



## Alerts

### Illinois Supreme Court Adopts Rules Relating to the Home Foreclosure Process

March 5, 2013

*Corporate / Financial Institutions Alert*

On February 21, 2013, the Illinois Supreme Court adopted three rules (99.1 (which relies on existing Rule 99), 113 and 114) which are “aimed at mitigating abuses and uncertainty in the mortgage foreclosures, and helping those who face loss of their homes by imposing several requirements on mediation programs and lenders seeking foreclosure.”

The rules were scheduled to take effect on March 1, 2013. But on February 28, 2013, the Illinois Supreme Court delayed implementation of them until June 1, 2013. The purpose of the delay was to allow time to determine how the rules would be applied to existing cases or whether they should only apply to new cases.

Most importantly, it does not appear that these rules will shorten the time it takes to foreclose on a property in Illinois. Currently, Illinois has one of the longest foreclosure processes in the country. At the end of January, there were more than 77,000 foreclosures pending in Cook County alone. According to Realty Trac, the average foreclosure in Illinois takes 697 days. Recently, the Federal Housing Finance Agency (FHFA) indicated that it was considering increasing the guarantee fees that Fannie Mae and Freddie Mac charge for mortgages in Illinois and four other states. These increased fees would offset the long foreclosure times and additional administrative costs incurred in Illinois and the other states. Furthermore, one can expect additional delays and costs to be incurred if these rules are applied to existing foreclosures. A copy of the rules and the related commentary from the special committee that drafted the rules are attached to this alert.

#### Rule 113

Under Rule 113, all copies of a complaint for foreclosure must include a copy of the note, as it currently exists, including all endorsements and allonges.

The plaintiff must also file an affidavit in support of the amounts due and owing when it files any motion requesting a judgment of default. The affidavit must contain, at a minimum, the following:

- Information about the affiant and the affiant’s familiarity with the lender’s business and mode of operation.

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- Identification of the books and records reviewed by the affiant in drafting the affidavit, including the payment history and any records transferred from a previous lender or servicer. If the defendant filed an answer or responsive pleading, a copy of the payment history must be attached to the affidavit.
- Identification of any computer program or computer software used by the entity to track and record mortgage payments.

Where the defendant is defaulted by a court order, a notice of the default and entry of the judgment of foreclosure must be prepared by the plaintiff's attorney and mailed by the clerk of the circuit court. The notice must be delivered to the clerk within two business days of the entry of the order and must be mailed within five business days of the entry of the default. The notice is to be mailed to the property address or the address on any appearance or other document filed by the defendant.

In addition to the other requirements related to judicial sales, Rule 113 requires the lender's attorney to send notice by mail to the defendant at least 10 business days before the sale. The notice must include the date, time and location of the sale.

### **Rule 114**

Rule 114 provides that when a mortgagor has appeared, filed an answer or other responsive pleading in a foreclosure action, the plaintiff must comply with the provisions of any loss-mitigation program applicable to the loan, before it can move for a judgment of foreclosure.

The plaintiff must file an affidavit demonstrating compliance with this rule prior or at the time it moves for a judgment of foreclosure.

The affidavit must state:

- Any type of loss-mitigation program applicable to the loan;
- What steps were taken to offer the loss-mitigation program to the mortgagor; and
- The status of any loss-mitigation efforts.

### **Rule 99.1**

Rule 99.1 provides guidance for those counties that desire to establish mortgage foreclosure mediation programs, which have to be submitted to the Administrative Office of the Supreme Court for approval. These programs must comply with the existing Supreme Court Rule 99 that addresses mediation programs.

The rule also gives those counties that have mortgage foreclosure mediation programs (Cook, Will, Peoria, Kane, Madison, Bond and McLean) until June 1, 2013, to comply with Rule 99.1.

For further information, please contact [Michael D. Morehead](#), [Tim Sullivan](#) or your regular [Hinshaw attorney](#).

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