

IN THE MATTER OF RESIDENTIAL MORTGAGE  
FORECLOSURE PLEADING AND DOCUMENT  
IRREGULARITIES

Administrative Order 01-2010

ADMINISTRATIVE ORDER DIRECTING  
SUBMISSION OF INFORMATION FROM  
RESIDENTIAL MORTGAGE FORECLOSURE  
PLAINTIFFS CONCERNING THEIR DOCUMENT  
EXECUTION PRACTICES TO A SPECIAL  
MASTER

To: Foreclosure Plaintiffs Filing 200 or more residential mortgage  
foreclosure actions in 2010:

AURORA LOAN SERVICES  
BANK OF NEW YORK MELLON  
BAYVIEW LOAN SERVICING, LLC  
BENEFICIAL NEW JERSEY  
DEUTSCHE BANK, N.A.  
FEDERAL HOME LOAN MORTGAGE  
FEDERAL NATIONAL MORTGAGE ASSOCIATION  
HOUSEHOLD FINANCE CO  
HSBC BANK USA, N.A.  
HSBC MORTGAGE CORPORATION  
HUDSON CITY SAVINGS  
METLIFE HOME LOANS

MIDFIRST BANK  
MORTGAGE ELECTRONIC REGISTRATION SYSTEM  
NATIONSTAR MORTGAGE  
NJ HOUSING & MORTGAGE FINANCE AGENCY  
PHH MORTGAGE CORP  
PNC BANK  
SOVEREIGN BANK  
SUNTRUST MORTGAGE INC.  
TD BANK, N.A.  
THE BANK OF NEW YORK  
US BANK, N.A.  
WACHOVIA BANK N.A.

This Administrative Order regarding uncontested residential mortgage foreclosure matters is issued by the Acting Administrative Director of the Courts in the performance of his supervisory responsibilities over the Office of Foreclosure in the Administrative Office of the Courts as provided by the Rules of Court (as set forth below), in accordance with the Supreme Court's Order of December 20, 2010, adopting emergent amendments to the Rules of Court, and the accompanying Notice to the Bar, in coordination with the December 20, 2010 order to show cause issued by Superior Court Judge Mary Jacobson regarding certain uncontested residential mortgage

foreclosures. The Administrative Order is in response to the request by the Chief Justice for an examination into the foreclosure document preparation and filing practices.

This order addresses several steps taken by the Judiciary today in an effort to ensure the integrity of the residential mortgage foreclosure process: (1) Judge Jacobson's order directing six lenders and service providers who have been implicated in irregularities in connection with their foreclosure practices to show cause why the processing of uncontested residential mortgage foreclosure actions they have filed should not be suspended; (2) administrative action directing twenty-four lenders and service providers who have filed more than 200 residential foreclosure actions in 2010 to demonstrate affirmatively that there are no irregularities in their handling of foreclosure proceedings, via submissions to retired Superior Court Judge Walter R. Barisonek, who has been recalled to temporary judicial service and assigned as a Special Master; and (3) the adoption of amendments to the Rules of Court and a Notice to the Bar which require plaintiff's counsel in all residential foreclosure actions to file certifications confirming that they have communicated with plaintiff's employees who have (a) personally reviewed documents and (b) confirmed the accuracy of all court filings, and which remind all counsel of their obligations under the New Jersey Rules of Professional Conduct.

Foreclosure rates are climbing rapidly across the nation, and New Jersey is no exception. In recent years, New Jersey's courts have witnessed an enormous expansion in foreclosure filings. In court year 2006, plaintiffs filed 21,752 foreclosure

actions; by court year 2010, that number grew to 65,222 foreclosure filings. Thus, in the past five years, the annual rate of foreclosure filings in this State has nearly tripled.

