

February 28, 2013

Supreme Court Issues New Procedural Rules for Foreclosures

On February 22, 2013, the Illinois Supreme Court adopted a set of new procedural rules that will impact both residential and commercial foreclosures in Illinois. The new rules are scheduled to go into effect as early as March 1, 2013. While procedural in nature and intended principally to address residential foreclosures and “robo-signing” concerns, the new rules apply equally in the commercial context and may present some procedural hurdles, especially in cases where the loan was acquired from another lender.

New procedural requirements include:

- A copy of the note as it currently exists, including all indorsements and allonges, must be attached to the complaint at the time of filing.
- A prove-up affidavit submitted in support of foreclosure must include a payment history in contested matters; identify the computer program/software used to record and track payments; identify the books, records and documents relied upon; and address any transfer of the loan/servicing rights to the current lender.
- The prove-up affidavit shall not have a stand-alone signature page if formatting allows the signature to begin on the last page of the statement.
- In all foreclosure actions in which the mortgagor has appeared or filed an answer or responsive pleading, the plaintiff must file an affidavit addressing whether the mortgagor is eligible for any loss mitigation programs and reporting on the status of those efforts.

Prudent lenders should review these new requirements before commencing new foreclosure actions or proceeding with summary dispositions in pending cases. Particular attention should be paid to circumstances in which the loan has been transferred, as newly required documentation may be missing or difficult to locate.

For more information, please contact your Katten Muchin Rosenman LLP attorney, or any of the following members of Katten's **Real Estate Litigation Practice**.

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