the Deficiency Judgment Act,¹ it sought to protect the debtor.² Prior to 1941, the price realized at the foreclosure sale conclusively determined the value of the mortgaged property.³ The rule could prove disastrous for the defaulting mortgagor. The mortgagee could purchase the property at the sheriff's sale for a nominal amount and then successfully claim that the mortgagor still owed the outstanding amount of the loan secured by the mortgage minus the proceeds from the sheriff's sale.⁴

Similar scenarios also were possible in other states. The Depression of the 1930's led many legislatures, including Pennsylvania's, to take remedial action. The various legislatures enacted five types of statutes that still remain in use.⁵

† Professor of Law, Villanova University School of Law; B.A. Yale University, 1967; J.D. University of Texas, 1972. I thank Professor Robert Washburn for reviewing this piece. I also thank my research assistant, Jeffrey Margulies.

1. 42 PA. CONS. STAT. ANN. § 8103 (Purdon 1982). A copy of the Pennsylvania Deficiency Judgment Act is reprinted in the Appendix to these articles. The current Act is substantially a reenactment of the Act of July 16, 1941, No. 151, 1941 Pa. Laws 400.

2. See *First Pennsylvania Bank v. Lancaster County Tax Claim Bureau*, 504 Pa. 179, 190, 470 A.2d 938, 944 (1983) (policy objective of Act is "to protect a debtor from personal liability by limiting liability to the fair market value of real estate collateral"); *Union Trust Co. v. Tutino*, 353 Pa. 145, 148, 44 A.2d 556, 558 (1945) (legislative intent in passing Act was "to protect judgment debtors whose real estate is sold in execution, by requiring the [creditor] to give credit for the value of the property he purchased at his execution and not merely to credit the price at which it was sold"). The 1941 Act is entitled "An Act to protect the debtors, obligors or guarantors of debts for which judgments are entered or may be entered . . . by prescribing the method of fixing the fair market value of such property sold on execution, and limiting the amount collectible thereafter on such judgments." Act of July 16, 1941, No. 151, 1941 Pa. Laws 400. For a history of the 1941 Act that demonstrates the tenacity of the legislature in devising constitutional remedial legislation, see 2 G. LADNER, *CONVEYANCING IN PENNSYLVANIA* § 12.28(a),(b) (4th ed. 1979).

3. See *In re White's Estate*, 322 Pa. 85, 89, 185 A. 589, 591 (1936) (price realized at foreclosure is conclusive upon parties as to value of mortgaged premises and mortgagee has personal claim against mortgagor for any deficiency, even if mortgagee purchased property at foreclosure sale).

4. See *id.* at 88, 185 A. at 590 (property was sold at foreclosure sale for \$50 and mortgagee then sought to collect deficiency between \$50 sale price and \$3,207 debt).

5. For a description and analysis of these various types of legislation, see Washburn, *The Judicial and Legislative Response to Price Inadequacy in Mortgage Fore-*

The first type prohibits deficiency judgments when the initial property transaction falls into a certain category, such as a purchase money mortgage, mortgage on a homestead, private sale, abandoned property, or sale with a short redemption period.⁶

The second type authorizes courts to issue remedial orders.⁷ Some statutes permit courts to deny confirmation of the foreclosure sale for such reasons as inadequacy of sales price, failure of the sales price to exceed an advanced bid, or substantial irregularities in the sale procedure. Some statutes permit courts to set aside confirmed sales in certain situations. Other statutes permit courts to establish an upset price that the sale price must equal or exceed in order to obtain judicial confirmation. Still other statutes authorize courts to enjoin or delay sales when severe economic conditions prevail.

The third type requires the court or office conducting the sale to appoint an appraiser to evaluate the property.⁸ Some statutes forbid confirming a foreclosure sale if the price bid falls short of a statutory percentage—usually two-thirds—of appraised value. Other statutes grant the mortgagor credit for the appraised value in calculating the remaining debt.

