



ATTORNEYS'
TITLE
GUARANTY
FUND,
INC.

RE: ATG Call to Action

Dear ATG Member,

I am writing to you to seek your assistance in a legislative matter that is of vital importance to ATG and its members.

In 1991 ATG formed The Judicial Sales Corporation. Over the years we have become the preferred provider of judicial sales services in Illinois. The revenue we garner from this work has allowed ATG to remain strong despite the real estate recession that has impacted all of us. More importantly, the service we provide confers a significant benefit to lenders and the public.

For the reasons articulated below, our ability to continue to provide this service is at significant risk.

The Illinois Mortgage Foreclosure Law (IMFL) was amended in 1987 to allow for the appointment of private selling officers. *See* 735 ILCS 5-1506(f)(3). The purpose of this amendment was to create competition in the judicial foreclosure sale market. Before 1987 the law conferred a monopoly on the sheriff (or the judge hearing the case). Many argued that the process was inefficient and expensive. The statute sought to fix that by introducing competition in the form of private selling officers. And in fact, the legislation did just that. The result of introducing competition has been lower prices and increased service. With the appointment of private selling officers, judicial foreclosure sales are conducted in a more efficient manner. As a result, foreclosed properties are delivered to the market more expeditiously, helping communities to reduce the problem of vacant properties, which often fall into disrepair or are vandalized, become havens for criminal activity, and remain off the market.

Recently, however, in an effort to capture what is perceived to be easy revenue a number of counties have enacted policies requiring that only the sheriff be appointed selling officer in foreclosure sales. For example, the Lake County Board adopted an ordinance to have the Sheriff's office conduct all Lake County mortgage foreclosure sales, to the exclusion of all statutory alternatives. Similar actions have been taken by authorities in Tazewell, Rock Island and other counties. To the extent an ordinance mandates, explicitly or inferentially, the use of the sheriff as the exclusive selling officer, it is an improper denial of a statutory remedy afforded any party under IMFL. It also has the effect of increasing the costs of foreclosures and making it more difficult for borrowers to find a way out of foreclosure. Judges in other counties, including DuPage, Kane, Will and Kendall, have refused to appoint any selling officers other than the sheriff. These developments are in direct contravention of IMFL's express language and purpose.

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House Bill 1263 (HB 1293) was introduced to address this issue. It has passed the House and is now in the Senate. We urge you to contact your State Senator and ask them to support HB 1293. Among other important changes, HB 1293 clarifies and preserves the right of the plaintiff, the foreclosing lender, to choose the selling officer.

HB 1293 will ensure continued competition in the judicial foreclosure sale market, which will positively impact the rights of foreclosure litigants as well as communities besieged by mounting foreclosures. A draft letter is attached together with a list of members of the Senate.

Sincerely,

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

Peter J. Birnbaum

cc