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# RESIDENTIAL MORTGAGE FORECLOSURES:

PROMOTING EARLY COURT INTERVENTION



NEW YORK STATE UNIFIED COURT SYSTEM

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# RESIDENTIAL MORTGAGE FORECLOSURES:

## PROMOTING EARLY COURT INTERVENTION

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# STATEWIDE PROGRAM FOR RESIDENTIAL OWNER-OCCUPIED FORECLOSURES

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## SCOPE AND PURPOSE OF THE PROGRAM

### DRAMATIC INCREASES IN FORECLOSURE FILINGS

Mortgage foreclosure filings have reached record levels in the New York State courts. There has been a 150% increase in foreclosure filings statewide from January 2005 through April 2008. Early data suggests that foreclosure filings will be up another 40% statewide in 2008. Moreover, specific areas of the State are being disproportionately affected. Foreclosure filings are up by 269% in Suffolk since January 2005, and an estimated 7,500 filings are expected there in 2008 alone. Since January 2005, filings are up by 223% in Queens County, 191% in Nassau County, 217% in Orange County, 195% in Dutchess County, 184% in Westchester County, 183% in Rockland County, and 160% in the Bronx.

As has been well reported in the media, the sharp increase in filings appears attributable largely to foreclosures on residential properties, a development which is having wide-ranging effects — not only on the families displaced from their homes, but also on the banking community, on neighborhoods destabilized by the rising number of foreclosed properties sitting vacant, and on the state economy. This has led to a recent increase in the availability of funds and programs to help prevent foreclosures or to assist homeowners in the foreclosure process. Further, legislative reform, as well as changes to national and state banking policies and regulations, are under consideration.

Meanwhile, the court system can take steps to promote better outcomes for homeowners and lenders alike.<sup>1</sup>

### HIGH DEFAULT RATE, LENGTHY PROCEEDINGS

Statistics show that defaults occur in about 90% of foreclosure cases. Many of these are intentional, informed defaults by homeowners who have concluded that they simply cannot afford to save their homes. Other defaults may be the result of the homeowner's lack of knowledge or understanding of the legal process, or the inability to afford or access help from available legal or counseling services. In addition, some homeowners decide that they will represent themselves in the litigation, whether by choice or because they are unaware of the resources available to them. Some of these instances represent missed opportunities to avoid foreclosure or reach an agreement with the lender that could benefit both sides.

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<sup>1</sup> For simplicity, this report will use the terms "lender" and "homeowner" to describe the plaintiff (although the plaintiff may not be the actual lender, but a nominee, mortgage servicer or other representative) and the borrower-defendant.

Furthermore, completing the foreclosure process can take many months, even in those cases in which the homeowner defaults or legal and factual issues can be resolved quickly.<sup>2</sup> Discussions with advocates for borrowers and persons familiar with the banking community have indicated that a conference under court auspices early in the foreclosure litigation could be beneficial to both lenders and homeowners.

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## RESIDENTIAL FORECLOSURE PROGRAM

### EARLY FORECLOSURE CONFERENCE PARTS

In view of the time-consuming nature of the foreclosure process, lenders and homeowners generally would benefit from early court resolutions that reduce the time, expense, and potential losses involved in the typical foreclosure case. In furtherance of this objective, the court system is planning a Statewide Foreclosure Conference Program, as set forth below, for foreclosure cases involving owner-occupied, one- to four-family residences. The Program will begin with a preliminary pilot in Queens County. The goal of this Program is to encourage lender-borrower negotiations prior to the filing of a foreclosure action, conduct court conferences as early as possible in the case to explore the possibility of a workout or settlement, and failing that, to arrive at a case management plan that helps avoid unnecessary delays. The homeowner will be encouraged to access legal and financial counseling service providers before the conference. These providers will assist the homeowner in exploring an out-of-court settlement with the lender and/or preparing for a meaningful court conference.<sup>3</sup>