The fourth type is a miscellany of protective devices.⁹ They include a requirement that the mortgagee exhaust its security before seeking a money judgment; a requirement that the mortgagee elect between either suing on the debt or foreclosing and obtaining a deficiency judgment; an extension of the time period during which the mortgagor can exercise the equitable right to redeem; and creation of a statutory right of redemption for a specified period after the foreclosure sale.

The fifth type limits the size of the deficiency judgment by giving the debtor credit for the property's fair market value.¹⁰ Pennsylvania's Deficiency Judgment Act falls into this category. Under the Act, a judgment creditor who buys real property in an execution proceeding and who seeks to collect the balance of the

closure Sales, 53 S. CAL. L. REV. 843, 901-34 (1980). My catalogue of the types of statutes is based on Professor Washburn's taxonomy. A state may incorporate more than one type of statute into its legislation. *See, e.g.*, CAL. CIV. PROC. CODE §§ 580, 726 (West 1980).

6. Washburn, *supra* note 5, at 916-19.

7. *Id.* at 919-26.

8. *Id.* at 903-07.

9. *Id.* at 926-34.

10. *Id.* at 907-16.

debt must petition the court to fix the real property's fair market value.¹¹ The value is credited against the amount that the debtor still owes.¹² As the preceding survey of remedial measures makes clear, the Act is scarcely radical pro-debtor legislation. For example, unlike twenty-seven other states,¹³ Pennsylvania does not grant the debtor a statutory right of redemption after the foreclosure sale. The Act offers a comparatively temperate method for protecting the debtor.

In his article, Harris Ominsky complains that the Act imposes an excessive burden on the mortgage lender. As he is aware, the Act is pro-debtor legislation designed to favor the mortgagor. He, however, focuses on the burdens imposed on the lender in a sophisticated mortgage loan transaction. Unlike parties to a residential or modest commercial mortgage, all parties to a sophisticated transaction undoubtedly enjoy the representation of experienced counsel and are aware of the risks they are assuming. Neither lender nor debtor is in a strong position to claim that its respective plight deserves greater sympathy on social policy grounds.

Though Mr. Ominsky may make a strong argument for some changes in the Act for substantial, complex transactions, I do not understand him as advocating that these changes apply to deficiency judgments following foreclosures on residences, farms, or small businesses. I would be interested in seeing a concrete legislative proposal that draws a clear line between substantial, complex transactions and all other transactions. I suspect that drafting such a proposal would prove to be an extremely difficult task.

Mr. Ominsky also suggests strategies for lenders and novel interpretations of a recent court case. I have questions to raise about both.

II. THE PROCEDURE

Mr. Ominsky asserts that the procedure for obtaining a deficiency judgment is too arduous. The Deficiency Judgment Act, however, imposes no unusually burdensome requirements.

11. 42 PA. CONS. STAT. ANN. § 8103(a) (Purdon 1982).

12. *Id.* § 8103(c), (d).

13. See Washburn, *supra* note 5, at 930 n.478. In addition to states that grant statutory rights of redemption, Connecticut has a judicially created post-foreclosure redemption period when strict foreclosure has occurred. See *Brand v. Woolson*, 120 Conn. 211, 215, 180 A. 293, 295 (1935).

The Act applies only to the judgment creditor who buys the debtor's property in an execution proceeding.¹⁴ To collect a deficiency judgment, the mortgage lender who has purchased the property first must obtain a personal judgment against the debtor.¹⁵ The lender then must petition the court to fix the property's fair market value.¹⁶ The petition must be filed within six months of the sale.¹⁷ In the petition, the lender must assert the property's fair market value.¹⁸ If the debtor then fails to file an answer contesting the asserted value, the court must accept the value that the lender has claimed.¹⁹ If the lender's allegation of fair market value is uncontroverted, the lender may obtain a speedy determination in the amount it sought.

