

Rule 114. Loss Mitigation Affidavit

(a) Loss Mitigation. For all actions filed under the Illinois Mortgage Foreclosure Law, and where a mortgagor has appeared or filed an answer or other responsive pleading, Plaintiff must, prior to moving for a judgment of foreclosure, comply with the requirements of any loss mitigation program which applies to the subject mortgage loan.

(b) Affidavit Prior to or at the Time of Moving for a Judgment of Foreclosure. In order to document the compliance required by paragraph (a) above, Plaintiff, prior to or at the time of moving for a judgment of foreclosure, must file an affidavit specifying:

- (1) Any type of loss mitigation which applies to the subject mortgage;
- (2) What steps were taken to offer said type of loss mitigation to the mortgagor(s); and
- (3) The status of any such loss mitigation efforts.

(c) Form of Affidavit. The form of the affidavit shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(d) Enforcement. The court may, either *sua sponte* or upon motion of a mortgagor, stay the proceedings or deny entry of a foreclosure judgment if Plaintiff fails to comply with the requirements of this rule.

Adopted Feb. 22, 2013, eff. May 1, 2013; amended Apr. 8, 2013, eff. May 1, 2013; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(April 8, 2013)

The context out of which Rule 114 arises is the huge increase in the number of foreclosure cases filed in the Illinois state courts. It is recognized by all members of the Committee that, wherever possible, it is in the best interests of all parties, the courts, and the local communities to avoid a foreclosure sale in favor of a workable loss mitigation alternative. Toward this end, Rule 114 requires the plaintiff to file an affidavit to document compliance with any loss mitigation program applicable to the mortgage loan at issue. The affidavit must be filled out and filed prior to or at the time of moving for a judgment of foreclosure. As such, the intended purpose of the rule is to prevent the entry of a judgment of foreclosure where the plaintiff has theretofore failed to comply with applicable loss mitigation requirements, be they local, state, or federal. The filing of the affidavit allows the court to review the plaintiff's level of compliance with applicable loss mitigation requirements, and, if necessary, to deny a motion for judgment of foreclosure if said compliance is lacking.

Specific procedures for filing and presenting the affidavit to the court may differ from county to county. Where counties have mediation programs in place, it is advisable that the county adopt procedures to incorporate the loss mitigation affidavit into the mediation process. Where no mediation program is in place, or where an individual case is not subject to mediation, the county and individual courts should consider appropriate local procedures to facilitate the use of the

affidavit in achieving its intended purpose. The affidavit requirement is intended to apply to all judgments on or after the effective date of the rule, no matter the foreclosure filing date. Because the affidavit must be filed prior to the entry of a foreclosure judgment, the effective date requires application to any case where a judgment of foreclosure has not yet been entered. Thus, although a case may already have been filed prior to the effective date of Rule 114, the Rule would apply if a judgment of foreclosure has not yet been entered.