

**OCAamendedRJComments - Comment on OCA Proposed Amendment to Request for Judicial Intervention Addendum in Foreclosure Actions**

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**From:** "Kayman, Steven M." <SKayman@proskauer.com>  
**To:** "OCAamendedRJComments@nycourts.gov" <OCAamendedRJComments@nycourts.gov>  
**Date:** 9/24/2013 6:12 PM  
**Subject:** Comment on OCA Proposed Amendment to Request for Judicial Intervention Addendum in Foreclosure Actions  
**CC:** Alan Rothstein <arothstein@nycbar.org>, "Lawrence Mandelker(mandelker@ka..."

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**Dear Mr. McConnell:**

**The New York City Bar Task Force on Residential Mortgage Foreclosures (the "Task Force") enthusiastically supports the proposed amendment of the Request for Judicial Intervention ("RJI") Addendum (UCS-840F) in foreclosure actions to require filers to identify the mortgage servicer with responsibility for the loan involved in the foreclosure proceeding. The Task Force was formed by the City Bar's Council on Judicial Administration in Spring 2011 to study and make recommendations for improving the fairness, effectiveness and efficiency of the residential mortgage foreclosure process in NYC courts. The membership of the Task Force includes representatives of borrowers, loan services and lenders, regulators and the court system, along with members of the Bar not otherwise involved with foreclosures.**

**As suggested in your August 9, 2013 memorandum proposing the amendment, knowing the servicer of a particular loan in foreclosure will help courts search, schedule and organize cases by servicer. This is important because the named plaintiff in a foreclosure action, the legal owner of the loan, has generally contracted with a bank or other financial institution to service the loan, including taking action if there has been a default and negotiating modifications and other settlements in foreclosure cases. In particular, the proposed amendment will assist courts in implementing the Task Force's recommendation, by letter dated February 3, 2013 to Chief Judge Lippman and Judges Prudenti and Kluger, to establish servicer-specific conference parts to enhance efficiency and accountability. We understand that difficulties in identifying the servicers of loans in foreclosure have made the establishment of such servicer-specific parts quite challenging.**

**The Task Force stands ready to assist in any way it can.**

**Respectfully submitted,  
Steven M. Kayman  
Chair  
New York City Bar Task Force  
On Residential Mortgage Foreclosures**

**Steven M. Kayman  
Member of the Firm**

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CONSUMER FRAUDS & PROTECTION BUREAU

September 23, 2013

John McConnell, Esq., Counsel  
NYS Office of Court Administration  
25 Beaver Street, 11<sup>th</sup> Floor  
New York, NY 10004  
Email: [OCAamendedRJlcomments@nycourts.gov](mailto:OCAamendedRJlcomments@nycourts.gov)

Re: Comments Regarding Proposed Amendment of Request for Judicial Intervention Addendum in Foreclosure actions (UCS-840F), Relating to Addition of the Mortgage Servicer's Name

Dear Mr. McConnell:

I am submitting these comments on behalf of the New York State Office of the Attorney General ("NYAG"). The NYAG strongly supports the proposed amendment to the Request for Judicial Intervention ("RJI") Addendum in foreclosure actions, which will require plaintiffs to identify the mortgage servicer of the loan at issue. Although foreclosing plaintiffs remain legally responsible for compliance with foreclosure related rules, it is generally the mortgage loan servicer who oversees the foreclosure litigation, retains foreclosure counsel, handles loss mitigation requests and makes the decisions whether to grant loan modifications. The proposed amendment will allow the Unified Court System ("UCS") to more efficiently schedule mandatory settlement conferences based on the identity of the mortgage servicer and thus make the settlement conferences more productive for both plaintiffs and defendants. The proposed amendment will also make it easier to monitor compliance with those measures that have been adopted by the legislature and court to protect homeowners facing foreclosure.

