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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 31, 2015

Honorable Lawrence K. Marks
Chief Administrative Judge
New York State Unified Court System
Office of Court Administration
25 Beaver Street
New York, NY 10004

Re: Reporting on Foreclosure of Real
Property Funds – Kings County
Report 2015-F-18

Dear Judge Marks:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by Unified Court System - Office of Court Administration officials to implement the recommendations contained in our prior audit report, *Reporting on Foreclosure of Real Property Funds – Kings County (2013-S-2)*.

Background, Scope, and Objective

The Office of Court Administration (OCA) is responsible for directing and overseeing the administrative operations of all courts in the New York State Unified Court System (UCS). This system serves the State's 62 counties through 13 districts. The borough of Brooklyn (Kings County) is in the 2nd District. The County Clerk's Office acts as the clerk of the respective county's Supreme Court. It receives, indexes, and files all Supreme Court documents and miscellaneous papers, and collects all associated filing fees, fines, and surcharges.

During the foreclosure process, when the plaintiff (lender) determines that the defendant (borrower) is unable to negotiate a settlement, the plaintiff requests judicial intervention. If the foreclosure process continues, the court will appoint a referee to determine the amount of the debt and to sell the property once a judgment of foreclosure is issued. The referee schedules the sale, appears in court on the appointed date and time, sells the property at auction, closes the sale, distributes the proceeds of the sale (including payment of any surplus funds to the County Clerk within five days of closing), and files the Report of Sale with the County Clerk within 30 days of closing, unless the court grants an extension.

Referees are selected from a list of eligible referees established under Part 36 of the Rules of the Chief Judge (Part 36 Eligible Fiduciary List). The court verifies the eligibility of the referee before appointment. A judge can also appoint a referee who is not on the list if he/she determines there are special circumstances, and must then notify the fiduciary clerk and the administrative judge of this decision in writing.

Our prior audit found that the court-appointed referees did not always properly report and account for foreclosure funds; referees deposited surplus funds late; and ten of the referees sampled were not listed on the Part 36 Eligible Fiduciary list.

We issued our initial audit report on December 12, 2013. The objective of our follow-up review was to assess the extent of implementation, as of September 16, 2015, of the four recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that OCA officials have made some progress in correcting the problems we identified. However, additional improvements are needed. Of the four prior audit recommendations, one was implemented, two were partially implemented, and one was not implemented.

Follow-Up Observations

Recommendation 1

Remind all referees of their responsibility as an appointee of the court to file an accurate and timely Report of Sale and accompanying schedules and the obligation to deposit surplus moneys with the Court within five days of receipt.

Status - Partially Implemented

Agency Action - OCA officials stated they implemented statewide procedures to ensure that such funds are deposited in accordance with the statute. The procedures include a *Foreclosure Action Surplus Monies Form* (FASMF), which must be completed and signed by the referee within 30 days of the auction. Our review of 34 of the 344 foreclosures from January 1, 2014 to May 20, 2015 found that seven FASMFs were not filed with the County Clerk as required (six were late and one was not filed at all). OCA officials claimed the six late forms were prepared and signed on the date of the auction, but were not filed timely with the County Clerk. They explained that until recently FASMFs were held by the courts and sent to the County Clerk in batches. However, in November 2014, the procedure was changed. FASMFs are now sent to the County Clerk as they are prepared.

We checked 18 Reports of Sale to determine whether the amount reported was correct. We identified six Reports of Sale that were incorrect: two surpluses and four deficiencies. The two surpluses were \$623 and \$35,399. As a result, the surplus funds deposited with

the New York City Department of Finance were understated. The amount of the four deficiencies ranged from \$744 to \$4,189. Also, our sample of six foreclosures with surplus funds disclosed that the referees did not deposit surplus moneys within five days as required. The deposits were from one day to 38 days late.

Recommendation 2

Ensure referees submit their Reports of Sale timely.

Status - Not Implemented

Agency Action - OCA officials indicated they implemented statewide procedures that should result in the timely filing of the Reports of Sale. However, our review of 34 sampled foreclosures showed eight Reports of Sale were not filed and seven were filed late (ranging from 13 to 233 days).

Recommendation 3

Remove referees from the Part 36 Eligible Fiduciary List if they are found to be negligent in performing their duty to provide an accurate Report of Sale.

Status - Implemented

Agency Action - OCA's Office of Inspector General reviewed the six referees who prepared the inaccurate Reports of Sale we identified and recommended the removal of two from the Part 36 Eligible Fiduciary List. Both referees filed an Opposition to Removal. The Chief Administrative Judge decided not to remove one referee, but issued a Letter of Caution. The other referee's appeal is still pending a decision. No action was recommended for three referees, and the remaining referee is now deceased.

Recommendation 4

Document and maintain the eligibility of each appointed referee as of the date of the appointment.

Status - Partially Implemented

Agency Action - Two of the 23 referees assigned to the 34 sampled foreclosed properties were not listed on the eligible list as of August 11, 2015. For one referee, who was appointed on April 17, 2014, OCA provided a *Statement of Reasons for Non-List Appointment* dated September 17, 2015, signed by the judge who originally appointed him. There was no documentation for the second referee.

Major contributors to this report were Abe Fish, Christine Chu, and Orin Ninvalle.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of OCA for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: George Danyluk, OCA
Charles Small, OCA
NYS Division of the Budget