

**Stern, Lavinthal & Frankenberg, LLC**

COUNSELLORS AT LAW

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February 15, 2013

Via Jefis and NJLS

Hon. Paul Innes, Judge, Chancery Division, General Equity Part  
Mercer County Superior Court  
Civil Courthouse  
P.O. Box 8068  
175 S. Broad Street  
Trenton, NJ 08650-0068

**RE: IN RE APPLICATION OF THE PROVIDENT BANK TO ISSUE CORRECTIVE NOTICES OF  
INTENTION TO FORECLOSE IN PENDING UNCONTESTED FORECLOSURE ACTIONS**

**Docket Number: F-5164-13**

Your Honor:

Stern, Lavinthal & Frankenberg, LLC represents The Provident Bank in the filing of a Verified Complaint and Order to Show Cause which seeks an Order of the Court permitting it to serve corrected Notices of Intent to Foreclose (hereinafter “NOI”) on some of its pending uncontested pre final judgment actions. The pleadings filed herein, are filed pursuant to the decision of the Court in U.S. Bank v. Guillaume, 209 N.J. 449 (2012) and the procedure established by the April 4, 2012 Order of Justice Stuart Rabner.

That procedure authorizes the Court to entertain summary actions by Order to Show Cause as to why lenders or servicers who have served deficient NOI’s should not be allowed to issue

corrected NOI's to the obligor defendants in pre final judgment actions. The Order of April 4, 2012 also requires that a corrected NOI be accompanied by correspondence advising the obligor defendant of the following information: the reasons why the corrected NOI is necessary; the procedure in place for the filing of an objection to the corrected NOI by the defendant/obligor; the name of a contact who can respond to questions of the Defendant/obligor; a statement that the receipt of the corrected NOI permits the obligor defendant 30 days in which he/she may either cure the default or object to the issuance of the corrected NOI. A form of letter which will explain the procedure in accordance with the April 4, 2012 notice of the Court is attached as Exhibit C to the Verified Complaint.

The Guillaume Court established that dismissal was not the sole remedy in the instance of an NOI which was not strictly compliant with the Fair Foreclosure Act. While the deficiencies in some of the NOIs for which The Provident Bank is seeking permission to re breach do not involve the naming of the lender and/or servicer as in Guillaume, the deficiencies could be interpreted as preventing the execution of a Certification of Diligent Inquiry. Therefore, The Provident Bank is seeking an Order of the Court allowing for the re breaching of these files as well.

The Provident Bank is a state chartered bank which services residential mortgages in New Jersey. The Provident Bank is currently servicing 7945 residential mortgage loans in New Jersey, 300 of which are in default. Of those 300 loans, 200 are in foreclosure and only 3 are the subject of this action. (See Verified Complaint, paragraphs 2. and 6.)

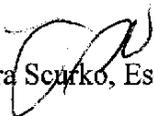
It is the policy of The Provident Bank to diligently work with the borrowers in an effort to resolve the default. Once efforts to address the default have proven less than fruitful, an NOI is

sent to the obligors in accordance with the Fair Foreclosure Act, N.J.S.A. 2A: 50-56. It is respectfully urged that the NOI was sufficient to advise the obligors of the gravity of the situation. However, the NOI in use by The Provident Bank has been revised to comply with the Court's ruling in the case of U.S. Bank v. Guillaume, 209 N.J. 449 (2012), and to enable counsel to sign a Certification of Diligent Inquiry in accordance with recent revisions to the Rules of Court. (See the Verified Complaint, paragraph 7).

Exhibit A to the Verified Complaint is a copy of the NOI proposed to be utilized by The Provident Bank, should the Court permit the rebreaching of these accounts. Plaintiff proposes to send the corrective NOI accompanied by an Explanatory Letter, which is attached as Exhibit C to the Verified Complaint. It is respectfully submitted that the proposed NOI complies with the Fair Foreclosure Act, and that the Explanatory Letter is in compliance with the tenets expressed in the April 4, 2012 Order of the Court. It is further respectfully urged that the corrective NOI is not prejudicial to the obligor defendants in that the reinstatement figure incorporated in the NOI will not include any attorney fees and costs which have been incurred in the pending foreclosure action. (See Verified Complaint, paragraph 9).