If the debtor challenges the lender's assertion of fair market value, the burden on the lender is no heavier than it would be in any contested litigation. The parties submit appraisals of the property's value, cross-examine the opposing expert witnesses, and the court makes its decision.²⁰

Mr. Ominsky lodges two criticisms. First, the lender cannot proceed against other collateral until the court fixes the property's value. In the interim, the assets that constitute such collateral may depreciate or disappear. Second, if the debtor contests the action for a personal judgment, the lender may be unable to obtain the judgment within six months of the execution sale. The Act requires the lender to petition for a fixing of fair market value within six months of the sale.²¹ Without a personal judgment in hand, the lender cannot petition under the Act. The lender therefore might fail to meet the Act's deadline and lose the right to seek further satisfaction for the debt.

As for the first criticism, the Act's purpose is to insure that the lender receives no more than the value of the debt.²² In order

14. 42 PA. CONS. STAT. ANN. § 8103(a) (Purdon 1982). *See also* Shapira Estate, 93 Pitt. L.J. 231, 232 (Allegheny 1945) (Deficiency Judgment Act applies only when real property has been sold to plaintiff in execution proceedings and price is insufficient to satisfy judgment).

15. *See* McDowell Nat'l Bank of Sharon v. Stupka, 310 Pa. Super. 143, 147-49, 456 A.2d 540, 542-43 (1983) (deficiency judgment petition may not be filed unless creditor has obtained personal judgment against debtor).

16. 42 PA. CONS. STAT. ANN. § 8103(a) (Purdon 1982).

17. *Id.* § 8103(d).

18. *Id.* § 8103(c).

19. *Id.* § 8103(c)(1).

20. *Id.* § 8103(c)(2)-(4).

21. *Id.* § 8103(d).

22. For a discussion of the purpose of the Act, see *supra* note 2 and accompanying text. *See also* Cheltenham Fed. Sav. & Loan Ass'n v. Pocono Sky Enters.,

to achieve its purpose, the Act necessarily requires that the court first fix the fair market value of the debt's primary security before it permits the lender to reach the debtor's other assets. The Act thus embodies a policy decision that protecting the debtor is more important than protecting the lender's right to collateral.²³ The policy decision is hardly radical.

Mr. Ominsky's second criticism seems more theoretical than real. The lender often can solve the deadline problem by initiating the action for personal judgment prior to the foreclosure action or simultaneously with it.²⁴ The only serious difficulty might arise when the personal judgment action becomes the subject of prolonged litigation. If the debtor contests the personal judgment action and the foreclosure, the lender then can move slowly on the foreclosure proceeding to insure that the personal judgment action first reaches resolution. How commonly the problem arises remains unclear. Mr. Ominsky cites no cases in which a creditor faced this predicament and lost the opportunity to obtain a deficiency judgment.

In summary, the Act's procedural requirements seem unexceptional and highly unlikely to confront the lender with an insurmountable problem.

III. STRATEGIES FOR FIRST AND SECOND MORTGAGES

Mr. Ominsky advises creditors holding both the first and second mortgage on a property to foreclose on the second mortgage, which presumably is the smaller of the two. He argues that the lender then can obtain a personal judgment for the larger debt secured by the first mortgage without first proceeding under the Act.

Mr. Ominsky further suggests that the lender can deprive the debtor of any credit toward the debt secured by the second mortgage. According to the argument, the lender first would foreclose

305 Pa. Super. 471, 479, 451 A.2d 744, 748 (1982) (objective of Act was to relieve debtor of further liability if property taken over by creditor had fair value sufficient to permit creditor to dispose of property without net loss on transaction).

