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DFS Releases Exemption Form under New York State's "Zombie Properties" Law

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The New York State Department of Financial Services ("DFS") has released the Vacant and Abandoned Property Exemption Form ("Exemption Form"), allowing qualifying financial institutions to claim an exemption from the new inspection and maintenance requirements found in Real Property and Proceedings Law ("RPAPL") Section 1308.

In order to establish an exemption under RPAPL Section 1308, an institution must submit the Exemption Form to the superintendent by February 28, 2017, for the 2017 calendar year only. For the 2018 calendar year and each calendar year thereafter, the Exemption Form must be submitted by December 31 of the year preceding the calendar year in which the exemption is being sought. In addition to the Exemption Form, DFS has provided accompanying instructions and an example. Our past advisory discussing the exemption and its calculation may be found here.

RPAPL Section 1308 requires certain mortgagees and servicers of first-lien mortgages authorized to accept payment of the loan to take specified actions to determine if a one-to-four family residential real property unit is vacant and abandoned, and to secure and maintain such a property if it is determined to be vacant and abandoned. The law, commonly referred to as the "Zombie Properties" law, took effect on December 20, 2016.

The DFS issued regulations to accompany the new law concerning vacant and abandoned property reporting requirements ("DFS Regulations"), which also took effect on December 20, 2016. Our recent advisory outlining the final version of the DFS Regulations, which addressed certain concerns raised by the industry to the proposed regulations, is available here. In addition, our advisory generally explaining the application of the initial version of the proposed DFS Regulations is available here.

Section 422.3 of the DFS Regulations applies to state and federally-chartered banks and credit unions that engage in mortgage origination and mortgage ownership during a calendar year. The DFS Regulations provide that such institutions may be eligible for either a "complete" or a "partial" exemption from the requirements of the new inspection and maintenance provisions of RPAPL Section 1308. For purposes of 2017 compliance, a complete exemption will apply to an institution if it had less than three-tenths of one percent [0.3%] of the total loans in the state during 2015, the calendar year ending two years prior to the current calendar. If the institution qualifies for the complete exemption for 2017, the inspection and maintenance obligations imposed by RPAPL Section 1308 will not apply during 2017. A partial exemption will apply to an institution for 2017 if it had between three-tenths

of one percent [0.3%] and five-tenths of one percent [0.5%] of the total loans in the state during 2015. If an institution qualifies for the partial exemption for 2017, the inspection and maintenance obligations imposed by RPAPL Section 1308 will apply to mortgages that became delinquent on or after December 20, 2016, only.

Please use the links to the full advisories above for additional details about the requirements under RPAPL Section 1308 and the DFS Regulations.

If you have any questions regarding the exemption, the "Zombie Properties" legislation, or the DFS Regulations, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com or Elizabeth Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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