In court year 2010, approximately 11,500 answers were filed in foreclosure actions. Of those, answers in only about 4,500 cases – that is, in just six percent of all foreclosure actions – were deemed to be contested. Thus, 94 percent of foreclosure cases proceed in the absence of any meaningful adversarial proceeding. The significance of this disparity is even more striking because many of the contested proceedings are defended pro se. Because these actions frequently lack an aggressive defense, the Office of Foreclosure and our General Equity judges are tasked with the responsibility of ensuring that justice is done for absent and pro se parties.

On November 4, 2010, the Supreme Court received a detailed report prepared by Legal Services of New Jersey, with supporting materials, alleging industry-wide deficiencies in foreclosure filings. Serious questions have surfaced about the accuracy of documents submitted to courts by lenders and service-providers in support of foreclosure requests.

In New Jersey, proceedings in state and bankruptcy courts have revealed instances of pervasive “robo-signing”<sup>1</sup> in foreclosure and bankruptcy filings. In In re Rivera, 342 B.R. 435 (Bankr. D.N.J. 2006), EverHome Mortgage Co.<sup>2</sup> (EverHome) hired

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<sup>1</sup> “Robo-signers” are mortgage lender/servicer employees who sign hundreds -- in some cases thousands -- of affidavits submitted in support of foreclosure claims without any personal knowledge of the information contained in the affidavits. “Robo-signing” may also refer to improper notarizing practices or document backdating.

<sup>2</sup> Formerly known as Alliance Mortgage Co. In re Rivera, 342 B.R. 435, 442 (Bankr. D.N.J. 2006).

First American National Default Outsourcing, LLC<sup>3</sup> (FANDO) to process foreclosure and bankruptcy documents.<sup>4</sup> Amirah Shahied was a FANDO employee whose signature appeared on numerous foreclosure and bankruptcy certifications alleging debtor default.<sup>5</sup> Shahied admitted to receiving stacks of signature pages -- detached from any corresponding certifications -- and signing them in bulk.<sup>6</sup> Not only did the New Jersey law firm representing EverHome fail to verify whether Shahied had personal knowledge of the facts relevant to each case, the firm's attorneys filed at least 251 certifications in Shahied's name after Shahied's FANDO employment terminated.<sup>7</sup> Firm attorneys testified that for at least four years, they knowingly affixed pre-signed documents prepared by the outsourcing company to certifications alleging debtor default.<sup>8</sup>

In state court proceedings, Thomas Strain, an employee of a servicing company associated with the New Jersey and Pennsylvania law firm of Phelan, Hallinan & Schmieg, LLP (Phelan), admitted in a deposition to notarizing approximately fifty foreclosure-related documents per day, often outside the signer's presence.<sup>9</sup> After New Jersey Chancery Division judges expressed concerns related to Phelan's mortgage

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<sup>3</sup> In 2004, First American National Default Outsourcing, LLC purchased another outsourcing company with which the firm worked called LOGS Financial Services, Inc. Id. at 439.

<sup>4</sup> Id. at 443-44.

<sup>5</sup> Id. at 443.

<sup>6</sup> Id. at 456-57.

<sup>7</sup> Id. at 444, 456-57.

<sup>8</sup> See id. at 446-55.

<sup>9</sup> See Deposition of Thomas P. Strain at 8, 22, Bank of New York v. Ukepe, No. F-10209-08 (Ch. Div. Dec. 18, 2008).

assignment practices, Phelan spent \$175,000 to redo approximately 3,000 assignments that Strain had notarized.<sup>10</sup>

Questions have also arisen as to whether plaintiffs filing foreclosure actions actually own the underlying mortgages. In a recent case, a New Jersey equity court found that a plaintiff attempting to foreclose a mortgage, which had been transferred through a series of securitizations, never obtained actual title to the underlying mortgage.<sup>11</sup> Confounding the problem, the court found that plaintiff's filings made "no meaningful attempt to comply with the provision of R. 4:64-1(b)(1) by 'reciting all assignments in the chain of title.'"<sup>12</sup>

Nationally, six major institutions have recently been implicated in robo-signing activities: Bank of America; JPMorgan Chase; Citi Residential; GMAC (now Ally Financial); OneWest Bank; and Wells Fargo.

