



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

January 31, 2018

To: All Interested Persons
From: John W. McConnell
Re: Request for Public Comment on Proposed Amendment to 22 NYCRR § 202.50
(Proposed Judgments in Matrimonial Actions; Forms) to Include Instructions
Addressing the Transfer of Title to a Marital Home

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Unified Court System’s Matrimonial Practice Advisory and Rules Committee (Committee) and Office of Policy and Planning (OPP), to amend 22 NYCRR § 202.50 to include judicial instructions and directives addressing the transfer of title to a marital home. As described in a supporting memorandum by OPP and the Committee (Exh. A), matrimonial litigants are often unaware that additional steps must be taken to complete the conveyance of title following the issuance of a court decision or agreement by the parties providing for the transfer of property in matrimonial actions. This problem is particularly troublesome where property held in the name of both spouses is the subject of a foreclosure action, precluding the party remaining in the home from unilaterally proceeding with a loan modification. To address this problem, the proposed amendment will alert parties as part of the judgment “that separate documents related to the transfer of residence must be signed and filed,” and will “allow [a] spouse residing in the marital property to obtain clear title to the marital home and apply for a mortgage loan modification if a foreclosure action is commenced” (Exh. A, p. 1). The amendment will also allow Supreme Court, in a post-judgment matrimonial action, to enforce the specific requirement of the transfer of the property (Exh. A, p. 2). The proposed rule amendment is attached as Exh. B; language proposed to be added to the Uncontested Divorce Instruction Booklet reflecting this amendment is attached as Exh. C.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than March 20, 2018.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.


EXHIBIT A

To: John McConnell, Counsel

From: Hon. Sherry Klein ~~Heimer~~ Chief, Office of Policy and Planning
Hon. Jeffrey Sunshine, Chair, Matrimonial Practice Advisory and Rules Committee

Date: October 17, 2017

Re: Proposal to Amend 22 NYCRR 202.50 as it relates to the transfer of properties in matrimonial actions to protect spouses in subsequent foreclosure action



At the request of and in consultation with the Chief of Policy and Planning, the Matrimonial Practice Advisory and Rules Committee has proposed the attached amendment to 22 NYCRR 202.50.

This committee has been alerted by the Office of Policy and Planning that some defendants in residential mortgage foreclosure cases have been unable to apply for loan modifications because of title issues arising from their divorce. When couples are involved in a divorce action, it is often agreed that one spouse may remain in the marital home. Where a foreclosure action has also been brought, or is brought after the divorce judgment is signed, the spouse seeking to remain in the home cannot proceed with the loan modification if the deed is titled in the name of both spouses.

The purpose of this proposed rule is to alert self-represented and represented litigants to the additional documents required for transfer of the marital residence, especially where there is a pending foreclosure action. In foreclosure actions, the bank will only consider loan modification applications from the titled individuals notwithstanding that one party may have been granted the marital residence or part thereof. With this amendment, parties will be alerted as part of the judgment that separate documents related to the transfer of a residence must be signed and filed. In this instance, it will allow the spouse residing in the marital property to obtain clear title to the marital home and apply for a mortgage loan modification if a foreclosure action is commenced. Additionally, if the property is never transferred to a spouse, either when both spouses are granted the property, or it is

agreed that they will maintain joint ownership post-divorce, and thereafter a foreclosure action is commenced the non-titled spouse may never receive notice of the foreclosure action once commenced.

Unfortunately, many litigants believe mistakenly that the provisions for transfer of a residence contained in an agreement, decision or judgment actually complete the transfer and they do not realize that a deed or other transfer documents must be executed and filed for this to be accomplished.

The modified rule will also allow the Supreme Court, in a post-judgment matrimonial action, to enforce the specific requirement of the transfer of the property. The instruction packet for uncontested matrimonial actions will also be amended in the form annexed hereto to alert litigants that separate documents must be executed to transfer the residence.

EXHIBIT B

MPARC Proposal Regarding Transfer of Marital of Residence Prepared in Cooperation with and at the Request of the Office of Policy and Planning, Hon. Sherri Klein Heitler, Draft approved at MPARC meeting on 9/15/17

22 NYCRR § 202.50 is hereby amended to read as follows:

Section 202.50 Proposed judgments in matrimonial actions; forms.

(a) Form of Judgments. Findings and conclusions shall be in a separate paper from the judgment, which papers shall be labelled "FINDINGS OF FACT AND CONCLUSIONS OF LAW" and "JUDGMENT," respectively.

(b) Approved Forms.

(1) Contested Actions. The paragraphs contained in Chapter III, Subchapter B of Subtitle D (Forms) of this Title, modified or deleted as may be necessary to conform to the law and facts in a particular action, shall be used in the preparation of " FINDINGS OF FACT AND CONCLUSIONS OF LAW," "JUDGMENT," or "REFEREE'S REPORT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW." Parenthesized portions indicate alternative provisions.

