

**NASSAU COUNTY - SUPREME COURT
GENERAL RULES GOVERNING
RESIDENTIAL FORECLOSURE MATTERS**

pursuant to Order of the Foreclosure Part Judge.

The Foreclosure Clerk/Ex Parte Clerk is authorized to reject and/or return for corrections any papers submitted to the Court which are not in compliance with the rules set forth herein.

Request for Judicial Intervention (RJI):

1. On or after February 15, 2010, all plaintiffs must file Requests for Judicial Intervention (RJI) on the newly revised form prescribed by the Chief Administrator of the Courts for Settlement Conference in Residential Mortgage Foreclosure Actions. All information requested must be properly and completely set forth on the RJI.

Foreclosure Settlement Conference Rules

1. The parties shall engage in settlement discussions in good faith to reach a mutually agreeable resolution, including a loan modification if possible.
2. Plaintiff's counsel shall appear for the Settlement Conference with all relevant documents including the documents set forth in Rule 202.12-a: current payoff and reinstatement documents; mortgage and note; payment history, workout forms or packet; copies of any recent paperwork regarding reinstatement, settlement offers or loan modification proposals; and an itemization of the amounts needed to cure and pay off the loan.
3. Plaintiff's counsel must appear in the Foreclosure Conference Part with settlement authority and/or a direct contact number where a servicing agent with settlement authority can be reached and participate in settlement discussions before the Court.
4. Defendants should bring the following documents to the conference: current income documentation, including pay stubs and benefits information, list of months expenses; recent mortgage statement, property tax statements and income tax return; loan resolution proposals and any information from previous workout attempts.
5. For cases involving servicing agents who have opted into the Home Affordable Modification Program (HAMP), counsel shall appear in the Foreclosure Conference Part with a status report regarding the outcome of the servicing agents' evaluation for HAMP modification, and specific written justification with supporting details if modification under HAMP was denied.

6. All Foreclosure cases in which the servicing agent as well as the Homeowner has agreed to a trial modification, whether under HAMP or otherwise, will be given a conference date in the Foreclosure Conference Part coincident with the trial modification period.
7. Any agency or representative assisting the Homeowner shall provide copies of all documents, including the completed work-out package, to the homeowner, who should bring them to the Settlement Conference.
8. All parties must appear at the Settlement Conference and any adjourned dates until the action is settled by means of a modification or other agreement. The plaintiff may proceed with the Foreclosure Action once an order has been issued from the Foreclosure Part indicating that the defendant has failed to appear or the Court has determined that the parties would not benefit from further settlement discussions.
9. The Settlement Conference procedures shall be deemed concluded if a settlement has been reached and the plaintiff has filed a Stipulation of Discontinuance or Forbearance Agreement with the County Clerk. In such event, Plaintiff/Counsel must fax a copy of the Stipulation of Discontinuance or Forbearance Agreement to the Foreclosure Clerk at (516) 571-2167.
10. An appearing homeowner shall file a Notice of Appearance in the action indicating the homeowner's name, address, telephone number, and e-mail address on a form provided by the Court, with the Clerk of the Foreclosure Conference Part who shall then forward it for appropriate filing.
11. All counsel appearing for the homeowner shall file a Notice of Appearance in the action indicating the attorney's name, address, telephone number, and e-mail address on a form provided by the Court, together with their representation status, with the Clerk of the Foreclosure Conference Part who shall then forward it for appropriate filing.

Motions/Ex Parte Applications:

1. The Foreclosure Clerk/*Ex Parte* Clerk is authorized to reject any papers that are not submitted in accordance with the following:
2. All *Motions/Ex Parte* Applications must be in compliance with the Civil Practice Law and Rules (CPLR). Other than for unrepresented litigants, applications should be indexed with protruding tabs. Motion papers, answering affidavits and reply affidavits must be served on adversaries in accordance with Civil Practice Law and Rules (CPLR) 2214.
3. Motion papers must be filed with the Court through the Office of the County Clerk or in Room 186 (either receipt of payment or with attorney check only) of the Supreme Court

five (5) days or more before the return date of the motion; cross motions shall be filed two (2) days before the return date of the motion.

4. No courtesy copies of motion papers will be accepted by the Court unless specifically directed by the Presiding Judge.
5. Irrespective of the return date indicated in the Notice of Motion, motions will be rescheduled by the Foreclosure Part to a date designated by the Presiding Judge.
6. All motions returnable on or before a Settlement Conference is held will be adjourned to a date subsequent to an order being issued by a Judge, Judicial Hearing Officer or Court Attorney-Referee indicating that Settlement Conference procedures have been completed and the plaintiff may proceed with the action.
7. Applications for surplus money must contain a recognized title search or its equivalent as an exhibit.
8. A proposed Order must be attached to any Order to Show Cause/Motion submitted to the Foreclosure Part. In the event that a proposed order is not submitted, the Order to Show Cause/Motion may be deemed abandoned.

