



Lawrence K. Marks  
Chief Administrative Judge

25 Beaver Street  
New York, N.Y. 10004  
(212) 428-2100

## MEMORANDUM

July 24, 2020

To: Hon. George J. Silver  
Hon. Vito C. Caruso

From: Lawrence K. Marks LM

Subject: Revised Procedure for Addressing Residential and  
Commercial Foreclosure Proceedings

=====

In light of recent revisions in statewide restrictions on the filing and prosecution of foreclosure matters in New York State arising during the course of the COVID-19 public health emergency, attached please find a copy of AO/157/20 (Attachment A), effective July 27, 2020, which amends the temporary protocol for handling of those proceedings in several significant respects. In broad outline, those revised procedures are as follows:

- A stay of commencement and enforcement of commercial foreclosure matters against certain mortgagors (including those “facing financial hardship due to the COVID-19 pandemic”), initiated by Governor Cuomo’s Executive Order 202.28, remains in effect until August 19, 2020. In addition, further proceedings in particular matters may continue to be governed by the suspension of “any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as described by the procedural laws of the state,” set forth in Executive Orders 202.8, 202.14, 202.28, 202.38, and 202.48.<sup>1</sup> However, the general stay of foreclosure proceedings directed by Administrative Order since mid-March shall no longer be in effect as of July 27.
- Filing and service of documents in foreclosure proceedings continue to be governed by AO/121/20. Consequently, initiating documents by represented plaintiffs must be filed through NYSCEF or mail only at this time. (Unrepresented parties may file papers in person.)

---

<sup>1</sup> Executive Order 202.48 extended this suspension through August 5, 2020.

- Commencement papers in commercial and residential foreclosure proceedings are required to include the form notice indicating that defendant-tenants may be eligible for an extension of time to respond to the complaint. (As noted in my memorandum of July 7, 2020, a form plaintiff's attorney affirmation is no longer required.)
- Prior to any further proceedings in a foreclosure matter, the court must initiate a status or settlement conference (including a conference pursuant to CPLR Rule 3408) to address a range of subjects related to the case and COVID-19 concerns.
- After holding such a conference, the court may address and decide any pending or future motion in a foreclosure matter, and may entertain other applications (including post-judgment applications). Motions may be considered in any foreclosure matter, including matters in which one or both parties are self-represented.
- All foreclosure proceedings should be conducted remotely to the fullest extent possible.
- No auction or sale of property may be scheduled to occur prior to October 15, 2020.
- By September 1, each administrative judge responsible for civil matters shall develop a plan for the conducting of auctions within their judicial district in a safe and healthful manner, as well as in a manner that addresses a number of outstanding procedural and administrative concerns in the auction process. (The Office of Policy and Planning shall reach out to each administrative judge on this latter subject in the near future.) These plans shall be reviewed and approved by the appropriate Deputy Chief Administrative Judge.

Questions about these revised procedures may be addressed to the Hon. Sherry Klein Heitler, Chief of Policy and Planning of the New York State Courts ([sheitler@nycourts.gov](mailto:sheitler@nycourts.gov)), or to her Chief of Staff, Steven Helfont ([shelfont@nycourts.gov](mailto:shelfont@nycourts.gov)).

Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate.

#### Attachment

c: Hon. Sherry Klein Heitler  
Steven Helfont, Esq.

## **Attachment A**