There is presently no method for UCS to track the identity of mortgage servicers in foreclosure cases because the named plaintiff is often not the same entity that services the defendant-homeowner's mortgage loan. For example, the named plaintiff in one Kings County foreclosure action is "U.S. Bank National Association as Trustee for WFASC 2005-003," while the mortgage servicer in that case is Wells Fargo Home Mortgage ("Wells Fargo").<sup>1</sup> In another Kings County foreclosure action, "Deutsche Bank National Trust Co., as Trustee for FFMLT 2006-FF13" is the named plaintiff and Wells Fargo is the mortgage servicer.<sup>2</sup> The NYAG was only able to discover that Wells Fargo is the mortgage servicer in these two cases by reviewing

<sup>1</sup> *U.S. Bank National Association, as Trustee v. Peter Vavallo et al.*, Sup. Ct. Kings Cty., Index No. 31635/2009.

<sup>2</sup> *Deutsche Bank National Trust Co., as Trustee for FFMLT 2006-FF13 v. Rachele Soriano, et al.*, Sup. Ct. Kings Cty., Index No. 13873/2010.

judicial opinions that held the plaintiff, through its servicer Wells Fargo, failed to meet the “good faith” requirement under CPLR Rule 3408.

The proposed amendment will enable the special servicer parts proposed by Chief Judge Jonathan Lippman in his 2012 State of the Judiciary to work more efficiently. The laudable concept behind these special servicer parts was to dedicate specific weeks to specific banks -- allowing the banks to assign a representative who has all the necessary paperwork and documentation and the full authority to negotiate mortgage modifications for the full week.<sup>3</sup> The ultimate purpose of the special parts is to foster “meaningful discussion and cooperative effort to bring about a meaningful settlement.”<sup>4</sup> Because a plaintiff-bank often uses many loan servicing companies to service its mortgage loans, it may prove more efficient and effective to schedule specific weeks for specific mortgage servicers. The proposed amendment will allow UCS to identify which mortgage loans are serviced by a particular mortgage servicer and to schedule settlement conferences accordingly.

In addition, because mortgage servicers are typically responsible for processing and making decisions on homeowner requests for loan modifications and for selecting and overseeing plaintiffs’ foreclosure counsel, the ability to identify cases by servicer will enable UCS and others to measure outcomes and track compliance with proper servicing standards in foreclosure actions, such as compliance with the “good faith” requirement under CPLR Rule 3408.

We recommend one modification to the proposed rule. UCS should require plaintiff’s foreclosure counsel to update the RJI Addendum when servicing of the mortgage loan subject to an existing foreclosure action is transferred to another servicer subsequent to the initial filing of the RJI. Transferring large volumes of mortgage servicing rights (“MSRs”) has become increasingly common. One report estimates that “banks sold more than \$500 billion in MSRs (unpaid principal balance) to nonbank-specialty servicers in the past year.”<sup>5</sup> Additional servicing transfers are expected this year.<sup>6</sup> Significant disruptions to loss mitigation may occur during the settlement conference process when servicing of homeowner-defendants’ mortgage loans are transferred from one servicer to another.<sup>7</sup> Requiring plaintiff’s foreclosure counsel to update the

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<sup>3</sup> The State of the Judiciary 2012 at 13-14, available at <http://www.nycourts.gov/admin/stateofjudiciary/SOJ-2012.pdf> (last visited August 20, 2013).

<sup>4</sup> Andrew Keshner, Foreclosure Pilots Launched, but Bills Die in Albany, *New York Law Journal* (July 2, 2012).

<sup>5</sup> Kerri Ann Panchuk, Subprime specialty servicers benefit from mass MSR swap, *Housingwire* (June 27, 2013) available at <http://www.housingwire.com/articles/subprime-specialty-servicers-benefit-mass-msr-swap> (last visited August 23, 2013).

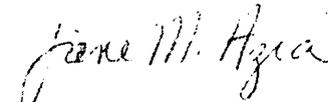
<sup>6</sup> Christina Mlynski, Industry witnesses shift to non-bank servicers, *Housingwire* (August 16, 2013) available at <http://www.housingwire.com/articles/26250-servicing-industry-witnesses-shift-to-non-bank-servicers> (last visited August 23, 2013) (“With additional large mortgage servicing right transfers scheduled to be completed in the latter half of the year, the trend suggests more banks want to distance themselves from distressed or high-risk loans, according to an analysis from Fitch Ratings.”)