### **Bank of America**

As the robo-signing issue drew national attention, a deposition implicating Bank of America came to light, suggesting that Bank of America foreclosed on homes with the aid of documents executed en masse, in the absence of due diligence, by people with no knowledge of the information contained in the documents and no experience in the financial services or mortgage processing industry.<sup>13</sup> On October 8, 2010, Bank of

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<sup>10</sup> See Transcript of Oral Argument at 3-4, 16-17, U.S. Bank Nat'l Assoc. v. Sinchegarcia, No. F-18446-08 (Ch. Div. May 27, 2009).

<sup>11</sup> Bank of New York v. Raftogianis, \_\_\_ N.J. Super. \_\_\_, \_\_\_ (Ch. Div. 2010) (slip op. at 2).

<sup>12</sup> Id. at \_\_\_ (slip op. at 47, 48).

<sup>13</sup> A signer for Bank of America said in a deposition taken in Massachusetts that she signed about 400 documents per day. See Deposition of Krystal Hall at 4-9 (Nov. 30, 2009)(provided by Legal Services of New Jersey). See also Ariana Cha, Bank of America Joins J.P. Morgan Chase, Ally in Halting Foreclosures in 23 States, Wash. Post, Oct. 1, 2010, [http://voices.washingtonpost.com/political-economy/2010/10/bank\\_of\\_america\\_halts\\_foreclos.html](http://voices.washingtonpost.com/political-economy/2010/10/bank_of_america_halts_foreclos.html).

America Home Loans announced a freeze on foreclosure sales pending a review of foreclosure documents in all fifty states.<sup>14</sup> The moratorium began in the wake of increased scrutiny surrounding robo-signing practices, as numerous legislators and state prosecutors began investigating foreclosure documentation practices.<sup>15</sup> On October 18, 2010, Bank of America Home Loans announced that it would resubmit affidavits in 102,000 foreclosure actions in judicial foreclosure states and proceed to resume foreclosure sales.<sup>16</sup>

### **J.P. Morgan Chase & Co.**

Deposition testimony of an employee of Chase Home Finance, a division of J.P. Morgan Chase & Co., revealed that her team of eight people was responsible for signing affidavits, deeds, assignments, allonges, lost note affidavits, and lost mortgage affidavits.<sup>17</sup> Her team executed about 18,000 affidavits per month.<sup>18</sup> She did not personally review any information to determine the factual accuracy of documents she signed.<sup>19</sup> On September 30, 2010, J.P. Morgan Chase & Co. announced a suspension of foreclosures in all judicial foreclosure states, pending a review of procedures.<sup>20</sup>

JPMorgan announced in early November that it would begin re-filing foreclosure

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<sup>14</sup> Press Release, Bank of America Home Loans, Statement from Bank of America Home Loans (Oct. 8, 2010), available at <http://mediaroom.bankofamerica.com/phoenix.zhtml?c=234503&p=irol-newsArticle&ID=1480657>.

<sup>15</sup> See Dan Fitzpatrick, Damian Paletta, & Robin Sidel, BofA Halts Foreclosures, Wall St. J., Oct. 9, 2010, at A1.

<sup>16</sup> Press Release, Bank of America Home Loans, Statement from Bank of America Home Loans (Oct. 18, 2010), available at <http://mediaroom.bankofamerica.com/phoenix.zhtml?c=234503&p=irol-newsArticle&ID=1483909>.

<sup>17</sup> Deposition of Beth Ann Cottrell at 6, Chase Home Finance, LLC v. Koren, No. 50-2008-CA-016857 (Fla. Cir. Ct. May 17, 2010).

<sup>18</sup> Ibid.

<sup>19</sup> Id. at 7-11, 35-36.

