

**MINUTES OF THE
BENCH – BAR FORECLOSURE COMMITTEE MEETING
WEDNESDAY JUNE 18, 2008**

Handouts to Committee Members: Agenda; Draft of Minutes of December 6, 2007 meeting; Recommendations of Process Subcommittee with Notice and proposed language re Motion to Open Judgment; "Committee" Subcommittee Recommended Revised Uniform Procedures and forms for committees; Recommendations of Short Calendar Subcommittee with proposed revisions to Standing Orders; Recommendations from Supplemental Judgment Subcommittee re calculation of debt and documents needed by the court; information re Foreclosure Mediation Program; proposed form for notice of judgment of foreclosure.

Members in attendance: Hon. Douglas C. Mintz, Chair, Hon. Salvatore C. Agati, Attorney Adam L. Bendett, Attorney Jessica L. Braus, Attorney Denis R. Caron, Attorney Thomas J. Farrell, Attorney Robert F. Frankel, Hon. Samuel Freed, Attorney Keith K. Fuller, Attorney Peggy George, Hon. Arthur A. Hiller, Attorney Leanne M. Larson, Attorney Richard M. Leibert, Attorney Eugene S. Melchionne, Attorney Geoffrey Kent Milne, Hon. Barry Pinkus, Attorney Raphael L. Podolsky, Attorney Sarah Poriss, Hon. Richard A. Robinson, Hon. Theodore R. Tyma, Attorney Thomas W. Witherspoon, Attorney Louis C. Zowine

Guest: Tais Ericson, Deputy Director, Civil

1. The Hon. Douglas C. Mintz, Chair, welcomed the members to the meeting at 2:06 p.m. Judge Mintz thanked the Judges for chairing the subcommittees, as well as all of the members for their time and effort. The members were each given a folder containing all of the handouts. Judge Mintz informed the committee that the recommendations of the subcommittees should be reviewed and voted on during the meeting. All agreed recommendations would then be provided to Hon. Arthur Hiller for further action. All members introduced themselves.

2. Motions to approve the minutes of the December 6, 2007 meeting were made and the minutes were approved.

3. Reports of Sub-Committees:

a. Process Subcommittee, Hon. Barry Pinkus, Chair

Judge Pinkus reported that the Process Subcommittee has 8 recommendations:

- A Notice, in accordance with the handout, to be attached to the top of the summons and complaint. In light of the Mediation Program, this notice would probably be the second attachment. This notice is intended to give

notice to the defendant due to the competing forces between bankers' and debtors' groups. A Standing Order should require this form be attached to the Summons and Complaint.

- Recommend that the language in the attached proposal be adopted for Motions to Open Judgment to allow for automatic granting of the motion. Judge Pinkus pointed out that the Rules Committee has finished its sessions for 2007-2008.
- Recommend that the pleadings be certified to appearing and non-appearing parties. This will require a rule change.
- Recommend that a motion for judgment not be filed before 30 days after the return date. Requires a rule change.
- Recommend that the statement of debt be made more explicit.
- Recommend that there be a rule change to allow 10 days to respond before a motion for default is filed.
- Recommend that the property address in a foreclosure be displayed on the case detail page in the computer system.
- Recommend that anyone be able to view documents that have been electronically filed.

Judge Pinkus made a motion that these recommendations of the Process Subcommittee be adopted.

Discussion regarding the recommendations ensued.

Pros and cons of having the property address shown on the case detail page were discussed.

It was suggested that rule changes be expedited so that these matters be dealt with sooner.

It was suggested that there be General Standing Orders and Standing Orders for Foreclosures By Sale.

The language for a Motion to Open Judgment should be the same as the standing order. Motion to amend the language was made and the language adopted.

With regard to the third recommendation, the language should be amended to state "That all pleadings be certified to all owners of the equity, borrowers and guarantors whether appearing or non-appearing." A motion to amend the language was made and the amendment approved.

Discussion proceeded regarding the notice to attach to the complaint. It was questioned whether the notice should be attached to residential foreclosures or all foreclosures. Members suggested that the notice could be used with regard to tax, sewer and municipal liens as well and, therefore, it should be kept simple so as not to confuse. The purpose is to alert people that they risk losing their property.

A motion was made that the notice be attached to the front of the summons and complaint and that it be attached to all foreclosure actions. Motion seconded and approved. Thereafter, it was suggested that the words "if this foreclosure involves your home" be added to the fourth paragraph of the notice as well as the paragraph in the textbox on the form. A motion to amend the language was made and approved.

The committee further discussed where the notices should be attached and the legislative intent with regard to the mediation notice being attached to the front of the complaint. Judge Mintz stated that the Chief Court Administrator could have policy as to how the notices should be attached to the complaint.

b. Committee Subcommittee – Hon. Salvatore Agati, Chair

Review of Uniform Procedures - The purpose of the revisions to the uniform procedures is to clarify the situations that must be addressed by Motions for Advice and to inform the committee of the foreclosure by sale process. One amendment that is needed is to change “Bond for Deed” to “Sales Agreement” in the Auction paragraph.