23. See *Cheltenham*, 305 Pa. Super. at 480, 451 A.2d at 749.

24. See *Schuylkill Trust Co. v. Sobolewski*, 325 Pa. 422, 426-27, 190 A. 919, 922 (1937) (mortgagee may pursue its remedies under both mortgage and bond at same time, although limited to one ultimate satisfaction); *Philadelphia Nat'l Bank v. Lutherland, Inc.*, 57 Pa. D. & C.2d 314, 316-17 (Monroe 1972) (it is well established that mortgagee may proceed on both obligations that evidence the debt at the same time, but if both obligations are reduced to judgment mortgagee may have only single satisfaction of debt).

on the second mortgage and pay a minimal price for the property at the forced sale. The lender then would seek a deficiency judgment, show that the property was sold subject to the first mortgage, and seek to deduct from the sale price the balance owed on the first mortgage. The deduction would prove larger than the sale price, and the lender would obtain a personal judgment for the outstanding balance on the loan secured by the second mortgage. The lender then would obtain a personal judgment on the outstanding balance of the loan secured by the first mortgage without having to proceed under the Act. The lender also would own the property.

This strategy raises practical and legal questions. As for the practicalities, the lender may be able to maximize the borrower's personal liability by foreclosing on the second mortgage, rather than the first. Whether increasing the size of the debt would result in a larger recovery in light of the debtor's financial plight is a separate question whose answer probably is almost always in the negative. As for the legal question, I doubt courts would approve steps designed to give the lender the property and judgments for the balance owed on both mortgages as well. Mr. Ominsky cites no cases supporting his position. Any such cases would contradict the thrust of hornbook law.²⁵ The curious result he expects would occur only because the same entity is creditor with respect to the debts secured by the first and second mortgages. Even a court of limited perceptiveness would recognize that the goal should be to permit the creditor the opportunity to recover the remaining debt and no more.²⁶ A court should deduct the property's full fair market value from the judgment on the debt secured by the second mortgage.

IV. MORTGAGED PROPERTIES IN DIFFERENT COUNTIES

Mr. Ominsky complains of the problem arising when the lender secures the debt with a blanket mortgage covering properties located in different counties. Because county courts of common pleas exercise jurisdiction over foreclosures and execution sales, it is impossible to proceed against all properties simultaneously. If the lender forecloses on property in one county, it must

25. See G. OSBORNE, G. NELSON & D. WHITMAN, *REAL ESTATE FINANCE LAW* § 6.14 (1979).

26. See *Schuylkill Trust Co. v. Sobolewski*, 325 Pa. at 426-27, 190 A. at 922 (1937) (only one recovery permitted on debt); see also *Cheltenham Fed. Sav. & Loan Ass'n. v. Pocono Sky Enters.*, 305 Pa. Super. at 480, 451 A.2d at 749 (1982) (Act is to be construed liberally to protect debtors and guarantors).

proceed under the Act before foreclosing on properties in other counties. Mr. Ominsky argues that the county-by-county procedure results in unnecessary expense and delay.

The solution, however, is simple, and Pennsylvania lenders have used it. Instead of accepting a blanket mortgage, the lender need only insist that the mortgagor issue a separate note and mortgage on the property in each respective county.²⁷ The lender then may foreclose on individual mortgages simultaneously or in succession, without having to petition the court for a deficiency judgment following each foreclosure action.

Mr. Ominsky notes that dicta in *First Pennsylvania Bank v. Lancaster County Tax Claim Bureau*, a 1983 Pennsylvania Supreme Court decision, argues against requiring compliance with the Deficiency Judgment Act when a blanket mortgage covers properties in different counties.²⁸ In *First Pennsylvania Bank*, the borrower secured a promissory note by giving the lender five separate mortgages to cover individual properties located in four Pennsylvania counties.²⁹ The lender later foreclosed on three of the properties and subsequently purchased them at sheriff's sales.³⁰ According to the court's dicta, the lender did not need to comply with the Deficiency Judgment Act after purchasing one property and before proceeding against the other properties.³¹ Though the court's language is not entirely clear, I hesitate to cite the case as disposing with the need for a judgment creditor to comply with the Deficiency Judgment Act after buying property at an execution sale in one county and before foreclosing in another county on property that falls under the same blanket mortgage. I offer three reasons.

