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\*Not For Service of Any Litigation Papers

(ALL REPLIES TO LATHAM OFFICE)

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CLIENT ALERT

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DATE: 4/23/2020

SUBJECT: RPAPL §1302-a- Proposed changes to New York foreclosure affidavit's

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In response to RPAPL §1302-a, which allows a defendant to raise a defense of plaintiff's lack of standing in a foreclosure at any time, If the judgment of foreclosure and sale was obtained by default that right continues post foreclosure sale, our office added additional language to the judgment pleading(s).

After further conversations with industry title partners, we are proposing additional language be added to the Affidavit of Merit & Summary Judgment Affidavit:

*(SERVICER/LENDER/ CUSTODIAN) is currently in possession of the Promissory note. The Promissory Note was indorsed in (BLANK/TO PLAINTIFF). I confirm that (SERVICER/LENDER/CUSTODIAN) had possession of the Promissory Note on (DATE SERVICER/LENDER/CUSTODIAN CAME INTO POSSESSION OF ORIGINAL NOTE). I confirm that (SERVICER/LENDER/CUSTODIAN) had possession of the Promissory Note on or before (DATE ACTION WAS COMMENCED).*

It will be beneficial to have an executed affidavit on hand in addition to the added language to the judgment pleading(s).

If we do not hear back from you, the proposed language will be added to our affidavit templates effective 5/1/2020.

If you do have any further questions or concerns, please reach out to [SKLHCommunications@schillerknapp.com](mailto:SKLHCommunications@schillerknapp.com).

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*Jacqueline F. McNally, Esq. is the responsible attorney for the law firm's NJ office.*

Schiller, Knapp, Lefkowitz & Hertzell, LLP, is an LLP formed in the State of New York