The members also discussed the need to fax or email the bid for the sale to the committee for sale. It was questioned whether the committee should be required to provide a cell phone number or if that would be a problem. It was suggested that the committee could provide a cell phone number to a bidder upon request. The members also discussed what should happen if a bankruptcy is filed. It was suggested that something be put back in the standing orders, as there was previously, to direct the committee on how to respond to bankruptcy filings.

Motion for Advice – approved.

Plaintiff Bid at Foreclosure Sale – approved.

Bond for Deed – Change to “Sales Agreement”. The acknowledgment was taken out and the witness lines should also be taken out. Also on page 3, the next to last paragraph, the word “shall” should be changed to “may”. It was also agreed that the Chair of this Committee has the right to correct all scrivener’s errors.

Motion for Possession – Change “Bond for Deed” to “Sales Agreement” and delete the end of paragraph 2. after “subject premises”.

Motion for Approval of Committee Sale, etc. – approved.

Return of Sale-No Proceeds – approved.

Return of Sale – approved.

Motion was made to approve the Committee Subcommittee’s recommendations. Motion was seconded and passed.

c. Short Calendar Subcommittee – Hon. Theodore Tyma, Chair

Standing Orders – Comments:

There was a question as to the meaning of “full” title search; it is not a well defined term. It was suggested that the wording be changed to “title search in accordance with the Standards of Title of the CBA.”

In item #6, the first two sentences should be deleted; should be in appraiser section. Should be in Foreclosure By Sale Standing Orders instead of the General Standing Orders. This should also apply to the last three paragraphs on page 3. Further suggestion is that the appraisal be returned 10 days before the sale, instead of 7 days. Members approved this.

Members also discussed the deposit amount. Not all members agree that it should be 10% of the fair market value based on whether or not it is a subsequent encumbrancer who is foreclosing a lien. Judge Pinkus stated that

this situation is allowed for by “unless otherwise ordered”; the court could order a different deposit amount.

In paragraph 11, it was suggested that “cluster housing” be replaced with “unless the property is a stand alone building unit in a common interest community”. It was agreed that the Judges’ committee could further amend this language.

In paragraph 13, the word “photograph” should be corrected to “photographing”.

As to paragraph 15, insurance by committee for sale, it was questioned whether the insurance should be limited to the day of the sale and whether the premium would be the same if the insurance commenced when the sign was placed on the property. Attorney Caron said that he would check into this.

Item #16 shall be amended to state “Upon request of the plaintiff, the committee shall provide the plaintiff with the committee’s estimated fees and costs no later than two business days after such request.”

In item #17, the phrase “Unless authorized by the plaintiff,” shall be added before “[t]he committee shall not disclose plaintiff’s written bid . . .” The last sentence of the paragraph shall be deleted.

Item #18 – add “on the date of the sale” to the end of the first sentence.

Add a new #19 stating – “If the committee receives notice of bankruptcy prior to the sale, the plaintiff’s attorney must be notified.”

The previous #19 becomes #20 and should be changed to state “The high bidder/purchaser must close no sooner than 21 days but not later than 30 days from the date of the Court’s approval of the committee sale. Also, that the deposit “may” be forfeited instead of “shall” be forfeited.

The members agreed that the last four paragraphs should be moved to General Standing Orders, if used.

Judge Tyma made a motion that the Standing Orders as modified, and without the last four paragraphs, be approved. Motion seconded and passed.

Judge Tyma made a further motion that the remaining four paragraphs be included in General Standing Orders.

The members discussed and agreed to delete the original paragraph #22 from the Standing Orders. The motion regarding the remainder of the rules passed.

d. Supplemental Judgment Subcommittee – Hon. Douglas Mintz, Chair
Members reviewed the proposals set forth in the handout. It was suggested that the language regarding insurance premiums be changed to “up to the date of the committee conveyance.”

It was also suggested that the affidavit of debt list any amounts for repairs to the property for preservation.

A motion was made to approve the recommendations for Supplemental Judgment. Motion was seconded and passed.

4. Introduction of Foreclosure Mediation Program – Tais Ericson

Tais Ericson presented an overview of Public Act 08-176 and the plans for implementation of the Foreclosure Mediation Program.

5. Peggy George presented a brief overview of a proposed form for Notice of Judgment of Foreclosure By Sale and Notice of Judgment of Strict Foreclosure.

Judge Mintz suggested that the Bench – Bar Foreclosure Committee have another meeting in September 2008. In the meantime the recommendations of the Bench – Bar Foreclosure Committee will be referred to Judge Hiller for further consideration.

Judge Pinkus made a motion that the meeting be adjourned. The motion was seconded and passed.

Meeting adjourned at 5:02 P.M.