

**MINUTES OF THE  
BENCH – BAR FORECLOSURE COMMITTEE MEETING  
Friday, July 26, 2013**

Members in attendance: Hon. Douglas C. Mintz, Chair, Hon. James Abrams, Attorney Adam L. Bendett, Attorney Jessica Braus, Attorney Denis R. Caron, Attorney Robert F. Frankel, Attorney Jeffrey S. Gentes, Attorney Peggy George, Attorney Robin Golden, Attorney Eugene S. Melchionne, Attorney Geoffrey Milne, Hon. Lisa K. Morgan, Ms. Roberta Palmer, Attorney Sarah Poriss, Hon. Richard A. Robinson, Attorney Gary Sklaver, Hon. Mark Taylor, Attorney Louis C. Zowine.

The meeting was called to order at 2:01 PM.

1. Welcome – Members and guests, Nancy McGann, Manager of the Foreclosure Mediation Program, and Cheryl Halford, Court Planner in charge of the Foreclosure Volunteer Attorney Program, introduced themselves.
2. Proposed Revision to PB § 17-45 Re Motions for Summary Judgment – The committee was asked by the Civil Commission to discuss whether the proposed changes to this rule should apply to foreclosure cases. The proposed changes to the rules were explained – that the rule would require that a Statement of Undisputed Material Facts be filed with the motion for summary judgment and that a party opposing the motion would have 45 days to file opposing documents which would have to include a Statement of Disputed Material Facts. The members discussed the frequency of motions for summary judgment, whether a motion for summary judgment is needed in many actions, the timeframes allowed for filings in foreclosure actions that are different from other civil actions, the delay necessitated by summary judgment motions and the number of cases with self-represented parties. Members discussed whether the existing rule should apply to foreclosure actions or whether a variation of the new proposal should apply. It was decided that a subcommittee should meet to prepare a proposal for the fall meeting of the Civil Commission. Judge Taylor will chair the subcommittee and Attorneys Caron, Frankel, Milne, Bendett, Gentes and Poriss will be members of the subcommittee.
3. Investor Restrictions Subcommittee – Attorney Gentes submitted to the members a report of the Investor Restrictions Subcommittee. Attorney Gentes reported that there have been 20 cases where this has been an issue, however, forty percent of the claims resulted in someone keeping the home. Investor restrictions also seem to be less of a problem now. There is also a new report form for the mediator with information about loss mitigation. The Committee

determined that it would be best not to do anything at this point, but to keep watch to see if any issues.

4. Uniform Mediation Standing Orders – Attorney Bendett provided members with a suggested change to the Uniform Mediation Standing Orders regarding the need to provide information on the amount that must be paid in order to satisfy the full obligation of the loan. Members discussed how important this information is and whether it is needed for every mediation session, whether it is necessary to update costs and fees that are incurred along the way and whether they meaningfully impact the mediation. Also discussed the changes to the statute and having less mediation sessions after Oct. 1<sup>st</sup> and the importance of having accurate information. Question whether this Standing Order needs to be changed to reflect the new statute. The Committee decided to have this discussed by a subcommittee and report back at the next meeting. Attorney Frankel will chair the subcommittee and Attorneys Bendett, Milne, Zowine and others who are interested will be members of the subcommittee.

5. Practice Book Rule 61-11 Revision, Eff. 10-1-13 – Judge Mintz reported that new sections (g) and (h) are being added to P.B. Rule § 61-11, effective October 1, 2013 to address the perpetual motion issue. For judgments of strict foreclosure if there have been two prior motions to open denied, no automatic stay shall arise upon the court's denial of any subsequent contested motion by the same party. For judgments of foreclosure by sale, the sale shall go forward if a motion to open was denied less than 20 days prior to the sale date; however a motion for approval of the sale shall not be filed until the expiration of the appeal period following the denial of the motion without an appeal having been filed.

6. PA 13-156 Condo Fees – Priority – Attorney George highlighted the statutory changes. The condo fee priority is now nine months instead of six months, but excludes late fees, interest or fines. Attorney's fees for enforcing the lien, however, can be included in the priority. Effective October 1, 2013, an association must provide a written notice to the holders of all security interests 60 days prior to commencing an action to foreclose a lien. Also effective October 1, 2013, any assessments and related attorney's fees and costs that are owed by a mortgagor and paid by a mortgagee are part of the debt due the mortgagee or lienor.

