

Certificate of Merit

in Residential Foreclosure Actions

filed on or after August 30, 2013

Pursuant to L. 2013, c. 306, effective August 30, 2013, plaintiffs commencing residential foreclosure actions are required to serve and file a certificate of merit, together with copies of relevant financial documents, with the summons and complaint. In response to requests from the bar, the Office of Court Administration has drafted a model form for this purpose. Practitioners may, of course, employ their own form of certificate to comply with the statute; use of the OCA model form is not mandatory.

Certificate of Merit Form

AO/208/13 (Administrative Order)

CPLR § 3012-b

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

Index No.:

Plaintiff(s),

CERTIFICATE OF MERIT
PURSUANT TO CPLR 3012-b

v.

Mortgaged Premise Address:

Defendant(s).

1. I am an attorney at law duly licensed to practice in the State of New York, and am affiliated with the law firm of _____, attorney for plaintiff _____ in this action.

2. This residential foreclosure action involves a home loan, as such term is defined in Real Property Actions and Proceedings Law §1304. Upon information and belief, defendant _____ is a resident of the property subject to foreclosure.

3. I have reviewed the facts of this case and reviewed pertinent documents, including the mortgage, security agreement and note or bond underlying the mortgage executed by defendant, all instruments of assignment (if any), and all other instruments of indebtedness including any modification, extension, and consolidation.

4. I have consulted about the facts of this case with the following representatives of plaintiff:

Name	Title
_____	_____
_____	_____
_____	_____
_____	_____

5. Upon this review and consultation, to the best of my knowledge, information, and belief, I certify that there is a reasonable basis for the commencement of this action, and that plaintiff is the creditor entitled to enforce rights under these documents.

6. Listed in Exhibit A and attached hereto are copies of the following documents not otherwise included as attachments to the summons and complaint: the mortgage, security agreement and note or bond underlying the mortgage executed by the defendant; all instruments of assignment (if any); and any other instrument of indebtedness, including any modification, extension, and consolidation. (Check box if no documents are attached in Exhibit A:)

7. Listed in Exhibit B and attached hereto are supplemental affidavits attesting that certain documents as described in paragraph 5 supra are lost, whether by destruction, theft, or otherwise. (Check box if no documents are attached in Exhibit B:)

8. I am aware of my obligations under New York Rules of Professional Conduct (22 NYCRR Part 1200) and 22 NYCRR Part 130.

Dated:

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and notwithstanding any provision in AO/431/11 to the contrary, I hereby order that, effective immediately,

- the provisions of AO/431/11 shall not apply to residential mortgage foreclosure actions commenced on or after August 30, 2013; and

- in residential mortgage foreclosure actions commenced prior to August 30, 2013, where no affirmation has been filed pursuant to AO/431/11, plaintiff's counsel may either (1) comply with AO/431/11, or (2) file with the court at the time of the filing of the Request for Judicial Intervention a certificate of merit whose contents are described in section 3012-b(a) of the Civil Practice Law and Rules.



Chief Administrative Judge of the Courts

Dated: August 1, 2013

AO/208/13

STATE OF NEW YORK

5582--A

Cal. No. 109

2013-2014 Regular Sessions

IN ASSEMBLY

March 4, 2013

Introduced by M. of A. WEINSTEIN, ROBINSON, COLTON, PERRY, O'DONNELL, STEVENSON, BARRETT, STECK, CRESPO, McDONALD, FAHY -- Multi-Sponsored by -- M. of A. CLARK, GALEF, GOTTFRIED, JAFFEE, LENTOL, MARKEY, PEOPLES-STOKES, SCHIMEL, WRIGHT -- (at request of the Office of Court Administration) -- (at request of the Department of Law) -- read once and referred to the Committee on Judiciary -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the civil practice law and rules, in relation to residential foreclosure actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The civil practice law and rules is amended by adding a new
2 section 3012-b to read as follows:

