

**NEW YORK COURT OF APPEALS RULES POSSESSION OF
NOTE, RATHER THAN MORTGAGE, CONVEYS STANDING TO
COMMENCE FORECLOSURE ACTION**

On June 11, the New York Court of Appeals [held](#) that **a loan servicer who holds the note has standing to commence a mortgage foreclosure action against a borrower even if the servicer cannot show that it also holds the mortgage.** See *Aurora Loan Servs., LLC v. Taylor*, 2015 NY Slip Op 04872 (Jun. 11, 2015). **The court reasoned that the servicer did not need to show possession of the mortgage because “the note, and not the mortgage, is the dispositive instrument that conveys standing to foreclose under New York law.”** In *Aurora*, the defendant borrowers had executed an adjustable rate note and a mortgage in 2006. The mortgage designated Mortgage Electronic Recording Systems, Inc. (“MERS”) as nominee, but the note was not transferred to MERS with the mortgage. After the borrowers defaulted, the servicer took possession of the note and filed for foreclosure against the borrowers. In reaching its decision, the court disregarded borrowers’ argument that the involvement of MERS somehow impacted the servicer’s standing to foreclose.