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November 26, 2012

FHFA OPAR

Attn: Edward J. DeMarco, FHFA Acting Director  
 400 Seventh Street SW, Ninth Floor  
 Washington, D.C. 20024

Via e-mail: [gfeinput@fhfa.gov](mailto:gfeinput@fhfa.gov)

**RE: State Level Guarantee Fee Pricing,  
 77 Fed. Reg. 186 (September 25, 2012)**

Dear Mr. DeMarco:

Legal Services of New Jersey opposes the Federal Housing Finance Agency's (FHFA) September 25, 2012 proposal to increase the guarantee fees charged by Fannie Mae and Freddie Mac (the GSEs) for New Jersey mortgage loans. The FHFA proposal penalizes New Jersey for requiring the GSEs – as every other foreclosing mortgagee – to file truthful foreclosure documents and make a good faith effort to modify mortgages. Using flawed methodology, the FHFA erroneously reports that the "Total Time to Obtain Marketable Title" in New Jersey is 750 days. This is simply untrue. For lenders that follow New Jersey law, the judicial foreclosure process takes 270 days.<sup>1</sup>

The FHFA's calculation of New Jersey's foreclosure timeline is distorted because over the past two years the GSEs and other lenders voluntarily halted New Jersey foreclosures. Most lenders stopped filing pleadings in pending foreclosure actions in late 2010 and – to this day – have neither resumed prosecuting those foreclosures nor filed new foreclosure actions. They did so amidst serious allegations of national misconduct; in their haste to foreclose, many loan servicers employed assembly line practices causing routine filing of false pleadings, a practice widely known as "robo signing." **Significantly, at no time did the New Jersey Supreme Court impose a judicial stay on foreclosures because of robo signing or for any other reason.** Given that it was the lending and servicing industry that engaged in misconduct and the lending and servicing industry that halted foreclosures, it is illegitimate to penalize homeowners or the State of New Jersey. Instead, the FHFA should look to the servicing industry for compensation for any foreclosure delays.

In its proposal, the FHFA takes the position that "foreclosure takes longer than average in some states as a result of regulatory or judicial actions." In fact, in

\*Pursuant to R:1-21-3(b)

<sup>1</sup> RealtyTrac.com, Foreclosure Laws and Procedures by State, <http://www.realtytrac.com/foreclosure-laws/foreclosure-laws-comparison.asp> (last visited November 19, 2012).

Attn: Edward J. DeMarco, FHFA Acting Director


New Jersey, exactly the opposite is true. In December, 2010, the New Jersey Supreme Court took action that would simultaneously protect the integrity of New Jersey's courts and land records and at the same time give foreclosing mortgagees a speedy solution to any allegations of robo-signing. It required lenders simply to certify that the pleadings they filed with the court in any pending actions were truthful (Exhibit A). To-date, lenders and their attorneys have elected neither to file a Certification of Diligent Inquiry nor correct any misinformation in their pleadings, and few have filed any new foreclosure actions. Had the GSEs filed Certifications of Diligent Inquiry in cases pending in December 2010, those foreclosures would have been concluded by June, 2011.

The vast majority of New Jersey foreclosures -- 96% -- are uncontested, meaning that they are processed without any court hearing at all, and of the small percentage of homeowners who fight foreclosure in court few of those are represented. Moreover, New Jersey has one of the shortest redemption periods of the states at only ten days. Thus, despite our judicial foreclosure process, New Jersey foreclosures proceed almost exclusively on documents filed by the plaintiff, at the speed with which the plaintiffs file them (particularly now that the state has implemented electronic filing). Even with mediation, community banks that complied with New Jersey law are foreclosing on portfolio loans faster than ever, an average of 194 days.

The FHFA can reduce credit losses in New Jersey by encouraging and incentivizing loan modifications instead of needless foreclosures. There can be no dispute that loan modifications are in the economic best interest of homeowners, communities, the economy and even investors. John Geanakoplos, Solving the Present Crisis and Managing the Leverage Cycle, 16 Fed. Reserve Bank New York Econ. Pol. Rev. 1 at 117 (2010) available at <http://goo.gl/NEFCN>. ("Throwing somebody out of his home is tragic for the homeowner, but also very expensive for the lender. One of the shocking aspects of the foreclosure crisis is how low the recoveries have become on foreclosed properties, after expenses. . . . Nobody gains when the homeowners are thrown out and the banks and/or investors collect pennies on the dollar for the money loaned."). Inexplicably, the FHFA would rather have Fannie Mae and Freddie Mac hold properties in REO indefinitely or accept fire-sale prices than to reduce even a fraction of principal in a loan modification -- even when they can recoup the principal reduction through a shared appreciation plan. Geanakoplos, supra, at 121 (a loan modification "could easily require the homeowner to share 50/50 with the lenders any appreciation in house price up to the full amortized value of the original mortgage..")

Thank you for the opportunity to comment on the FHFA's proposal. Please contact me if there are any questions with reference to the above.

Very truly yours,  
LEGAL SERVICES OF NEW JERSEY

By:   
Rebecca Schore, Esq.

# **EXHIBIT A**

## NOTICE TO THE BAR

**RE: Emergent Amendments to *Rules 1:5-6, 4:64-1 and 4:64-2***

In light of irregularities in the residential foreclosure practice as reported in sworn deposition testimony in New Jersey and other states, the Court has adopted, on an emergent basis, amendments to *Rules 1:5-6, 4:64-1 and 4:64-2*. These amendments are effective December 20, 2010. The new rule and the amendments, along with the Order adopting them, appear with this notice. The Court's Order also contains directions for counsel in pending uncontested residential foreclosure cases.