First, the lender in *First Pennsylvania Bank* did not hold a blanket mortgage; it held a separate mortgage on each property.³² To extend the court's dicta to blanket mortgages would overturn by implication a longstanding recognition by the state's bench and bar that the Deficiency Judgment Act applies to blanket mortgages. The court seemed to acknowledge the continuing validity

27. Mr. Ominsky suggests this strategy in his article. He also advises the lender to consider cross-collateralization with all separate mortgages recorded as junior liens on each property and containing cross-default provisions.

28. 504 Pa. 179, 187-90, 470 A.2d 938, 942-44 (1983).

29. *Id.* at 182, 470 A.2d at 939-40.

30. *Id.* at 183, 470 A.2d at 940.

31. *Id.* at 190, 470 A.2d at 944.

32. *Id.* at 182, 470 A.2d at 939-40.

of the case on which the longstanding rule is based³³ and expressly distinguished that case's facts from those of the case at bar.³⁴

Second, *First Pennsylvania Bank* suggests a reason for treating separate mortgages differently from blanket mortgages. The court stated: "We believe a creditor who has bargained for a specific lien on several parcels should [instead of having to proceed against all mortgages securing the debtor's obligation in a single foreclosure action] be able to issue successive executions" ³⁵ The court in its dicta thus considered the expectations of the lender and borrower. Given the longstanding Pennsylvania rule regarding application of the Act to blanket mortgages, the court could argue that the lender and the borrower presumably understood the consequences of their bargain when they agreed on separate mortgages as opposed to a blanket mortgage. According to the argument, their negotiations resulted in an agreement that would favor the lender if the borrower were to default. The court's dicta arguably respects the parties' expectations. Had the parties negotiated a blanket mortgage, the court would have frustrated their expectations if it had not required compliance with the Deficiency Judgment Act. The court does not suggest a change in the accepted interpretation of the Act. It instead permits the parties to choose either of two methods for securing the debt, one of which is more favorable to the lender than the other. The dicta thus allows the borrower and lender flexibility in structuring their agreement. Their choice will depend on the relative

33. The rule that the Act applies to blanket mortgage situations derives from *Union Trust Co. v. Tutino*, a 1945 Pennsylvania Supreme Court decision:

If a mortgage includes more than one tract of land and the execution is against one tract only, and the plaintiff desires to proceed against other property belonging to the debtor, he must, within six months, apply to the court to fix the fair market value of the property sold and credit the judgment debt with that amount; if he does not do that, the debtor "shall be released and discharged of such liability."

353 Pa. 145, 149, 44 A.2d 556, 558 (1945).

In *First Pennsylvania Bank*, the court acknowledged the *Tutino* decision and did nothing to cast doubt on its continuing validity. 504 Pa. at 188-89, 470 A.2d at 943.

34. 504 Pa. at 189-90, 470 A.2d at 944. The court stated that it did not think that "*Tutino* which involved a creditor's election to execute a personal judgment against one of two parcels in the same county controls here." *Id.* The court's language is not entirely clear, but it supports a reading that the court did not intend to extend its new theory to assist a lender who has bargained for a single blanket mortgage, rather than for separate liens. See *infra* text accompanying note 35.

35. 504 Pa. at 190, 470 A.2d at 944.

bargaining power of each party.³⁶

Third, I would hesitate to argue for an extension of dicta when only two of seven justices ascribe to the dicta itself. Four justices expressly disassociated themselves from the section of the opinion that discussed the Deficiency Judgment Act issue, and one justice concurred only in the case result.³⁷

In *Valley Trust Company v. Lapitsky*, the Pennsylvania Superior Court rejected the dicta in *First Pennsylvania Bank* because it fails to serve the Act's purpose of protecting the debtor.³⁸ Lenders thus are best advised not to rely on the *First Pennsylvania Bank* dicta.

