

## FIRM NEWSLETTER

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**GEHRIS & ASSOCIATES, LLC**  
**ATTORNEYS AT LAW**



# HAPPY HALLOWEEN

We hope to provide updates and awareness of legal issues through this newsletter. In this month's issue we will discuss modifications to maintenance payments and loss mitigation affidavits in foreclosure cases. We continue to monitor the effects of the Coronavirus (COVID-19) pandemic on the justice system and will provide updates to you as we receive them.

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### Reducing Maintenance Due to Downturn in Business



As part of a divorce proceeding the Court has the power to award maintenance, money to be paid by one party to the other. According to Section 504 of the Marriage and Dissolution of Marriage Act, the Court considers several factors when deciding on whether to award maintenance. These factors include: (1) The income and property of each party; (2) the needs of each party; (3)

the realistic present and future earning capacities of each party; and several other factors. In order to later modify or terminate maintenance, a party must show that there has been a substantial change in circumstance.

When determining if there has been a substantial change in circumstance, the Court looks to the factors laid out in Section 504 of the Marriage and Dissolution Act, as well as those laid out in Section 510(a-5). These additional factors include: (1) Any change in employment status of either party and whether the change has been made in good faith; (2) any impairment of the present and future earning capacity of either party; (3) the increase or decrease in each party's income since the prior judgement or order from which a review, modification, or termination is being sought; as well as several other factors.

The Court *In re Marriage of Burdess* was presented with facts in support of the Petitioner's motion to review maintenance as well as facts in support of the Respondent's motion to terminate maintenance. ([Read more](#))

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## Foreclosure: Loss Mitigation Affidavits

During a pending foreclosure case, Illinois Supreme Court Rule 114 requires that the Plaintiff (generally the lender) file an affidavit which specifies any type of loss mitigation which applies to the loan, the type of loss mitigation which applies to the loan and the status of any such loss mitigation efforts. The lender must comply with



the requirements of the loss mitigation affidavit prior to moving forward with obtaining a judgment of foreclosure.

The court has some discretion in whether to stay, or put the case on hold, or deny the request for a foreclosure if the plaintiff fails to comply with the completion and filing of a loss mitigation affidavit. The rule exists in order to encourage lenders and homeowners to make attempts to work out the mortgage issues prior to a judgment of foreclosure being entered. It is in the best interests of the parties to avoid a foreclosure sale and work out an alternative.

The court determined in *Wells Fargo Bank, N.A. v. Smith*, 2019 IL App (1<sup>st</sup>) 172963 that Wells Fargo had filed a loss mitigation affidavit in September of 2015 which specified a loss mitigation program which had been offered to the homeowners. ([Read more](#))

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## Spotlight



We hope you had a safe and happy Halloween. As always, let us know if there are topics

or issues that you would like to see addressed in future newsletters. Please feel free to pass this newsletter along to friends and family who may be dealing with these issues.

### [CARES Act](#)

We will continue to monitor the COVID-19 situation and will follow guidance from public health officials and government agencies, so we can continue to support our clients and communities as needed.

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