

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO.:

**NOTICE OF MOTION TO
CONFIRM REFEREE REPORT
AND FOR A JUDGMENT OF
FORECLOSURE AND SALE**

v.

Defendant(s).

MORTGAGED PROPERTY:

COUNTY:

SBL #:

-----X

PLEASE TAKE NOTICE that, upon the affirmation of [*Attorney Name*] dated [*Date*], the affidavit of [*Name of Bank Representative*], sworn to [*Date*], the exhibits attached thereto, and all prior proceedings in this case, Plaintiff [*Name of Plaintiff*] will move this court at [*Insert Date and Time*] before [*Insert Appropriate Part of Court*], at the Supreme Court, [*Insert County Name*] County, [*Insert Court Address*], or as soon thereafter as the parties may be heard, for an order:

1. Confirming the Referee’s Report made in accordance with RPAPL §1321;
2. Granting a Judgment of Foreclosure and Sale pursuant to RPAPL §1351;
3. Directing the distribution of the sale proceeds pursuant to RPAPL §1354, and
4. Such additional relief as this court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers and notice of cross-motion, with supporting papers, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion.

DATED:

[*County*], New York

[*Attorney Name*]
[*Law Firm*]
Attorneys for Plaintiff [*Name of Plaintiff*]
[*Address*]
[*Telephone*]

TO: [*All Defendants must be noticed and their addresses listed here*]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO.:

**ATTORNEY AFFIRMATION IN
SUPPORT OF PLAINTIFF'S
MOTION TO CONFIRM
REFEREE REPORT AND FOR A
JUDGMENT OF FORECLOSURE
AND SALE**

v.

Defendant(s).

MORTGAGED PROPERTY:
COUNTY:
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[Attorney's Name], pursuant to CPLR 2106 and under penalties of perjury, hereby affirms
as follows:

1. I am an attorney at law and a[n] [Partner, Of Counsel, Associate] of [Name of Law Firm], the attorneys of record for Plaintiff [Name of Plaintiff]. I am fully familiar with the facts, court papers, and proceedings of this action based upon a review of the file maintained by my office.

2. This is a foreclosure action. The Plaintiff is moving the court to confirm the Referee's Report made in accordance with RPAPL §1321 and for a Judgment of Foreclosure and Sale pursuant to RPAPL §1351 that directs the distribution of the proceeds of sale in accordance with RPAPL §1354.

3. True and accurate copies of the following documents are attached hereto:

<u>Document</u>	<u>Tab</u>
Affirmation pursuant to Admin Order 431/11 or Certificate of Merit	Exhibit A
Note	Exhibit B
Mortgage	Exhibit C
Assignments	Exhibit D
Notice of Default	Exhibit E

RPAPL §1304 90-Day Notice	Exhibit F
Department of Defense Search results	Exhibit G
Summons and Complaint	Exhibit H
Notice of Pendency	Exhibit I
Affidavits of Service	Exhibit J
Affidavit of Service by Mail pursuant to CPLR 3215(g)(3)(iii)	Exhibit K
Affidavit of Merit and Amount Due	Exhibit L
Affirmation of Regularity	Exhibit M
Order of Reference	Exhibit N
Notice of Entry of Order of Reference	Exhibit O
Referee's Oath and Report of Amount Due	Exhibit P
Attorney Fee Affirmation	Exhibit Q
[<i>Power of Attorney with Pooling and Servicing Agreement</i>]	Exhibit R
[<i>Secretary's Certification</i>]	Exhibit S
[<i>Include any additional exhibits here</i>]	Exhibit T

Legalback No. 2 - filed contemporaneously with this application
Costs and Disbursements of Plaintiff with Supporting Invoices

Legalback No. 3 - filed contemporaneously with this application
Proposed Judgment of Foreclosure and Sale

PROCEDURAL HISTORY

4. This residential mortgage foreclosure action was commenced by filing the summons and complaint in the [*County Name*] County Clerk's Office on [*Date*], the County where the mortgaged property is located. The action was brought to foreclose a residential mortgage executed by [*List Mortgagors. Explain Mortgage and Note/CEMA as applicable*].