### FORECLOSURE CONFERENCE PROCEDURES

- Local court rules will be amended to require the plaintiff, when serving the summons and complaint on the homeowner, to include a brief, easy-to-read notice that describes the early foreclosure conference program, provides information about available services, and is accompanied by a “request for early conference” form.<sup>4</sup>
- The court will send a second notice to the homeowner upon the filing of a special Foreclosure

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<sup>2</sup> In a typical residential mortgage foreclosure case, the entire process from commencement of the action to sale of the property currently ranges from about 12 to 18 months in New York City and Long Island. It can be eight months or less in areas outside New York City. Foreclosures take as much time as they do primarily because of the detailed procedures required by law. A simplified review of the stages of a typical foreclosure case is included later in this document.

<sup>3</sup> Lenders obviously are in a better position to assess a potential workout or settlement if the borrower provides, in advance, financial information such as tax returns, proof of employment and financial statements. It is the court system’s expectation that homeowners — particularly where they obtain assistance from available legal service providers and/or counseling services — will be gathering that financial information for purposes of evaluating what kind of workout, if any, is feasible. It is also expected that where a workout appears feasible, the advisors will consider supplying it to plaintiff’s counsel in advance of the conference in order to settle the matter outside of court.

<sup>4</sup> Before beginning the foreclosure action, the lender or a representative has sent the homeowner notice or notices of default and notice of acceleration of the debt in conformity with the terms of the mortgage, and may have made or attempted to make personal contact for purposes of formulating a workout. The lender is also required by RPAPL § 1303 to serve, with the summons and complaint, a separate notice headed “Help for Homeowners in Foreclosure,” with general information about the potential

Request for Judicial Intervention (RJI) at the time that proof of service on the homeowner is filed with the County Clerk. The Foreclosure RJI will include the names, addresses and contact telephone numbers of all defendants, and identify both the current servicer and the current note holder.

- The court’s notice will inform homeowners and lenders that an early conference is available to be held within 60 days, at the option of the homeowner, to explore whether the case can be resolved without foreclosure or, alternatively, to streamline subsequent proceedings.
- The court’s notice will explain that the availability and effectiveness of this early conference will be enhanced by the homeowner’s accessing assistance BEFORE the conference, whether it is the help of a lawyer or housing counselor.
- The court’s notice will supplement the RPAPL §§ 1303 and 1320 notices by providing contact information for local organizations that have agreed to provide homeowners with legal assistance, financial counseling, and other services, as well informational brochures about the foreclosure process, Offices for the Self-Represented, online help resources, etc.
- The court’s notice will be accompanied by a “request for early conference” form to be mailed to the Foreclosure Conference Part. In order to place the conference on the court calendar, the homeowner will be required to confirm in the request form that he/she has scheduled an appointment for legal assistance or housing counseling with a service provider, or, if not, explain why they have not yet done so.
- The notice will inform the homeowner that scheduling the conference does not relieve him or her of the obligation to respond to the complaint in a timely manner.<sup>5</sup>
- Upon receiving the request for early conference form, a case manager assigned to the new conference part will contact the parties to schedule a conference. The case manager may follow up with the homeowner or the identified service provider to ensure that the homeowner is receiving essential assistance.
- After the RJI is filed, case information will be made available to service providers that can initiate contact with homeowners to assist them with settlement opportunities.
- The parties will be informed that the court conference will precede any motions in the case.

If the parties cannot reach a settlement either before or at the conference, the conference will at least enable the court and parties to arrive at a case management plan designed to streamline

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*(footnote 4, continued)* availability of “government agencies, legal aid entities and other nonprofit organizations” that may provide assistance to homeowners (in owner-occupied, one-to-four family dwellings), and includes reference to a New York State Banking Department toll-free helpline (1-877-Bank-NYS) and website ([www.banking.state.ny.us](http://www.banking.state.ny.us)). Additionally, where residential property being foreclosed has “not more than three units,” RPAPL § 1320 mandates that the summons contain a notice headed “You Are in Danger of Losing Your Home,” notifying the homeowner of the need to respond to the complaint to avoid default, and suggesting the homeowner speak to an attorney or go to the court for further information on how to answer.

