

**ILLINOIS SUPREME COURT
MORTGAGE FORECLOSURE COMMITTEE**

On April 11, 2011, the Illinois Supreme Court created the Mortgage Foreclosure Committee and charged it with the task of investigating the procedures currently used throughout Illinois in mortgage foreclosure proceedings; studying relevant Supreme Court Rules and local rules that directly or indirectly affect such proceedings; analyzing the procedures adopted in other states in response to the unprecedented number of foreclosure filings nationwide; reviewing legislative proposals pending in the Illinois General Assembly that may impact the present statutory scheme for mortgage foreclosures; and ultimately recommending to this Court mortgage foreclosure rules for statewide. To meet this charge, the Committee established subcommittees, including a Practice and Procedures Subcommittee.

The following nine discussions points are submitted by the Practice and Procedure Subcommittee for comment at public hearing:

1. The Committee recommends that the Supreme Court adopt a rule establishing a model foreclosure prove up affidavit.

2. The Committee seeks input on whether plaintiffs be required to attach a payment history to prove up affidavits.

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

4. The Committee recommends that the Supreme Court adopt a rule requiring that all foreclosure sales be held within forty-five (45) days of the expiration of the redemption period unless extended by direction of the plaintiff or by court order.

5. The Committee recommends that the Supreme Court adopt a rule requiring that upon entry of a judgment of foreclosure and sale, plaintiff be required to send notice to all defendants, including defendants in default, of the foreclosure sale date, time and location.

6. The Committee recommends that the Supreme Court adopt a rule requiring court clerks to send a notice to all defaulted borrowers. The notice should advise defaulted borrowers that: (1) the court has entered a default order of foreclosure and sale; (2) the borrower may file a motion to vacate that order as soon as possible; (3) the borrower may redeem the property from foreclosure by paying the total amount due plus fees and costs, by a specific calendar day; (4) referring the borrower to local resources for legal assistance in preparing a motion to vacate; and (5) advising the borrower to act immediately. The court clerk should be required to send the notice of default to the property address and to any secondary address at which the borrower was served with process and to place proof of this service in the court file.

Committee on Mortgage Foreclosure
Public Hearing
Practice and Procedure Issues

7. The Committee recommends that the Supreme Court adopt a rule, or that the Illinois Code of Civil Procedure be amended to require that a special representative be appointed to stand in the place of deceased mortgagors in cases where no estate has been opened.

8. The Committee recommends that the Supreme Court adopt a rule that in instances where the sale of a foreclosed property generates a surplus over the amount owed to lien holders as set forth in the judgment, the plaintiffs' attorney send a special notice to the mortgagors advising them of the surplus and enclosing a simple form to file with the court clerk to claim the surplus, and that any person claiming a surplus be required to appear in open court to be examined under oath and identified on the record as being the same person as the one authorized to claim the surplus.

9. The Committee seeks input on whether the Supreme Court adopt a rule requiring plaintiffs' 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.