It is respectfully urged that this Court grant the relief sought and that it order that if the Defendant Obligor fails to cure the default or object in a timely manner to the service of the NOI, that the cases should proceed to Final Judgment as an uncontested matters.

Respectfully submitted,  
**STERN, LAVINTHAL, & FRANKENBERG, LLC**

  
Laura Scarfko, Esq.

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STERN LAVINTHAL & FRANKENBERG LLC  
105 Eisenhower Parkway - Suite 302  
Roseland, NJ 07068  
(973) 797-1100  
Attorneys for Plaintiff

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IN RE APPLICATION OF THE  
PROVIDENT BANK TO ISSUE  
CORRECTIVE NOTICES OF INTENTION  
TO FORECLOSE IN PENDING  
UNCONTESTED FORECLOSURE  
ACTIONS

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION

CIVIL ACTION

Docket No: F-5164-13

CERTIFICATION OF COUNSEL

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I, Laura Scurko, Esq. of full age, hereby certify as follows:

1. I am an attorney of the State of New Jersey, and an associate in the firm of Stern, Laventhal & Frankenberg, LLC. I am the attorney with the primary responsibility for the filing of the Verified Complaint and Order to Show Cause in this matter. I make the statements herein based upon personal knowledge. I am authorized to make these statements in support of Plaintiff's Verified Complaint and Order to Show Cause.

2. Should the Court execute the Order to Show Cause in this matter, our office will undertake the publication of a legal notice as required by the Order to Show Cause. A true copy of the proposed form of that Notice is attached hereto as Exhibit A.

3. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 2-15-13

  
\_\_\_\_\_  
Laura Scurko, Esq.

# EXHIBIT A

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**LEGAL NOTICE**

Docket No.: F-5164-13  
Superior Court of New Jersey  
Chancery Division

STATE OF NEW JERSEY TO:

**Any defendant in an uncontested residential mortgage foreclosure action in which The Provident Bank is either the Plaintiff or servicer**

**YOU ARE HEREBY ORDERED TO SHOW CAUSE** why the relief requested by The Provident Bank in the Verified Complaint and Order to Show Cause in a civil action pending in the Superior Court of New Jersey, Chancery Division, bearing Docket F-5164-13 should not be granted by the Court. Copies of all pleadings in regard to this matter may be obtained from the Court's web page at <http://www.judiciary.state.nj.us>.

This action has been instituted for the purpose of whether or not the Court should allow The Provident Bank to re-send Notices of Intention to Foreclose pursuant to the process established by the Supreme Court of New Jersey on April 4 2012. Any objection to this action must be **in writing** and filed with the Clerk of the Superior Court, Hughes Justice Complex – CN 971, Trenton, New Jersey 08625. A copy of any objection must also be sent to Honorable Paul Innes, Chancery Division, General Equity Part, Mercer County Courthouse, PO Box 8068 175 South Broad Street, Trenton, NJ 08650 and to Laura Scurko, Esq, Stern, Lavinthal and Frankenberg, LLC, 105 Eisenhower Parkway, Suite 302, Roseland, NJ 07068. Any objection must be filed no later than \_\_\_\_\_. If timely objection is filed, the Court may conduct oral argument on \_\_\_\_\_. If no timely objection is filed, the Court may rule on the application on the papers on the return date.

If you are unable to obtain an attorney, you may communicate with the New Jersey Bar Association by calling **732-249-5000**. You may also contact the Lawyer Referral Service of the county of venue by calling **973-267-5882**. If you cannot afford an attorney, you may communicate with the Legal Services office of the county of venue by calling **973-383-7400**.

*Jennifer M. Perez*

JENNIFER M. PEREZ, CLERK  
SUPERIOR COURT OF NEW JERSEY

***This is an attempt to collect a debt and any information obtained will be used for that purpose.***

"The Fair Housing Act prohibits "any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status or national origin, or intention to make such preference, limitation or discrimination" in connection with any aspect of a residential real estate transaction. Stern, Lavinthal & Frankenberg, LLC encourages and supports the equal housing practices of the Fair Housing Act in the conduct of business."

