



Supreme Court of Illinois

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ILLINOIS SUPREME COURT ADOPTS NEW RULES TO EASE BURDEN OF HOME FORECLOSURE PROCESS

The Illinois Supreme Court announced on Friday new rules aimed at mitigating abuses and uncertainty in mortgage foreclosures, and helping those who face the loss of their homes by imposing several requirements on mediation programs and lenders seeking to foreclose.

These include the identification of resources for government-certified counseling, for free legal representation to eligible homeowners, interpretive services and sworn assurances that all loan modification efforts have been made by the lender.

The three, stand-alone Supreme Court rules reflect the Court's concern over well-publicized deceptive practices at the national and local level and the significant impact the continuing flow of residential mortgage foreclosures is having on Illinois citizens and communities.

The rules are a direct outgrowth of public hearings and 21 months of work by the Special Supreme Court Committee on Mortgage Foreclosures, whose formation was recommended by Justice Mary Jane Theis.

The 14-person committee consisted of those who have been on the front lines in dealing with the housing and foreclosure crises, including judges; bankers and their lawyers; a public interest attorney; a law professor and the head of the Consumer Protection Division of the Illinois Attorney General's office.

"These new rules will promote fairness in home foreclosure proceedings, curb abuses in the system, provide lenders finality when foreclosure is necessary and ensure homeowners who have been thrown out of work during the years of a troubled economy are aware of their rights and where to turn for help," said Chief Justice Thomas L. Kilbride, an early proponent of foreclosure mediation programs in Illinois. "The Special Committee, formed at the recommendation of Justice Theis, has done its work well, with perseverance and with attention to the kind of detail that we believe will get positive results.

"I and my colleagues on the Supreme Court thank them as well everyone who participated in the process through written suggestions or testimony at the public hearings. All their efforts, we hope, will not only promote efficiency, finality and justice; but provide a touch of humanity in what is a painful process for homeowners and an unwelcome one for lenders."

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Justice Theis acknowledged the hard work of the committee not only for its labors, but for engaging in extensive compromise to draft significant proposals that bridge the inherent self-interests on both sides, the lender and the borrower.

"The Special Committee worked hard and reached a consensus," said Justice Theis. "Some of the provisions in these rules are controversial in their specific worlds, whether it be finance and lending or in public interest and consumer law. No side got everything it wanted.

"I applaud the Special Committee, and all those who had input, for drafting provisions that will lend some stability and certitude to what is a financially and emotionally **draining** process."

Justice Theis explained that the new rules establish a uniform protocol around the state that will require lenders to provide homeowners with needed information so that they understand the process and consequences of foreclosure; require lenders to seek modification of loans for eligible homeowners before they complete foreclosure; require improved legal notice to homeowners throughout the process and before the actual sale of a foreclosed home; and require Circuit Courts in Illinois who have a mediation program to provide resources for HUD-certified consultation, free legal help and language interpretive services to those eligible and in need of them.

"There can be no 'win-win' in a process that is as painful to homeowners as foreclosure," Justice Theis said. "But the process should be fair. These rules remedy or mitigate questionable practices such as robo-signing; speed up the process to hopefully shorten the blight on communities through boarded-up homes, and provide a certainty that will enable foreclosed homeowners to examine loan modification options or proceed on a new path."

The changes in Illinois foreclosure practice are embodied in new Supreme Court Rule 99.1, dealing with requirements for mortgage foreclosure mediation programs in the Circuit Courts and counties; new Supreme Court Rule 113 which sets out required practice, procedure and notice obligations by the lender as plaintiff; and new Supreme Court Rule 114, which requires a lender to attest that it has complied with the requirements of any loss mitigation program which applies to the specific home loan. Without the affidavit, a judge may deny entry of a foreclosure judgment.

The rules are effective March 1. Those counties and Circuits which already have foreclosure mediation programs have 90 additional days until June 1 to amend their local rules to comply with the Rule 99.1 requirements, including the identification of resources for counseling, free legal aid and interpretive language services.

"I'm very proud of the Committee's work," said Judge Lewis M. Nixon, chair of the Committee, who is supervising judge of the Mortgage Foreclosure Section of the Cook County Circuit Court. "We had input from private citizens, people who were going through foreclosures themselves, from banks and attorneys. The rules are balanced. They contain recommendations that are helpful to both sides."