<sup>20</sup> David Streitfeld, JPMorgan Suspending Foreclosures, N.Y. Times, Sept. 30, 2010, at B1.

documents within a few weeks; that estimate has since been revised and re-filing will not be wholly underway for several months.<sup>21</sup>

**Citi Residential Lending, Inc.**

An individual employed by Nationwide Title Clearing, Inc., with signing authority for Citi Residential Lending, Inc., testified in a deposition that when he signed documents for Citi, he did not review them for substantive correctness.<sup>22</sup> Indeed, he could not even explain what precisely an assignment of mortgage accomplishes.<sup>23</sup> He had no prior background in the mortgage industry.<sup>24</sup> Further, a second person with signing authority for Citi Residential Lending, Inc., testified that she never reviewed any books, records, or documents before signing affidavits and that she instead trusted the company's internal policies and procedures to ensure the accuracy of the information she signed.<sup>25</sup> She signed several documents each day (in many instances without knowledge of what she was signing) and indicated that they were often notarized outside of her presence.<sup>26</sup> On November 18, 2010, Harold Lewis, Managing Director of CitiMortgage, informed the House Financial Services Committee that Citi initiated a

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<sup>21</sup> Dan Fitzpatrick & Ruth Simon, Foreclosure Restarts Limp Out of the Gate, Wall St. J., Nov. 27, 2010, at B1.

<sup>22</sup> Deposition of Bryan Jay Bly at 32-33, Deutsche Bank Nat'l Tr. Co. v. Hannah, No. 2009-CA-1920 (Fla. Cir. Ct. July 2, 2010).

<sup>23</sup> Id. at 39-40.

<sup>24</sup> Id. at 23-27.

<sup>25</sup> Deposition of Tamara Price at 7-8, 14-18, 24, Deutsche Bank Nat'l Tr. Co. v. Young, No. CA-2007-0114 (Fla. Cir. Ct. Apr. 21, 2008).

<sup>26</sup> Id. at 19-20.

review of 10,000 affidavits for correctness and another 4,000 affidavits to ensure that a notary was present when they were signed.<sup>27</sup>

### **GMAC, LLC (Ally Financial)**

The team leader of the document execution unit of GMAC Mortgage, LLC (now Ally Financial Inc.) testified in a deposition that his team of thirteen people executed approximately 10,000 “affidavits and things of that nature” per month.<sup>28</sup> The signer assumed that these documents were checked for accuracy prior to their submission for signing, though he lacked actual personal knowledge of their contents.<sup>29</sup> Notarization often occurred at a different time and place than signing, and signers would sometimes not check that all listed exhibits were attached to the affidavits they signed.<sup>30</sup> In September, Ally Financial announced a temporary freeze on evictions in judicial foreclosure states, citing “an important but technical defect” in foreclosure filings.<sup>31</sup>

### **OneWest Bank**

In a deposition for a case where IndyMac Federal Bank, FSB (now OneWest Bank, FSB) serviced a mortgage owned by Deutsche Bank National Trust Company, a OneWest employee described the process of executing documents. She signed

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<sup>27</sup> Robo-Signing, Chain of Title, Loss Mitigation and Other Issues in Mortgage Servicing: Hearing Before the H. Comm. on Financial Servs., 111th Cong. 3 (2010) (statement of Harold Lewis, Managing Director, CitiMortgage).

<sup>28</sup> Deposition of Jeffrey Stephan at 6-7, GMAC Mortgage, LLC v. Neu, No. 50-2008-CA-040805XXXX-MB (Fla Cir. Ct. Dec. 10, 2009) (hereinafter Stephan, Dec. 2009 Dep.). In subsequent deposition testimony, the witness revised his estimate and indicated that the number was 6,000 to 8,000 documents per month. Deposition of Jeffrey Stephan at 46-47, Fed. Nat’l Mortgage Ass’n v. Bradbury, No. BRI-RE-09-65 (Me. Dist. Ct. June 7, 2010) (hereinafter Stephan, June 2010 Dep.).

