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April 9, 2012

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

Re: Proposed Recommendations for Improving the Practice and Procedure for Mortgage Foreclosure Proceedings in Illinois

To Whom It May Concern:

We write on behalf of Land of Lincoln Legal Assistance Foundation's Homeownership Task Force. This letter is in response to the proposed recommendations for Improving the Practice and Procedure for Mortgage Foreclosure Proceedings in Illinois. Organized in 1972, Land of Lincoln Legal Assistance Foundation, Inc. (LOLLAF) is an Illinois not-for-profit corporation whose mission is to pursue civil justice for low-income persons through representation and education. Our goals are: (1) to promote economic security, adequate shelter and health care; (2) to alleviate domestic violence and improve family stability; and (3) to advance the interests of vulnerable populations. Land of Lincoln is the sole provider of the full range of free civil legal services for low-income persons in 65 counties in central and southern Illinois.

We have helped hundreds of low-income homeowners seeking assistance with their mortgages because they are facing foreclosure. We applaud the Committee's efforts to improve the foreclosure process. The Committee requested comment on significant, important proposals. We cannot offer comments on all of its proposals. However, we will attempt to address those that pertain to Land of Lincoln's clients, as well as where we believe the proposed rules can more aggressively aid homeowners facing foreclosure.

The Supreme Court should adopt rules establishing a model foreclosure prove up affidavit, signed by an individual with personal knowledge, and require that a payment history be attached.

We urge the Supreme Court to adopt the Foreclosure Committee's proposal requiring a model foreclosure prove up affidavit. Any model prove up affidavit adopted should be written in a consumer-friendly way, easy to understand, with an explanation of fees, past due payments, date

of default, etc. so that a borrower can easily refer to the document and understand how each was calculated and challenge any inaccuracies. The affidavit should be signed by an individual with personal knowledge of the borrower's account, who could be contacted or deposed by the borrower, if necessary.

A payment history should be attached to prove up affidavits. Many homeowners we meet with are often unsure of when their last payment was made, if their payments are being applied to the balance owed or held in a suspense account, whether unlawful fees have been applied to their account or if their payments have been timely credited. Requiring foreclosing plaintiffs to attach payment histories would aid homeowners in understanding their accounts and whether the servicer has been properly handling it. However, payment histories currently provided to consumers who request them pursuant to a RESPA Qualified Written Request are at best opaque, and at worst, indecipherable—particularly without a payment code or knowledge of the computer system that generated it. Payment histories should be attached to prove up affidavits, but a stronger aid to judges and homeowners would be requiring these histories to be provided in a consumer-friendly format, that clearly note dates, how payments are applied, and where fees have been added, as well as what those fees are for. Several recent bankruptcy cases, particularly *In re Stewart*, 391 B.R. 327 (Bankr. E.D. La. 2008), in which a homeowner challenged Wells Fargo's proof of claim, illustrate the myriad ways in which fees and amounts owed are inflated, embellished, and unmerited, with little oversight by the courts. Attaching a payment history to a prove up affidavit is one easy step to provide a check on this practice, and offer homeowners information. It also helps to level the playing field in a lopsided process that significantly favors Plaintiffs. While theoretically Plaintiffs do have the burden of proof, in practice it often falls to homeowner defendants, many of whom are *pro se*, to prove that the Plaintiff is wrong that they are in default or that the Plaintiff's accounting is inaccurate.

Finally, we agree with the Committee that the Court should adopt a rule requiring plaintiff's attorneys to file a separate affidavit along with the prove up affidavit stating that they had spoken to a specifically-named person who worked for their client and verified, through that conversation, that the figures were correct and the foreclosure was justified. The rule should also specify that the attorney explain how the information was found, verified, and determined to be accurate. Attorneys are officers of the Court, who pledge to be truthful in their representations before all tribunals. Requiring attorneys to swear to the source and accuracy of their information-gathering that support their pleadings is not overly burdensome, and does much to restore faith in the process given recent scandals in foreclosure courts.

The Supreme Court should adopt a rule requiring that a copy of each assignment of mortgage being foreclosed be attached to the foreclosure complaint, and that copy of the note, as it currently exists, including all endorsements and allonges, is attached to the foreclosure complaint.

