



STATE OF NEW YORK  
**UNIFIED COURT SYSTEM**  
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**ANN PFAU**  
Chief Administrative Judge

**JOHN W. McCONNELL**  
Counsel

## MEMORANDUM

August 26, 2010

**TO:** County Clerks  
District Executives  
NYC Chief Clerks

**FROM:** John W. McConnell 

**SUBJECT:** New Filing Fees in Consumer Credit Transactions and Foreclosure Actions

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As you may be aware, the Governor recently signed legislation increasing various court fees, including (1) civil court fees in consumer credit transactions, and (2) the index number fee in RPAPL Article 13 foreclosure actions (L. 2010, c. 56, Part K; "Part K;" excerpt attached). These new fees, described in greater detail below, are effective on September 1, 2010.

\* \* \*

### I Civil Court Fees in Consumer Credit Transactions Under the Uniform Court Acts

Part K amends the Uniform District Court Act, the Uniform City Court Act, and the New York City Civil Court Act to impose an "additional" \$95.00 fee upon "filing the first paper in an action or proceeding arising out of a consumer credit transaction" as defined in CPLR 105(f). Part K (§§ 1-3). In such cases, the initial filing fee will total \$140.00.

The legislation also amends those court acts to require payment of a \$95.00 fee upon the filing of a judgment in a CPLR 105(f) consumer credit transaction action or proceeding commenced prior to September 1, 2010 (on which no "additional" filing fee has been paid).

II. Index Number Fee in RPAPL Article 13 Foreclosure Action

Part K (§5) further amends CPLR 8018 to entitle county clerks to collect an additional fee of \$190.00 for the assignment of an index number “in an action to foreclose pursuant to article 13 of the real property actions and proceedings law.” In such cases, the new fee will total \$380.00.

Questions have arisen as to whether clerks should collect this enhanced fee for the purchase of index numbers in actions or proceedings which, though not commenced as an action to foreclose a mortgage per se, routinely apply Article 13's procedures. See, e.g., Lien Law §43 (RPAPL provisions relating to actions for foreclosure of a mortgage upon real property apply to actions in a court of record to enforce mechanics liens); Real Property Law §339-aa (common charge lien foreclosed “in like manner as a mortgage of real property”). This is a matter that may ultimately be decided in litigation. However, in the absence of a clear legislative directive that such other proceedings or lienholders were the intended targets of the legislation, it is our view that the enhanced fee set forth in the CPLR should not be assessed in such cases.

\* \* \*

If you have any questions on these matters, or wish to share your views, please do not hesitate to contact Holly Nelson Lutz of this Office at (518) 474-7469.

Please distribute this memorandum further as you deem appropriate.

Attach.

cc: Hon. Fern A. Fisher  
Hon. Michael V. Cocco  
Administrative Judges  
Maria Logus  
David Sullivan

## CHAPTER TEXT:

## LAWS OF NEW YORK, 2010

## CHAPTER 56

AN ACT to amend the executive law, the vehicle and traffic law, the public health law, the social services law, the criminal procedure law, the family court act, the public officers law, the penal law, the correction law, the environmental conservation law, the parks, recreation and historic preservation law and the mental hygiene law, in relation to merging the crime victims board, the division of probation and correctional alternatives and the office for the prevention of domestic violence into the division of criminal justice services; and to repeal certain provisions of the executive law and the judiciary law relating thereto (Part A); to amend the executive law, the public officers law, the family court act, the social services law, the criminal procedure law, the state finance law, the public health law, the general municipal law, the penal law, the correction law, the surrogate's court procedure act, the court of claims act, the civil practice law and rules, the real property tax law and the administrative code of the city of New York, in relation to the office of victim services; and to repeal certain provisions of the executive law relating thereto (Part A-1); to amend the executive law, in relation to comprehensive emergency management planning and certain fire service related activities; to amend the state finance law, in relation to grants and reimbursements to municipalities for certain emergency management and fire service related costs; to amend the county law, in relation to the New York state interoperable and emergency communication board; to amend the tax law, in relation to grants for public safety communications systems and infrastructure; to amend the general business law, in relation to approval of electrical devices; to amend the general municipal law, in relation to state fire administration; to amend the insurance law, in relation to reports on fire insurance policies; to amend the vehicle and traffic law, in relation to vehicle operation by certain state officials; to amend the criminal procedure law, in relation to peace officers; and to repeal certain provisions of the executive law and the county law relating thereto (Part B); intentionally omitted (Part C); to amend the criminal procedure law and the penal law, in relation to terms of probation; to amend the penal law and the executive law, in relation to warrants and modification and extension thereof, waiver of extradition, conditions and probation, and reimbursement (Part D); to amend the executive law, the state finance law and the county law, in relation to the office of indigent legal services and the indigent legal services fund (Part E); intentionally omitted (Part F); intentionally omitted (Part G); intentionally omitted (Part H); intentionally omitted (Part I); intentionally omitted (Part J); to amend the uniform district court act, the uniform city court act, the New York city civil court act, the judiciary law and section 14 of part J of chapter 62 of the laws of 2003, amending the county law and other laws relating to fees collected, in relation to the fee for the filing of the first paper in an action or proceeding; and to amend the civil practice law and rules, in relation to the index fee for an action to foreclose (Part K); to amend the uniform justice court act, in relation to improving

EXPLANATION--Matter in *italics* is new; matter in brackets [-] is old law to be omitted.

