

Sunday, November 18, 2007

### Further Federal District Court Judges Address Standing in Foreclosure Actions

In the wake of federal District Court Judge Boyko's decision on October 31, 2007, two further federal District Court judges have issued orders in mortgage foreclosure cases on the issue of standing. Judge Kathleen M. O'Malley issued an order on November 14, 2007 in the case of *In re Foreclosure Actions*, Case Nos. 1:07cv1007, et al., (N. D. Ohio October 31, 2007) (O'Malley, J.) dismissing 32 foreclosure cases without prejudice. The court stated that its administrative order applicable to private foreclosure actions requires that such cases be accompanied by an affidavit documenting that the named plaintiff is the owner and holder of the note and mortgage as of the date the foreclosure action is filed.

The court held that an affiant simply attesting that the plaintiff is the owner and holder of the note and mortgage is not sufficient and that the plaintiff must document the chain of ownership to demonstrate its legal status with documents executed before the foreclosure action is commenced. Due to the lack of documentation or the filing of documentation executed after the filing of the complaints, the court's held that its administrative order was not complied with and the 32 cases were dismissed without prejudice.

On November 15, 2007, Judge Thomas M. Rose issued an order in the cases of *In re Foreclosure Cases*, Case No. 3:07cv043, et al., (S. D. Ohio November 15, 2007) (Rose, J.) giving the plaintiffs in 27 mortgage foreclosure case thirty days to prove standing and diversity jurisdiction or face dismissal without prejudice. The court reviewed that plaintiffs have the burden of establishing constitutional standing and if they cannot, their claims must be dismissed for lack of subject matter jurisdiction.

The court pointed out that standing is determined as of the time of the filing of the complaint. In the context of a foreclosure action, the plaintiff must show that it is the holder of the note and mortgage at the time the complaint is filed. The court's order gave the plaintiff's thirty days to submit evidence showing that they had standing and diversity jurisdiction in these cases when the complaints were filed and that the failure to do so would result in the dismissal of the cases without prejudice. The court further noted that 26 of the 27 foreclosure were not filed in compliance with its relevant administrative order which requires that mortgage foreclosure actions be accompanied by the following: a sworn payment history showing that the amount in controversy exceeds \$75,000, copy of the promissory note, mortgage and loan modifications, mortgage assignments, affidavit that the plaintiff is the owner of the note and mortgage, and a corporate disclosure statement. From these documents, the court noted that it can generally confirm standing and diversity jurisdiction.

Posted by Jordan E. Bublick, Bankruptcy Attorney at 1:54 PM