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BY FEDERAL EXPRESS

Supreme Court Mortgage Foreclosure Committee c/o
Administrative Office of the Illinois Courts
3101 Old Jacksonville Road
Springfield, IL 62704

Re: Comments on Supreme Court Mortgage Foreclosure Committee Proposals to Improve Foreclosure Proceedings

Dear Committee:

As most of the committee is probably aware, the firm of Codilis & Associates, P.C. is one of the largest residential mortgage foreclosure firms in Illinois. We appreciate and understand the scrutiny being given to all aspects of the residential foreclosure industry and particularly the judicial foreclosure process. This letter is intended to serve as comment to the "Topics for Discussion at Public Hearing – Loss Mitigation and Mediation" published on the Supreme Court's website. As always, our intent in participating in this process is to ensure that any new rules promulgated by the court will strike a balance between (1) fairness and due process to defaulted borrowers; and (2) the effects that burdensome procedures may have on the many other stakeholders, including lenders, servicers, attorneys, the judicial system, and the future population of borrowers seeking to obtain or refinance home loans.

As a preliminary matter, it should be noted that since the subcommittee's published report merely suggest topics for discussion without for the most part providing specific, detailed proposals, it is a difficult to provide thorough comment. Nevertheless, please consider the general comments included here.

Loss Mitigation Discussion Topics

Most of the loss mitigation discussion topics appear to have to do with the establishment of particular obligations and corresponding deadlines to impose on mortgage servicers with respect to loss mitigation. Such requirements are not new. Many such requirements have already been imposed (and enshrined through federal law or regulation) and additional requirements are being imposed on the larger servicers pursuant to the national mortgage settlement between the largest servicers, the state attorneys general, and the U.S. Department of Justice. Illinois is a party to that settlement. Compliance with these requirements is and will be enforced and audited by the OCC, OTS, and the Settlement Monitors. Further, the State of Illinois has also addressed some of these issues legislatively through amendments to the Illinois Mortgage Foreclosure Law requirement pre-foreclosure notices to the borrower 735 ILCS 5/15-1502.5, notices of legal rights and workout options 735 ILCS 5/15-1504.5, creating remedies for failure to comply with federal Making Home Affordable Program 735 ILCS 5/15-1508(d-5). The rights afforded these borrowers under these statutory provisions are being enforced. The creditor's bar ensures that the proper notices and communications are sent, and the defense bar zealously pursues remedies in court when they are not.

It seems that devoting court resources to addressing issues that are already governed by federal law, by the settlement to which Illinois is a party, and to some extent by existing state law

would be wasteful. Worse, to the extent that any particularly requirements established by the court differ or even conflict with existing requirements, there may be conflict of law issues or just general confusion created for all parties. Such additional requirements, particularly when viewed in light of the legal requirements already in place will be particularly burdensome to the mortgage industry without any meaningful benefit to the borrowers.

To the extent that the discussion topics are meant to address loss mitigation negotiations outside the context of the existing federally governed programs, we have some concern about the jurisdiction and authority of the court to impose rules regarding what are effectively contract negotiations or renegotiations between independent parties. This is of particular concern with respect to pre-foreclosure loss mitigation where no party has brought any matter or controversy before the court.

While most of our comments have been general, we do wish to address particularly loss mitigation items seven and eight.

Item seven suggests that compliance with “all of the above” must occur prior to foreclosure and that failure to do so would give rise to a defense to the action. Putting aside the fact that no specific details are included in “the above”, it does seem likely that such a requirement would be overly burdensome – particularly where the requirements might be additional to or even in conflict with those already required by law. Moreover, the state legislature has already enacted legislation establishing the remedy for failure to comply with the provisions of the Making Homes Affordable Program at 735 ILCS 5/15-1508(d-5).

Item eight suggests completion of an extraordinarily detailed affidavit concerning pre-foreclosure loss mitigation. A copy of an affidavit used in Connecticut is provided as an example. First, the

Connecticut affidavit addresses federal programs which are, as has been pointed out, already regulated by federal law and procedure. Second, the imposition of such a detailed affidavit requirement creates a burden on the plaintiff and plaintiff's counsel which does not have a corresponding benefit for borrowers since these requirements are otherwise enforced and enforceable.

Mediation Discussion Topics

Again our comments to these topics will for the most part be general, as detailed, specific proposals are not included in the memo.

As a preliminary matter some thought should be given to whether the resources and resultant delays which court mediation programs cost and create are truly beneficial. As noted above, an extraordinary amount of loss mitigation and notice of loss mitigation rights to borrowers is already required under federal and state law. The State of Florida provides an excellent illustrative example. Florida had adopted a statewide mediation program. The program resulted in increased costs, significant delays, and little benefit. It was abandoned by the Florida Supreme Court in December, 2011. We should take note of Florida's experience.

Assigning a case to mediation in Cook County can delay a foreclosure for more than a year. This dramatically increases the cost and artificially prolongs the foreclosure crisis and the depression of real estate values. Recent economic reporting suggests that in states where the foreclosure process is non-judicial and not subject to lengthy delays, property values are recovering at a much faster rate than states with lengthy foreclosure processes. Given the amount of federally mandated loss mitigation, imposing additional delays in costs on the Illinois process delay the state's economic recovery without providing particular benefit to the borrower.

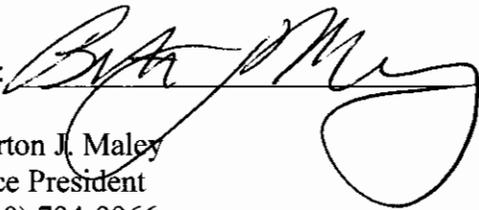
In the event mediation programs are to be continued in Illinois, they should be opt-in programs to conserve resources, they should be limited to owner occupied property where the borrower has regular income and can be considered for loan modification, and a strict time limit should be imposed on the process. The state does not have the resources for mandatory mediation in all cases, and the parties should not be forced to bear the costs such proceedings when so much time and resources are already devoted to loss mitigation before and during foreclosure pursuant to federal law and the national mortgage settlement.

Thank you in advance for your consideration of our comments and concerns. If there is anyway our firm or its attorneys can be of assistance in your deliberations, please do not hesitate to contact us.

Very truly yours,

Codilis & Associates, P.C.

By:


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