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Supreme Court Mortgage Foreclosure Committee
c/o Administrative Offices of the Illinois Supreme Court
3101 Old Jackson Road
Springfield, Illinois 62704

May 25, 2012

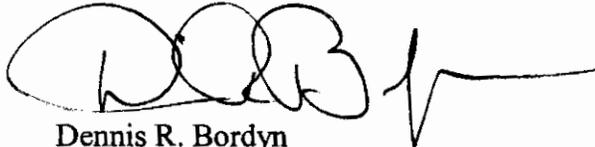
To Whom It May Concern:

I am requesting that I be scheduled to testify at the public hearing on the Proposed Recommendations of the Supreme Court Mortgage Foreclosure Committee to be held on June 8, 2012.

Enclosed are my written comments regarding the mandatory mediation programs provided by the Illinois courts as part of the foreclosure process and, specifically, why these programs as administrated by the courts frequently serve to deprive borrowers of valuable rights under the Illinois Mortgage Foreclosure Law.

Thank you for your consideration. If you have any questions, please feel free to contact me.

Sincerely,
BORDYN LAW OFFICES P.C.



Dennis R. Bordyn
Attorney at Law



MANDATORY MEDIATION: THE VENUS FLYTRAP OF THE FORECLOSURE PROCESS

Since the collapse of the residential real estate market some four or five years ago, conventional wisdom seems to be that the overall value of the residential real estate market would best be served if fewer properties in financial distress were on the market and, conversely, if more properties remained occupied and maintained. To this end, the federal government promulgated programs such as Making Home Affordable (“MFA”), to help a projected 5 million to 7 million homeowners in financial distress to continue to own and occupy their homes by paying a sustainable monthly payment (including mortgage principal and interest, property taxes, property insurance, and association assessments) of about 1/3 of their monthly gross income.

Modification programs prior to the enactment of MFA were largely ineffective. The redefault rate in modified mortgages was around 62%, primarily because in the majority of those modifications the monthly payment either stayed the same or was increased. The precursor program of MFA, Hope for Homeowners, was a complete failure because it was too complicated for the lenders or homeowners to understand.

For the first two years of MFA, permanent modifications were few and far between and many requests for modifications were not approved because the participants has inadequate guidelines for implementing the program. Thus came the need for mandatory mediation programs implemented by the foreclosure courts to bring the parties together in an attempt to increase the number of successful permanent modification.

However, as the mandatory mediation programs have been implemented by the courts, the program may in many respects be detrimental to the interests of the homeowners who are in the foreclosure process.

First, there is no evidence that the number and “sustainability” of permanent modifications resulting from the mandatory mediation programs in Illinois are significantly better than the number and “sustainability” of permanent modifications obtained by homeowners outside the mandatory mediation programs when the homeowner is assisted by licensed, competent legal counsel. In fact, anecdotal evidence suggests that the potential for successful, permanent modifications is significantly increased when competent, licensed legal counsel negotiates the modification request outside the mandatory mediation program.

Second, mandatory mediation programs often are detrimental to the rights and remedies afforded to homeowners under Illinois civil procedure, especially the Illinois Mortgage Foreclosure Law for the following reasons:

The allure of “mandatory mediation” to a homeowner in the process of losing their home is great and, even if it is a misconception, homeowners believe that the mortgage holder will be required to give them some sort of modification. Such homeowners are not generally aware of the fact that their

chances of getting a permanent modification are statistically just a bad through mandatory mediation as without it. It is because of this allure that I refer to mandatory mediation as the Venus Fly Trap of the foreclosure process. But, it is not that lack of the significant chance for a successful modification that is the greatest detriment to the homeowner...it is what the homeowner forfeits to use the mandatory mediation program.

In 2011, HB1960 was enacted as 735 ILCS 5/15-1505.6 and the right of defendants in foreclosure cases to file a motion to dismiss the entire proceeding or to quash service of process that objects to the court's jurisdiction over the person is limited to 60 days after the earlier of the date that the defendant filed an appearance or the date that the defendant "participated in a hearing without filing an appearance", unless that period is extended by the court for good cause shown. Further, in any residential foreclosure action, if the defendant files a responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with the foregoing provision, the defendant waives all objections to the court's personal jurisdiction over the defendant.

Based on this statute, when defendant are lured into court to find out how the mandatory mediation program would benefit them, they have "participated in a hearing without filing an appearance" and the 60 day clock begins to tick, even if they are unaware of what they have lost by doing so.

Frequently defendants are advised by the court to not hire an attorney unless they know they have defenses and are advised to meet with volunteers outside the courtroom to get help in filling out the Appearance and Answer forms and paying their appearance fee. In almost every case, the Answer form filled out by the defendant with the help of an unlicensed volunteer contains no denial of any of the allegations in the plaintiff's complaint and no affirmative defenses, even if the defendant may indeed have had *bona fide* defenses or denials.

By the time the defendant is informed by the mortgage holder or its servicer that no mortgage modification will be offered to them, two things have happened. First, the foreclosure process is at least 60 days further into the 7 month redemption period and the clock continues to tick. Second, the defendant is now susceptible to the plaintiff's Motion for Summary Judgment (because the form Answer denied nothing and set forth no affirmative defenses).

Recommendations:

1. 735 ILCS 5/15-1505.6 should no apply to any foreclosure action unless all defendants are informed verbally and in writing of the impact of the statute on their rights and remedies under the IMFL.
2. Defendants should be advised by the court that they should obtain competent legal advice of a licensed attorney before filing an Answer or Appearance and that the assistance that they receive from an unlicensed volunteer in filling out court forms or applying for a modification is not competent legal advice.

3. The redemption period should be tolled from the date the homeowner applies for a modification until thirty (30) days after the servicer/mortgage holder complies with both MFA programs and applicable non-HAMP modification programs and gives a detailed written disposition of the application to the defendant and files same with the court.