Daniel P. Lindsey, a public interest attorney at LAF (formerly Legal Assistance Foundation of Metropolitan Chicago), was co-chair of a subcommittee which recommended the new rules requiring the loss-mitigation affidavit (Rule 114) and the requirements for mortgage foreclosure mediation programs (Rule 99.1).

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"I hope what the loss mitigation and mediation proposals do is give homeowners a chance whenever possible to work something out with their lender, whether a loan modification or something else, instead of going through the entirety of the foreclosure process," Mr. Lindsey said. "A lot of the work I do is with homeowners we think should get a loan modification who are getting the runaround. The lender is telling them one thing on the phone – 'Don't worry, we'll work with you' –and then their lawyers are barreling ahead with the foreclosure in court.

"I hope these rules can slow things down, when appropriate, to help the homeowner and lender to get a real chance to do a loan modification and avoid foreclosure. The loss mitigation affidavit is an enforcement tool to help reach that goal. It gives judges a concrete tool to make sure lenders are offering loss mitigation before seeking a foreclosure judgment."

Counties with mediation programs which have until June 1 to adapt their local rules to Supreme Court Rule 99.1 are Cook, Will, Peoria, Madison and Bond, McLean and Kane. Kankakee and St. Clair counties are in the process of establishing mediation programs.

Supreme Court Rule 113 establishes new rules of practice and procedure that improve legal notice to a homeowner and is directly aimed at eliminating the questionable practice of robo-signings by requiring submission by the lender's representative of a prove-up affidavit.

"The new rules improve the quality of notice to homeowners involved in foreclosure cases," said Appellate Justice Mathias W. Delort, who served as co-chair of the Practice and Procedure subcommittee which drafted Rule 113. "First, if a homeowner loses a foreclosure case by default because of a failure to appear in court, the clerk of the court will be required to send a clear notice to the homeowner explaining what occurred. Currently, there is no consistent practice in giving notice.

"Second, foreclosure plaintiffs (lenders) will be required to send a specific notice of the sale date to all homeowners, rather than simply advertising it in a newspaper. And thirdly, to alleviate some of the confusion caused by the frequent transfer of mortgages and lawsuits being brought by entities unknown to the borrowers, every foreclosure lawsuit must now include a copy of the note signed by the mortgagor, including all endorsements evidencing the transfer of ownership of the mortgage."

In addition to Judge Nixon Mr. Lindsey and Appellate Justice Delort, the members of the Committee are:

- Circuit Court Judge Robert G. Gibson, of the 18th Judicial Circuit Du Page County, Wheaton;
- John J. Glowinski, senior vice president, First Midwest Bank, Itasca, senior officer responsible for remediation of troubled accounts;
- Richard M. Guerard, attorney and partner, Guerard, Kalina & Butkus, Wheaton, a firm concentrating its practice in commercial, banking and real estate law;
- Deborah Hagen, chief, Consumer Protection Division, Illinois Attorney General's office, Springfield, publisher of "Illinois Consumer Protection Law" for the Illinois Institute of Continuing Legal Education;
- Richard L. Heavner, attorney, Heavner, Scott, Beyers & Mihlar, a firm concentrating in providing legal services to mortgage lending institutions, and owner of Central Illinois Title Company, Decatur. He was co-chair with Judge Delort of the Practice and Procedure subcommittee.
- Circuit Court Judge Douglas L. Jarman, 4th Judicial Circuit, Montgomery County Courthouse, Hillsboro;

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--Prof. Robert M. Lawless, University of Illinois College of Law, Champaign, teacher of courses including bailouts, bankruptcy, business bankruptcy and consumer law;

--Retired Cook County Circuit Court Judge Clifford L. Meacham, Chicago. Judge Meachem served as co-chair with Mr. Lindsey of the Loss Mitigation and Mediation subcommittee.

--Associate Judge Darryl B. Simko, Cook County Circuit Court, Mortgage Foreclosure Section;

--William F. Smith, attorney, general counsel Home Star Bank, Manteno;

--Kevin J. Stine, attorney, Mathis, Marifian & Richter, concentrating in banking law and creditor rights, Belleville.

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