<sup>5</sup> It is expected that the service provider accessed by the homeowner will either assist the homeowner in filing a pleading or request from the plaintiff an extension of time to respond. Defendants will not be precluded from requesting leave to submit a late answer at the conference. A judge will be available to address such requests, if necessary.

subsequent proceedings and promote active case management going forward. For lenders, an early court conference in which it becomes clear that there is no reasonable ability to achieve a workout should lead to quicker, more cost-effective outcomes. For homeowners who might otherwise default unnecessarily, the court notice may encourage them to access services and attempt to resolve the case. Where homeowners appear and raise defenses, early court intervention and continuing case management will ensure that the case does not languish. The rights of the parties will be preserved during the early conference process.

The availability of lawyers and financial/housing counselors is a critical component of this program. These professionals can educate homeowners about their rights and options, and advocate with lenders and service companies to re-negotiate mortgage terms. Indeed, with the assistance of these outside service providers, many cases potentially could be settled with limited or no court intervention. The court system has had discussions with representatives of legal services and mortgage counseling providers about the anticipated availability of such services.

### **CONDUCTING THE CONFERENCE**

The assigned case manager will not only schedule conferences, but also answer procedural questions, including questions about the “request for early conference” form, and reinforce the importance of homeowners accessing legal and/or housing counseling services before the conference date. Plaintiffs and defendants will be able to communicate electronically or by telephone with case managers to learn the status and anticipated calendaring of each case. For the convenience of plaintiffs who may have multiple cases pending, the court will calendar together all cases involving a particular plaintiff for a specific date and time. Plaintiffs will be able to appear by telephone or in person, but will be required to be represented by someone with the authority to settle the case, including authority to modify loan terms or amounts.

The court system will assign Judicial Hearing Officers and court-attorney referees to preside over the early conference parts, with the assistance of case managers. A judge will be available in the event that matters arise that require a judge’s decision or order. For prepared parties, the objective at this conference will be to assist them in reaching a workout, or if that is not possible, identifying issues that can be addressed at the outset to permit the case to proceed efficiently. If the homeowner has not received legal assistance or housing counseling and does not have assistance at the conference, the homeowner will be linked to lawyers and housing counselors at that time and the conference will be rescheduled for a brief period.

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## **ADDITIONAL FORECLOSURE PROGRAM COMPONENTS**

### **RESIDENTIAL FORECLOSURE ADVISORY COMMITTEE TO PROMOTE COORDINATION AND BEST PRACTICES**

An Advisory Committee of Judges and nonjudicial staff with expertise in this area will be appointed by the Chief Administrative Judge to promote statewide coordination given the broad scope of

this program and the complex nature of the mortgage foreclosure crisis. The Advisory Committee would convene regularly to:

- consider further recommendations for how the court system, the legislature and other entities can respond effectively to the foreclosure problem;
- focus on efforts to train judges and court staff around the state;
- identify and disseminate best practices;
- develop protocols and forms for use around the state; and,
- serve as a point of contact with the service provider and banking communities to promote communication and build consensus.

### **SPECIALIZED TRAINING**

The Judicial Institute and the Advisory Committee will work together on a fast track to develop a special curriculum tailored to all foreclosure conference part judges and staff, including training in the law and economics of mortgage foreclosures and alternative dispute resolution.

### **TIMING OF PROGRAM**

We anticipate testing the Foreclosure Conference Program in Queens this summer. We hope to expand the Program statewide this Fall.

