

## Memorandum in Support

### REAL PROPERTY LAW SECTION

RPLS #1

March 6, 2013

S. 3479  
A. 1582

By: Senator Golden  
By: M. of A. Lentol  
Senate Committee: Judiciary  
Assembly Committee: Judiciary  
Effective Date: Immediately

**AN ACT** to amend the civil practice law and rules, in relation to the liability of referees for interest and penalties on deeds.

**LAW AND SECTION REFERRED TO:** Section 1 of this bill adds a new subdivision (c) to section 8003 of the civil practice law and rules and re-letters the existing subdivision (c) to subdivision (d).

#### **THE REAL PROPERTY LAW SECTION SUPPORTS THIS LEGISLATION**

In many cases, especially when the foreclosing lender is the successful bidder at a foreclosure sale, the Referee is presented with a deed to sign immediately, thereby putting title in the successful bidder's name. The successful bidder is often anxious to obtain the Referee's deed promptly so that it can commence any necessary eviction proceedings to obtain vacant possession of the real property. In the common scenario where the foreclosing lender takes title, no funds are ever delivered to the Referee because the foreclosing lender is entitled to credit bid up to the amount of the judgment without advancing any funds. As a result, the Referee does not ever receive a bid deposit or any other proceeds of the sale. The foreclosing lender records the deed and pays the transfer taxes. Thus, the Referee never comes into possession of any funds to pay any transfer taxes nor does the Referee have any control over the deed once it is executed and delivered to the successful bidder.

Even in cases where the successful bidder is not the foreclosing lender and the Referee comes into possession of funds, if the Terms of Sale require the Referee to pay the transfer taxes, the Referee customarily turns over the funds necessary to pay the transfer taxes to the purchaser or to the purchaser's title insurer together with the Referee's Deed and any other required closing documents. Even in these instances, the Referee has no ability to control the timely payment of the transfer taxes once they are delivered to the purchaser. Motivated to record the deed promptly, the purchaser should, and does, pay the transfer taxes as required. Justifiably, the Referee should not be required to make sure the purchaser does so. Nor should the Referee be held accountable for any delay on the purchaser's part.

Moreover, it should be noted that a Referee, in performing his or her duties, is merely acting as an officer of the Court in facilitating a judicially mandated sale. In doing so, a Referee should not be subjected to interest and penalties imposed solely by the failure of a third party, over whom the Referee has no control, timely to record a deed and pay the transfer taxes. This is especially so given the very modest compensation that Referees receive to conduct the auction of the mortgaged property and complete the sale. The Referee should not bear any economic liability for the prompt failure to act by the ultimate owner of the foreclosed property. Putting this burden on the Referee is akin to putting this burden on the Court. That would be improper.

We are pleased that A.9220-A/S.6467-A incorporates the modifications suggested in a previous Real Property Law Section memorandum commenting on the original version of this bill.

Based on the foregoing, the Real Property Law Section **SUPPORTS** this legislation.

Persons who prepared this Memorandum: Thomas J. Hall, Esq.  
Richard Fries, Esq.

Section Chair: Steven M. Alden, Esq.