

MEMORANDUM IN SUPPORT REAL PROPERTY LAW SECTION

RPLS #4

May 10, 2018

The Real Property Law Section Supports the proposed amendment of the Rule Relating to Appointments by the Court (22 NYCRR Part 36) to Increase the Income Cap for Appointees

The Real Property Law Section (the “RPLS”) **supports** the proposed amendment of rules relating to appointments by the Court (22 NYCRR Part 36), proffered by the Unified Court System’s Second Special Commission on Fiduciary Appointments, “to increase, from \$75,000 to \$100,000 or \$125,000, the amount that a person or entity may be awarded in aggregate Part 36 compensation in a calendar year while remaining eligible for additional compensated appointments in the following year.”

The RPLS furnishes its support in connection with the following appointments: (a) receivers (Section 36.1(a)(8)), (b) referees (Section 36.1(a)(9)), and (c) the following persons or entities performing services for receivers: (i) counsel; (ii) accountants; (iii) auctioneers; (iv) appraisers; (v) property managers; and (vi) real estate brokers (Section 36.1(a)(10)).

The RPLS does not comment on increases in compensation for the other Part 36 appointees identified in Section 36.1, though the RPLS does not have any objection thereto.

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We appreciate, and endorse, the historic justification for using annual compensation as a framework to curtail successive receiverships (and appointments of other referenced parties performing services for the receiver). The circumstance where a select few receivers are awarded receiverships without regard to their frequency or their ability to commit their resources to the particular distressed real estate asset should be avoided, or at least minimized. The rules set forth in Part 36 have worked well to accomplish this laudable objective.

However, as noted in the March 12, 2018 memorandum of John W. McConnell, the compensation limits set forth in Section 36(d)(2) were “last increased more than a decade ago.” The proposed increase here is warranted and appropriate.

It is crucial to protect, preserve and maintain distressed real estate assets in the throes of foreclosure (contested or otherwise) or any other litigation. Proper attention must be given to the collection of rent, the maintenance of essential services and the needs of the tenants. Dedicated, skilled, experienced and proactive receivers, and those persons or entities performing services for them (such as property managers), must be appointed to meet these goals. The proposed increase in the maximum annual compensation before the appointee becomes ineligible for compensated appointments in the next calendar year should advance that prospect.

The increase will neither impair the limitation on the number and frequency of an appointee's receiverships nor dilute the receiver's capacity to serve. In that this limitation will remain in place whether the annual compensation is increased to \$100,000 or \$125,000, the RPLS supports either increase.

Based on the foregoing the RPLS **SUPPORTS** this proposal.