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## **CURRENT NEW YORK EFFORTS**

### **KINGS COUNTY**

In Kings County Supreme Court, judges and staff began implementing a number of measures in 2003 to address the extremely high default rate as well as certain recurring substantive issues, including a high incidence of improperly qualified borrowers and disproportionately priced properties. These measures included: closer court scrutiny of all foreclosure papers; standardized foreclosure forms (providing heightened standards and uniformity); requiring the lender to send an additional round of notice informing homeowners in simple language that they have an opportunity to come to court to oppose the foreclosure; orders of reference that set forth rules for distribution of surplus monies; and, increasing the referee's computation fee to \$250 from \$50.

### **NEW YORK CITY**

The Federal Reserve Bank of New York and the New York City Bar Association are co-sponsoring the Lawyers' Foreclosure Intervention Network (LFIN), which will provide *pro bono* legal services to low-income homeowners facing foreclosure. The Federal Reserve Bank has committed funding for each of the next two years to support the LFIN, which will be administered by the City Bar. Volunteer lawyers are being recruited and trained to assist homeowners in understanding and assessing their options, negotiating workout arrangements with lenders, and where appro-

appropriate, representing homeowners in litigation. LFIN is recruiting lawyers from the New York City legal community, and the Federal Reserve Bank is encouraging financial institutions to waive, in appropriate situations, conflicts of interest that may arise in counsel's representation of a homeowner. LFIN is offering free training and CLE credits to its volunteer lawyers, the first of which is scheduled for June 18 and 19 at the City Bar.

### **NASSAU COUNTY**

Nassau County has started the Mortgage Foreclosure Pro Bono Project to give free legal advice to Nassau homeowners facing foreclosure. The Project is a collaboration of the County, the Attorney General's office, and Nassau/Suffolk Legal Services. Training for volunteer lawyers is being conducted by the Nassau County Bar Association. Nassau residents are advised to call the County's Foreclosure Prevention Hotline (516-571-HOME). Homeowners who meet poverty guidelines may be assigned counsel from a legal services provider. Homeowners above the poverty level may be referred to pro bono attorneys. Approximately 60 Nassau County-based lawyers attended the first training session.

### **ERIE COUNTY**

The State Banking Department and four state Senators from central and western New York have sponsored six five-hour public forums, "Operation Protect Your Home," designed to give homeowners facing foreclosure an opportunity to meet with housing counselors and participating mortgage lenders such as Citigroup, HSBC Finance, and many others. More than 1,700 letters have been mailed to the participating lenders' customers who are more than 30 days late in payments and live in the four state Senate Districts.

In February 2008, the City of Buffalo brought a lawsuit against 39 lenders under state and local public nuisance laws and state property maintenance laws (*City of Buffalo and Mayor Byron W. Brown v ABN Amro Mortgage Co.*, No. 2008002200 (Sup. Ct., Erie Co.)). The suit seeks to recover the costs the City incurred in 2007 in demolishing 57 houses (\$16,000 each). In addition, the City has been prosecuting banking officials in local housing court to compel them to repair and maintain foreclosed and abandoned properties.

### **MONROE COUNTY**

The Federal Deposit Insurance Corporation has recently started a pilot program — the Alliance for Economic Inclusion (AEI) — to educate and assist homeowners harmed by the subprime mortgage crisis in the Rochester region. The AEI is a coalition of financial institutions, community-based organizations, researchers, state and local government officials, federal bank regulators and other community stakeholders. AEI offers legal counseling and financial products to homeowners in need of assistance, including short-term loans, savings accounts, and targeted financial education programs.

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## THE TYPICAL JUDICIAL FORECLOSURE PROCESS IN NEW YORK

A typical residential mortgage foreclosure case in New York can take anywhere from 8 to 18 months from commencement to sale of the property, depending on location. Foreclosures take as much time as they do in large part because of the detailed procedures required by law. The stages of a typical case are as follows:

### ***Summons, Complaint, Notice of Pendency***

A lender seeking to foreclose on real property commences the litigation by filing a summons and complaint with the County Clerk for the county in which the property is located. All plaintiffs are given up to 120 days from the filing of the summons and complaint to serve process under CPLR § 306-b, but in most foreclosure cases, due to the requirements of CPLR Article 68 governing the Notice of Pendency and the prevalent practice of filing it with the summons and complaint, plaintiff effectively has 30 days to serve process or risk the lapsing of the Notice of Pendency.<sup>6</sup>

