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VIEWPOINT

Serving Notice to the Process Serving Field



BY MATT MASSA

Some of the most distressing mortgage foreclosure headlines have involved allegations of fraud, unethical practices and possible criminal acts aimed at loan servicers, law firms and process serving companies nationwide. Alleged abuses range from widespread “robo-signing” to backdating, forgery and other odious practices.

The implications for the banking industry are significant. Multiple state attorneys general have launched investigations into practices and numerous banks voluntarily stopped foreclosure proceedings for a time to review their internal processes and those used by the law firms they hire.

Institutions found to be culpable could face litigation, damage to their reputations and other unwanted effects, including further negative fallout for the mortgage-

backed securities market and beyond.

Also looming are significant financial penalties and new regulations that would exacerbate the problems.

There is no doubt that some process servers have strayed in carrying out their jobs. Certain behaviors that have been exposed are inexcusable, and unacceptable to all of us who care about this industry.

Equally abhorrent are process serving management companies, which often claim that because these errant process servers are subcontractors the company has no responsibility for what they do, nor any power to influence what the server does — thus trying to wash their hands of the whole matter.

Regardless of employee or contractor status, process server quality and integrity of performance can and should be achieved through diligent screening programs, consistent communication, standard operating expectations, quality-control measures and compensation linked to individual score-card results.

Just as many financial institutions have immersed themselves in self-policing to identify and resolve deficiencies, so must process serving companies take action to help restore and maintain the integrity of our industry.

In general, this will require a renewed commitment to ethical perseverance and procedural efficiency.

Here are three ways to accomplish this:

- Engage only people of demonstrated character and integrity. Process servers must hold their personal integrity, as well as the integrity of their trade, in the highest regard.

It may sound abstract, but a company can institutionalize an ethical foundation for every server that touches a file.

Character-based selection involves, among other practices, asking prospective servers and their references about dependability, honesty, thoroughness, discretion, creativity, flexibility and attentiveness, as well as keying in on their track record for success, performance and loyalty. It also means seeking to verify these items to the extent possible through appropriate criminal or other background checks.

- Put more emphasis on demonstrated professional knowledge, experience and training. Contrary to the business model of companies that accept no responsibility for their process servers, the best companies in our industry will establish unambiguously what kinds of standards are expected from their servers.

This sounds very basic, but it is a surprisingly uncommon practice.

A company should ensure that prospective servers bring to the job a solid foundation of professional knowledge and experience — including an understanding of process serving laws, use of technology, codes of civil procedure, court-specific interpretations and requirements, shared best practices and standard operating procedures, as well as client-specific expectations.

To help institutionalize these standards, Firefly Legal is lobbying local and national industry groups to develop and adopt an industrywide certification/approval program for independent, professional process servers.

The goal must be unequivocal excellence

and efficiency, without competitive bias. The more servers know, and the more standardized the expectations of what they need to know, the less they will be inclined to cut corners, because they will be invested in their work — and our industry will then begin to move toward a more consistent and modern environment.

- Implement integrated, industry-standard quality control. Process serving demands much more than just making sure that signatures are legitimate and no laws are being broken.

There is a lot of freedom out on the streets for today's process servers, and with that comes the potential for cutting corners, "dumping papers" and other unacceptable

actions. Yet the technology is already available to help prevent these types of infractions, and companies just need to take advantage of it.

For example, we use a combination of tools like GPS, systematic flagging of multiple jobs at different addresses, suspicious time-stamping protocols and time tracking against distance projections.

Such tools don't necessarily control what the server does, but they help to ensure that what he or she does in the field is consistent with all requisite legal, client and ethical requirements.

Although process servers take an oath to perform their jobs with integrity, human beings are fallible.

Our industry can virtually eliminate the types of abuses that recently put process servers in the spotlight by institutionalizing processes to engage the "right" people; ensuring they possess the right knowledge, training and experience; clearly communicating to them ethical and legal expectations; and maintaining strict quality measures. To a large degree, the way forward starts with common-sense business management practices and principles, and those companies that insist on business as usual will rightfully be left behind.

Matt Massa is the national operations director of Firefly Legal, a legal services company that specializes in process serving, traces and searches, face-to-face services and court filing.



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