

# STATE OF NEW YORK

11257

## IN ASSEMBLY

May 4, 2026

Introduced by M. of A. WALKER -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, in relation to the scope of quasi-judicial immunity of referees in mortgage foreclosure actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. The legislature hereby  
2 finds that referees appointed in mortgage foreclosure actions pursuant  
3 to article thirteen of the real property actions and proceedings law and  
4 article forty-three of the civil practice law and rules perform func-  
5 tions that are limited in scope and subject to strict judicial super-  
6 vision.

7 The legislature further finds that New York courts, including the  
8 appellate division, second department, apply a functional analysis in  
9 determining whether quasi-judicial immunity applies, limiting such immu-  
10 nity to acts that are discretionary in nature and integrally related to  
11 the judicial process, and withholding such immunity for ministerial  
12 acts, acts in excess of authority, or acts undertaken in bad faith or in  
13 the clear absence of jurisdiction.

14 It is the intent of the legislature to codify and clarify these prin-  
15 ciples as applied to foreclosure referees, and to ensure accountability  
16 where such referees engage in misconduct or exceed the authority  
17 conferred by statute or court order.

18 Court-appointed foreclosure referees have been computing judgment  
19 debts with unlawful interest - compound interest, interest during the  
20 motion determination period, unauthorized default rates - for years.  
21 Those inflated computations suppress surplus funds that legally belong  
22 to borrowers, subordinate lienholders, and creditors. In addition, fore-  
23 closure referees fail to report surplus monies to the Court and the  
24 former owner, and fail to deposit the surplus monies into Court as  
25 required by law. In none of the cases has there been anyone held  
26 accountable, despite the widespread and public account of this abuse of  
27 power or discretion.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 Referees claim quasi-judicial immunity, even though New York State law  
2 directs otherwise. The amendments in this bill also seek to codify the  
3 rule being proposed by the New York State Office of Justice Initiatives  
4 that referees "do not have judicial immunity and would not be repres-  
5 ented by the Attorney General if sued". This legislation expressly  
6 abrogates judicial and quasi-judicial immunity for specific enumerated  
7 categories of misconduct, including conversion of surplus funds, failure  
8 to deposit surplus funds into court, and failure to file the report of  
9 sale as to surplus funds.

10 This act addresses any unlawful computation or unauthorized distrib-  
11 ution of surplus monies by a referee is per se misconduct; authorizes  
12 vacatur of the foreclosure sale where the misconduct materially affected  
13 the open bid or upset price, the calculation of the amounts due to the  
14 mortgagee or plaintiff or its attorneys, or the calculation or deposit  
15 or distribution of surplus monies, and is in keeping with the federal  
16 and state law that surplus monies from any auction is protected property  
17 of the former owner.

18 § 2. The real property actions and proceedings law is amended by  
19 adding a new section 1354-a to read as follows:

20 § 1354-a. Scope of quasi-judicial immunity of referees in foreclosure  
21 actions. 1. For purposes of this section:

22 (a) "Referee" means any person appointed pursuant to section thirteen  
23 hundred fifty-one of this article, section forty-three hundred eleven of  
24 the civil practice law and rules, or an order of reference issued in a  
25 mortgage foreclosure action.

26 (b) "Discretionary act" means an act involving the exercise of  
27 reasoned judgment.

28 (c) "Ministerial act" means an act performed in a prescribed manner  
29 without the exercise of independent judgment, including compliance with  
30 statutory directives or court orders.

31 2. A referee shall be entitled to quasi-judicial immunity only to the  
32 extent that the act complained of:

33 (a) constitutes a discretionary act that is consistent with the  
34 specific authority granted to the referee;

35 (b) is expressly authorized by statute or by the order of reference or  
36 by the judgment of foreclosure and sale; and

37 (c) is integrally related to the judicial function of enforcing or  
38 effectuating a judgment of foreclosure.