STERN LAVINTHAL & FRANKENBERG LLC  
105 Eisenhower Parkway - Suite 302  
Roseland, NJ 07068  
(973) 797-1100  
Attorneys for Plaintiff

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**IN RE APPLICATION BY THE  
PROVIDENT BANK TO ISSUE  
CORRECTIVE NOTICES OF  
INTENTION TO FORECLOSE IN  
PENDING UNCONTESTED  
FORECLOSURE ACTIONS**

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
CIVIL ACTION  
Docket No: F-5164-13

**ORDER TO SHOW CAUSE TO  
PROCEED SUMMARILY PURSUANT  
TO RULE 4:67-2**

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THIS MATTER being brought before the Court by the law firm Stern, Lavinthal & Frankenberg, LLC, attorneys for plaintiff, Provident Bank (hereinafter "Provident ") seeking relief by way of summary action to permit the service of corrective Notices of Intention to Foreclose (hereinafter "NOI"), based upon the New Jersey Supreme Court decision in U.S. Bank v. Guillaume, 209 N.J. 449 (2012), and as implemented in Chief Justice Stuart Rabner's April 4, 2012 Order, and based upon the facts as set forth in the Verified Complaint filed herewith; and the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to R. 4:67-2 and for good cause shown;

IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 2013

ORDERED that the parties in interest listed in Exhibit B to the Verified Complaint appear and show Cause on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, before the Honorable Paul Innes ,P. J. Ch, Superior Court, at the Mercer County Courthouse, 175 South Broad Street, Trenton, NJ 08650-0068 at \_\_\_\_ o'clock to object to this Court allowing Provident to issue corrective Notices of Intention to Foreclose pursuant to this Order to Show Cause, and why an Order should not be entered as follows:

- A. Declaring that Plaintiff's Form of Notice of Intention to Foreclose is compliant with the requirements of the Fair Foreclosure Act;
- B. Authorizing Provident to send new Notices of Intention to Foreclose, which notice will give the borrower/obligor at least thirty days from the date the letter is mailed to cure the default on the mortgage without having to pay legal fees or costs;
- C. Granting such other relief as the Court deems equitable and just.

**IT IS FURTHER ORDERED** that:

- 1. Plaintiff shall serve a copy of this Order to Show Cause and Verified Complaint upon all individuals obligated on the loans listed in Exhibit B to the Verified Complaint, for loans which have a Note secured by a Mortgage on residential property that is the borrower's, or their immediate family's principal residence. Service shall be effectuated by certified mail return receipt requested and regular mail to the property address and the last known address (if different) as indicated in Plaintiff's records, within \_\_\_\_\_ days of the date of this Order

2. A copy of this Order to Show Cause and Verified Complaint shall be posted on the Judiciary web Page at <http://www.judiciary.state.nj.us>.
3. A true copy of this Order to Show Cause, Verified Complaint, Brief in support of the relief sought and Certification of Laura Scurko, Esq. shall be served upon the parties in interest listed in Exhibit B to the Verified Complaint, by regular mail and simultaneously by certified mail, return receipt requested (or by registered mail, return receipt requested with respect to any party in interest who resides outside the United States).
4. Along with this Order to Show Cause, Plaintiff is authorized to serve the corrective Notice of Intention to Foreclose allowing the defendant borrower/obligor at least thirty days to cure the default on the subject mortgage without having to pay attorney's fees or costs incurred in the pending action. The Notice of Intention to Foreclose which will be served will be in a form as set forth in Exhibit A to the Verified Complaint.
5. Along with the Notice of Intent to Foreclose, Plaintiff shall also serve an Explanatory Letter in the form set forth in Exhibit C to the Verified Complaint.
6. For any borrower in an active Bankruptcy case where the provisions of the automatic stay are still in place, Plaintiff may serve a copy of this Order to Show Cause and Verified

Complaint but may choose to delay serving a corrective Notice of Intention to Foreclose until such time that the stay is vacated, if it believes that doing so will violate the automatic stay.

