

### **Third Revised Residential Mortgage Foreclosure Affidavit Policy of the Cuyahoga County Court of Common Pleas**

Questions have arisen about the truthfulness of the mortgage foreclosure affidavits filed by several large servicers and lending institutions. The affidavits in question have been filed in many guises such as affidavits of payment history, variable interest rate affidavits, real party in interest affidavits, affidavits in support of motions for summary judgment, etc. The Magistrates Department has received numerous motions of lenders requesting continuances to “ensure their paperwork is proper”.

The Foreclosure Committee has considered the seriousness of these recent disclosures and recommends the following in all residential mortgage foreclosure cases:

- In prejudgment cases where a lender has requested a delay in the proceedings to examine evidence it has submitted or otherwise calls into question the validity of the evidence its has submitted, the Committee recommends the entry of an order requiring plaintiff within thirty days to show cause why the case should not be dismissed without prejudice.
- In post judgment cases where the lender has requested a delay in the proceedings to examine evidence it has submitted in support of its judgment or otherwise calls into question the validity of the evidence its has submitted, the Committee recommends the entry of an order requiring plaintiff within thirty days to show cause why the case should not be dismissed and the judgment vacated.
- In any case where the lender seeks to remove the case from the active docket to examine evidence it has submitted, the Committee recommends that the motion be denied as improper under the rules of Civil Procedure and Superintendence. Following denial of the motion, an order as described above should be entered.
- The Committee further recommends the entry of the following as a standing order in all residential mortgage foreclosure cases:

All non-military client affidavits filed in residential mortgage foreclosure cases must indicate that the affiant has actual personal knowledge of the file and loan history in question and has personally reviewed the documents, records, or other data relied upon to make the statements contained in the affidavit. All client executed military affidavits filed in residential mortgage foreclosure cases must indicate that the affiant has actual personal knowledge of the appropriate defendants' military status. Failure to provide appropriate affidavits may result in mandatory personal attendance of an affiant for a hearing, the imposition of sanctions and penalties for perjury or contempt, and dismissal of the case.

Before judgment is entered on any claim for foreclosure and/or money judgment in a residential mortgage foreclosure case, counsel for plaintiff and any other party that asserts a claim for foreclosure or money judgment must file an Affidavit or Affidavits.

In regard to non-military client affidavits, this Affidavit must:

- 1) Identify the counsel of record and his or her law firm.
- 2) Provide that the counsel of record has reviewed the file.
- 3) Provide that the counsel of record has communicated with a representative of the party seeking foreclosure and/or money judgment or its servicer and that this representative has affirmed that he or she has personally reviewed the documents, records, or other data related to the case; has reviewed the pleadings and other court filings in the case; and has confirmed both the factual accuracy of the pleadings and court filings and the accuracy of the notarizations contained therein.
- 4) Provide the full name of the representative described in Item 3 and the date or dates of the communication.
- 5) Certify that, to the best of the counsel of record's knowledge, the pleadings and other court filings in support of the claims for foreclosure are complete and accurate in all relevant respects.
- 6) Acknowledge that counsel of record has a continuing obligation to amend and supplement the Affidavit in light of newly discovered facts following its filing.
- 7) Be signed and dated by counsel of record.

In regard to client executed military affidavits, this Affidavit must:

- 1) Identify the counsel of record and his or her law firm.
- 2) Provide that the counsel of record has communicated with the affiant of the military affidavit and that the affiant has affirmed that he or she has personally reviewed necessary website and/or database to determine the military status of the appropriate defendants.
- 3) Provide the full name of the affiant described in Item 2 and the date or dates of the communication.

- 4) Certify that, to the best of the counsel of record's knowledge, the information contained in the military affidavit is accurate in all relevant respects.
- 5) Acknowledge that counsel of record has a continuing obligation to amend and supplement the Affidavit in light of newly discovered facts following its filing.
- 6) Be signed and dated by counsel of record.

Failure to submit an appropriate Affidavit on or before the date of trial, the date that a motion for summary judgment is ripe for ruling, or the date of default hearing, whichever is applicable, will result in dismissal of the case and may result in further sanctions. Standardized Affidavit Forms are posted on the County website [[link to forms](#)]. All affidavits submitted pursuant to this order must be in the format of these Standardized Affidavit Forms.

In lieu of this affidavit:

- 1) In cases where client affidavits have been filed, the affiant or affiants must appear at the hearing of the matter and testify regarding those affidavits. The representative must appear in person and telephonic appearance will not be permitted. If multiple client affidavits are filed in the case and are executed by more than one affiant, each affiant must appear at the hearing of the matter.
- 2) In cases where no client affidavits have been filed, an officer of the party seeking foreclosure or officer of its servicer must appear at the hearing of the matter and testify in support of the allegations of the complaint and contents of other documents or court filings. The officer of the party seeking foreclosure or officer of its servicer must appear in person and telephonic appearance will not be permitted.
- 3) In cases where no hearing is scheduled before the entry of judgment (such as some summary judgment cases), the party seeking foreclosure must, contemporaneously with the motion for summary judgment, move to schedule a hearing at which the affiant may appear.
- 4) With the exception of affiants of military affidavits, the affiant or officer of the party seeking foreclosure or officer of its servicer who appears in court in lieu of the filing of a foreclosure counsel affidavit must appear with the original promissory note, including all endorsements and allonges and a current payment history for the mortgage loan at issue. The affiant or officer of the party seeking

foreclosure or officer of its servicer must be prepared to testify that he or she has personally reviewed the documents, records or other data related to the case, has reviewed the pleadings and other court filings in the case and has confirmed both the factual accuracy of the filings and the accuracy of the notarizations contained therein, if any. The affiant or officer of the party seeking foreclosure or officer of its servicer must be prepared to respond to the questioning of the magistrate or judge presiding over the hearing and the questioning of any other party attending the hearing.

- 5) If the affiant or officer of the party seeking foreclosure or officer of its servicer has been previously deposed and has testified under oath regarding the above required information, the filing of the transcript of that deposition will satisfy the requirements of this policy.

Failure to file an attorney affidavit or do any of the alternatives to filing an attorney affidavit before the case is ripe for the entry of judgment will result in dismissal of the case.