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August 4, 2010

The Honorable Pat Quinn  
Governor of Illinois  
Room 207, State Capital Building  
Springfield, Illinois 62706

RE: House Bill 5055

Dear Governor Quinn:

I am writing this follow up to my letter of July 15, 2010, which addressed the benefits of House Bill 5055 (Lang, D-Skokie; Wilhelmi, D-Joliet). I am sure that after you have considered the issues, you will understand the positive implications of this bill.

While the subject matter of the bill has received significant (and mostly misleading) press in recent days, nearly all of that press has been focused on a potential loss of revenue to county sheriffs.

Not only is the allegation of lost revenue illusory, it is not the primary issue at stake.

The big-picture issue is the positive impact this bill will have on communities besieged by mounting foreclosures and the rights of foreclosure litigants. This bill is intended to *add* efficiencies to a *woefully inefficient* foreclosure process. In the end, the bill will benefit distressed homeowners and the communities affected by the foreclosure crisis.

Homeowners bear the cost of a foreclosure. Private selling officers nearly always charge far less than the sheriffs. If a sale is cancelled, which happens regularly in foreclosure matters, private selling officers do not charge a cancellation fee if cancelled within a designated time frame. This is generally not the case with a sheriff's sale. Simply stated, the borrower benefits when a private selling officer is deployed.

Additionally, as has been proven for years, the use of private selling officers will reduce the fees and costs associated with the foreclosure process because private selling officers provide considerably more services to the lenders than any sheriff.

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If this bill doesn't pass, borrowers who want to invoke their redemption rights will be hurt. It is clear that sales conducted by sheriffs increase the costs associated with the foreclosure process with the unintended consequence of increasing the difficulty for a homeowner to find an exit strategy from a foreclosure.

Private selling officers conduct hundreds of sales every day. In Kane County, for example, where the courts appoint only the sheriff, sales are only conducted once a week. In that county today, it takes nine months to schedule a sale, even when the redemption periods have been waived or are expired. During those nine months, foreclosed properties are often vacated, fall into disrepair, become havens for gang activity and remain off the market.

These communities become blighted and neighborhood stabilization is delayed. In counties like Cook where private selling officers are regularly appointed, sales are conducted daily and regularly occur within 30 days of the judgment when the redemption periods have been waived or are expired.

The sheriff's complain of lost revenue to the county. But we ask you to examine the real cost to these counties when those properties become blighted as a result of these delays. That occurs daily in Kane County and elsewhere when these properties languish vacant while everyone waits for the sheriff to conduct the sale.

Recent press coverage of this issue has been misleading in suggesting that the bill intends to replace the sheriff in handling evictions. Nothing in the bill impacts the sheriff's right to handle evictions. The impact of the bill is limited solely to foreclosure auctions.

Additionally, contrary to some inferences, this bill does not confer a monopoly on private selling officers. It does, however, retain the choice of selling officer for the party bringing the action, the lender.

This was the intention of the Illinois Mortgage Foreclosure Law when it was amended in 1987 to allow for the appointment of private selling officers. The purpose of the amendment was to create competition in an inefficient market, which, at the time, conferred a monopoly on the sheriffs that was inefficient and expensive.

That objective has been accomplished through the appointment of private selling officers and the result has been lower prices and increased service. Now, certain county boards have usurped that competition through the implementation of municipal ordinances and judicial fiat.

**In short, they want to reclaim the monopoly the legislature sought to dismantle when it introduced the concept of private selling officers in 1987. And yes, sheriffs can still compete for and win this business from the banks. But they must do so on a level playing field.**

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This issue before you is really no different than service of process. In most counties lawyers turn to special process servers where the county sheriff cannot meet the demands of the litigants. Some county sheriffs now actively compete for that business with success. The same can be accomplished here and everyone would benefit.

The sheriffs want revenue, and that is understandable. But the real issue here is not what the sheriffs want, but what is best for the distressed homeowners and communities of Illinois.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Birnbaum". The signature is fluid and cursive, with a large, stylized initial "P" and "B".

Peter J. Birnbaum

PJB:sw