

N Y SUPREME COURT HOLDS FORECLOSING BANK DOES NOT
NEED TO GIVE NOTICE TO BORROWER'S ESTATE

The Supreme Court of New York, Westchester County, recently held that the notice provisions of New York Real Property Actions and Proceedings Law § 1304 (“RPAPL § 1304”) do not apply when the borrower is deceased, and a mortgagee foreclosing on a residential property therefore does not need to notify the estate. See U.S. Bank N.A. v. Levine, 52 Misc. 3d 736 (N.Y. Sup. Ct. 2016). Under RPAPL § 1304, a lender, assignee, or mortgage loan servicer must, at least 90 days before commencing a legal action on a home loan, provide a notice of default to the borrower indicating that the borrower is at risk of losing his or her home. In this action, the borrower passed away in 2013 and the mortgagee commenced a residential foreclosure action on the borrower’s mortgage in 2015. The mortgagee then moved for summary judgment, but the borrower’s estate opposed, arguing that the mortgagee had failed to provide notice to the estate under RPAPL § 1304. Although the court noted that the Appellate Division has not addressed the issue, it referenced two other Supreme Court decisions in which the courts held that the notice provisions of RPAPL § 1304 do not apply if the borrower is deceased, and that the mortgagee does not need to give notice to the estate because the estate is not the borrower. Accordingly, the court granted the mortgagee’s motion for summary judgment.