### ***Time to Respond to the Complaint***

Once service is completed, the homeowner has 20 days to answer the complaint if it was personally served, and 30 days or more if substituted service was employed.<sup>7</sup>

### ***Computation of the Amount Due***

If the time to answer passes without a response from the homeowner, the plaintiff will file a Request for Judicial Intervention (RJI) together with an *ex parte* application for appointment of a “referee to compute.”<sup>8</sup> The application requires approval of the court, and includes selection of a referee. If the homeowner answers and raises defenses, the lender is likely to move simultaneously for summary judgment and the appointment of a referee to compute.<sup>9</sup> How long it takes for all motion papers to be filed and readied for consideration by the court, and how long it will take the

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<sup>6</sup> Most plaintiffs file a Notice of Pendency (also referred to as “lis pendens”) with the County Clerk at the time of filing of the summons and complaint. The Notice of Pendency is constructive notice to subsequent purchasers or encumbrancers of the pendency of the foreclosure action, so that any interest subsequently acquired is foreclosed by the plaintiff’s action and the holders need not be named as parties. CPLR 6512 states that a “notice of pendency is effective only if, within 30 days after filing, a summons is served upon the defendant or first publication of the summons against defendant is made pursuant to an order and publication is subsequently completed.”

<sup>7</sup> This assumes that the defendant can readily be found and served. If not, the plaintiff may be required to move for permission to serve process in another manner, such as publication.

<sup>8</sup> RPAPL § 1321(1).

<sup>9</sup> For purposes of this overview, the assumptions are that (1) the homeowner has not filed a motion to dismiss the complaint or other preliminary motion; (2) no other defendant is opposing the foreclosure and other defendants have filed only notices of appearance and waiver under CPLR § 320 (usually waiving notice of further proceedings, except notice of sale, surplus money proceedings and/or notice of discontinuance of the action); and (3) no discovery is sought. In cases in which those assumptions do not apply, the course of the litigation and the time it will take cannot be readily estimated.

court to decide the motion, will depend on the complexity and merits of the issues raised on the motion and in opposition.

When the court orders the appointment of a referee to compute, the clerk of the court is required to send the referee a copy of the order of reference.

In the default case, the referee performs the computation *ex parte*. If the homeowner has appeared and/or another defendant has appeared or not waived notice of the appointment of a referee, the referee is required to notify the parties of the time and place for the “first hearing to be held within twenty days after the date of the order.”

### ***Referee’s Report of Amount Due***

Upon completion of the referee’s hearing or *ex parte* review of evidence supporting the amount due, the referee files an Oath and Report of Amount Due.

### ***Judgment of Foreclosure and Sale***

When the referee report is filed, the plaintiff’s next step is usually to apply simultaneously for confirmation of the referee’s report and for a judgment of foreclosure and sale. The application is made either *ex parte* in the default situation or by motion on notice to any parties who have appeared without waiving such notice.

Among other things, the judgment will appoint a “referee to sell,” who often is the same individual as the referee to compute,<sup>10</sup> and direct that the auction of the property be advertised in a publication selected by the court and in compliance with complex statutory requirements for publication of notice of the foreclosure sale. Satisfying publication requirements takes approximately four weeks. The notice of sale also contains the terms of the auction sale.

### ***Sale***

The foreclosure sale is conducted under the auspices of the referee, typically on courthouse property.

### ***Closing***

If plaintiff is the successful bidder, the deed can be signed at the time of sale or some later convenient date. When there is a successful third-party bidder, a closing is usually required by the terms of sale to take place 30 days after the sale, usually at the referee’s office.