39 3. A referee shall not be entitled to quasi-judicial immunity for the  
40 negligent or improper performance of ministerial acts, including but not  
41 limited to:

42 (a) compliance with the procedures governing foreclosure sales set  
43 forth in the judgment of foreclosure and sale;

44 (b) miscalculation of the amounts due to the plaintiff under the judg-  
45 ment of foreclosure and sale or misapplication of the orders therein as  
46 to the amounts due to the plaintiff upon the auction of the subject  
47 property;

48 (c) the receipt, safeguarding, accounting for, and distribution of  
49 proceeds in accordance with section thirteen hundred fifty-four of this  
50 article;

51 (d) the preparation and filing of reports required by law or court  
52 order; or

53 (e) adherence to notice, publication, and bidding requirements  
54 mandated by statute or court directive.

55 4. A referee shall not be entitled to quasi-judicial immunity for acts  
56 undertaken:

1 (a) in excess of the authority expressly conferred by the appointing  
2 court or in the judgment of foreclosure and sale;

3 (b) in contravention of statutory mandates, including section thirteen  
4 hundred fifty-four of this article;

5 (c) in the clear absence of jurisdiction or delegated authority;

6 (d) where the referee converts foreclosure auction proceeds or sale  
7 funds to property of a person or entity other than the former owner of  
8 the real property that was the subject of the foreclosure auction;

9 (e) where the referee fails to deposit the surplus monies from a fore-  
10 closure auction into court; or

11 (f) where the referee fails to timely file the surplus monies report.

12 5. (a) Notwithstanding any provision of law to the contrary, a referee  
13 shall not be entitled to judicial or quasi-judicial immunity for miscon-  
14 duct.

15 (b) For purposes of this section, "misconduct" shall include:

16 (i) the performance of an act in violation of a mandatory statutory  
17 provision, court rule, or express term of the order of reference or  
18 judgment of foreclosure and sale;

19 (ii) any act undertaken in excess of the authority conferred by the  
20 appointing court or in the clear absence of jurisdiction;

21 (iii) the failure to comply with duties prescribed by section thirteen  
22 hundred fifty-four of this article governing the receipt, safeguarding,  
23 accounting for, and distribution of foreclosure sale proceeds;

24 (iv) the unauthorized collection, retention, commingling, or disburse-  
25 ment of funds;

26 (v) conduct constituting bad faith, gross negligence, or reckless  
27 disregard of statutory obligations or court directives; or

28 (vi) any material deviation from prescribed foreclosure procedures  
29 that impairs the integrity of the foreclosure sale or the rights of  
30 interested parties.

31 6. The following acts shall constitute misconduct per se and shall not  
32 be protected by judicial or quasi-judicial immunity:

33 (a) distribution of proceeds in a manner inconsistent with the priori-  
34 ty scheme mandated by section thirteen hundred fifty-four of this arti-  
35 cle;

36 (b) conducting or completing a foreclosure sale in contravention of  
37 the express terms of the judgment of foreclosure and sale;

38 (c) calculating the amounts due to plaintiff in contravention of the  
39 express terms of the judgment of foreclosure and sale;

40 (d) conducting or completing a foreclosure sale in contravention of  
41 the express terms of the rules governing the auction of the property;

42 (e) exercising authority not granted by the appointing order, includ-  
43 ing altering material terms of sale without court approval; and

44 (f) failure to account for, remit funds or deposit funds as required  
45 by law or court order.

46 7. Upon a finding of misconduct under this section:

47 (a) quasi-judicial immunity shall not apply to the conduct at issue;

48 (b) the auction shall be vacated, set aside or reversed;

49 (c) the referee may be held personally liable for damages proximately  
50 caused thereby; and

51 (d) such conduct may serve as a basis for surcharge, removal, or other  
52 relief as the court deems appropriate.

53 § 3. Section 1355 of the real property actions and proceedings law is  
54 amended by adding a new subdivision 3 to read as follows:

55 3. (a) The report of sale filed by the referee pursuant to this  
56 section shall include, under penalty of perjury, a certification that:

1 (i) all amounts distributed to the plaintiff were computed in accordance with applicable law, the order of reference, and the judgment of foreclosure and sale;

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4 (ii) no compound interest was applied in violation of section 5-527 of the general obligations law or section five thousand one, five thousand two or five thousand three of the civil practice law and rules;

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7 (iii) no interest was applied during any motion determination period contrary to applicable law;

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10 (iv) all distributions were made in accordance with the judgment of foreclosure and sale and the order of reference, and no amount was paid out that was not authorized by either instrument or by applicable law;

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13 and  
14 (v) the full amount of any surplus has been deposited with the court as required by subdivision four of section thirteen hundred fifty-four of this article.