7. PA 13-276 Priority of Liens – Attorney George highlighted the statutory changes. Effective October 1, 2013, §5 of the public act provides that in tax assessment appeals, where the court finds there has been an overpayment, the court must enter judgment for the whole amount of such overpayment less any lien recording fees incurred under sections 7-34a and 12-176. §7 of the public act, effective October 1, 2013, provides that where the municipality has approved an abatement of taxes, the lien shall have the same precedence as tax liens under § 12-172. And, pursuant to § 42 of the public act, effective as of July 11,

2013, C.G.S. § 49-31r was amended with regard to when the municipality must provide the judicial form regarding community-based resources to a homeowner.

8. PA 13-136 – Foreclosure Mediation – Attorney Nancy McGann gave a presentation on the changes this new legislation has made to the Foreclosure Mediation Program. See Handout attached.

Next meeting to be on September 12, 2013 at 2:00 PM in Wethersfield.  
Subcommittees to report to full committee then.

A motion was made that the meeting be adjourned. The motion was seconded and passed. Meeting adjourned at 4:15 P.M.

For July 26, 2013 Bench-Bar Foreclosure Committee Meeting

RE: Uniform Mediation Standing Orders

Change D from

The Plaintiff's attorney must bring to each mediation session an updated itemization of all fees and costs including any other charges and attorneys fees requested that must be paid in order to satisfy the full obligations of the loan and an itemization of all overdue amounts causing the loan to be in default.

To

The Plaintiff's attorney must bring to the initial mediation session (if not provided in accordance with Public Act 13-136) , and to each mediation session upon request, an itemized statement of the amount required to reinstate the loan, which shall include an itemization of all attorney's fees and costs.

Adam L. Bendett, Esquire

**REPORT TO BENCH-BAR FORECLOSURE COMMITTEE**

Following its creation at the April 13, 2012 meeting of the Bench-Bar Foreclosure Committee, the Investor Restrictions Subcommittee met twice regarding both (1) the proposed Standing Order contained in the April 9, 2012 letter to Judge Mintz from 32 members of the bar (including four members of the Committee), and (2) the power of the Judicial Branch to adopt such a Standing Order. The Subcommittee resolved to report its findings to the full Committee so that the Committee could review the issues at hand before next steps were taken. The Subcommittee is prepared to discuss these issues in greater detail at the August 29, 2012 Committee meeting.

1. Proposed Standing Order

The Subcommittee reviewed the proposed Standing Order for, among other things, the need for such an Order, compatibility with foreclosing parties' rights, existing statutory requirements and court rules, the issues attendant to self-represented parties facing foreclosure, and compliance burdens on plaintiffs. Based on the discussion, proponents of the measure revised the order proposed in the April 9 letter, as follows:

If the Plaintiff claims that workout options for the mortgagor are materially restricted by the loan's investor or similar entity, the Plaintiff shall, if the Plaintiff or its agent participates in a federal loss mitigation program, (a) provide the document containing such restriction and any amendments thereto to the mortgagor in connection with mediation, (b) while the matter is in mediation, promptly notify the mortgagor if the restriction is eliminated or amended in a manner that could reasonably and materially affect the mediation, and (c) if such federal loss mitigation program requires participants to solicit loan investors for waivers of workout restrictions, produce evidence of such solicitation with respect to the mortgagor. The court may order that any documents so produced shall be designated as confidential following motion by the mediator or the Plaintiff and good cause shown.

If neither the Plaintiff nor its agent participates in a federal loss mitigation program, then provisions of documentation concerning any such restriction may be ordered by the court upon motion of the mediator or the Defendant and good cause shown. Any document so produced pursuant to such a motion shall be designated as confidential among the parties unless the Defendant can show good cause for it to be otherwise designated.

The Subcommittee was unable to reach a consensus or recommendation regarding the necessity and the suitability of the revised proposed Standing Order, and returns the issue to the full Bench-Bar Committee.

## 2. Means of Adopting Such a Requirement

Were the Bench-Bar Committee to recommend adoption of such a requirement, the Subcommittee's members identified three possible approaches for its implementation: (a) a Standing Order adopted by the Judicial Branch; (b) changing the Practice Book through the Rules Committee; or (c) statutory change via the legislature. The Subcommittee was unable to reach a consensus or recommendation regarding the best approach, and returns the issue to the full Bench-Bar Committee.

