
Legislature Treats Attorneys Unfairly

An article on April 20 "Foreclosure Bill Set to Pass Legislature," discussed impending legislation that would bar attorneys from compelling the sale of a client's home based upon an unpaid fee. While I understand that certain unscrupulous or heartless attorneys might compel an elderly client from a modest home, the majority of us toil for our fees under highly charged conditions with the hope of getting paid, not ousting senior citizens. As a counter to that legislation, indeed, if it can be demonstrated that the equity in the legislatively guarded home is substantial and the client is not a public charge, an attorney should continue to have the same access to enforcement vehicles available to the public at large; unless, of course, attorneys are further singled out as recipients of government subsidies to pay the mortgages on their own homes.

For the record, clients often steer cases into costly avenues of litigation, despite a divorce attorney's best efforts to de-escalate the conflict. With that scenario in mind, when the marital estate is comprised of only a \$600,000 house, why should our fees be deferred to death or a voluntary sale? Is it because we should know better than to generate such fees? That perception assumes a lot. Moreover, when we seek to withdraw as counsel based upon a client's refusal to take a less litigious path, our applications are often denied, and we are judicially struck in the case until it ends. I wonder if the Legislature ever reflected on the paradox of forcing us to service clients who refuse to follow our recommendations for free. Is this what they mean by "pro bono?"

As most practitioners are aware, the Bankruptcy Code affords a debtor a homestead exemption of only \$10,000. By virtue of the new law, a debtor's exempt property under New York State Law could be as high as \$1 million, but only when the debt is owed to an attorney. The question that must be answered is whether someone in the Legislature will ever stand up for our unfairly treated profession.

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