### ***Following the Foreclosure Sale and Closing***

If the proceeds of the foreclosure sale do not cover the amounts due, plaintiff has the option of moving to obtain a judgment against the homeowner for the deficiency. If the sale price exceeds the amount due, then surplus money proceedings may ensue to determine distribution of the

<sup>10</sup> The court instead may appoint the sheriff of the county to conduct the sale. RPAPL § 1351(1).

excess funds. If there are occupants or tenants remaining on the property, other proceedings may be required for the purchaser at foreclosure to obtain possession of the property.

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## INITIATIVES IN OTHER JUDICIAL FORECLOSURE STATES

New York is one of approximately 19 states where judicial foreclosure is the primary foreclosure process.<sup>11</sup> Of this group, only a few states and/or localities around the country have responded to the residential foreclosure crisis by establishing, through court rule or legislation, new procedures to improve and expedite the courts' handling of residential mortgage foreclosures. The following is an overview of programs recently instituted in Connecticut, Philadelphia, Pennsylvania, Ohio, and New Jersey.

### CONNECTICUT

In response to a sharp increase in foreclosure filings,<sup>12</sup> Chief Justice Rogers appointed a statewide committee of judges, attorneys and court staff to study the problem and make recommendations. The committee is considering issuing the following recommendations, among others: (1) an amendment to standing orders requiring that a special notice be included as a cover sheet to all summonses/complaints in residential foreclosure actions; (2) a rule change concerning the showing necessary to obtain a default judgment; and, (3) a rule change mandating that a motion for judgment not be filed before 30 days after the return date.<sup>13</sup>

In addition, the Connecticut Legislature recently enacted a law authorizing the judiciary to establish a mediation program for all residential foreclosure actions with a return date on or after July 1, 2008. Under this legislation, the lender must attach to the front of the complaint a copy of a notice of availability of mediation, and a mediation request form. The borrower has 15 days from the return date of the foreclosure action to file the request. The court has three days from receipt of the request to notify all appearing parties, and a mediation session must be held within 10 days of notification. The borrower and lender (or its representative) are required to appear in person. The mediator has two days to file a report with the court stating whether the parties would benefit from further mediation. If so, additional sessions may be held, but the mediation must conclude within 60 days of the return date of the foreclosure action. If further mediation is not recommended, the process ends automatically. The mediator has two days from the conclusion of the mediation to file a report setting forth all resolved and unresolved issues.

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<sup>11</sup> Like the majority of states, New York also has a non-judicial foreclosure statute, but it is considered onerous and is rarely used.

<sup>12</sup> Filings increased from 11,764 in 2005-06 to almost 20,000 in 2007-08.

<sup>13</sup> Pursuant to Connecticut practice, the return date is the date the case is considered started in the court system. The defendant's appearance must be filed within two days of the return date, and defendant's responsive pleading must be filed within 15 days of the return date.

The legislature appropriated \$2 million to fund the mediation program and hire court-employed mediators.

### PHILADELPHIA, PENNSYLVANIA

In April 2008, the Sheriff of Philadelphia unilaterally postponed all judicial sales of owner-occupied residential properties.<sup>14</sup> In response, the Philadelphia Court of Common Pleas established by court rule a Mortgage Foreclosure Diversion Pilot Program designed to provide early court intervention via a “conciliation conference” in all residential foreclosure cases. Under the program, the court issues a “Case Management Order” that:<sup>15</sup>

- schedules a conciliation conference for a specific date, place and time;
- requires the defendant-homeowner and the plaintiff’s servicer to appear (in person or by telephone);
- requires defendant immediately to call a hotline for a housing counseling agency;
- requires defendant to provide housing counselors with specific financial information;
- requires defendant to provide certain financial documentation to the plaintiff; and,
- authorizes plaintiff to send defendant the 10-day notice regarding entry of a default judgment, but delays the request for entry of judgment until after the conference.

