

## Lenders will pay fees in NY

by Matt Volke

Published: October 25th, 2010



iStock image used with permission.

A new state law allows those in foreclosure on their homes to have lenders pay their legal fees in some cases, a move some attorneys say will level the playing field.

Gov. David A. Paterson last week signed the Access to Justice in Lending Act into law, part of the state's response to false or unverified filings by the mortgage and banking industries. In the last month, many accusations have been made that lienholders cut corners in foreclosure and other mortgage-related documents to be "robo-signed" as homes were seized nationwide, skipping important

verification steps along the way.

The New York bill puts the foreclosed on the same footing as lenders. In some instances, homeowners — and their attorneys — have been hesitant to challenge lienholders out of fear of losing and accruing attorney fees, attorney Peter Scribner, a solo practitioner in Rochester, said Monday.

"In general, we're apprehensive about challenging mortgage banks in bankruptcy for fear that all we're going to do is increase attorney fees the bank is going to be claiming," Scribner said.

He hasn't challenged such a case yet, but said he was glad to see the measure passed.

"We're going to see more challenges to the validity of mortgages in bankruptcy," he said.

"There's been a lot of casual record keeping in the assignment of mortgages during the securitization of mortgages during this past decade, and in the past year the state courts have started questioning paperwork."

"We've seen at most a handful of cases in 2010. It's not common, and it's certainly not going to be routine in the future, but the building blocks for challenging the validity of mortgages have been built recently," Scribner said.

Accusations of false filing typically have been made against massive law firms in large markets that dealt with the largest banks. **Dibble and Miller PC's Gerald Dibble** said there have been few challenges so far, but at least three of his clients are considering them.

"There's so much funny business that took place in the mortgage business, especially in this past decade," **Dibble** said. "It could come back and start biting some mortgage holders." **Dibble** said he would take a risk on some cases, knowing he would be paid through the lender.

"It will make the system, in my view, be more accurate and make the foreclosure lawyers more careful in ascertaining their paperwork," he said of the state law change. "But it's only going to apply to those people who are not in default and want to take a risk to challenge the actual paperwork," he said. "I might just take a chance and challenge."

The state Bankers Association opposed the move, submitting a memorandum to the governor over the summer stating the law was unfair: "This legislation is so broadly drafted that it could give defendants in foreclosure actions the right to attorney's fees even where a mortgagee would have no such rights," the organization wrote.

Nearly 80,000 foreclosures were pending in New York courts this month, and the filing has become a hot button issue. The New York State Unified Court System last week announced that attorneys filing foreclosure forms will be required to verify the accuracy of the paperwork. The new rule, approved by Chief Judge Jonathan Lippman and all of the presiding justices of the Appellate Division, requires attorneys to verify all documents.

Complete URL: <http://nydailyrecord.com/blog/2010/10/25/lenders-will-pay-fees-in-ny/>