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:

Section 1. Legislative findings and intent. The legislature hereby finds that referees appointed in mortgage foreclosure actions pursuant to article thirteen of the real property actions and proceedings law and article forty-three of the civil practice law and rules perform functions that are limited in scope and subject to strict judicial supervision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) miscalculation of the amounts due to the plaintiff under the judgment of foreclosure and sale or misapplication of the orders therein as to the amounts due to the plaintiff upon the auction of the subject property;

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

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

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

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

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

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

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

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

(e) where the referee fails to deposit the surplus monies from a foreclosure auction into court; or

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

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

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

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

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

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

(iv) the unauthorized collection, retention, commingling, or disbursement of funds;

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

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

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

(a) distribution of proceeds in a manner inconsistent with the priority scheme mandated by section thirteen hundred fifty-four of this article;

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

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

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

(e) exercising authority not granted by the appointing order, including altering material terms of sale without court approval; and

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

7. Upon a finding of misconduct under this section:

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

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

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

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

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

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

(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;

(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;

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

(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; and

(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.

(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.

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

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.

(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.

§ 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.

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

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

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

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