<sup>7</sup> Consumer Financial Protection Bureau, Supervisory Highlights, Summer 2013 at 11, available at [http://files.consumerfinance.gov/f/201308\\_cfpb\\_supervisory-highlights\\_august.pdf](http://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf) (last visited August 27, 2013); Christina Mlynski, FHFA watchdog calls for better oversight of specialty servicers, *Housingwire* (August 22, 2013) available at <http://www.housingwire.com/articles/26336-fhfa-watchdog-calls-for-better-oversight-of-specialty-servicers> (August 22, 2013) (“The other issue, that happens whenever loans are transferred, is disruptions and

RJI Addendum when there is a servicing transfer will help minimize any disruption by alerting both the parties and the court to the change in servicing.

The NYAG strongly supports the proposed amendment to the RJI Addendum in foreclosure actions and thanks the UCS for the opportunity to submit these comments.

Very Truly Yours,



Jane M. Azia

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disconnects with loss mitigation efforts that were underway at the previous servicer. Sometimes, the borrow claims that a [modification] or another loss mitigation solution was underway and there is no record of it.")



## **NEW YORKERS FOR RESPONSIBLE LENDING**

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Tel: (212) 680-5100 / Fax: (212) 680-5104 / nyr1@nedap.org

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**By Email to OCAamendedRJIcomments@nycourts.gov**

September 23, 2013

Mr. John W. McConnell, Esq.  
Counsel  
State of New York – Unified Court System  
25 Beaver Street  
New York, NY 10004

***Re: Proposed Amendment of RJI Addendum in Foreclosure Actions (UCS-840F)***

Dear Mr. McConnell:

New Yorkers for Responsible Lending (NYRL) write specifically to comment on the proposed amendment of the Request for Judicial Foreclosure (RJI) addendum in residential foreclosures (UCS-840F) (“the Amendment.”) and, for the reasons stated below, we strongly support the Amendment.

NYRL is a 161-member state-wide coalition that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities. NYRL members represent a broad cross-section of community financial institutions, community-based organizations, affordable housing and foreclosure prevention groups, advocates for seniors, legal services and labor organizations, and community reinvestment, fair lending, and consumer advocacy groups. Coalition members have detailed and extensive experience in assisting homeowners obtain mortgage loan modifications within the New York State court system. They are intimately familiar with the difficulties that homeowners face in seeking a modification and the strain on the courts due to an overloaded foreclosure docket.

While the Amendment proposes a small change to the current residential foreclosure RJI addendum – adding the name of the servicer of the mortgage at issue – it will have a major and positive impact on New York’s judicial foreclosure process.

Due to the securitization of most residential mortgages, the plaintiff in a residential foreclosure action is often a vaguely-named and all-but-absent Wall Street trust. The entity with whom homeowners and the Court are required to interact is what is known as a “servicer,” the entity the owner of the loan-- in most instances a mortgage securitization trust-- selected to run the day-to-day affairs of collecting mortgage payments and crediting the homeowner’s account. It is the servicer who prosecutes a foreclosure in the trust’s name, and it is the servicer that is authorized to settle the action with a mortgage modification or other foreclosure alternative. Accordingly,

the proposed Amendment will add transparency and promote greater efficiency in the foreclosure process.

#### Including the Servicer's Name Adds Must-Needed Transparency

Knowing the servicer's name at the outset of the action will increase transparency in the foreclosure process, especially during the settlement conference part of the action. Based on our collective experience representing thousands of homeowners, when a homeowner is in foreclosure, the best chance of obtaining a mortgage modification is during the settlement conference process. The referees and judges can most effectively achieve the statutorily-mandated goals of the settlement conference part – saving those homes from foreclosure that can be saved – if they know the servicer's name. There is no reason why this information should be kept hidden from them. The Amendment – by providing the servicer's name on the RJI addendum – will ensure that the Court is no longer the last to know what entity services a homeowner's loan.