<sup>29</sup> E.g., Stephan, Dec. 2009 Dep., supra note 28, at 10, 12-13.

<sup>30</sup> Stephan, June 2010 Dep., supra note 28, at 54, 56; Stephan, Dec. 2009 Dep., supra note 28, at 13.

<sup>31</sup> Ariana Eunjung Cha, Ally Financial Suspends Evictions in 23 States, Wash. Post, Sept. 21, 2010, at A14.

approximately 750 documents per week, taking no more than thirty seconds to execute each document.<sup>32</sup> She did not personally check the accuracy of the documents and instead relied on others to check prior to signing.<sup>33</sup> Documents were notarized, and witnessed if necessary, some time after execution, outside of the employee's presence.<sup>34</sup>

Banks utilizing loan servicers have expressed concern. For example, Deutsche Bank has issued several letters and memoranda to its servicers expressing concern regarding allegations of potential defects in foreclosure practices, procedures, and/or documentation, and reminding the servicers to conduct themselves in accordance with applicable law.<sup>35</sup>

### **Wells Fargo**

Wells Fargo employees have admitted in depositions to signing documents without verifying the information contained therein. In one foreclosure case, a loan administration manager stated that he signed 50 to 150 documents per day, including assignments, declarations, and affidavits related to foreclosure.<sup>36</sup> He signed the documents without checking the information and relied on employees of another

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<sup>32</sup> Deposition of Erica Johnson-Seck at 11-13, IndyMac Fed. Bank, FSB v. Machado, No. 50-2008-CA-037322XXXX MB AW (Fla. Cir. Ct. July 9, 2009).

<sup>33</sup> Id. at 14-16.

<sup>34</sup> Id. at 18, 21-22.

<sup>35</sup> See Memorandum from Deutsche Bank Nat'l Trust Co. and Deutsche Bank Trust Co. Ams. to Securitization Loan Servicers (Oct. 8, 2010); Memorandum from Deutsche Bank Nat'l Trust Co. and Deutsche Bank Trust Co. Ams. to Securitization Loan Servicers (Jul. 28, 2008); Memorandum from Deutsche Bank Nat'l Trust Co. and Deutsche Bank Trust Co. Ams. to Securitization Loan Servicers (Aug. 30, 2007).

<sup>36</sup> Deposition of H. John Kennerty at 9, Geline v. Nw. Tr. Servs., No. 09-2-46576-2-SEA (Wash. Super. Ct. May 20, 2010).

department to ensure the accuracy of the information.<sup>37</sup> The manager and others with the same position could sign as a Vice President of Loan Documentation for purposes of executing loan documents but were not otherwise officers of the company.<sup>38</sup>

In another foreclosure case, an employee stated that she spent about two hours a day signing between 300 to 500 documents.<sup>39</sup> She held the title of Vice President of Loan Documentation for the purpose of signing the documents.<sup>40</sup> She did not review or have personal knowledge of the facts in the documents, relying on outside counsel or an employee in the foreclosure department for accuracy.<sup>41</sup> Similarly, for a bankruptcy case in Texas, a Wells Fargo employee stated that she sometimes did not personally review documents before signing, relying on the expertise of the document preparer.<sup>42</sup>

On October 27, 2010, Wells Fargo stated in a press release that “[a]s part of the company’s review of its foreclosure affidavit procedures, the company has identified instances where a final step in its processes relating to the execution of the foreclosure affidavits (including a final review of the affidavit, as well as some aspects of the notarization process) did not strictly adhere to the required procedures.”<sup>43</sup> Wells Fargo then announced that it would “submit supplemental affidavits for approximately 55,000 foreclosures” in all judicial foreclosure states.<sup>44</sup>

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<sup>37</sup> Id. at 61-64, 69.

<sup>38</sup> Id. at 10-13.

<sup>39</sup> Deposition of Xee Moua at 29-31, Wells Fargo Bank, NA v. Stipek, No. 50-2009-CA-012434XXXMB-AW (Fla. Cir. Ct. Mar. 9, 2010).