5. On [*Date*], Plaintiff filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65, a copy of which is attached hereto as exhibit _____. [*Add if notice of pendency expired: On [Date], Plaintiff re-filed the notice of pendency in accordance with RPAPL §1331 and CPLR Article 65.*]

6. The summons, complaint, and notice of pendency are in the form prescribed by statute and contain all of the particulars required by law. The summons complies with the requirements of RPAPL §1320, contains the required notice in boldface type and is in the format

required by statute.

7. On [*Date Action Filed*], Plaintiff was [*Specify Holder, Assignee, Transferee*] of

8. the subject note. See Affidavit of [*Insert Name of Affiant*], attached hereto as exhibit __. The [certificate of merit pursuant to CPLR 3012-b] OR [attorney affirmation

required pursuant to Administrative Order 4311/11] was filed with supporting documents and is attached hereto as exhibit _____.

9. According to the affidavit of service filed in the [*County Name*] County Clerk's Office, the summons was served with the complaint. Defendant(s) were served with the notice required by RPAPL §1303 printed on colored paper together with the summons and complaint printed on white paper. The RPAPL §1303 notice complies with the requirements of that statute, with the title in bold, 20-point type and the text in bold, 14-point type. The RPAPL §1303 notice was delivered to the mortgagors on its own separate page, together with the summons and complaint. Defendant(s) were timely served with the 90-Day Pre-Foreclosure notice required by RPAPL § 1304. Plaintiff filed the name, address and telephone number of the Defendant(s), the amount claimed to be due, and the type of loan at issue with the superintendent of banks within three business days of the mailing of the 90-day Pre-Foreclosure notice as required by RPAPL 1306. Copies of these notices and affidavits of service are attached hereto as exhibits ____ .

10. Plaintiff served defendants with copies of the summons in compliance with CPLR 3215(g)(3). The affidavit of service by mail pursuant to CPLR §3215(g)(3) is attached hereto as exhibit _____. Plaintiff served defendants with an additional copy of the summons in compliance with CPLR 3215(g)(3)(iii). Copies of the affidavits of service and mailing are attached hereto as exhibits _____.

11. No defendant is an infant. No defendant is in the armed services of the United States of America. Upon information and belief, no defendant is incompetent. The following defendants were served out of state: [insert names]. [Add facts and relief requested if any defendant is an infant, in the armed services, or incompetent, as applicable].

12. [Add if no answer was filed: Per this Court's Order of Reference, defendant(s) _____ were deemed to be in default.]

13. [If Applicable] Pursuant to CPLR 3408 the court held a mandatory settlement conference in this action. [Choose a or b]:

- a. A settlement was not reached and the case was released from the settlement conference part on [date].
- b. Plaintiff attended a settlement conference on [date] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part.

14. [If Applicable] The defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure. See Affidavit of [Insert Name of Affiant], attached hereto as exhibit __.

15. On [Date], the Plaintiff moved for an Order of Reference. Plaintiff's motion was granted by the Court by order dated [Date]. A copy of the Order of Reference is attached hereto.

16. [If applicable: Plaintiff mailed Notice of Entry of the Order of Reference to defendant(s) or their attorney(s) on [Date] and filed the Notice of Entry with the [County Name] County Clerk on [Date]. A copy of the Notice of Entry is attached hereto as exhibit __.]

17. This court appointed [Name of Referee] as Referee to compute the amount due the Plaintiff and to examine and report whether the mortgaged property can be sold in parcels.

18. On [*Date*], the Referee executed an Oath and Report of Amount Due which computed the amount due the Plaintiff to be \$ _____ as of [*Date*], and determined that the property should be sold as one parcel. The Referee's Oath and Report are attached hereto as exhibit P. Plaintiff is entitled to interest at the note rate until the Judgment of Foreclosure and Sale is entered and at the statutory default rate thereafter.

19. No previous motion for a Judgment of Foreclosure and Sale has been made. [*-OR- Explain any prior applications or motions and the resulting outcome, and attach any prior orders as exhibits.*]

PLAINTIFF IS ENTITLED TO A JUDGMENT OF FORECLOSURE AND SALE.