#### The Servicer's Name on the RJI Addendum Will Promote Efficiency

Being able to group residential foreclosure actions by servicer may help the Court promote greater efficiency and help homeowners negotiate modifications more expeditiously. Some courts have attempted to schedule conferences by servicer, in order to ensure compliance with the statutory obligation that plaintiffs appear at settlement conferences with full settlement authority. However, due to the amount of work it currently takes court personnel to uncover the name of the servicer in any given case, efforts to schedule conferences on a servicer-specific basis have, to date, met with little success. The proposed amendment would allow the Court to more easily schedule conferences by servicer. And having such conferences attended by an authorized representative of the servicer who is both capable of making decisions, analyzing loan modification applications, advising of any missing documentation or incomplete application information, and apprising the Court and the homeowner of the status of pending applications, is far more efficient than conducting multiple conferences characterized by incomplete information, piece-meal requests for documentation, and multiple adjournments, which are harmful to homeowners, whose arrears mount with each passing month.

#### Adding the Servicer's Name on the RJI Addendum Will Impose No Cost on the Plaintiff

The proposed RJI change will impose no cost to Plaintiffs or their counsel. With recent amendments to CPLR 3012-b and the requirement that Plaintiff's counsel file a Certificate of Merit, counsel should already know the identity of the mortgage servicer—indeed they are usually retained by the mortgage servicer. In order to comply with the recently-enacted Certificate of Merit requirement, which obligates Plaintiff's counsel to verify there is a debt owed, counsel will inevitably communicate with the mortgagee's loan servicer.

As a result, including the servicer's name on the RJI addendum will require no extra work of Plaintiff's counsel.

We Recommend that the Uniform Court System Impose an Obligation on Plaintiff's Counsel to Update the Information Provided on the Proposed Amended RJI Addendum When Servicers Change

Because mortgage servicing rights are frequently bought and sold even while foreclosure actions remain pending, we recommend that the requirement to identify the mortgage servicer on the proposed Amended RJI addendum be designated as an ongoing one, so that Plaintiffs' counsel are required to update the initially-provided information identifying the mortgage servicer in the event that the applicable servicing rights change hands after the initial RJI filing.

Plaintiff Is Separate from the Servicer

Although we strongly support the Amendment, we support it with one caveat: that the legal distinction between the servicer and the Plaintiff remain clear. While the servicer is the entity with whom homeowners and the Court interact when attempting to negotiate mortgage modifications, we recommend that collection of information concerning servicers not in any way be used to excuse the named Plaintiffs in foreclosure actions from any of their statutory obligations in such cases, and that, in particular, that collection of such information not be permitted in any way to dilute the requirement that foreclosing Plaintiffs own or hold the note necessary to sustain a foreclosure cause of action.

With the foregoing caveat, we strongly support the proposed Amendment and applaud the Unified Court System for seeking to promote greater transparency and efficiency in the foreclosure process.

2013



New York State  
Association of County Clerks

**MEMORANDUM**

September 13, 2013

**To:** Office of Court Administration  
Via email (OCAamendedRJlcomments@nycourts.gov)

**From:** Betsy Larkin  
President, NYSACC  
Cortland County Clerk

**Re:** Response concerning proposed amendment of Request for Judicial Intervention Addendum in foreclosure actions (USC-840F), relating to addition of the mortgage servicer's name

The New York State Association of County Clerks supports the proposed amendment, adding the mortgage servicer's name to the addendum to RJIs in foreclosure actions (USC-840F).

**OCAamendedRJComments - With regard to today's article Change in Foreclosure Form. In addition to having to name the servicer It should be mandatory that they give a contact name or names along with a direct contact number with extension along with email and fax number.**

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**From:** Hon. Dana Winslow

**To:** OCAamendedRJComments

**Date:** 8/15/2013 4:45 PM

**Subject:** With regard to today's article Change in Foreclosure Form. In addition to having to name the servicer It should be mandatory that they give a contact name or names along with a direct contact number with extension along with email and fax number.

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With regard to today's article Change in Foreclosure Form. In addition to having to name the servicer It should be mandatory that they give a contact name or names along with a direct contact number with extension along with email and fax number.

F. Dana Winslow.