**Bench-Bar Foreclosure Committee**  
**July 26, 2013**

**What's New?**  
**PA 13-136 (eff. 7/15/13)**

**Section 1:** (§ 49-31 k)

- **Definitions**
  - ❖ Mortgagor
  - ❖ Mortgagee
  - ❖ Objectives of the Mediation Program
  - ❖ Ability to Mediate (cf. settlement authority)

**Section 2:** (§ 49-31 l)

- **Return Dates from 7/1/08 – 6/30/09**
  - ❖ Eliminates 25 day limit for filing appearance/mediation requests
  - ❖ Extends FMP to 6/30/14 (§49-31 l (b)(4))
- **Prior to Mediation/The Pre-Mediation Process**
  - ❖ Bifurcation of the process by return date
    - a. 10/1/11 – 9/30/13: Service of existing Mediation Information Form (JD-CV-125); M'gor returns to counsel w/in 15 days of initial mediation session with supporting docs (§49-31 l(b))
    - b. 10/1/13 – 6/30/14: Pre-mediation process (§49-31 l(c)(4))
      - New Mediation Information Form served
      - Assignment to mediation; notice w/ electronic mail address
      - Electronic delivery of docs/forms/info
      - Meeting(s) with mediator
      - Facilitate/confirm document transmission
      - Pre-mediation report
      - Determination regarding mediation
      - Petitions for good cause (mistake/misunderstanding or change in circumstances)
  - ❖ Specifically authorizes filing answer, special defenses, counterclaims without breaking 8 mo. litigation hold (§ 49-31 l(c)(6))
  - ❖ Court referrals at any time for good cause (§ 49-31 l(c)(5))
    - a. Parties likely to benefit or change in circumstances
    - b. Participation in pre-mediation w/ court established deadlines (return dates on/after 10/1/13)

**Section 3:** (§ 49-31 m)

- Makes explicit that mediation addresses disposition options such as short sales and deeds-in-lieu
- Amends to provide that mediators have a duty to be unbiased and cannot give legal advice

**Section 4:** (§ 49-31 n)

- **Mediation** (§ 49-31 n)
  - ❖ Mediation period defined (§ 49-31 n(b)(1) and n(c)(1))
  - ❖ Who appears (§49-31 n(b)(2) and n(c)(2))
    - a. Represented borrowers
    - b. Multiple SRP borrowers
    - c. Non-borrower spouses
    - d. Personal appearances excused for disability/significant hardship
  - ❖ Ability to Mediate (§49-31 n(b)(2)) and n(c)(2))
  - ❖ Time to respond to requests/explanation of denials
  - ❖ Requests for additional/missing information in writing
  - ❖ Mediator Reports (JD-CV-89 rev. 7/13)
  - ❖ Supplemental Information by Party (JD-CV-133) w/in 5 business days
- **Sanctions** (§49-31 n(b)(2) and n(c)(2))
  - ❖ Intentional conduct/pattern or practice by party or counsel
  - ❖ Proportional to conduct/consistent with objectives of mediation
  - ❖ Examples
- **Extensions of the Mediation Period** (§49-31 n(b)(9) and n(c)(9))
  - ❖ Time for filing – 15 days
  - ❖ Who may file
  - ❖ One per motion/request
  - ❖ Extensions - agreement highly probable
  - ❖ Extensions – conduct inconsistent with objectives
  - ❖ Extension by agreement w/out hearing
  - ❖ Orders- 20 days from filing of motion/request with articulation
  - ❖ No judgment may enter if motion/request pending
  - ❖ Cases pending as of 10/1/13:
    - a. 3 or fewer sessions = no sessions held
    - b. 4 or more sessions = move to terminate or extend; otherwise mediation period concludes after 3<sup>rd</sup> session post 10/1/13



- **Reporting Requirements** (§ 49-31 n(d))
  - ❖ By 2/14/14: Summary of data from 7/1/13 – 12/31/13
  - ❖ By 2/14/15: Summary of data from 7/1/13 – 12/31/14

**Section 5:** (New)

- **Expedited Foreclosures**
  - ❖ Proof by clear and convincing evidence
  - ❖ Use of affidavit
  - ❖ Not occupied by M'gor, tenant or other occupant
  - ❖ 3 or more of the 7 listed conditions exist
  - ❖ Not available if under construction, seasonal, or subject to quiet title action/other ownership dispute