20. In conjunction with the motion for an Order of Reference previously granted by this Court, Plaintiff established all the required elements for a foreclosure. Plaintiff now requests that the property be sold pursuant to RPAPL §1351 and that the sale proceeds be distributed in accordance with RPAPL §1354.

21. RPAPL §1354(2) requires the Referee conducting the sale to pay out of the proceeds all taxes, assessments, and water rates that are liens upon the property and to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute. At the time of sale, transfer tax is not a lien upon the property nor is it an expense of sale, as that term is used in RPAPL §1354(1). Rather, transfer tax is an expense of recording the deed. All expenses of recording the Referee's Deed, including real property transfer tax should be paid by the purchaser at the closing and not by the Referee from sale proceeds.

22. Plaintiff is entitled to a Judgment that includes reimbursement for Plaintiff's attorney fees for this action in accordance with the terms of the note and mortgage. A detailed affirmation regarding attorney fees is attached hereto as exhibit _____.

23. Plaintiff is also entitled to a Judgment that include reimbursement for Plaintiff's costs, allowances, and disbursements in this matter in accordance with the terms of the note and mortgage and CPLR Article 83. A detailed statement of Plaintiff's costs and disbursements with the supporting invoices was filed contemporaneously with this motion.

24. [Set forth any additional relevant information here.]

25. A proposed Judgment of Foreclosure and Sale has been provided to the Court together with this motion.

WHEREFORE, Plaintiff requests an order from this Court:

- A. Confirming the Referee's Report;
- B. Granting a Judgment of Foreclosure and Sale which appoints a Referee to sell the property;
- C. Directing the distribution of the sale proceeds;
- D. [Include Request for Additional Relief, if Applicable];
- E. Such additional relief as this court may deem just and proper.

Dated: _____
[County], New York

[Attorney's name]

[Attorney's Name], Esq., an attorney at law licensed to practice in the State of New York, and the attorney for Plaintiff in this action hereby certifies that, to the best of his/her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this pleading, affidavit (or motion if applicable), and the contentions contained

herein are not frivolous as defined by 22 NYCRR 130-1.1(c).

[Attorney's name]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

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Plaintiff(s),

v.

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COSTS OF PLAINTIFF

INDEX NO.:

MORTGAGED PROPERTY:

COUNTY:

SBL #:

COSTS

Costs before Note of Issue - CPLR 8201(1)	\$200.00
Allowance by statute - CPLR 8302(a)(b)	\$ _____
First \$200.00 at 10%	\$20.00
Next \$800.00 at 5%	\$40.00
Next \$2000.00 at 2%	\$40.00
Next \$5000.00 at 1%	\$50.00
	\$150.00
Additional allowance - CPLR 8302(d)	\$50.00
Discretionary costs on motion - CPLR 8303(a)(1)	\$ _____

FEES AND DISBURSEMENTS

Fee for index number -	CPLR 8018(a)	\$ _____
Referee's fee to compute, per order of the court - ...	CPLR 8003(a)	\$ _____
Paid for searches -	CPLR 8301(a)(10)	\$ _____
Serving copy of Summons and Complaint -	CPLR 8301(d)	\$ _____

Reproduction costs -	CPLR 8301(a)(6)	\$ _____
Fees for publication of Summons -	CPLR 8301(a)(3)	\$ _____
Certified copies of papers -	CPLR 8301(a)(4)	\$ _____
Request for judicial intervention -	CPLR 8020(a)	\$ _____
Clerk's fee for filing of Notice of Pendency -	CPLR 8021(a)(10)	\$ _____
Skip trace fees -	CPLR 8301(d)	\$ _____
Motion fees -	CPLR 8020(a)	\$ _____
Note of Issue -	CPLR 8020(a)	\$ _____
Total		\$ _____

ATTORNEY'S AFFIRMATION

The undersigned, _____, Esq., pursuant to CPLR 2106 and under penalties of perjury affirms as follows:

That he/she is the attorney of record for the Plaintiff in the above-captioned action, that the foregoing disbursements have been incurred in this action and are reasonable in amount, and that the copies of documents or papers charged for herein were actually and necessarily obtained.

DATED: _____
 [County], New York

 [Attorney's name]
 [Law Firm]
 Attorneys for Plaintiff [Name of Plaintiff]
 [Address]
 [Telephone]