Plaintiffs and Defendants in foreclosure will benefit from this proposed rule if it is adopted by the Supreme Court. The Illinois Mortgage Foreclosure statute already requires a Plaintiff to identify precisely the legal capacity in which Plaintiff brings the foreclosure. 735 ILCS 5/15-1504(a)(3)(N). However, documents attached to mortgage foreclosure complaints frequently do not support Plaintiff's assertion that it is a proper plaintiff who has standing to foreclose. In many cases, the named Plaintiff is not the entity the homeowner defendant has been working with to save their home. When defendants consult attorneys, it may be pointed out that the

attached supporting documentation, namely the mortgage and note, do not support Plaintiff's assertion that *it* can foreclose.

The proposed rule is not overly burdensome and simply requires the Plaintiff to substantiate that it is the real party in interest, which a Plaintiff and its attorney should do before filing suit. Demanding the Plaintiff to attach the necessary assignments, as well as the mortgage note, including all endorsements and allonges, substantially decreases the risk for the Plaintiff that its ability to foreclose will be challenged by a homeowner defendant. Furthermore, the rule would alleviate some of the time-consuming litigation that clog court dockets, as homeowners file motions and discovery to demand that Plaintiff has the ability to foreclose via the note. Finally, the rule will eliminate some of the uncertainty about whether a homeowner might be sued multiple times on the same debt if other Plaintiffs purporting to be the real parties in interest file suits in the future.

The Supreme Court should adopt the Committee's suggestion for a rule that requires, upon entry of a judgment of foreclosure and sale, that Plaintiff be required to send notice to all defendants, including defendants in default, of the foreclosure sale, date, time and location.

Notice to homeowners, particularly defaulted homeowners, of the foreclosure sale, date, time and location gives homeowners, particularly those without defenses, an idea of how long they can remain in the home before being forced to leave by order of the court. A fixed date gives homeowners certainty and security about when they may be compelled to leave and may lead to a peaceful transition as the homeowner exits. By communicating this to homeowners, the Plaintiff benefits because homeowners are less likely to prematurely abandon the property and leave the Plaintiff to maintain utilities, secure the property, prevent pipes from freezing, and prevent code violations. The rule might be improved by requiring the court clerk to send this notice, not the Plaintiff.

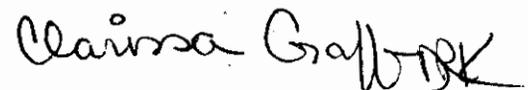
The Supreme Court should adopt a rule requiring court clerks to send a notice to all defaulted borrowers of their default. All of the Committee's suggestions for the contents of the notice should be wholly adopted in the rule.

Having the court clerks send notice to defaulted borrowers of their default will prevent wrongful foreclosures and ensure that a borrower is aware that a judgment has been taken against him/her. Borrowers sometimes are not served, or are improperly served, or are served by publication and this proposed rule is a substantial antidote to prevent a borrower from being surprised by a sheriff with an eviction notice. Having the clerk send the notice, rather than the Plaintiff, also provides a necessary warranty that the borrower was given the notice and it did not get lost in the Plaintiff's attorney's significant volume of foreclosure paperwork. Furthermore, having the clerk send the notice and not the Plaintiff, should appeal to plaintiffs because it ensures that a homeowner cannot claim that it was not provided to them and it prevents unnecessary delay were a homeowner to file an untimely motion to vacate.

Additionally, by advising borrowers of their right to file a motion to vacate, how to acquire legal resources to file a motion, as well as informing borrowers of their redemption rights, the proposed notice rule provides meaningful safeguards of due process in foreclosure.

Thank you for your consideration of these comments. We looked forward to the Supreme Court's adoption of new rules in the future that improve the mortgage foreclosure process in Illinois.

Sincerely,

Handwritten signature of Clarissa Gaff in black ink.

Clarissa Gaff
Senior Staff Attorney and Homeownership Task Force Coordinator
Land of Lincoln Legal Assistance Foundation

Handwritten signature of Debby Knoblock in black ink.

Debby Knoblock
Staff Attorney
Land of Lincoln Legal Assistance Foundation