Prior to the conference, the defendant must file with the court and mail to plaintiff’s counsel a “Certification of Participation” stating he/she met with a housing counselor and a loan resolution proposal will be submitted before the conference.<sup>16</sup> Among the main issues to be addressed at the conciliation conference are:

- whether the defendant is represented and the availability of volunteer counsel;
- whether the defendant met with a housing counselor and an assessment of a possible loan work-out was prepared;
- defendant’s income and expense information, employment status, etc.;
- defendant’s eligibility for available work-out programs;
- any necessity for a subsequent conference; and
- whether, where there is no prospect of resolution, the case may proceed to sale.

The pilot program was developed by a judicial steering committee formed in 2004. The Court has appointed six *judges pro tem* to hear the first 700 conferences scheduled for June 10-13. Training is being provided to law firms and attorneys who will serve *pro bono*.

<sup>14</sup> Residential mortgage foreclosure filings in Philadelphia have increased from 5562 cases in 2006, to 6603 cases in 2007.

<sup>15</sup> While the court must serve this Order in all pending foreclosure cases, the plaintiff will be required to serve the Order along with the complaint for all new cases filed after July 7, 2008.

<sup>16</sup> There is no penalty imposed for defendant’s failure to file this certificate and the conference will proceed despite noncompliance with this rule.

## OHIO

Ohio has also seen a dramatic increase in foreclosure filings (85,000 statewide in 2007). The state has launched a public awareness campaign and set up a telephone hotline to provide information and connect homeowners to approved housing counselors. In addition, as of April 2008, 1100 lawyers have volunteered to provide *pro bono* legal services to homeowners.

In February 2008, the Ohio Supreme Court issued a directive that all courts with foreclosure dockets consider implementing a foreclosure mediation program based on a model program developed by its special Advisory Committee in collaboration with elected state officials, representatives of mortgage lenders, bar associations and other groups. Cuyahoga County (encompassing Cleveland) responded by announcing a proposed mediation program in April 2008.<sup>17</sup> Under this program, all summonses served on homeowners must include a form by which the homeowner may request mediation. In addition, a magistrate may order mediation in any case, even if not requested by the homeowner. If mediation is ordered, the lender must complete a questionnaire regarding the history of the loan within 14 calendar days. The case is stayed pending completion of the mediation process, which consists of approximately three face-to-face meetings. At the first mediation conference, the homeowner must produce recent pay stubs, bank statements, W-2 forms and tax returns. At the second meeting, the mediator determines whether the parties are prepared to negotiate in good faith. The third meeting is the actual mediation session. If the lender's representative does not attend or have settlement authority, sanctions may be imposed, including dismissal. Lenders have criticized Cuyahoga's model for the large number of required mandated personal appearances.

The Summit County Court of Common Pleas (which includes the City of Akron) has been mediating foreclosure cases for the past four years. In 2007, it successfully settled 65% of the cases sent to mediation. The magistrates do not send a case to mediation until an answer has been filed, which only occurs in 10-15% of the cases. In the first three months of 2008, the Summit County mediators handled 37 foreclosure cases, resulting in 26 settlements.

## NEW JERSEY

The New Jersey Supreme Court has established an Office of Foreclosure within the Administrative Office of the Courts. The Office of Foreclosure's function is to assist General Equity judges throughout the state by taking on fixed duties that expedite the processing of all uncontested mortgage foreclosure actions. Pursuant to court rule, all foreclosure complaints and initial pleadings must be centrally filed with the Superior Court Clerk's Office in Trenton. Unless the action becomes contested, all responsive and subsequent pleadings must also be filed in Trenton. The overwhelming majority of foreclosure actions in New Jersey are uncontested and therefore remain with the Office of Foreclosure until disposition.

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<sup>17</sup> As of early June 2008, approximately 60% of Ohio's 88 counties have instituted or are in the process of instituting the Foreclosure Mediation Program Model.

