

# **NEW YORK A.G. SCHNEIDERMAN SUES HSBC BANK USA FOR HOLDING HUNDREDS OF STRUGGLING HOMEOWNERS IN LEGAL LIMBO**

<http://www.ag.ny.gov/press-release/ag-schneiderman-sues-hsbc-holding-hundreds-struggling-homeowners-legal-limbo>

Suit Alleges That By Failing To Follow New York Law, HSBC Has Trapped Hundreds Of New Yorkers Facing Foreclosure In The “Shadow Docket”

**Schneiderman: “The Law Is Clear And I Will Prosecute Any Lender That Denies New York Homeowners Their Legally Mandated Right To Negotiate Alternatives To Foreclosure.”**

Attorney General Eric T. Schneiderman today filed a lawsuit against HSBC Bank USA and HSBC Mortgage Corporation (USA) for failing to follow state law related to foreclosure actions, putting homeowners at greater risk of losing their homes. Under state law, residential mortgage lenders, servicers and their agents who sue to foreclose on a homeowner are required to file a “Request for Judicial Intervention” (RJI) when they file their proof of service with the county clerk. The process mandates that the lender then attend a settlement conference within 60 days. The purpose of this court-supervised conference is to provide an opportunity for borrowers to negotiate alternatives to foreclosure, including loan modifications that make mortgage payments more affordable, with the intent that they avoid losing their homes.

Across New York, thousands of foreclosure cases are languishing for months, even years, because financial institutions delay filing the paperwork that triggers the settlement conference. The subsequent backlog of cases is often referred to as the “shadow docket,” and has become a major burden on homeowners and the judicial system. According to one report, the Office of Court Administration estimates that 25,000 families are trapped in the shadow docket.

“Companies like HSBC are brazenly ignoring state law, leaving homeowners across New York stuck in a legal limbo where they can’t even get the legally required settlement conference that could help them keep their homes,” said **Attorney General Schneiderman**. “For homeowners facing foreclosure, time is their greatest enemy. Every day spent waiting for a settlement conference is a day that the lender piles on additional interest, fees and penalties and the homeowner falls further behind. I am committed to doing everything I can to stand up for New

Yorkers who are trapped in the 'shadow docket' and denied their right to fight for their homes."

An investigation conducted by Attorney General Schneiderman showed that HSBC bank and HSBC Mortgage Corporate repeatedly failed to timely file the RJI in hundreds of foreclosure cases against New York homeowners, increasing the risk that those homeowners would lose their homes. A sampling of HSBC foreclosure filings from four counties -- Erie, Monroe, Suffolk and Bronx -- identified close to 300 instances where HSBC failed to file the RJI with the proof of service. In some of those cases, homeowners waited for over two years for HSBC to file the RJI. All the while, HSBC continued to charge interest and assess fees and penalties, adding thousands of dollars to what the homeowner owed. Those additional charges put homeowners at greater risk that they would lose their homes because, as a result, they may not qualify for a loan modification.

Rebecca Karm, an Erie County resident fighting foreclosure after suffering from medical issues and losing her job, waited hundreds of days for a settlement conference, at a cost of thousands of dollars. HSBC filed the proof of service on Nov. 12, 2010, but failed to file the RJI until June 8, 2012. According to an affirmation provided by the Western New York Law Center, the fees accrued during those 547 days would add approximately \$23,000 to Ms. Karm's principal balance if she were offered a permanent loan modification on the day the affirmation was submitted.

"HSBC needs to be held accountable for flouting a state law designed to help people keep their homes, and I would like to commend Attorney General Eric Schneiderman for standing up for New Yorkers against this banking giant," said **Buffalo Comptroller Mark J.F. Schroeder**. "Foreclosures are a major problem in Buffalo, and banks should be trying to fix the situation, not make it worse."

"New York State has gone to extraordinary lengths to afford homeowners protections of the courts when their homes are being foreclosed upon," said **Joseph Kelemen, Executive Director of the Buffalo-based Western New York Law Center**. "When banks, servicers, and other entities foreclosing on homes start a lawsuit and then delay filing the necessary papers to get the case in front of a judge, homeowners are denied the protections they are entitled to under the law and are placed at greater risk of losing their homes. We applaud the efforts of Attorney General Schneiderman to restore integrity to the judicial foreclosure process."

Attorney General Schneiderman filed a lawsuit in New York Supreme Court seeking to compel HSBC to file the RJI immediately in all cases in which it has filed a proof of service, and to file an RJI simultaneously with proof of service in

all future cases. In cases where HSBC has already failed to file the RJI with proof of service on the homeowner, the suit also seeks to compel HSBC to take the following steps to protect New York homeowners:

- Prepare an accounting of interest charges, penalties and fees (e.g. late fees, inspection fees, attorney's fees, broker reports) that accrued beginning 60 days after the filing of proof of service on the homeowner;
- Toll and waive all accrued interest charges, fees and penalties that accrued, or will accrue, beginning 60 days after the filing of proof of service on the homeowner;
- Grant restitution for interest charges, fees and penalties paid by the homeowner that accrued beginning 60 days after the filing of proof of service on the homeowner; and
- Grant damages to homeowners injured by HSBC's illegal practices.

Today's lawsuit was brought against HSBC; however, Attorney General Schneiderman is committed to bringing similar actions against other mortgage lenders who hold borrowers in the shadow docket in defiance of state law.

"Although identifying these cases takes significant resources, my office will continue to bring these types of cases until every homeowner in the shadow docket receives the relief they are legally entitled to," added Schneiderman.

This case is being handled by Assistant Attorney General James M. Morrissey, under the supervision of Assistant Attorney General In-Charge Michael J. Russo and Executive Deputy Attorney General Martin J. Mack.

Attorney General Schneiderman's lawsuit against HSBC is part of his ongoing effort to bring much-needed protections to homeowners facing foreclosure. He proposed a measure that will require plaintiff attorneys to file the proof of personal service, and proof that their client has the right to foreclose on the loan, earlier in the foreclosure process (A. 5582), and legislation that would impose criminal penalties on residential mortgage lenders, servicers and their agents who intentionally engage in fraudulent or deceptive conduct in the preparation, execution or filing of false foreclosure documents (A.7395). Both bills have passed in the Assembly and await Senate approval.

<http://www.ag.ny.gov/press-release/ag-schneiderman-sues-hsbc-holding-hundreds-struggling-homeowners-legal-limbo>

The case is New York v. HSBC Bank USA et al, New York State Supreme Court, Erie County, No. 001660-2013