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DEC 12 2013

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CLERK OF SUPREME COURT
BY
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Justice Kristina Pickering
NEVADA SUPREME COURT
201 S. Carson Street
Carson City, NV 89701

December 6, 2013

Re: Public Comments on Proposed Rule Changes for the FMP

Dear Justice Pickering;

Please do not take this letter to be a prohibited ex-parte contact, as I write solely regarding the upcoming rule changes in the Foreclosure Mediation Program. I was not aware of the public comment period and the hearing held yesterday concerning the public's input on the new FMP Rules. I did not see it on the court's website, which I check nearly every day. I understand that some interested parties were given written notification, but that the informal Foreclosure Defense Bar was not. Had I known, I would have attended to testify and would have sent in my comments much earlier.

I have been representing distressed homeowners in mediations since the program's inception, and have brought dozens of Petitions for Review. From those, I have taken three (3) appeals, all of which were heard *en banc*, I am pleased to note. I would like to take this opportunity to make my views on the program known, because I believe it is on the verge of failure. That is something I would hate to see.

With the aspiration of being candid with the court, I would be the first to admit that AB149 is being "gamed" by certain homeowners who hire counsel to 'kill the foreclosure' and nothing more. I don't know what you should do about that problem, though it needs to be addressed. The system is, however, being similarly gamed by the mortgage servicers who pretend to be the legitimate representatives of the owners of the note, ie. the investors, when they have not communicated with them at all. This is something that can be corrected. When this happens deals are rarely made because the servicer is more interested in protecting its own bottom line than the investor's, and that invariably hurts the homeowner.

The scenario that continually plays out works like this; the Servicer has an agency relationship with the investor called a Pooling and Servicing Agreement. These documents all have several features in common regardless of the identity of the parties. They provide that the servicer can modify mortgages, consistent with accepted industry practice, in so far as the modification does not "materially impair" the value of the note. This means no principal reductions, and no major interest rate changes. If the servicer

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does reduce the principal then the "repurchase" provision kicks in and it has to buy back the note and experience the attendant loss. If the servicer simply stands fast and refuses to modify the note, then it can pass 100% of the losses on to the investor. This tension is at the heart of the problem, but it is the way the securitization industry constituted itself. I believe that the legislators who wrote the law were not entirely aware of how this process works.

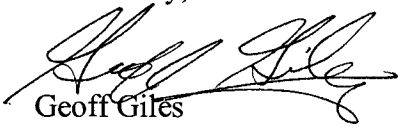
With this arrangement in place, servicers attend the mediations with the assertion that they are in good faith. They attend with nothing 'on the table' that would make the home affordable. They do this is despite the fact that both the homeowner and the investor would be better off with a reduced stream of payments that a principal reduction would provide. In short, the servicer is the impediment to the process not the facilitator, and is certainly not the legitimate "representative" of the investor.

The new rules being considered elevate the servicer to the legal status of the representative, which gives the industry a 'pass' on this procedure; FMP Rule 12(7)(c). If this arrangement is codified into the rules, then the only resolutions that will be made at mediations will be for the homeowner to agree to walk away from the property. This will be the death knell of the FMP and would serve to thwart the legitimate purposes behind AB149.

I can tell you that I have done a few private party mediations, where local creditors hold the note and deed of trust, and they are always anxious to make sensible deals because of the inevitable losses that will occur in; foreclosing on a home, taking possession, and then re-selling it. These people have a "dog in the fight" and can not profit from any of the Government's programs. This is the way things should work with big institutional servicers like Wells Fargo, Bank of America, Chase, PNC and the rest, but it simply is not happening. The legislative history and all the comments from the law makers involved with enacting AB149, suggest that intermediaries are not to attend mediations, yet that is precisely what the large institutional servicers are! Worse, they are intermediaries which have vested interests in foreclosing and passing the loss on to the investor, and not in making deals that will work for the homeowner. The only motivation they do have that would benefit the homeowner comes from the federal HAMP program, which is getting ready to sunset.

Therefore, I urge the Supreme Court not to promulgate a rule that treats servicers as the *bona fide* representative of the investor, and request that this letter be considered as a timely submitted public comment from someone who is knowledgeable about the subject matter. I know there are others like me that would like to give the court input in this regard. Thank you, I remain....

Yours truly,



Geoff Giles

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cc: Foreclosure Defense Bar