

In NY foreclosures, onus on attorneys

by Matt Volke

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The New York State Unified Court System on Wednesday announced that attorneys filing foreclosure forms will be required to verify their accuracy.

The new rule, approved by Chief Judge Jonathan Lippman and all of the presiding justices of the Appellate Division, comes on the heels of accusations that lienholders cut corners by allowing foreclosure and other mortgage-related documents to be "robo-signed" as homes were seized nationwide, skipping important verification steps along the way. The accusations typically are being made against massive law firms in large markets that dealt with the largest banks.

The new requirement means Rochester-area attorneys who don't take on huge case loads will have to jump an extra hoop during the process, at least one local observer said.

"When I do a foreclosure here, the client is around," **Dibble and Miller PC's Gerald Dibble** said Wednesday. The new rule's "reasonable, but it's going to slow down the process."

Dibble said the rule is a good idea, however, because the public must be ensured the courts are doing their job and their homes aren't being foreclosed upon unfairly.

"The court should be trusted, should be relied upon," **Dibble** said. "The court should be credible to the public and trusted that the file work is good."

Almost 80,000 residential foreclosures are pending on New York court dockets, all of which will require plaintiffs' counsel to submit affirmation of documents during one of the three stages of a case:

- For new cases, the affirmation must accompany the request for judicial intervention.
- In pending cases, the affirmation must be submitted with either the proposed order of reference or the proposed judgment of foreclosure.
- In cases where the foreclosure judgment has been entered but the property has not yet been sold at auction, the affirmation must be submitted to the referee and a copy filed with the court five business days before the scheduled auction.

Attorneys general in all 50 states and the District of Columbia are jointly investigating whether banks and other lenders have violated their states' laws. In Maryland, an emergency measure approved this week by that state's highest court outlines how state judges can review foreclosures and stop them if documents are invalid.

New York attorneys already have an obligation to ensure the documents they present to the court are valid, but Chief Judge Lippman said having them sign something affirming that all papers underwent a proper review will hold them accountable as never before.

"We cannot allow the courts in New York State to stand by idly and be party to what we now know is a deeply flawed process, especially when that process involves basic human needs — such as a family home — during this period of economic crisis," Chief Judge Lippman said in a written statement. "This new filing requirement will play a vital role in ensuring that the documents judges rely on will be thoroughly examined, accurate and error-free before any judge is asked to take the drastic step of foreclosure."

Lawyers handling pending foreclosure actions probably will need to go back to their clients and verify that all proper steps were followed, which means a lot of leg work for large firms, **Dibble** said. The new affirmation form requires attorneys to give the name of the bank employee who affirmed the records are accurate, and the date the conversation took place.

Dibble said the vast majority of people lose a house because they did not make their payments. He said it's rare that people are unjustly removed from a home, and even rarer when an attorney knowingly files false foreclosure paperwork.

"When we do foreclosures, we verify everything," he said. "No lawyer I know of in New York state would do that, to know the paperwork was signed and signed improperly and submit it."

A few major banks froze foreclosure actions nationwide as their filings are reviewed for problems. Two of the largest, Bank of America and GMAC Mortgage, resumed proceedings this week.

The Associated Press contributed to this report.

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