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Foreclosure freeze hits large firms

by Matt Volke

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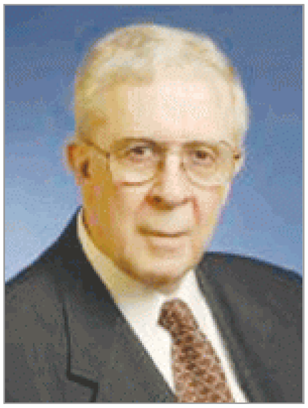

Gerald W. Dibble

Anyone who checks the paper regularly for foreclosure notices can spot that there aren't many as of late.

Some of the larger firms handling the bulk of foreclosures have come to a grinding halt after recent changes in law require attorneys to verify all documents. Larger firms were accused of robo-signing documents and letting details fall through the cracks.

Smaller firms, though, say they haven't had nearly the same issues with slowed work because they were already taking the steps necessary to verify foreclosure documents.

"It's not going to affect any law firm that has contact directly with the mortgagee. They will have the ability to get that data efficiently and properly," said attorney Gerald Dibble, of Dibble & Miller PC, who handles foreclosures. "The firms that are doing the vast majority of these foreclosures have mechanized it to such a degree that the lawyer doesn't really have his own knowledge of the case. We don't have that here. We deal with the mortgagee and we get what we need."

All 50 U.S. state attorneys general are investigating whether banks, loan servicers and law firms properly prepared documents to justify hundreds of thousands of foreclosures. The probe came after JPMorgan Chase & Co. and Ally Financial Inc.'s GMAC mortgage unit said they would stop repossessions in 23 states where courts supervise home seizures and Bank of America Corp. froze foreclosures nationwide.

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

The new ruling by Chief Judge Jonathan Lippman and all of the presiding justices of the Appellate Division, came 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.

"A lawyer has the right to rely upon the client and not doubt that they're telling him something improper," Dibble said. "If we suspect, on a reasonable basis, that something in the affidavit wasn't proper … we have a duty to look into it.

"This mortgage fiasco is horrible for the bar," he added. "We're trusted. We're officers of the court. That whole situation causes me great concern that our profession is going to get a black eye over this."

The new affirmation requirement means Rochester-area attorneys who don't take on huge case loads will have to jump through an extra hoop during the process.

John DiCaro of Shapiro, DiCaro & Barak LLP said any new step in the process will require firms to adapt, which takes time.

"There's a requirement we file those affirmations," DiCaro said. "We've been reviewing the requirement to make sure we can comply with it going forward, and obviously we will. I think it's obvious any new requirement like this will add time because it's an additional step in the process."

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.

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.

Attorney Peter Scribner said he's been following the issues stemming from the court order.

"There are two takes on this," Scribner said. "Take number one says that all this is really a lot of fuss about not much. At the end of the day, mortgage banks will get their paperwork in order. They're not going to walk away from all this money.

"Take two is this is a very serious case of fraud and even racketeering within the industry and that a huge number of foreclosures could get voided," Scribner said. "I find it hard to imagine that courts will strike a critical blow at the mortgage industry. It could be big. Catastrophic. I think we're at the beginning of quite a number of serious developments."

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