

**MINUTES
BENCH-BAR FORECLOSURE COMMITTEE
SUBCOMMITTEE RE MOTIONS TO OPEN JUDGMENT**

NOVEMBER 6, 2009

Members in attendance: Attorney Denis Caron, Chair, Hon. Douglas Mintz, Attorney Robert Frankel, Attorney Geoffrey Milne, Attorney Raphael Podolsky, Attorney Adam Bendett.

Attorney Caron called the meeting to order at 3:47 P.M.

Discussion began regarding the Westport case and concerns with motions to open judgment and the appeal period. Members began looking at the problem and possible solutions. The issue has to do with the review period on the ruling on the motion to terminate the stay following a denial of a motion to open the judgment of foreclosure. The committee cannot do anything until the appeal period has run; otherwise the committee is at risk.

Members discussed, through statute or practice book rule change, to change the appeal period from twenty to five days. With a shorter appeal period the matter could be heard by the court before the sale date. There was no consensus on making this part of a proposal.

Members discussed other proposed changes in the rules on motions to open. If the court deemed the motion to open was filed for the purpose of delaying the sale, the court could allow the sale to go forward, but not approve the sale. When the appeal period ends, if no appeal is filed the sale could be approved. If an appeal is filed the successful bidder could file a motion for return of the deposit and the court could order the deposit returned; the appeal would be moot. The members propose a change to the rule addressing the automatic stay during the 20-day appeal period rather than the 10-day stay following the denial of a motion to vacate the appellate stay. This would save the borrower further expenses, etc. If the appeal is successful, the plaintiff would have to pay the expenses of the sale. The members voted, with Attorney Podolsky abstaining, to proceed with a version of this proposal. Attorney Caron will work on drafting this proposal.

Members then discussed how a judgment of strict foreclosure would be affected by the denial of a motion to open the judgment. If no appeal is filed, there is a question as to whether the judgment was effective to vest title on the actual law day. Also concerned with whether a junior encumbrancer would rely on fact that the law day didn't pass. Another concern is the passage of title to a third person if a junior encumbrancer redeemed during the appeal period of the denial of a motion to open the judgment.

The members suggest that the court could deny the motion to reopen, set a new law day 40 days in the future and also order that another motion to open the judgment must be filed, heard and decided within 21 days. A motion was made that a proposal for a rule be

drafted for the purpose of further discussion. All voted in favor of drafting a proposal for further discussion. Attorney Caron to draft the proposal. The subcommittee will meet again after the proposal for a rule is drafted.

Meeting adjourned at 5:00 P.M.