In summary, Pennsylvania lenders have devised a method for dealing with the problem that Mr. Ominsky raises. The current understanding of state law gives lenders and borrowers choices in how they structure their agreements. The sophistication of lenders and the dearth of cases in the area suggest that the Act does not set a trap for the unwary. Dicta in *First Pennsylvania Bank*, moreover, does not suggest that the standard reading of the Act is likely to change.

V. FORECLOSING ON REALTY AND PERSONALTY

Mr. Ominsky advises of possible pitfalls for the lender who secures a loan with a mortgage and security agreement on real estate and personal property. He notes that Pennsylvania sheriffs generally will not include personal property in the foreclosure sale, even if it is listed in the mortgage as security. They will include only fixtures and equipment essential to a business' operation as a going concern. This policy is in line with longstanding Pennsylvania law that a real estate mortgage is not a lien on per-

36. In making this argument, I do not concede that the dicta in *First Pennsylvania Bank* is correct as it applies to separate mortgages. I argue only that the dicta on separate mortgages does not extend to blanket mortgages. If a lender must comply with the Act when separate mortgages secure a single note or when a blanket mortgage secures a single note, the lender still may avoid the Act by requiring a separate note and mortgage on the property in each respective county. See *supra* note 27 and accompanying text. The borrower and lender, then, have various methods for structuring an agreement with the different methods designed to reflect different expectations.

37. In a concurring opinion, Justice Zappala, joined by Justices Nix, Larsen, and McDermott, expressly disassociated himself from the portion of the *First Pennsylvania Bank* case that dealt with the Deficiency Judgment Act and urged that that portion of the opinion be regarded as dicta. 504 Pa. at 191, 470 A.2d at 944 (Zappala, J., concurring). Chief Justice Roberts concurred only in the result of the case. *Id.* at 191, 470 A.2d at 944 (Roberts, C.J., concurring).

38. 339 Pa. Super. 177, 182, 488 A.2d 608, 611-12 (1985).

sonal property—aside from the exceptions just noted—even though the mortgage purports to include personal property.³⁹ As Mr. Ominsky explains, this practice makes it difficult to sell real estate and personal property together as a going business, since acquisition of the personal property will not be possible until the lender complies with the Deficiency Judgment Act. The resulting delay, he argues, deprives the lender of the opportunity to readily sell a fully equipped business, gives leverage to the borrower in any negotiations between them, and gives other creditors the chance to seek satisfaction out of the personal property.

Mr. Ominsky suggests two strategies. First, he suggests that the lender invoke the industrial plant doctrine. Under the doctrine, fixtures and equipment essential to a business' operation as a going concern are considered part of the realty and will be transferred at the foreclosure sale as if they were real estate.⁴⁰ The lender thus would argue for an expansive application of the doctrine to personalty.

Second, Mr. Ominsky suggests avoiding the Deficiency Judgment Act by invoking section 9-501(d) of the Uniform Commercial Code.⁴¹ The Code permits the lender to sell and then buy the secured personal property at a public sale. The lender thus could acquire the personal property prior to acquiring the real property and avoid the requirements of the Deficiency Judgment Act.⁴²

As for invoking the industrial plant doctrine, Mr. Ominsky worries that uncertainties in its application may prevent it from extending to all items that might make attractive the sale of the

39. See 2 G. LADNER, *supra* note 2, § 12.24.

40. See, e.g., *First Nat'l Bank v. Reichneder*, 371 Pa. 463, 91 A.2d 277, 278-80 (1952) (holding that beer barrels designed for and used in connection with operation of a particular brewery were to be considered part of real estate owned by that business). See generally 2 G. LADNER, *supra* note 2, § 12.24(b).

41. Section 9-501(d) of the U.C.C., codified in Pennsylvania, provides:

If the security agreement covers both real and personal property, the secured party may proceed under this chapter as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this chapter do not apply.

