# TOP NEW YORK BANK REGULATOR URGES:
## LEGISLATURE TO AMEND MANDATORY FORECLOSURE SETTLEMENT LAW

May 19, 2015 By Ryan P. Mulvaney

The New York foreclosure laws are "broken," according to the Superintendent of the Department of Financial Services of the State of New York, and require fixing. In particular, today, Superintendent Ben Lawsky urged the New York Legislature to amend the mandatory foreclosure settlement conference law, NY CPLR § 3408, to require that the participants be required to do so "in good faith." According to Superintendent Lawsky, the conferences are "the most significant" cause for delays in the foreclosure process because the servicers and lenders show up "unprepared or not at all ... delaying the process and get to collect more interest and fees than if it had acted more quickly to complete the foreclosure."

As having attended countless mandatory foreclosure conferences on behalf of mortgage servicer clients, I agree that the conferences unnecessarily prolong the foreclosure process. To cast the blame on servicers and lenders, however, demonstrates that Superintendent Lawsky is misinformed particularly when the statutory authority governing mandatory foreclosure conferences already requires "good faith" efforts. Indeed, CPLR 3408(f), which was enacted in 2008 as part of omnibus legislation titled "Subprime Residential Loan and Foreclosure Laws," requires parties to "negotiate in good faith to reach mutually agreeable resolution, including a loan modification, if possible." CPLR 3408(f). The corresponding Court Rule likewise already requires the court to "ensure that each party fulfills its obligation to negotiate in good faith and shall see that conferences not be unduly delayed or subject to willful dilatory tactics so that the rights of both parties may be adjudicated in a timely manner." 22 NYCRR 202.12-a. In addition, Superintendent Lawsky's suggestion that servicers and lenders have a vested or strategic interest in delaying the process because doing so allows them to collect more fees and interest is misguided.

More often than not, I -- adhering to "mandatory" -- have appeared at the mandatory settlement conferences in "good faith," but borrowers have either not appeared or use the conference as a delay tactic; have been prepared to either expeditiously work toward facilitating a borrower's loan modifications in "good faith," or be released from the conferences and litigate the cases; have encountered borrowers who either completely fail to return, or fail to timely complete, loan modification applications; and have encountered those charged with presiding over the conferences failing to hold borrowers to deadlines. In response to Superintendent Lawsky, I suggest that "in good faith" should have meaning to ***all*** involved in the conference process.

LINK TO ARTICLE http://nyp.st/1JxY0q3

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