The Office of Foreclosure is responsible for “recommending” entry of foreclosure-related orders and judgments to the General Equity judge sitting in the Mercer County (Trenton) vicinage. The Office recommends entry of orders and judgments when an action's uncontested pleadings establish a *prima facie* case, all procedural requirements are discharged, and the relief requested is appropriate. If an answer or other pleading creates a dispute requiring adjudication, the Office of Foreclosure transfers the foreclosure file to the appropriate vicinage for disposition. As a result, judges and court staff are unaware of any foreclosure action filed in their vicinage until the foreclosure case file is forwarded for adjudication.

Where a foreclosure is contested, the judge will schedule a case management conference within 30 days of a plaintiff's motion to strike an answer or for summary judgment. If the matter is not resolved during the case management conference, the judge hears the motion. If an order striking the answer or for summary judgment is entered, the case is returned to the Office of Foreclosure to be handled as an uncontested foreclosure action. The Office of Foreclosure, on behalf of the Superior Court Clerk, processes writs of execution and writs of possession.

To deal with the increase in foreclosure complaints, the court system has added paralegals to supplement existing staff.



# Supreme Court of the State of New York — Queens County

88-11 SUTPHIN BLVD., JAMAICA, NEW YORK 11435

Hon. Jeremy Weinstein  
ADMINISTRATIVE JUDGE

Anthony D'Angelis  
CHIEF CLERK

**SAMPLE-**  
NOT A FINAL DOCUMENT

June \_\_\_\_\_, 2008

Dear Queens Homeowner:

A mortgage foreclosure case has been started against you by your mortgage lender for failure to pay your mortgage. It is important that you do not ignore this notice or any court papers that you receive or **YOU MAY LOSE YOUR HOME**. Help may be available to you. This letter contains the phone numbers of people and organizations standing by to help homeowners free of charge.

## **A Court Conference is Available With You and Your Lender**

The court can hold a Conference with you and your lender to see if your case can be resolved without further court action. What do you need to do to schedule a Conference? First, you need to get help as soon as possible either by retaining your own lawyer or by calling and making an appointment with one of the organizations listed below. Once you have done that, please mail the enclosed Request for Early Conference Form to the Foreclosure Conference Part at the address at the top of this page. Please mail it **no later than 20 days from the date of this letter**. Someone from the Foreclosure Conference Part will contact you to inform you of the date of your Conference.

## **What to Bring to the Court Conference**

It is important that you (and your lawyer if you have retained one) arrive at the Conference ready to discuss the facts of your case. To help the court, please bring the following documents if you have them:

- All your mortgage papers, including the loan application, mortgage and mortgage note, the Truth-in-Lending disclosure, and the HUD-1 Settlement statement;
- Any notices you have received regarding your mortgage payments or arrears;
- A list of all payments made on the mortgage debt;
- Documents showing your monthly income and expenses, including your most recent tax returns; and
- Any other documents you feel the court should look at.

## **Responding to Court Papers**

In addition to attending the Conference, you also must respond to any court papers you receive. The number of days you have to respond is stated in the court paper called "Summons." **Make sure you meet the deadline given in the Summons and any other deadline set by law** whether or not you contact the Foreclosure Conference Part to schedule a Conference. If you do not have an attorney, you may call one of the organizations listed below for help responding to court papers.

## **Help is Available**

- **The Center for New York City Neighborhoods** was established by the Mayor's office to connect homeowners like you with attorneys and housing counselors in Queens County. Call the Center at \_\_\_\_\_ or dial 311. These trained professionals can tell you about your rights and options going into the Conference.
- **The Office of the Self-Represented**, located at the courthouse, 88-11 Sutphin Blvd., Jamaica, Queens, Room 109, also can assist you by providing information about the foreclosure process as well as sample court forms and instructions. If you plan to visit this office, please bring this letter along with any court papers you may have received and your mortgage documents

Please call the Foreclosure Conference Part at \_\_\_\_\_ if you have a question about anything contained in this letter.

Very truly yours,

Anthony D'Angelis

CHIEF CLERK

cc: [plaintiffs and certain agencies].