<sup>40</sup> Id. at 40.

<sup>41</sup> Id. at 31, 46-48.

<sup>42</sup> Deposition of Tamara Savery at 28-30, Guevara v. Wells Fargo Bank, N.A., No. 07-32604 (Bankr. N.D. Tex. July 15, 2009).

<sup>43</sup> Press Release, Wells Fargo & Company, Wells Fargo Provides Update on Foreclosure Affidavits and Mortgage Securitizations (Oct. 27, 2010).

<sup>44</sup> Ibid.

Others have raised questions about the entire industry's handling of foreclosure matters.

### **Congressional Report**

On November 16, 2010, the Congressional Oversight Panel released an in-depth report analyzing the recent robo-signing allegations.<sup>45</sup> The Panel found that “[t]he foreclosure documentation irregularities unquestionably show a system riddled with errors.”<sup>46</sup> Legal consequences stemming from alleged irregularities

range from minor, curable title defects for certain foreclosed homes in certain states to more serious consequences such as the unenforceability of foreclosure claims and other ownership rights that rely on the ability to establish clear title to real property, forced put-backs of defective mortgages to originators, and market upheaval. The severity and likelihood of these various possible consequences depend on whether the irregularities are pervasive and when in the process they occurred.<sup>47</sup>

The Panel's report “emphasizes that mortgage lenders and securitization servicers should not undertake to foreclose on any homeowner unless they are able to do so in full compliance with applicable laws and their contractual agreements.”<sup>48</sup>

### **Congressional Testimony**

Katherine Porter, Professor of Law at University of Iowa College of Law, testified that it is still unclear whether “the problems in mortgage servicing occur sporadically or

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<sup>45</sup> Congressional Oversight Panel, November Oversight Report Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation (Nov. 16, 2010), available at <http://cop.senate.gov/documents/cop-111610-report.pdf> (submitted under § 125(b)(1) of Title 1 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343).

<sup>46</sup> Id. at 34.

<sup>47</sup> Id. at 14.

<sup>48</sup> Id. at 6.

are endemic.”<sup>49</sup> Yet, after conducting comprehensive studies, Professor Porter opined “that the structure of the mortgage servicing industry and the lack of accountability by financial institutions in the securitization process make it a fair inference that the problems from flawed foreclosure are not isolated incidents.”<sup>50</sup> She suggested that “[t]he key task going forward is to provide transparent measures of the depth of deficient paperwork and to provide reliable monitoring of foreclosure processes.”<sup>51</sup>

The Honorable F. Dana Winslow of the New York State Supreme Court, testifying before the House of Representatives Committee on the Judiciary, stated that there have been deficiencies in plaintiff mortgagees’ proof of their rights to foreclosure.<sup>52</sup> Specifically, proof of standing to bring a foreclosure action has become a large problem. Mortgagees often fail to produce Notes or produce the wrong Notes. There are often gaps in the chain of title. The information provided by plaintiff mortgagees often differs from the County Clerk’s records.<sup>53</sup> Doubt has also been cast over the validity of signatures on assignments.

### **Other States**

Other state courts and attorneys general have responded in kind. The Chief Administrative Judge of the Courts of the State of New York recently issued an order directing attorneys filing residential foreclosure actions to certify that they have

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<sup>49</sup> TARP Foreclosure Mitigation Programs: Hearing Before the Congressional Oversight Panel 7 (2010) (statement of Katherine Porter, Professor of Law, University of Iowa College of Law).

<sup>50</sup> Id. at 9.

<sup>51</sup> Id. at 14.

<sup>52</sup> Foreclosed Justice: Causes and Effects of the Foreclosure Crisis Before the H. Comm. on the Judiciary, 111th Cong. (2010)(statement by F. Dana Winslow, Justice, N.Y. State Supreme Court).

