

MEMORANDUM

February 25, 2019

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on a Proposal to Send Court Notices to Homeowners of Court Date in Tax Lien Foreclosure Cases

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The Administrative Board of the Courts is seeking public comment on a proposal by the Office of Court Administration’s Office of Policy and Planning (“Office”) that the Court System provide written notice to homeowner-defendants in tax lien foreclosure proceedings containing (1) the first court date in the proceeding, (2) an alert that the proceeding could result in the homeowner’s loss of title to the property at issue, and (3) a referral list of legal service providers and housing counselors.

As described in a supporting memorandum (Exh. A) from Judge Sherry Klein Heitler, Chief of Policy and Planning, current law requires that various notices be provided to homeowners upon commencement of residential mortgage cases (RPAPL § 1304), but similar notice is not required in tax lien foreclosure cases, governed by Real Property Tax Law §§ 1123-1125. The Office submits that, though not statutorily required, the provision of court notice with the specified information would substantially enhance the fairness and efficacy of the tax lien foreclosure process (A sample of the notice proposed by the Office is attached as Exh. B).

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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 May 24, 2019.

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: Administrative Board
From: Hon. Sherry Klein Heitler, Chief, Office of Policy & Planning
Re: Court Notice to Homeowners in Tax Lien Foreclosure Cases
Date: December 27, 2018

The Office of Policy & Planning seeks approval of a court notice to be sent to respondent homeowners upon the commencement of a tax lien foreclosure proceeding under Article 11 of New York's Real Property Tax Law (see attached).

Homeowners in residential mortgage foreclosure actions are entitled to receive advance notice (usually 90 days) of an impending foreclosure from their loan servicer pursuant to RPAPL 1304. If an action is commenced, the court must provide additional information to the homeowner during a special settlement conference pursuant to CPLR 3408. These requirements apply to foreclosures on both traditional and reverse mortgages.

A homeowner involved in a tax lien foreclosure is required to be served with the petition but is not entitled to any additional protections similar to those set forth at RPAPL 1304 or CPLR 3408. Tax lien foreclosures governed by RPTL Article 11 neither requires the petitioner to provide the homeowner with advance notice of the proceeding nor requires the court to schedule a special settlement conference immediately after the action is commenced. If the petition is filed by the City of New York, the NYC Department of Finance requires that at least four notices be sent to a homeowner before the lien is sold to a debt buyer. However, neither New York City nor the debt buyer is required to send a pre-commencement notice of a foreclosure action on those liens.

Bringing tax lien foreclosures in line with traditional and reverse mortgages will require legislation. In the interim, the attached notice should be promulgated for use statewide. Among other improvements from the current law, this notice will serve to provide homeowners with information about their first court date and direct them to a directory of free civil legal service providers and housing counselors. For New York City homeowners, the proposed court notice would supplement any notice received from the NYC Department of Finance before the homeowner's lien is sold to a debt buyer. For homeowners outside New York City, the court notice may be the only indication, other than the petition itself, that a foreclosure may be imminent.

The Office of Policy and Planning respectfully requests that the annexed draft notice be made available for public comment.

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF [NAME OF COUNTY]

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IN THE MATTER OF THE FORECLOSURE OF Index No. _____
TAX LIENS BY PROCEEDING IN REM PURSUANT
TO ARTICLE ELEVEN OF THE REAL PROPERTY
TAX LAW BY *(insert name of tax district)*.

PETITION OF FORECLOSURE

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Notice of Commencement of Action Pursuant to RPTL § 1120

To the Defendant: You are receiving this *Notice* because a case has been started against you to enforce the payment of unpaid taxes which have accumulated and become liens against your property. If you have not already, you should be receiving what is called a “petition” from the Plaintiff which details the allegations against you. Essentially, the Plaintiff is asking the Court to sell your property to recover the taxes it claims that it is owed.

It is important that you do not ignore this notice or any other court papers that you receive, or **YOU MAY LOSE YOUR HOME**. While the court cannot provide you with legal advice, help may be available to you. For a list of lawyers and housing counselors in your area that may be able to assist you, please visit the Office of Policy & Planning website at <http://ww2.nycourts.gov/admin/OPP/foreclosures.shtml>. General information about foreclosures can also be found at CourtHelp (<https://www.nycourts.gov/courthelp/Homes/foreclosures.shtml>).

Court Date. A Judge will hear this case at the following date, time, and location:

Date: _____ Time: _____ Courtroom: _____

Address: _____

Judge: _____

If you do not come to court on this date the Judge may grant Plaintiff’s application and order the sale of your property.

Important! Unless you receive a court order telling you to leave the property you have a right to remain in your home.

From: _____
Clerk of the Court

Dated: _____