

**MINUTES OF THE
BENCH – BAR FORECLOSURE COMMITTEE MEETING
Wednesday August 29, 2012**

Handouts to Committee Members: Agenda; Draft of Minutes of April 13, 2012 meeting; proposals re Practice Book §§ 61-11 and 6-3, report of Investor Restrictions Subcommittee.

Members in attendance: Hon. Douglas C. Mintz, Chair, Attorney Adam L. Bendett, Attorney Denis R. Caron, Attorney Robert F. Frankel, Attorney Jeffrey S. Gentes, Attorney Peggy George, Attorney Robin Golden, Attorney Leanne Larson, Attorney Richard M. Leibert, Attorney Eugene S. Melchionne, Hon. Lisa K. Morgan, Ms. Roberta Palmer, Attorney Raphael L. Podolsky, Attorney Sarah Poriss, Attorney Gary Sklaver, Hon. Mark Taylor, Attorney Louis C. Zowine.

The meeting was called to order at 2:11 PM.

1. Approval of Minutes of April 13, 2012 Meeting - Motion to approve the minutes of the April 13, 2012 meeting was made and the minutes were approved.

2. Subcommittee re Motions to Open Judgment – Report – Attorney Caron reported on the issues discussed by the subcommittee. The subcommittee proposed that Practice Book § 61-11 be amended to add new subsections (f) and (g) which would allow a foreclosure sale to go forward when a motion to open judgment is denied; however, approval of the sale is not to be heard by the court until after the expiration of the appeal period. Also, the court is not to vacate the automatic stay following the denial of the motion to open judgment. After discussion, the full committee recommended the following changes to the proposed subsection (g):

- Subsection (g), line 4, remove “or allowance of fees or expenses”
- Subsection (g), line 6, after “motion to open or reopen the judgment” add “without an appeal having been filed”
- Subsection (g), add to end “during such appeal period”.

A motion was made that the proposed amendment to PB § 61-11, with the recommended changes, be submitted to the Rules Committee. Motion seconded.

After further discussion, it was recommended that changes be made to subsection (f) as follows:

- line 2, “that defendant” should be changed to “any defendant”
- line 4, “filed by such defendant owner if such defendant owner” should be changed to “filed by any defendant owner if the moving defendant owner”.

Committee voted: all in favor with exception of one member abstaining – Attorney George.

The committee then discussed the subcommittee's proposed amendment to Practice Book § 6-3. The amendment would allow the Certificate of Judgment issued by the clerk to be used in C.G.S. § 49-17 cases. After discussion, the committee members suggested changing the last sentence to "The certificate of judgment shall constitute a decree of foreclosure for purposes of compliance with the requirements of said statute."

A motion was made that the proposed amendment to PB § 6-3, with the recommended change, be submitted to the Rules Committee. Motion seconded. Vote: All in favor.

3. Subcommittee re Investor Restrictions - Report – Attorney Gentes reported that the implications of investor restrictions is that a modification of the mortgage cannot be effected because of an investor restriction. The subcommittee had concerns as to how this could be addressed – whether a standing order was appropriate or if there was a need for a rule by the Rules Committee or if redress should be sought through legislation.

A motion was made that the Bench-Bar Foreclosure Committee recommend to the Judicial Branch that the proposed order be adopted as a standing order. Members questioned how often this is an issue and whether more data could be obtained. Data is to be obtained from mediators during the next month to find out how often an investor restriction is an issue.

A motion was made to table this matter until further data is available. Motion seconded. All members in favor, except two – Ms. Palmer and Attorney Sklaver.

4. Practice Book 17-4(2) Issues – Opening for Mediation –

5. C.G.S. § 49-15(b) Issues When Bankruptcy Filed –

Attorney Frankel explained the need for a change to rule 17-4(2) because of the requirement that the judicial authority enter a judgment of dismissal if a motion to open has been granted and a withdrawal is not filed or a judgment is not thereafter entered within 120 days. Frequently, there is a situation where the judgment is opened and referred to mediation which takes longer than the 120 day period allowed. Therefore, this rule should be amended to permit the mediation to take place. C.G.S. § 49-15(b) is also an issue when a bankruptcy is filed.

Judge Mintz requested that Attorney Frankel now chair the Motions to Open Judgment Subcommittee so that these issues could be discussed. The subcommittee to report back at a Bench-Bar Foreclosure Committee Meeting in October.

6. Changes to Foreclosure Forms – Attorney George reported that she reviewed the judicial foreclosure forms for necessary changes in connection with electronic filing. In particular changes are needed on forms JD-CV-78, JD-CV-75 and JD-CV-74. Attorney George will draft changes and circulate to committee members for review.

A motion was made that the meeting be adjourned. The motion was seconded and passed. Meeting adjourned at 4:10 P.M.