The rule amendments require plaintiff's counsel in all residential foreclosure actions to file 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)*.

Plaintiff's counsel shall file such documents (1) immediately upon the commencement of any new residential foreclosure action filed after the effective date of the new rule and amendments, 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 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 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 foreclosure actions in which judgment is sought, as to the accuracy of any proofs submitted pursuant to *Rule 4:64-2*.

Finally, 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 evidentiary support."

Questions concerning these amendments should be directed to Kevin M. Wolfe, Esq., in the AOC's Civil Practice Division, at (609) 292-8470 or [kevin.wolfe@judiciary.state.nj.us](mailto:kevin.wolfe@judiciary.state.nj.us).

/s/ Glenn A. Grant

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

Dated: December 20, 2010

## SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 1:5-6, 4:64-1 and 4:64-2 are adopted effective immediately. And,

It is FURTHER ORDERED that in all uncontested residential foreclosure cases pending entry of judgment as of December 20, 2010, (1) within 60 (sixty) days, plaintiff's counsel shall file a certification, which shall be served on all defendants, stating (a) that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents submitted to the court thus far and (ii) confirmed their accuracy; and (b) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated; (2) plaintiff's attorney shall also file a certification attesting that the complaint and all documents subsequently filed with the court comport with the requirements of Rule 1:4-8(a). And

It is FURTHER ORDERED that in all uncontested residential foreclosure cases in which judgment has been entered but no sale of the property has occurred as of December 20, 2010, (1) within 45 (forty-five) days, plaintiff's counsel shall file a certification, which shall be served on all defendants, stating (a) that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents submitted to the court thus far and (ii) confirmed their accuracy; and (b) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated; (2) plaintiff's attorney shall also file a certification attesting that the complaint and all documents subsequently filed with the court comport with the requirements of Rule 1:4-8(a).

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: December 20, 2010

1:5-6. Filing

(a) ...no change.

(b) ...no change.

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by *R. 4:5-1* in the form set forth in Appendices XII-B1 or XII-B2 to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by *R. 5:4-2(f)*, the Parents Education Program registration fee required by *N.J.S.A. 2A:34-12.2*, the Confidential Litigant Information Sheet as required by *R. 5:4-2(g)* in the form prescribed in Appendix XXIV, or the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives as required by *R. 5:4-2 (h)* in the form prescribed in Appendix XXVII-A or XXVII-B of these rules;

(D) the signature of an attorney permitted to practice law in this State pursuant to *R. 1:21-1* or the signature of a party appearing pro se, provided, however, that a pro se appearance is provided for by these rules; or

(E) a certification of title search as required by *R. 4:64-1(a)(1)* and the certifications of diligent inquiry and of accuracy as required by *R. 4:64-1(a)(2)* and (3).

If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within ten days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(2) if an answer is presented by a defendant against whom default has been entered other than in a mortgage or tax foreclosure action, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(3) a demand for trial de novo may be rejected and returned if not filed within the time prescribed in *R. 4:21A-6* or if it is submitted for filing by a party in default or whose answer has been suppressed.

(4) a paper shall be returned stamped "Received but not Filed (date)" if it does not conform to the requirements of *R. 1:4-9* with notice that if the document is retransmitted on conforming paper within 10 days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(d) ...no change.

(e) ...no change.

Note: Source — *R.R. 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a)* (first and second sentence), *4:5-7* (first sentence), *5:5-1(a)*. Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d) redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2) adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1),(3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (c)(1) and (c)(3) amended July 28, 2004 to be effective September 1, 2004; subparagraph (c)(1)(E) adopted, paragraphs (c)(2) and (c)(3) amended, and paragraph (c)(4) adopted July 27, 2006 to be effective September 1, 2006; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; subparagraph (c)(1)(C) amended July 16, 2009 to be effective September 1, 2009; subparagraph (c)(1)(E) amended December 20, 2010 to be effective immediately.

4:64-1. [Uncontested Judgment: Foreclosures] Foreclosure Complaint, Uncontested Judgment  
Other Than In Rem Tax Foreclosures

(a) Title Search; Certifications.

(1) Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which R. 4:64-7 does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.

(2) In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry stating

(A) that the attorney has communicated with an employee or employees of the plaintiff who (a) personally reviewed the documents being submitted and (b) confirmed their accuracy; and

(B) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

(3) Plaintiff's attorney shall also annex to the complaint a certification, executed by the attorney, attesting that the complaint and all documents annexed thereto comport with the requirements of Rule 1:4-8(a)

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

(f) ...no change.

(g) ...no change.

(h) ...no change.



(i) ...no change.

Note: Source — *R.R.* 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as subparagraph (a)(1), and new subparagraphs (a)(2) and (a)(3) added December 20, 2010 to be effective immediately.

4:64-2. Proof; Affidavit

(a) ...no change.

(b) ...no change.

(c) ...no change.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating (1) that the attorney has communicated with an employee or employees of the plaintiff who (A) personally reviewed the documents being submitted and (B) confirmed their accuracy; (2) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated pursuant to this rule; and (3) that the documents comport with the requirements of Rule 1:4-8(a).

Note: Source — *R.R. 4:82-3*. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; text amended and designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2008 to be effective September 1, 2008; caption amended and new paragraph (d)(1) and (2) added December 20, 2010 to be effective immediately.