

**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](mailto:rulecomments@nycourts.gov) or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11<sup>th</sup> 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

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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**