<sup>53</sup> Ibid.

personally reviewed the accuracy of all relevant documents and notarizations.<sup>54</sup> At least four state attorneys general and the attorney general for the District of Columbia have required certain lenders, including those named in this Order, to prove the validity of their residential mortgage foreclosure processes.<sup>55</sup>

### **Authority**

The Judiciary has an overriding concern about the integrity of the judicial process. Its obligation to administer justice extends to safeguarding that process, which depends on the integrity of documents filed with the court. The questionable practices discussed above have the potential to call into question: (1) the validity of affidavits, certifications, assignments, and other documents filed with the court; (2) the integrity of residential mortgage foreclosure records; (3) the integrity of the judicial system as a whole; and (4) the integrity of titles passed through purchase at foreclosure sale.

The Rules Governing the Courts of the State of New Jersey specifically authorize the Administrative Director of the Courts, at the direction of the Chief Justice and the Supreme Court, to promulgate and enforce rules and directives related to case processing and such other matters as the Chief Justice and the Supreme Court direct.<sup>56</sup> Further, by statute, the Administrative Director, at the direction of the Chief Justice, is required to:

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<sup>54</sup> New York State Unified Court System, Attorney Affirmation-Required in Residential Foreclosure Actions (Oct. 20, 2010). Justice Schack of the Supreme Court, Kings County, New York has denied motions and dismissed foreclosure cases due to insufficiencies of the documents presented to the court. See, e.g., Onewest Bank, F.S.B. v. Drayton, No. 15183/09 (N.Y. Sup. Ct. Oct. 21, 2010); HSBC Bank USA, N.A. v. Charlevagne, 872 N.Y.S.2d 691 (N.Y. Sup. Ct. 2008).

<sup>55</sup> See Congressional Oversight Panel, supra, note 49, at 44-46 (detailing actions taken in New York, California, Arizona, Ohio, the District of Columbia, and Connecticut).

<sup>56</sup> R. 1:33-3.

(a) Examine the administrative methods, systems and activities of the . . . employees of the courts and their offices and make recommendations to the Chief Justice with respect thereto.

(b) Examine the state of the dockets of the courts, secure information as to their needs for assistance, if any . . . .

(g) Examine, from time to time, the operation of the courts, investigate complaints with respect thereto, and formulate and submit to the chief justice recommendations for the improvement thereof.<sup>57</sup>

The Office of Foreclosure, an administrative unit within the Administrative Office of the Courts, is responsible for reviewing mortgage foreclosure complaints; reviewing uncontested tax, mortgage, condominium, and homeowner association liens and timeshare foreclosures; and recommending the entry of certain orders and judgments in uncontested foreclosure matters subject to the approval of a New Jersey Superior Court judge designated by the Chief Justice,<sup>58</sup> which judge historically has been the General Equity Judge in Mercer County, whose name appears on all judgments of foreclosure. The Office of Foreclosure provides the only review of uncontested foreclosure actions, and that review is restricted to making recommendations related to the matters listed in R. 1:34-6; the Office of Foreclosure is not empowered to make rulings.<sup>59</sup>

### **Operative Provisions of this Order**

To protect the integrity of the process and ensure the veracity of filings with the court in foreclosure cases and pursuant to the authority of the Administrative Director of the Courts as set forth above, I announce the following steps:

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<sup>57</sup> N.J.S.A. 2A:12-3.

<sup>58</sup> R. 1:34-6; R. 4:64-1; R. 4:64-7; First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 356 (2007).

<sup>59</sup> Wells Fargo Home Mortgage v. Stull, 378 N.J. Super. 449, 452 n.1 (App. Div. 2005).

1. In a separate proceeding, Judge Mary C. Jacobson, Presiding Judge of the General Equity Division, Mercer County, has today issued an order directing the six lenders and service providers identified above, who have been implicated in irregularities in connection with their handling of foreclosure matters, to show cause why the processing of uncontested residential foreclosure matters they have filed should not be suspended. In that order to show cause, Judge Jacobson indicates her intention to appoint a Special Master to inquire into the document preparation practices of those entities and to review any remediation plans they may be directed to submit.