## PART K

Section 1. Paragraph 2 of subdivision (a) of section 1911 of the uniform district court act, as amended by section 33 of part J of chapter 62 of the laws of 2003, is amended and two new paragraphs 2-a and 10 are added to read as follows:

(2) Upon filing the first paper in an action or proceeding, including a special proceeding for the settlement of a claim of an infant or incompetent, forty-five dollars, unless there has been paid a fee of forty-five dollars for the issuance of a summons, order of arrest or attachment, requisition or warrant of seizure, or a notice of petition or order to show cause in lieu thereof in a summary proceeding, as provided for by ~~[subparagraph (1) hereof]~~ paragraph one of this subdivision.

(2-a) Upon filing the first paper in an action or proceeding arising out of a consumer credit transaction as defined in subdivision (f) of section one hundred five of the civil practice law and rules, an additional ninety-five dollars.

(10) Upon the filing of a judgment by a plaintiff on or after September first, two thousand ten in an action or proceeding arising out of a consumer credit transaction as defined in subdivision (f) of section one hundred five of the civil practice law and rules, ninety-five dollars; provided such action or proceeding was commenced prior to such date and no additional fee was paid therein pursuant to paragraph two-a of this subdivision.

§ 2. Paragraph 1 of subdivision (a) of section 1911 of the uniform city court act, as amended by section 5 of part B of chapter 686 of the

laws of 2003, is amended and two new paragraphs 1-a and 12 are added to read as follows:

(1) Upon the filing of the first paper in any action or proceeding, forty-five dollars, unless there has already been paid a fee of forty-five dollars as provided for by paragraph ~~[(11) hereof]~~ eleven of this subdivision.

(1-a) Upon filing the first paper in an action or proceeding arising out of a consumer credit transaction as defined in subdivision (f) of section one hundred five of the civil practice law and rules, an addition ninety-five dollars.

(12) Upon the filing of a judgment by a plaintiff on or after September first, two thousand ten in an action or proceeding arising out of a consumer credit transaction as defined in subdivision (f) of section one hundred five of the civil practice law and rules, ninety-five dollars, provided such action or proceeding was commenced prior to such date and no additional fee was paid therein pursuant to paragraph (one-a) of this subdivision.

§ 3. Subdivision (b) of section 1911 of the New York city civil court act, as amended by section 36 of part J of chapter 62 of the laws of 2003, is amended and two new subdivisions (b-1) and (n) are added to read as follows:

(b) Upon filing summons with proof of service thereof, or upon filing of the first paper in that county in any action or proceeding, forty-five dollars, unless there has been paid in that county a fee of forty-five dollars pursuant to subdivision (a) ~~[hereof]~~ of this section.

(b-1) Upon filing the first paper in an action or proceeding arising out of a consumer credit transaction as defined in subdivision (f) of section one hundred five of the civil practice law and rules, an additional ninety-five dollars.

(n) Upon the filing of a judgment by a plaintiff on or after September first, two thousand ten in an action or proceeding arising out of a consumer credit transaction as defined in subdivision (f) of section one hundred five of the civil practice law and rules, ninety-five dollars, provided such action or proceeding was commenced prior to such date and no additional fee was paid therein pursuant to subdivision (b-1) of this section.

§ 4. Paragraph (e) of subdivision 2 of section 39 of the judiciary law, as amended by section 22 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

(e) All fees collected pursuant to sections eighteen hundred three, eighteen hundred three-A and nineteen hundred eleven of the New York city civil court act, all fees collected pursuant to state law by the county clerks in the city of New York, except as otherwise provided herein with respect to fees collected pursuant to subdivision (a) of section eight thousand eighteen of the civil practice law and rules and except those fees collected by the clerk of Richmond county which in the other counties of the city of New York are collected by the city registers, all fees collected pursuant to section eight thousand eighteen of the civil practice law and rules except only to the extent of one hundred sixty-five dollars of any fee collected pursuant to subparagraph (i) of paragraph one of subdivision (a) of such section and except for those collected pursuant to subparagraph (ii) of paragraph one of paragraph three of such subdivision (a), all fees collected pursuant to section eight thousand twenty of the civil practice law and rules except for those collected pursuant to subdivisions (f), (g) and (h) of said section, all fees collected pursuant to section eight thousand twenty-

