



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION
INTERNAL AUDIT SERVICES

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

SHERRILL SPATZ
INSPECTOR GENERAL

GEORGE DANYLUK, CIA
CHIEF INTERNAL AUDITOR

February 1, 2016

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street - 21st Floor
New York, NY 10038

Dear Ms. Maldonado:

On behalf of the Chief Administrative Judge, attached is a response to the follow up audit report 2015-F-18 New York State Unified Court System - *Reporting on Foreclosure of Real Property Funds – Kings County*.

Please contact me at (518) 238-4303 if you need further information or have any questions concerning this response. Thank you for the opportunity to respond to the report.

Sincerely,

George Danyluk

/smw
Enclosure

c: Hon. Lawrence K. Marks
Hon. Fern A. Fisher
Hon. Lawrence Knipel
Maria Logus, Esq.
Hon. Nancy T. Sunshine
Brian Mason
Charles A. Small, Esq.

New York State Unified Court System
Response to Office of the State Comptroller's Follow Up Audit
Reporting on Foreclosure of Real Property Funds -Kings County

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 – The Court has fully complied with this recommendation. In Kings County, the Order of Referral reminds all referees of their responsibility to file a Report of Sale timely and in accordance with statute.

The Unified Court System has taken steps beyond reminding referees of their responsibilities, by implementing statewide procedures to account for surplus funds and follow up on the timeliness of deposits. Specifically, in Kings County at an auction where there is a potential surplus, the referee, plaintiff, and the buyer fills out a Foreclosure Auction Surplus Monies Form (FASMF). The information generated on the form is entered into the Court's Civil Data Base, and the matter is adjourned for 6 months from the date of the auction. On the adjourned date, the court staff checks to make sure there is an actual surplus, and if so, whether the money has been deposited with the County Clerk's Office. If the money has not been deposited with the County Clerk's Office, the matter is adjourned to a date not later than thirty (30) days before the judge that appointed the referee for further action.

Recommendation 2

Ensure referees submit their Reports of Sale timely.

Status – As indicated above, the Court has taken steps within its statutory authority to implement the recommendation. In addition, referees who consistently file untimely reports are subject to removal. Upon complaint, they will be investigated and removed where warranted from the list of Part 36-eligible appointees.

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. Both referees who were recommended for removal have been issued a Letter of Caution, requiring them to complete requisite training programs and review the laws governing fiduciary appointments.

Recommendation 4

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

Status - The court system has maintained this documentation since 2003. A current list of registered referees has been maintained on-line and available to the appointing judge. Further, a data base of all registered referees dating back to 2003 is maintained at OCA. The court system will continue to maintain both sources of documentation.

Further, the Court has appropriate checks and balances in place to ensure that referees are properly appointed. While it would be the exception, a judge has the discretion under Part 36 of the Rules of the Chief Judge, section 36.2 (b) (2) to appoint a referee not on the eligible list upon finding of good cause. When an appointment is made from the eligible list, the current list is available on line and is checked by the Court at the time of appointment. Although not required to do so, the practice in Kings County Supreme Court is for the Fiduciary Clerk to enter the appointment into the UCS Part 36 database. The system automatically notifies the court if the referee is not on the eligible list. This provides further assurance that the referee is on the eligible list.