2. All other lenders and service providers who have filed more than 200 residential foreclosure actions in 2010 (as listed in the caption of this administrative order) are required, within 45 days, to demonstrate affirmatively that there are no irregularities in their handling of foreclosure proceedings. To that end, they are to detail the processes they follow and, in particular, outline the manner in which documents are handled, reviewed, and verified, in order to demonstrate the reliability and accuracy of documents and other submissions to the court in foreclosure proceedings. As appropriate, they should describe the practices of their subsidiaries and all related servicers and outsource firms acting on their behalf. In addition, they should confirm their full compliance with the Rules of Court and applicable statutes.

3. Those lenders and service providers described in the previous paragraph are to make submissions to retired Superior Court Judge Walter R. Barisonek, who by separate order effective January 3, 2011 has been recalled to temporary judicial service and assigned as Special Master, and who will be paid by the Judiciary. Submissions should be in the form of affidavits or certifications. On reviewing such submissions, the

Special Master may request additional information and take appropriate follow-up measures including taking live testimony and referring matters to Judge Jacobson for further review.

4. Foreclosure actions involving the institutions described in paragraph 2 above will continue to be processed by the Superior Court Clerk's Office and the Office of Foreclosure during the 45-day period during which materials are to be submitted.<sup>60</sup> If the Special Master finds the submitted documents sufficient to establish that an institution has not engaged in irregular practices, then foreclosure actions involving those institutions will continue to be processed by the Superior Court Clerk's Office and the Office of Foreclosure in the normal course.

If the Special Master finds the documents provided to be insufficient or finds they raise concerns that an institution has engaged in irregular practices, the Special Master may refer the matter to Judge Jacobson for appropriate action, including conducting a hearing and, depending on her findings, ordering the suspension of processing residential mortgage foreclosure actions involving a particular institution.

All counsel are reminded of their obligations under the New Jersey Rules of Professional Conduct and that, pursuant to Rule 1:4-8(a)(3), an attorney's signature on any paper filed with a court "certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," all "factual allegations have evidentiary support, or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient

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<sup>60</sup> This paragraph does not apply to the parties who are the subject of Judge Jacobson's order.

evidentiary support.” All counsel are further reminded that pursuant to Rule 4:64-1(b)(10), “if plaintiff is not the original mortgagee or original nominee mortgagee,” the complaint must provide “the name of the original mortgagee and a recital of all assignments in the chain of title.”

Further, I hereby direct that, pursuant to the Supreme Court’s order of December 20, 2010 adopting emergent amendments to the Rules of Court and the Notice to the Bar accompanying that rule amendment order, plaintiff’s counsel in all residential foreclosure actions shall file the following with the court: (1) an affidavit or certification executed by the attorney that the attorney has communicated with an employee or employees of the plaintiff who (a) personally reviewed documents for accuracy and (b) confirmed the accuracy of all court filings in the case to date; (2) the name(s), title(s), and responsibilities of the employee(s) of the plaintiff who provided this information to the attorney; and (3) an affidavit or certification executed by the attorney that all the filings in the case comport with all requirements of Rule 1:4-8(a).

The aforementioned shall be filed: (1) immediately upon the commencement of any new residential mortgage foreclosure action filed after the date of this order, as to the accuracy of the information contained in the complaint, as set forth in Rule 4:64-1(b)(1) through (13); (2) within 60 days of the date of this order in any residential foreclosure action today pending and awaiting judgment, as to the accuracy of the complaint and of any proofs submitted; (3) within 45 days of the date of this order in any residential foreclosure action in which judgment was entered but no sale of the property has yet occurred; and (4) with the motion to enter judgment in all future

residential foreclosure actions in which judgment is sought, as to the accuracy of any proofs submitted pursuant to Rule 4:64-2.

/s/ Glenn A. Grant

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Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of  
the Courts

Date: December 20, 2010