

**Putnam Supreme Court
Foreclosure Settlement Conference Part**

(12/2012)

Presiding: HON. FRANCIS. A. NICOLAI
Administrative Judge, Ninth Judicial District

Albert J, Degatano, Court Attorney-Referee
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Pursuant to rule 3408(a) of the Civil Practice Law and Rules: "In any residential foreclosure action involving a home loan as such term is defined in section thirteen hundred four of the Real Property Actions and Proceedings Law, in which the defendant is a resident of the property subject to foreclosure, the court shall hold a mandatory conference within sixty days after the date when proof of service is filed with the county clerk . . . for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents." Said settlement discussions are conducted in the Foreclosure Settlement Conference Part (FSP-P).

PART RULES

Assignment to the Foreclosure Settlement Conference Part

Pursuant to section 202.12-a(b) of the Uniform Civil Rules For The Supreme Court And The County Court (22 NYCRR 202.12-a[b]): "At the time that proof of service of the summons and complaint is filed with the county clerk, plaintiff shall file with the county clerk a specialized Request for Judicial Intervention (RJI), on a form prescribed by the Chief Administrator of the Courts, applicable to residential mortgage foreclosure actions covered by this section." The FSP-P must schedule an initial "settlement conference to be held within 60 days after the date of the filing of the RJI." 22 NYCRR 202.12-a(c)(1).

Motion Practice

No motions concerning the underlying residential foreclosure action may be filed with the RJL or while a case is pending in the FSP-P. Motions made prior to assignment to, or while a case is pending in, the FSP-P will be held in abeyance until the case is released from the FSP-P. See 22 NYCRR 202.12-a(c)(7). Any application involving a residential foreclosure action must contain a separate statement from the moving party affixed to the front of the application that the action does or does not fit the criteria for assignment to the FSP-P and that if it was assigned to the FSP-P, the case was released from the FSP-P with full authority to proceed with motion practice.

Stay of Underlying Residential Foreclosure Action

Once a case is assigned to the FSP-P, the underlying residential foreclosure action, including discovery, is stayed until the case is either discontinued following settlement or the case is released from the FSP-P without settlement. The underlying residential foreclosure action may be stayed for an additional period of forty-five (45) days from the date of release from the FSP-P .

Settlement Conferences

The parties to an action which has been assigned to the FSP-P will receive by regular mail a letter from the FSP-P advising them of the date for which the initial conference has been scheduled. The regular conference calendar for the FSP-P is called in the Putnam County Courthouse, courtroom 209, the second and fourth Wednesday at 9:30 a.m. Parties and/or their representatives must check in with the clerk in courtroom 209 and cases are called for conference in the order in which both sides have advised the clerk of their appearance.

Settlement conferences are conducted in person by Court Attorneys and Court Attorney-Referees in conference rooms adjacent to courtroom 209. Parties must appear for an initial conference personally or by a representative – i.e., attorney or housing counselor – who is actually present. Prior to the initial conference, plaintiff's counsel should complete the form entitled "Foreclosure Settlement Conference Part Worksheet, Part I," copies of which are available in courtroom 209 or may be downloaded below.

If specifically permitted by the Court, attorneys and housing counselors may appear at a subsequent conference by telephone. However, requests for permission to appear by telephone must be made to the Court Attorney / Referee during the conference at which the date for the next conference is being selected.

The business of the FSP-P is conducted during settlement conferences at which both parties have appeared. Unless specifically authorized elsewhere in these Part Rules or by a Court Attorney / Referee during a conference in a particular case, neither the clerk for the FSP-P nor the Court Attorneys / Referees will accept or respond to telephone calls or correspondence by regular mail, facsimile transmission (FAX) or electronic transmission (E-MAIL), concerning a case pending in the FSP-P.

Adjournments

Requests for adjournments of conferences scheduled in the FSP-P may be made only by FAX to the office of the clerk of the FSP-P at (212) 457-2871: the clerk's office will not consider a request made by telephone, regular mail or E-MAIL. The FAX must be received by the clerk's office no less than two (2) full business days prior to the date for which the conference is scheduled. For example, to request an adjournment of a conference scheduled for a Wednesday at 9:30 a.m., and assuming no intervening holiday court closing, the FAX must be received no later than 9:30 a.m. on the preceding Monday. The clerk's office will not consider a request received in violation of this deadline. The FAX must be on the letterhead of the attorney/housing counselor/party by whom the request is submitted, and must include: The title and index number of the case, that the request is on consent of all parties, a date to which the parties agree the conference may be adjourned, and that copies of the FAX have been sent to all parties.

There is no guarantee that a request for adjournment will be granted or that, if granted, the conference will be adjourned to the date requested. The clerk's office will neither respond to a request for adjournment nor confirm whether an adjournment has been granted. Parties requesting an adjournment should check E-Courts, on the Unified Court System website, the day after making the request to confirm whether the adjournment has been granted.

Actions Settled in the FSP-P

The underlying residential foreclosure action in a case assigned to the FSP-P is deemed "settled" when it is resolved by satisfaction, reinstatement or permanent modification of the subject loan, or by the closing of title following an agreed upon short sale or deed-in-lieu transaction. Pursuant to CPLR 3408(g), "[t]he plaintiff must file a notice of discontinuance [of the underlying residential foreclosure action] and vacatur of the lis pendens within one hundred fifty days after any settlement agreement or loan modification is fully executed." Thus, a settled case cannot be removed from the FSP-P until a notice of discontinuance and vacatur of lis pendens has been filed with, and all applicable fees remitted to, the Putnam County Clerk.

Therefore, at the conclusion of the conference at which the parties confirm that they have reached a settlement, the Court Attorney / Referee will adjourn the case to a Discontinuance Calendar to be called 30-45 days after release. Discontinuance Calendars are called in courtroom 209 at 2:30 p.m. every third Monday. There will be no adjournments of cases to be called on a Discontinuance Calendar. Defendants/borrowers need not appear for cases called on a Discontinuance Calendar. If plaintiff appears but has not discontinued the action in the interim since it was deemed settled and released from the FSP-P or since the last time it was called on a Discontinuance Calendar, it will be repeatedly adjourned to the next Discontinuance Calendar. If plaintiff has discontinued the action in the interim, it will not appear on the next Discontinuance Calendar. If plaintiff fails to appear for a case called on a Discontinuance Calendar, the action will be dismissed pursuant to 22 NYCRR 202.27(b) and (c).

Actions Released from the FSP-P Without Settlement

The underlying foreclosure action cannot be removed from the FSP-P, and prosecution thereof is not resumed, unless and until one of the parties interposes a motion, or files a Note of Issue or an application for another type of judicial intervention. Therefore, at the conclusion of the conference at which a non-settled case is released, the Court Attorney / Referee will adjourn it to a regular conference calendar "for dismissal." There will be no adjournments of cases to be called "for dismissal." Defendants/borrowers need not appear for cases called "for dismissal." If plaintiff appears but has not resumed prosecution of the action in the interim since the date of release from the FSP-P, it may be dismissed for want of prosecution pursuant to CPLR 3215 or 3216. If plaintiff has resumed prosecution of the action in the interim, it will not appear on the calendar. If plaintiff fails to appear for a case called "for dismissal," the action may be dismissed pursuant to 22 NYCRR 202.27(b) and (c).