CHAP. 56

120

two of the civil practice law and rules, all fees collected pursuant to section twenty-four hundred two of the surrogate's court procedure act, all fees collected pursuant to section eighteen hundred three, eighteen hundred three-A and subdivision (a) of section nineteen hundred eleven of the uniform district court act, all fees collected pursuant to section eighteen hundred three, eighteen hundred three-A and subdivision (a) of section nineteen hundred eleven of the uniform city court act and all fines, penalties and forfeitures collected pursuant to subdivision eight of section eighteen hundred three of the vehicle and traffic law, except such fines, penalties and forfeitures collected by the Nassau county traffic and parking violations agency, section 71-0211 of the environmental conservation law, section two hundred one of the navigation law and subdivision one of section 27.13 of the parks, recreation and historic preservation law shall be paid to the state commissioner of taxation and finance on a monthly basis no later than ten days after the last day of each month. The additional fee of five dollars collected by county clerks in New York city pursuant to paragraph three of subdivision (a) of section eight thousand eighteen of the civil practice law and rules shall be distributed monthly by the county clerks as follows: four dollars and seventy-five cents to the commissioner of education for deposit into the local government records management improvement funds; and twenty-five cents to the city of New York.

§ 5. Paragraph 1 of subdivision (a) of section 8018 of the civil practice law and rules, as amended by section 23 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

1. A county clerk is entitled, for the assignment of an index number to an action pending in a court of which he or she is clerk, to a fee of: (i) one hundred ninety dollars [~~payable in advance~~]; and (ii) in an action to foreclose pursuant to article thirteen of the real property actions and proceedings law, such clerk is entitled to collect an additional fee of one hundred ninety dollars. Such fees are payable in advance.

§ 6. Subdivision 1 of section 465 of the judiciary law, as amended by chapter 166 of the laws of 1991, is amended to read as follows:

1. Every person applying for examination for admission to practice as an attorney and ~~[counselor]~~ counselor at law shall pay a fee of two hundred fifty dollars, or seven hundred fifty dollars if, to qualify to take the bar examination, the person must satisfy the rules of the court of appeals for the admission of attorneys and counselors at law governing the study of law in a foreign country, for each taking or retaking of the examination, or if dispensation has been received from the taking of the examination, four hundred dollars for credential review for admission on motion. All such fees shall be paid into the state treasury in the manner provided by section one hundred twenty-one of the state finance law.

§ 7. Section 14 of part J of chapter 62 of the laws of 2003 amending the county law and other laws relating to fees collected, as amended by section 1 of part CC of chapter 56 of the laws of 2008, is amended to read as follows:

§ 14. Notwithstanding the provisions of any other law: (a) the fee collected by the office of court administration for the provision of criminal history searches and other searches for data kept electronically by the unified court system shall be ~~[fifty-five]~~ sixty-five dollars; (b) ~~[twenty-seven]~~ thirty-five dollars of each such fee collected shall be deposited in the indigent legal services fund established by section 98-b of the state finance law, as added by section

twelve of this act, (c) nine dollars of each such fee collected shall be deposited in the legal services assistance fund established by section 98-c of the state finance law, as added by section nineteen of this act, (d) sixteen dollars of each such fee collected shall be deposited to the judiciary data processing offset fund established by section 94-b of the state finance law, and (e) the remainder shall be deposited in the general fund.

§ 8. Notwithstanding any other provision of law, the monies collected from the imposition of fees charged pursuant to paragraphs (2-a) and (10) of subdivision (a) of section 1911 of the uniform district court act, paragraphs (1-a) and (12) of subdivision (a) of section 1911 of the uniform city court act, and subdivisions (b-1) and (n) of the New York city civil court act shall be deposited to the credit of the general fund.

§ 9. Subdivision 4 of section 468-a of the judiciary law, as amended by section 17 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

4. The biennial registration fee shall be three hundred [~~fifty~~] seven-ty-five dollars, sixty dollars of which shall be allocated to and be deposited in a fund established pursuant to the provisions of section ninety-seven-t of the state finance law, fifty dollars of which shall be allocated to and shall be deposited in a fund established pursuant to the provisions of section ninety-eight-b of the state finance law, twen-ty-five dollars of which shall be allocated to be deposited in a fund established pursuant to the provisions of section ninety-eight-c of the state finance law, and the remainder of which shall be deposited in the attorney licensing fund. Such fee shall be required of every attorney who is admitted and licensed to practice law in this state, whether or not the attorney is engaged in the practice of law in this state or elsewhere, except attorneys who certify to the chief administrator of the courts that they have retired from the practice of law.

§ 10. This act shall take effect July 1, 2010; provided that sections one, two, three, four, five, eight and nine of this act shall take effect September 1, 2010.

PART L