Orders of Reference:

1. Each Order of Reference must have appended thereto, the history of the property by way of a chain of assignment, the date of the assignment, and a reference to the tab where that assignment is located.
2. Within one (1) year after the signing and entry of an Order of Reference, an application for a Judgment of Foreclosure and Sale must be made. Such period of time will be suspended by the filing of a Forbearance or Settlement agreement with the Clerk of the Court. Failure to comply may result in an automatic dismissal of the action.

Auctions/Sales:

1. The Clerk of the Foreclosure Part is authorized to reject any Notice of Sale that does not comply with the following rules:
2. Notices of Sale shall be filed with the Foreclosure Clerk within one (1) year of the entry of the Judgment of Foreclosure and Sale. Permission of the Court must be obtained for any filings made thereafter.

3. A Notice of Sale must be submitted to the Foreclosure Department by facsimile (516) 571- 2167 at least ten (10) days prior to the scheduled date of the Auction. A copy of the Notice of Sale must simultaneously be sent to the owner of the equity of redemption at both his/her last known address and the property address. An Affidavit of Service of such Notice shall be presented to the Foreclosure Clerk on or before the Auction/Sale.
4. The property will not be auctioned/sold unless an Affidavit/Affirmation of Compliance is submitted to the Foreclosure Clerk on or before the Auction/Sale. Such Affidavit/Affirmation of Compliance must state that the plaintiff has complied with all Federal and New York State Laws, Rules and Regulations, Executive Orders and any and all other Legislative Orders and Mandates relative to Foreclosure.
5. The Court-appointed referee shall determine the date of the sale which is to be held at the time and place indicated in the Judgement of Foreclosure and Sale and shall notify the plaintiff sufficiently in advance thereof to permit publication of the Notice of Sale in compliance with Real Property Actions and Proceedings Law (RPAPL) 231.
6. It is the plaintiff's responsibility to arrange for publication. The costs of publication may be recouped from the proceeds of the sale.
7. It is the plaintiff's responsibility to notify the Court appointed Referee of any encumbrances in advance of the Auction/Sale date.
8. In the event the plaintiff adjourns or cancels the Auction/Sale, at least five (5) days notice, both written and telephonic must be given to the Court appointed Referee. If such notice is not timely given, the Court appointed Referee may apply to the Foreclosure Part Judge through affirmation seeking additional fees.
9. A legally competent representative of the plaintiff authorized to act on plaintiff's behalf must appear at the Auction/Sale.

Day of Auction Rules

1. The Court appointed Court appointed Referee and all interested parties must be present at the location indicated in the Order of the Court on the published date promptly at 11:30 a.m.
2. The Terms of Sale, including any known encumbrances, must be posted outside of the Courtroom by the plaintiffs no later than 10:45 a.m. on the day of the sale.
3. Court appointed Referees will accept either 1) Cash; or 2) certified or bank check made payable to the Court appointed Referee. No double-endorsed checks will be accepted.

4. A successful bidder must have in his/her possession at the time of the bid the full ten (10%) percent of the sum bid, in cash or certified or bank check to be made payable to the Court appointed Referee.
5. All bidders must have proof of identification and will be required to stand and state their names and addresses on the record at the time the bid is made.
6. No sale will be deemed final until the full ten (10%) percent deposit has been paid to the Court appointed Referee and a contract has been signed, which must be done in the Courthouse immediately following the sale.
7. If a successful bidder fails to immediately pay the deposit and sign the Terms of Sale, the property will be promptly returned to auction the same day.
8. The amount of the successful bid, which will become the “purchase price”, will be recorded by the Court Reporter.
9. It is the responsibility of the bidder to acquaint him/herself with the property, any encumbrances thereon, and the Terms of Sale before placing a bid and to be certain that adequate funds are available to make good the bid. The failure of the successful bidder to complete the transaction under the terms bid may result in the bidder’s preclusion from bidding at auction for a period of sixty (60) days.
10. An order may be issued by the Judge Presiding at the Foreclosure Part substituting any Court appointed Referee who fails to timely appear on the date of the Auction/Sale.

THESE RULES WILL BECOME EFFECTIVE FEBRUARY 15, 2010