



*New York State  
Unified Court System  
25 Beaver Street  
New York, New York 10004*

*A. Gail Prudenti  
Chief Administrative Judge*

212-428-2120

March 18, 2014

Hon. Thomas P. DiNapoli  
State Comptroller  
110 State Street  
Albany, New York 12236

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EXECUTIVE CORRESPONDENCE

MAR 25 2014

OFFICE OF THE STATE COMPTROLLER  
THOMAS P. DINAPOLI  
COMPTROLLER

Dear Comptroller DiNapoli:

On December 12, 2013, your Office issued Audit Report 2013-S-2 entitled *Reporting on Foreclosure of Real Property Funds - Kings County*. The attached response is provided in accordance with Section 170 of the Executive Law, requiring the Chief Administrative Judge to report to the Governor, the State Comptroller, and the leaders of the Legislature on what steps were taken to implement the recommendations contained in the Report.

I thank you for the efforts of your staff on this audit, and we look forward to working with you on future projects.

Very truly yours,

A. GAIL PRUDENTI  
Chief Administrative Judge

/smw

c: Hon. Andrew Cuomo  
Hon. Jonathan Lippman

Hon. Dean Skelos  
Hon. Jeffrey Klein  
Hon. Andrea Stewart-Cousins  
Hon. John DeFrancisco  
Hon. Liz Krueger

Hon. Sheldon Silver  
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Ronald Younkins, Esq.  
Sherrill Spatz, Esq.  
George Danyluk, CIA

**Reporting on Foreclosure of Real Property Funds - Kings County**  
**OSC Audit Report 2013-S-2**  
**90 Day Response**

The Unified Court System has taken the following steps in response to the audit recommendations:

*Recommendation One.*

*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.*

In Kings County, the Order of Referral already included direction to the referee to file the report timely and in accordance with statute.

Statewide procedures have been implemented to allow better accounting for surplus funds and to ensure that such funds are deposited in accordance with statute. These procedures include a Foreclosure Action Surplus Monies Form, which the Referee must complete and sign, within 30 days after the auction. For courts outside New York City, the completed, signed form must be delivered to the County Clerk, and a copy provided to the Chambers of the Justice who signed the Judgment of Foreclosure. Chambers staff shall verify compliance. For courts within New York City, the form is filled out at the auction and handed directly to the fiduciary clerk. The fiduciary clerk shall verify compliance. If surplus monies are reported, in addition to filing the form, the Referee must file proof of deposit and provide proof of same to the Court within 30 days of the Sale. If the form and proof of deposit, if any, are not timely filed, the case shall be calendared no later than six months after the Judgement of Foreclosure has been signed, before the Judge who appointed the Referee for whatever action he or she deems appropriate. This is to determine whether the sale as ordered has occurred, the outcome, and to determine if surplus monies, if any, have been properly deposited.

*Recommendation Two.*

*Ensure referees submit their Reports of Sale timely.*

See response to recommendation one.

*Recommendation Three.*

*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.*

Upon receipt of the audit report, the UCS Inspector General's Office conducted investigations of six referees cited in the report. As a result, the Inspector General has recommended to the Chief Administrative Judge that two of the referees be removed from the list of eligible Part 36 appointees, which would preclude all future list and non-

list appointments. The investigation also confirmed that two referees did deposit surplus funds late, but, did not recommend removal due to extenuating factors related to the sales. In addition, one referee provided information and documentation to sufficiently support the figures in his Report of Sale. It appears that this documentation was not considered by the audit staff at the time of their review. Finally, the investigation also confirmed that a former judge made a non-list appointment and failed to file a written finding of good cause. The judge has since retired from the bench. The court system has taken steps to ensure that a written finding of good cause is filed for future non-list appointments (see response to Recommendation Four).

*Recommendation Four.*

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

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.