(2) Uncontested Actions. Parties in uncontested matrimonial actions shall use the forms and Instructions in the Unified Court System Uncontested Divorce Packet as set forth in section 202.21(i)(2) of this Part, unless the court permits otherwise pursuant to that section. The Instructions to said Packets shall instruct litigants that they may include a request for transfer of title to the marital home, cooperative apartment or condominium apartment in their request for ancillary relief in the Summons with Notice or Verified Complaint, and shall provide instructions as to what must be done to effectuate a transfer. The Instructions shall also advise litigants that, if they have a mortgage, they should speak with an attorney as well as the bank before the transfer is made.

(3) *Additional Requirement with Respect to Uncontested and Contested Judgments of Divorce.* In addition to satisfying the requirements of paragraphs (1) and (2) of this subdivision, every judgment of divorce, whether uncontested or contested, shall include language substantially in accordance with the following decretal paragraphs which shall supersede any inconsistent decretal paragraphs currently required for such forms:

ORDERED AND ADJUDGED that the Settlement Agreement entered into between the parties on the day of , *an original* **OR** *a transcript* of which is on file with this Court and incorporated herein by reference, shall survive and shall not be merged into this judgment,* and the parties are hereby directed to comply with all legally enforceable terms and conditions of said agreement as if such terms and conditions were set forth in their entirety herein; and it is further

*: In contested actions, this paragraph may read either [shall survive and shall not be merged into this judgment] or [shall not survive and shall be merged into this judgment].

ORDERED AND ADJUDGED, that the Supreme Court shall retain jurisdiction to hear any applications to enforce the provisions of said Settlement Agreement or to enforce or modify the provisions of this judgment, provided the court retains jurisdiction of the matter concurrently with the Family Court for the purpose of specifically enforcing, such of the provisions of that (separation agreement)(stipulation agreement) as are capable of specific enforcement, to the extent permitted by law, and of making such further judgment with respect to maintenance, support, custody or visitation as it finds appropriate under the circumstances existing at the time application for that purpose is made to it, or both; and it is further

ORDERED AND ADJUDGED, that any applications brought in Supreme Court to enforce the provisions of said Settlement Agreement or to enforce or modify the provisions of this Judgment shall be brought in a County wherein one of the parties reside; provided that if there are minor children of the marriage, such applications shall be brought in a County wherein one of the parties or the child or children reside, except for good cause shown; and it is further

(4) Additional Requirement with Respect to Uncontested and Contested Judgments of Divorce. In addition to satisfying the requirements of paragraphs (1), (2), and (3) of this subdivision, every judgment of divorce, whether uncontested or contested, shall include language substantially in accordance with the following decretal paragraph:

ORDERED AND ADJUDGED that, pursuant to the parties' Settlement Agreement dated _____ **OR** the court's decision after trial dated _____, all parties shall duly execute all documents necessary to formally transfer title to real estate or co-op shares to the Plaintiff **OR** Defendant as set forth in the parties' Settlement Agreement **OR** the court's decision after trial, including, without limitation, an appropriate deed or other conveyance of title, and all other forms necessary to record such deed or other title documents (including the satisfaction or refinancing of any mortgage if necessary) to convey ownership of the marital residence located at _____, no later than _____;

OR Not applicable; and it is further

(c) Judgments submitted to the court shall be accompanied by a complete form UCS 111 (Child Support Summary Form).

EXHIBIT C

LANGUAGE TO BE ADDED TO UNCONTESTED DIVORCE
INSTRUCTION BOOKLET

TRANSFER OF MARITAL HOME, CO-OP OR CONDO

Real property, including a house or a condominium apartment, or a cooperative apartment, is not legally transferred just because a stipulation of settlement has been signed or the court has determined that title shall be transferred. In order to transfer such property certain forms, such as a deed and transfer tax forms and other required forms, must be obtained and must be filled out with the required information. If a cooperative apartment is being transferred, the stock certificate and proprietary lease must be assigned to the transferee and approval of the Cooperative Board may be required. The transferor must then sign the deed or assignment and other required forms in front of a Notary Public. The transfer will be complete when the signed, notarized deed or assignment, and other required forms are filed in the County where the property is located, either in the office of the City Register in Kings, Queens, New York or Bronx Counties, or in the local County Clerk's office in all other New York State Counties. If there is a mortgage on the marital residence it is important that you speak with an attorney as well as the bank before the transfer is made. You may need the bank or lender's written consent before making any transfer. Be aware that when you transfer real property out of your name by signing and filing a deed or assignment and other required forms, this does not relieve or excuse you from your obligations on any mortgage which you may have placed on the property.

Rev. 10/23/17