3 § 3012-b. Certificate of merit in certain residential foreclosure
4 actions. (a) In any residential foreclosure action involving a home
5 loan, as such term is defined in section thirteen hundred four of the
6 real property actions and proceedings law, in which the defendant is a
7 resident of the property which is subject to foreclosure, the complaint
8 shall be accompanied by a certificate, signed by the attorney for the
9 plaintiff, certifying that the attorney has reviewed the facts of the
10 case and that, based on consultation with representatives of the plain-
11 tiff identified in the certificate and the attorney's review of perti-
12 nent documents, including the mortgage, security agreement and note or
13 bond underlying the mortgage executed by defendant and all instruments
14 of assignment, if any, and any other instrument of indebtedness includ-
15 ing any modification, extension, and consolidation, to the best of such
16 attorney's knowledge, information and belief there is a reasonable basis
17 for the commencement of such action and that the plaintiff is currently
18 the creditor entitled to enforce rights under such documents. If not

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

LBD08975-11-3

A. 5582--A

2

1 attached to the summons and complaint in the action, a copy of the mort-
2 gage, security agreement and note or bond underlying the mortgage
3 executed by defendant and all instruments of assignment, if any, and any
4 other instrument of indebtedness including any modification, extension,
5 and consolidation shall be attached to the certificate.

6 (b) Where a certificate is required pursuant to this section, a single
7 certificate shall be filed for each action even if more than one defend-
8 ant has been named in the complaint or is subsequently named.

9 (c) Where the documents required under subdivision (a) are not
10 attached to the summons and complaint or to the certificate, the attor-
11 ney for the plaintiff shall attach to the certificate supplemental affi-
12 davits by such attorney or representative of plaintiff attesting that
13 such documents are lost whether by destruction, theft or otherwise.
14 Nothing herein shall replace or abrogate plaintiff's obligations as set
15 forth in the New York uniform commercial code.

16 (d) The provisions of subdivision (d) of rule 3015 of this article
17 shall not be applicable to a defendant who is not represented by an
18 attorney.

19 (e) If a plaintiff willfully fails to provide copies of the papers and
20 documents as required by subdivision (a) of this section and the court
21 finds, upon the motion of any party or on its own motion on notice to
22 the parties, that such papers and documents ought to have been provided,
23 the court may dismiss the complaint or make such final or conditional
24 order with regard to such failure as is just including but not limited
25 to denial of the accrual of any interest, costs, attorneys' fees and
26 other fees, relating to the underlying mortgage debt. Any such dismissal
27 shall be without prejudice and shall not be on the merits.

28 § 2. Subdivision (a) of rule 3408 of the civil practice law and rules,
29 as amended by chapter 507 of the laws of 2009, is amended to read as
30 follows:

31 (a) In any residential foreclosure action involving a home loan as
32 such term is defined in section thirteen hundred four of the real prop-
33 erty actions and proceedings law, in which the defendant is a resident
34 of the property subject to foreclosure, plaintiff shall file proof of
35 service within twenty days of such service, however service is made, and
36 the court shall hold a mandatory conference within sixty days after the
37 date when proof of service upon such defendant is filed with the county
38 clerk, or on such adjourned date as has been agreed to by the parties,
39 for the purpose of holding settlement discussions pertaining to the
40 relative rights and obligations of the parties under the mortgage loan
41 documents, including, but not limited to determining whether the parties
42 can reach a mutually agreeable resolution to help the defendant avoid
43 losing his or her home, and evaluating the potential for a resolution in
44 which payment schedules or amounts may be modified or other workout
45 options may be agreed to, and for whatever other purposes the court
46 deems appropriate.

47 § 3. This act shall take effect on the thirtieth day after it shall
48 have become a law and shall apply to actions commenced on or after such
49 effective date; provided, however that the amendments to subdivision (a)
50 of rule 3408 of the civil practice law and rules made by section two of
51 this act shall not affect the expiration of such subdivision and shall
52 be deemed to expire therewith.