

## Resources

### Amendment to Illinois Foreclosure Law Provides for Sale Set Aside If Borrower Has Applied for HAMP Assistance

August 3, 2011

The Illinois legislature has recently enacted an amendment to Illinois' foreclosure statute that requires a court that entered a judgment of foreclosure to set aside the foreclosure sale if the mortgagor has applied for assistance under the federal Making Home Affordable Program (HAMP). Governor Quinn has signed the legislation, which became effective on July 23, 2010.

Specifically, if the mortgagor, by motion prior to the confirmation of the foreclosure sale, can prove by a preponderance of the evidence that (1) he or she has applied for assistance under the HAMP program, and (2) the mortgaged property was sold in material violation of the program's requirements for proceeding to a judicial sale, then the sale must be set aside.

Under the HAMP program, mortgage servicers may not refer any loan to foreclosure or conduct a scheduled foreclosure sale unless and until: (i) the borrower is evaluated for HAMP and is determined to be ineligible for the program; (ii) the borrower is offered a trial period plan but fails to accept the offer and make the required trial period payment; (iii) the servicer has established the right party contact, has sent at least two written requests asking the borrower to supply required information in accordance with SD 10-02 and has otherwise satisfied the "reasonable effort" solicitation standard, and the borrower failed to respond by the dates indicated in those requests; (iv) the servicer has satisfied the "reasonable effort" solicitation standard without establishing right party contact; or (v) the borrower or co-borrower states he or she is not interested in a HAMP modification.

This amendment applies to a sale under any foreclosure action filed before January 1, 2013, provided the mortgagor has applied for HAMP assistance on or before December 31, 2012.

Accordingly, servicers who proceed to foreclose on an Illinois property when the borrower has applied for a HAMP modification or is in a HAMP trial period plan may have that sale set aside. Any servicer who proceeds to such a sale in Illinois without first confirming such facts does so at some risk.

If you have any questions regarding this Consumer Financial Services Alert, you may contact **Richard Gottlieb**, Director of the Financial Industry Group, at 312-627-2196, or **Arthur Axelson**, the author of this alert and leader of Dykema's Financial Services Regulatory Practice, at 202-906-8607.

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Amendment to Illinois Foreclosure Law Provides for Sale Set Aside If Borrower Has Applied for HAMP Assistance (Cont.)

## Practice Areas

Financial Services Litigation – Consumer

Litigation

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