

MINUTES

FORECLOSURE PROCESS SUBCOMMITTEE MEETING MARCH 20, 2008 at 3:00 pm

Members in attendance: Hon. Barry Pinkus, Hon. Arthur Hiller, Atty Richard Leibert, Atty Adam Bendett, Atty Gregory F. Arcaro, Atty Denis Caron, Atty Gene Melchionne, Atty Ronald Bender, Atty Rafie Podolsky, Atty Gary Sklaver, Atty Keith Fuller, Atty Louis Zowine, Atty Peggy George

At 3:05 PM Judge Pinkus called the meeting to order and welcomed the members to the meeting.

Minutes of February 7, 2008 meeting approved.

1. Old Business:

Committee reviewed suggestions A – D to present to the Bench – Bar Committee.

A. Notice annexed to Complaint. Members discussed the need to change the perception of homeowners. There should be some type of notice that lets homeowners know they can work with the lender to keep their property rather than being foreclosed. There is a proposed bill in the Legislature, HB05552, which requires a pre-foreclosure notice and another notice at the start of the foreclosure action. There was discussion about contents of notice and who should send the notice. Also, there was a suggestion to develop a statement setting forth a mortgagor's rights. New York has a notice as well as Illinois. A sample notice from Cook County, Illinois which contains a list of counselors and phone numbers, was presented to the committee members. It was noted that the Governor's Hotline and the Banking Commission have information available for mortgagors whose loans are being foreclosed. Attorney Richard Leibert and Attorney Gary Sklaver are to develop proposed language for a notice. It was also mentioned that pleadings should be certified to all defendants in the action regardless of whether an appearance has been filed. Attorneys would have to specify in the certification whether the defendant was an appearing or non-appearing defendant. Any notice that is included with the complaint should be on colored paper and placed on top of the Summons and Complaint.

B. Motion for Judgment. Discussion as to whether a standing order of the court could require that a motion for judgment not be filed before 45 days after the return date. Judge Pinkus stated that he believes a rule change would be necessary. Members suggested that there be a change to Practice Book Rule 17-33 to mandate that a motion for judgment could not be filed before 30 days after the return date.

C. Motion to Open Judgment. The opening of the judgment would be automatic upon the filing of the motion, but the case would not be withdrawn. Suggested that someone draft a proposed rule.

D. Preliminary statement should include the principal, interest, per diem, escrow advances and corporate advances. This requirement should be set forth in a standing order.

2. Proposals from Atty Podolsky and Atty Sklaver.

Changes to Foreclosure Procedures – Sklaver 12-5-07

Loss Mitigation: Parties can stipulate.

Law Day: Suggest that there be a sliding scale as to when to set the law day or sale date. If equity, there is a sale. Suggest that the amount of equity to order a sale be increased, e.g., equity of \$10,000 before a sale is ordered, otherwise order strict foreclosure.

Short Calendar issues – refer #1 and 2 on page 2 to the Short Calendar subcommittee.

Attachment to Complaint: Have the handout available in the courtrooms with information for mortgagors.

Default issues: This is beyond the scope of this subcommittee. Documents are being reviewed by judges before entering judgment.

Fees on Reinstatement: Could have a sliding scale for fees – e.g., \$____ within 30 days; \$____ next ____ days, etc. If an action is started the mortgagor could speak with plaintiff's counsel and get a lower amount for counsel fees.

Attorney Podolsky's 1-23-08 proposal

(1) Will look into having property address added to case detail page of case information.

(2) Answer form – subcommittee believes it would not be advantageous to have an answer form.

(3) Tenants – In most instances the tenants are not named in the foreclosure action so this is not a problem.

(4) Defaults against a John Doe: The clerks do not enter defaults against fictitious names.

1-24-08 issue re Disclosure of Defense: Recommend a rule change to 10 days in light of e-filing of motions.

Next meeting to be scheduled for April 24th at 2:00 PM

Meeting adjourned at approximately 5:12 pm.