7. If the Court grants final relief on the return date of this Order to Show Cause and plaintiff has not already sent a corrective Notice of Intention to Foreclose, Plaintiff shall serve the corrective Notice of Intention to Foreclose once the provisions of the automatic stay in the bankruptcy case are no longer in place. In the alternative, Plaintiff may apply to the United States Bankruptcy Court for relief from the provisions of the automatic stay to effectuate service of the corrective Notice of Intention to Foreclose pursuant to this Order to Show Cause.
8. In the event that plaintiff does not serve a corrective Notice of Intent to Foreclose with this Order to Show Cause, Plaintiff may not proceed with a foreclosure action until such Notice of Intention is served as authorized by this Court's Order.
9. If plaintiff believes that service of this Order will be a violation of the provisions of the automatic stay, once the stay is vacated, Plaintiff may file a Motion with the Chancery Judge in the vicinage where the property is located requesting permission to send a new Notice of Intent to Foreclose

Plaintiff shall not be required to file a new Order to Show Cause for cases currently in bankruptcy.

10. Plaintiff shall publish the legal notice of this action substantially in the form as Set forth in Exhibit A to the Certification of Laura Scurko, Esq. on at least two days prior to \_\_\_\_\_ in the following newspapers:
  - a. Star Ledger
  - b. Bergen Record
  - c. The Press of Atlantic City
  - d. The Gloucester County Times
11. The Court will only entertain objections to the process outlined in the Supreme Court's April 4, 2012 Order. Any party in interest who wishes to object to the process shall file the objection under the docket number for this Order to Show Cause, **in writing**, to the following address:

Clerk of the Superior Court  
Foreclosure Processing Services  
Attn: Objection to Notice of Intention to Foreclose  
25 Market Street  
P.O. Box 971  
Trenton, New Jersey 08625-0971.

A copy of the objection to the Order to Show Cause must also be sent to:

Honorable Paul Innes, Judge,  
Chancery Division, General Equity Part  
Mercer County Superior Court  
Civil Courthouse  
P.O. Box 8068  
175 S. Broad Street  
Trenton, NJ 08650-0068

A copy of the objection to the Order to Show cause must be served upon the attorney for the Plaintiff at:

Laura Scurko, Esq.  
STERN, LAVINTHAL & FRANKENBERG, LLC  
105 Eisenhower Parkway - Suite 302  
Roseland, NJ 07068  
Attorneys for Plaintiff

12. Objections to this Order to Show Cause must state with specificity the basis for the objection and must be filed no later than \_\_\_\_\_ 2013.
13. If a timely objection is not filed, the matter may proceed to judgment in accordance with the Rules of Court.
14. Any objection in regard to a specific corrected NOI in a specific foreclosure case must be filed **in writing under the docket number of the individual foreclosure action, NOT this Order to Show Cause**. Any objection must state the basis for the objection with specificity and be filed and served as set forth in Paragraph 11 above. Objections to a specific NOI will be referred to the Chancery Judge in the vicinage in which the property lies for resolution.
15. Parties in interest are hereby advised that a telephone call to the Plaintiff, to the Plaintiff's attorney; to the Superior Court Clerk's Office, or to the Court, will not protect your rights; you must file and serve your written objection as outlined in this Order.

16. If you cannot afford an attorney you may call the Legal Services office in the county in which you live. If you do not have an attorney or are not eligible for free legal assistance through the Legal Services office (or such office does not provide services for this particular type of proceeding), you may obtain a referral to an attorney by calling one of the lawyer Referral Services.
17. If no party in interest timely files and serves an objection to this Order to Show Cause as provided for above, the application may be decided by the Court on the date this matter is scheduled to be heard, provided that the Plaintiff has filed a proof of service and a proposed form of judgment as required by this Order to Show Cause.
18. If written objection to this Order to Show Cause is filed, the Plaintiff's written reply shall be filed and served by \_\_\_\_\_ 2013. A copy of the reply, if any, shall be served upon the Clerk of Superior Court, with a courtesy copy sent directly to the Honorable Paul Innes P.J.Ch. Plaintiff is only required to serve its response upon any party or parties who have filed written objections to this Order to Show Cause.
19. Plaintiff shall submit to the Court an original and two copies of a proposed form of judgment addressing the

relief sought on the date this matter is scheduled to be heard no later than \_\_\_\_\_ days before the date this matter is scheduled to be heard.

20. The Plaintiff shall file proof of service of the Verified Complaint, this Order to Show Cause and all supporting documents with the Clerk of Superior Court no later than nine (9) days before the return date of this Order.

21. The Court will entertain argument but not testimony, on the return date of the Order to Show Cause, unless the Court advised to the contrary no later than \_\_\_\_\_ days before the return date.

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Hon. Paul Innes, P.J.Ch.