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## Bank Seeks Limits on Foreclosure Diversion

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A local bank has asked the state Supreme Court to exercise its plenary jurisdiction to stop the delay of commercial real estate foreclosure actions in Philadelphia.

According to a King's Bench petition filed by Customers Bank, a division of INS Bank, the bank said Philadelphia Common Pleas Court President Judge Pamela Pryor Dembe improperly issued two orders delaying all sheriff's sales in the city until April 5, 2011. That order included commercial property on which Customers Bank has a lien.

The bank argued regulations for the Residential Mortgage Foreclosure Diversion Pilot Program specifically exclude commercial property from the diversion program or any delays.

This filing comes as the court, the mayor's office and the sheriff's office are working through a period of transition after the last sheriff resigned and the city controller is investigating the office's books, according to a number of media reports.

According to Customers Bank's petition, the bank is owed a judgment of about \$5.5 million through a lien secured against Tower Apartment Partnership's commercial property at 5801 Morris St. in Philadelphia. The property consists of a vacant, partially completed 36-unit condominium, which was originally up for sheriff's sale in September 2010. After a few postponements were granted upon the request of Tower Apartment Partnership, the court sua sponte issued two more orders, delaying all sheriff's sales first to March 1, 2011, and then to April 15, 2011.

Customers Bank's attorney, Francis M. Correll of Klehr Harrison Harvey Branzburg, said his client filed the petition Friday when it got wind that the March 1 sale was postponed to April 15. They were hoping the high court would act immediately to allow the sale to proceed March 1, but said that clearly didn't happen.

He said Customers Bank filed a King's Bench petition rather than seeking reconsideration from Dembe because of the time concerns as well as the question of whether it had standing to interject because the diversion program doesn't offer guidelines on how to challenge an order under the program.

Correll said interest and taxes are accruing on the \$5.5 million lien, making every month of delay all the more expensive for his client.

Correll said his sense is that a handful of commercial properties have always been included in the program's orders delaying sheriff's sales, but he believed his client was the first to challenge the inclusion of commercial property.

"We've been lumped in without any opportunity to be heard about why we're different," Correll said.

Correll said his client would not have pursued the petition if it were foreclosing on a residential property. He said there must be a way to allow only commercial foreclosures to proceed to sheriff's sale without disrupting the residential foreclosure diversion program.

Correll said there is no way to consider the condominium building a residential property under the diversion program's own regulations. He said Customers Bank, then operating as Interstate Net Bank, issued a commercial loan to the developer to develop condominiums. None of the units have been sold and not all of them are built, he said.

According to the program's regulations, "owner-occupied residential properties" under foreclosure must first be diverted to a conciliation conference. The term residential premises, according to the regulation, means "real property located within the city and county of Philadelphia containing not more than four residential units and shall include a residential condominium unit or a residential co-op unit, occupied by an owner as the owner's principal residence."

The regulations go on to state that premises that are not owner occupied, are not residential or are not exposed to judicial sale to enforce a residential mortgage are not subject to a conciliation conference and may be sold as scheduled.

Daniel P. McElhatton of McElhatton Foley represents Tower Apartment Partnership. He said only that he thought the petition was "a colossal waste of time and money."

The case is captioned *Interstate Net Bank v. Tower Apartment Partnership*. Interstate Net Bank had initially owned the loan, but went out of business and is now INS Bank, doing business as Customers Bank.

Calls to Dembe and the sheriff's office weren't returned by press time. •