13 PA. CONS. STAT. ANN. § 9501(d) (Purdon 1984).

42. The Code does not define fixtures more expansively than does real property law. It treats goods as fixtures "when they become so related to particular real estate that an interest in them arises under real estate law." *Id.* § 9313(a). See also *id.* § 9105(b) (applying definition of "fixture" to entire Uniform Commercial Code article on secured transactions). Whether the lender first pursues personalty subject to the security agreement or forecloses on both the realty and personalty subject to the security agreement, the law concerning disputed personalty will be the same.

property as a going business. The risk in applying the doctrine expansively is that it may favor the lender over the debtor and over other creditors. The trend of law is running against the industrial plant doctrine because it sacrifices fairness to all the parties in favor of ease of application.⁴³ In any case, the doctrine offers Pennsylvania lenders the opportunity to acquire at least some personalty at the foreclosure sale.

As for invoking Article Nine of the Uniform Commercial Code, Mr. Ominsky notes that the value of the personal property largely depends on the lender's ability to take over the real property at a later date and eventually sell both together as a turnkey operation. Because the personal property's value depends on the occurrence of subsequent events, the lender runs the risk of bidding too high on the personal property. At the same time, Mr. Ominsky admits that the lender generally faces no difficulty in acquiring the personalty at a reasonable price at the public sale.

Mr. Ominsky proposes revising the Deficiency Judgment Act by judicial construction or legislative action to make it inapplicable to mortgages covering mixed collateral. For the sophisticated commercial transaction with which Mr. Ominsky concerns himself, I cannot disagree. For residential, farm, and modest commercial transactions, however, I do not think revisions of the Act are desirable or likely, because they would put the lender in a more favorable position in relation to the borrower.

VI. CONCLUSION

The Deficiency Judgment Act balances the respective interests of the mortgage lender, the borrower, and other creditors in a manner favorable to the borrower. The protection for the borrower may be unnecessary when parties to the transaction are sophisticated and are assisted by knowledgeable attorneys. The risk of revising the Act to exempt these parties is that, wittingly or unwittingly, the exemption may encompass the less sophisticated. To call for revisions requires making the case that the Act is oppressive as it affects sophisticated transactions. I do not think that case has been made. As long as any revision risks harm to the debtor of modest sophistication and resources, revision is un-

43. See *Masheter v. Boehm*, 37 Ohio St. 2d 68, 76-77, 307 N.E.2d 533, 539-40 (1974) (criticizing application of the industrial plant doctrine in eminent domain proceedings, but also criticizing the doctrine's use in the mortgage setting).

likely in an era that has seen waves of mortgage defaults⁴⁴ and measures to impose moratoria⁴⁵ on foreclosures.

44. As of November 1, 1984, Philadelphia was the city with the seventh highest rate of foreclosures for mortgages guaranteed by the Federal Housing Administration. See Franklin, *Foreclosures on Houses Rise as Inflation Falls*, N.Y. Times, Feb. 18, 1985, at A1, col. 2. See also Robbins, *Despair Wrenches Farmers' Lives as Debts Mount and Land is Lost*, N.Y. Times, Feb. 10, 1985, § 1, at 1, col. 3. As of June 30, 1984, about 35% of active borrowers with the Farm Home Administration were delinquent. Of the delinquent borrowers, 69% were delinquent in an amount greater than 10% of their outstanding principle. U.S. GENERAL ACCOUNTING OFFICE, INFORMATION ON DELINQUENT BORROWERS IN FARMERS HOME ADMINISTRATION MAJOR FARMER LOAN PROGRAMS 1, 3 (Feb. 6, 1985).

45. See, e.g., Pennsylvania Homeowners' Emergency Mortgage Assistance Act, No. 91, 1983 Pa. Laws 385 (codified in scattered amendments to 35 PA. CONS. STAT. ANN. § 1680 (Purdon Supp. 1984-1985)).