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16 (b) A false certification made pursuant to this subdivision shall constitute a false written statement under section 210.45 of the penal law and shall give rise to civil liability under subdivision three of section thirteen hundred fifty-four-a of this article.

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19 § 4. Rule 4311 of the civil practice law and rules is amended to read as follows:

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22 Rule 4311. Order of reference. (a) An order of reference shall direct the referee to determine the entire action or specific issues, to report issues, to perform particular acts, or to receive and report evidence only. It may specify or limit the powers of the referee and the time for the filing of [~~his~~] the referee's report and may fix a time and place for the hearing.

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28 (b) A referee who acts outside or in excess of the authority conferred upon the referee in the order of reference or in the judgment of foreclosure and sale, as applicable, or who makes a calculation of amounts due that violates applicable law governing interest, fees, or charges in connection with any judgment of foreclosure and sale in any mortgage foreclosure action, acts without jurisdiction and without quasi-judicial authority as to such act or calculation, shall not be entitled to judicial immunity, quasi-judicial immunity, or any derivative form of immunity therefor. Such referee who acts outside or in excess of the authority conferred upon the referee in a mortgage foreclosure action shall be subject to civil and criminal liability pursuant to section thirteen hundred fifty-four-a of the real property actions and proceedings law.

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39 § 5. Construction. This act shall be construed to preclude the extension of immunity to ministerial acts, ultra vires conduct, or acts undertaken in bad faith or in the absence of authority or in the excess of the authority conferred on the referee by a court or an order or a judgment.

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45 This act shall be construed consistent with the following: (a) U.S. law in Tyler v. Hennepin Cnty, 598 U.S. 631, 645 (2023), for the principle that a property owner is entitled to the surplus from a foreclosure sale, including a former property owner who previously was unable to pay the mortgage; (b) New York common law governing quasi-judicial immunity, including but not limited to Della Pietra v. State of NY, 71 NY 2d 792 (Court of Appeals, 1988), for the principle that "{w}here, however, the official 'has stepped outside the scope of his authority' {citation omitted} and acted in the clear absence of all jurisdiction or without a colorable claim of authority, there is plainly no entitlement to absolute immunity, even if the underlying acts are prosecutorial or quasi-judicial in nature"; and NAT'L BANK v. Van Keuren, 184 AD 2d 92 (3rd

1 Dept. \_\_\_), for the principles that the appointed referee is an officer  
2 of the court and must perform his duties impartially without regard to  
3 the interests of any particular person in the proceeding {citations  
4 omitted}); that a court has broad discretion in setting aside a foreclo-  
5 sure sale and ordering a resale (79 NY Jur 2d, Mortgages, § 706, at 64)  
6 and, significantly, almost any individual, even a nonparty, who has a  
7 legitimate interest in the outcome can move to set it aside.

8 § 6. Severability. If any clause, sentence, paragraph, subdivision,  
9 section or part of this act shall be adjudged by any court of competent  
10 jurisdiction to be invalid, such judgment shall not affect, impair, or  
11 invalidate the remainder thereof, but shall be confined in its operation  
12 to the clause, sentence, paragraph, subdivision, section or part thereof  
13 directly involved in the controversy in which such judgment shall have  
14 been rendered. It is hereby declared to be the intent of the legislature  
15 that this act would have been enacted even if such invalid provisions  
16 had not been included herein.

17 § 7. This act shall take effect immediately and shall apply to all  
18 actions pending on an instrument described under subdivision 4 of  
19 section 213 of the civil practice law and rules or as to which a surplus  
20 exists or is claimed from an auction that was conducted on such an  
21 instrument prior to the enactment of this act.