



Judge's Chambers
Butler County Court of Common Pleas
Post Office Box 1208
Butler, PA 16003-1208

Marilyn J. Horan
Judge

Telephone: 724-284-5290
Facsimile: 724-284-1084

June 2, 2009

Mr. David Callen
Committee on Commerce
General Assembly of Pennsylvania
214 Irvis Office Building
Harrisburg, PA 17120

By Email: dcallen@pahouse.net

Dear Mr. Callen:

If you will recall, we recently spoke about Senate Bill 1042 and mortgage foreclosure conciliation programs. I understand there is a legislative hearing on June 4, 2009, in Philadelphia concerning these matters. I want to provide you with some comments relative to the bill, so that your committee may consider these in conjunction with your hearing. As you know, I am a Common Pleas judge in Butler County, and I preside over civil actions, which include mortgage foreclosure proceedings. I have been working in coordination with community members, including creditors, debtors, legal counsel, court personnel and consumer credit agencies. Our meetings have been focused upon determining what, if any, court programming is necessary to respond to the recent increase in mortgage foreclosure actions. I anticipate we will soon implement court procedures for notices, stays and conferences scheduled upon request of either party.

Initially, I respectfully submit that it is my belief that legislation may not be necessary to accomplish implementation of procedures in the various counties. Procedures that are appropriate and effective in larger counties may not be as effective or appropriate in smaller counties. Each local court has the authority to implement programs that will respond to circumstances within each county. In addition, the Supreme Court has the authority to also implement State Rules to create programming as is necessary. I am aware that our many counties of Pennsylvania and our Supreme Court are very cognizant of the creditor/debtor crisis. Responsible court action to respond locally and statewide is already a topic of concern to our state judiciary. As such, legislative action

Mr. Callen
Page 2
June 2, 2009

may not be the most appropriate or best approach to the issue. In addition, legislation to provide for program mandates, without attendant funding, can create substantial difficulties for counties. I am sure you are contemplating these issues as a part of your legislative process.

I would also note that there has been a collaborative effort among lenders' attorneys who have forwarded a model mortgage foreclosure diversion program and conciliation process by way of communications to all counties throughout the state. I seem to recall from our phone conversation that you have some familiarity with this model program. However, if you do not have the same, I will be happy to forward it to you. The Lackawanna County conciliation program follows some of those procedures that are recommended by the lenders' attorney group. The Lackawanna County program mandates all foreclosures provide notice of consumer credit counseling availability and of a conciliation conference process. However, the conciliation process is scheduled based upon request, and only after the defendant mortgagor certifies they have contacted the consumer credit counseling agency and provided the financial information to that agency in order to facilitate a meaningful conference experience.

With regard to the legislation under consideration, I have reviewed House Bill 1042, Section 5109 (c) (1), and note that it directs conciliation conferences shall be scheduled for all cases. It also provides that a conference shall occur before the entry of judgment in the foreclosure action. I respectfully suggest that it may be more appropriate to have conciliation conferences available for scheduling if requested by any party. A mandate to schedule all cases for conciliation conference may not be efficient or practical. Where either party believes a conciliation conference will be helpful, such party should be able to request that a conference be scheduled. Cases scheduled on request will best merit the expenditure of court and party resources.

In addition, the requirement for a conciliation conference before the entry of judgment in foreclosure may not respect the plaintiffs' rights to pursue default judgment within timelines set forth under Pennsylvania Rules of Civil Procedure. The Bill, as written, may be in conflict with such State rules. The most important time for making a court conference available is before any sale in foreclosure. Obviously, as soon as the notice is received by the defendant, they can proceed to request a conference which could be scheduled promptly. An order scheduling a conference can provide for a stay in proceedings (for 60 days, perhaps) to permit the scheduling and conduct of a court conference. A court-ordered stay, rather than a legislative preclusion of entry of judgment, would be more flexible and appropriate to meet differing circumstances of individual cases and county practices and calendars.

Mr. Callen
Page 3
June 2, 2009

In addition, Section 5109 (b) sets forth notice requirements and indicates that the court order can automatically schedule a date for all conferences, or the notice can advise the defendant of a right to attend a conference and inform of the process required to have such conference scheduled. This suggests a conference upon request option, which I have discussed above. I agree with the scheduling of conferences upon request. However, you will note that under Section 5109 (h), a sale cannot occur until either the conference is held, or the mortgagor fails to appear. Subsection (h) is not written to accommodate the option where a party requests a conference to trigger court conciliation conferencing. Section (h) should be modified to provide that the sale may not occur until any requested conference has been held, or until the mortgagor fails to appear for a requested conference.

It would be prudent to provide that, in conjunction with the mortgagor's request for a conference, the mortgagor must verify that he/she has either scheduled a meeting with a consumer credit counseling agency, or they have already had such a meeting, and the mortgagor should provide the financial information necessary for a meaningful conference to occur.

Finally, subparagraph (g) of the legislation provides for reporting of results of the program through the Administrative Office of Pennsylvania Courts. Your legislation does not define what you are seeking to have recorded in the category of "results". I would expect that if the legislation remains as written, Administrative Office of Pennsylvania Courts would interpret what results they believe are meaningful for reporting and would develop the appropriate forms to accomplish this.

I appreciate your invitation to attend the legislative hearings in Philadelphia on June 4, 2009; however, I am not able to travel to Philadelphia on that date, as my son is graduating from high school that same day.

I would be more than happy to respond to further inquiries or provide any further assistance you may request relative to this legislation.

Respectfully,

Marilyn J. Horan
Judge

MJH:icm