



NEW YORK STATE  
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS  
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL  
COUNSEL

MEMORANDUM

September 12, 2016

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Uniform Forms for Use in Residential Foreclosure Proceedings

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The Administrative Board of the Courts is seeking public comment on two uniform forms – an intake form and a status form (Exh. A) – proposed for statewide use in mandatory residential foreclosure settlement conferences. Those conferences, required by State law for several years pursuant to Civil Practice Law and Rules §3408 and 22 NYCRR §202.12-a, are designed to facilitate early meeting of the parties in foreclosure matters, exchange of pertinent documents, and prompt settlement discussions. A recent study by the Office of Court Administration’s Office of Policy and Planning disclosed that the lack of clear and uniform method for memorializing the outcome of these conferences has limited their effectiveness, and has sometimes led to confusion and delay in the foreclosure process itself. The proposed forms, designed by the Office Policy and Planning following extensive discussion with stakeholders around the State (including judges, clerks, plaintiff and defense practitioners, and legal services providers), are designed to address that problem: to standardize case management, streamline the conference process, and provide an accurate record of proceedings for litigants and the court (Exh. B).

In light of the ongoing importance of the residential foreclosure process and the statewide impact that these uniform forms will have upon litigation involving unrepresented persons, the Board is soliciting the views of the bar and public on the proposal.

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Persons wishing to comment on the proposed forms 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, 11th Fl., New York, New York 10004. **Comments must be received no later than November 1, 2016.**

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**

**SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF \_\_\_\_\_**  
**FORECLOSURE SETTLEMENT CONFERENCE INTAKE FORM**

\_\_\_\_\_  
Plaintiff(s), v. Index No.: \_\_\_\_\_  
Defendant(s).

A Residential Foreclosure Conference was held on \_\_\_\_\_ and the following parties appeared before the undersigned:

**APPEARANCES For Plaintiff ("P")**

Name \_\_\_\_\_ Email/Phone: \_\_\_\_\_

Law Firm: \_\_\_\_\_ Loan Servicer: \_\_\_\_\_

For Defendant(s) ("D") [ ] UNREPRESENTED [ ] REPRESENTED BY: [ ] retained [ ] of counsel [ ] other

Name \_\_\_\_\_ Email/Phone: \_\_\_\_\_

Law Firm: \_\_\_\_\_ Service Provider: \_\_\_\_\_

Other: \_\_\_\_\_

[ ] This foreclosure action is eligible for an FSC: [ ] Yes [ ] No [ ] Vacant

If eligible, does D want to remain in possession: [ ] Yes [ ] No

Has D filed an answer: [ ] Yes [ ] No

[ ] This case does not meet the criteria of Uniform Rule 202.129(a) (FSCNER) (FSCNEU).

[ ] D failed to appear at the scheduled conference, P to proceed with the action. (FSCDFTR) (FSCDFTU).

**LOAN AND INCOME INFORMATION**

Mortgage Date: \_\_\_\_\_ Reinstatement: \_\_\_\_\_ (as of) \_\_\_\_\_

Default Date: \_\_\_\_\_ Payoff: \_\_\_\_\_ (as of) \_\_\_\_\_

Original Loan Amount: \_\_\_\_\_ Other: \_\_\_\_\_

Interest Rate: \_\_\_\_\_ Contributor: Y/N \_\_\_\_\_

Monthly Payment: \_\_\_\_\_ PITI \_\_\_\_\_ Contribution Amount: \_\_\_\_\_

Defendant Income: \_\_\_\_\_ Rental Income: \_\_\_\_\_

Term \_\_\_\_\_ Prior Modifications/Mortgages Y/N \_\_\_\_\_ HAMP Y/N \_\_\_\_\_

Other: \_\_\_\_\_

**FOLLOWING A SETTLEMENT CONFERENCE, IT IS HEREBY DIRECTED THAT:**

[ ] By \_\_\_\_\_ [date], P shall provide to D a loan modification/short sale application.

[ ] By \_\_\_\_\_ [date], D shall submit to P a completed loan modification/short sale application.

[ ] By \_\_\_\_\_ [date], P shall send Missing Document Letter, if necessary.

[ ] By \_\_\_\_\_ [date], D shall respond to the Missing Document Letter.

[ ] Other \_\_\_\_\_

[ ] Case Discontinued except by settlement (FSCDISCR) (FSCDISCU). P shall file a Notice of Discontinuance and serve a Certified Copy of such Discontinuance upon D within (45) days of the date hereof.

[ ] Case is not settled and P may proceed with the action (FSCCNSR) (FSCCNSU). Unless otherwise directed by the Court, failure to proceed will result in dismissal of the action.

[ ] Stayed pending other outcome (FSCSTAYR) (FSCSTAYU).

[ ] The court directs an adjournment to \_\_\_\_\_ at \_\_\_\_\_ for further conference (FSCCTDR) (FSCCTDU).

Directed by:	P acknowledges receipt by signing below:	D acknowledges receipt by signing below:
Date:		

**SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF \_\_\_\_\_**  
**FORECLOSURE SETTLEMENT CONFERENCE STATUS FORM**

\_\_\_\_\_  
 Plaintiff(s), v. Index No.: \_\_\_\_\_  
 Defendant(s). # of prior conferences \_\_\_\_\_

A Residential Foreclosure Conference was held on \_\_\_\_\_ and the following parties appeared before the undersigned:

<b>APPEARANCES For Plaintiff(s) ("P")</b>	
Name _____	Email/Phone: _____
Law Firm: _____	Loan Servicer: _____
<b>For Defendant(s) ("D")</b> <input type="checkbox"/> UNREPRESENTED      <input type="checkbox"/> REPRESENTED BY: <input type="checkbox"/> retained <input type="checkbox"/> of counsel <input type="checkbox"/> other	
Name _____	Email/Phone: _____
Law Firm: _____	Service Provider: _____
Other: _____	

On \_\_\_\_\_ [date], D submitted an initial/updated modification/short sale package to P.  
 On \_\_\_\_\_ [date], P requested that D submit the following additional documents:

\_\_\_\_\_  
 \_\_\_\_\_  
 Additional documents to be sent to (name, address and fax number): \_\_\_\_\_

P did not comply with this Court's prior directive dated \_\_\_\_\_, in that: \_\_\_\_\_

D did not comply with this Court's prior directive dated \_\_\_\_\_, in that: \_\_\_\_\_

The Court directs P to have the lender's representative, authorized to settle, as follows:  
 Present in Court on the next court date     Available to the Court by DIRECT telephone line  
 Other \_\_\_\_\_

- Case Settled by loan modification (FSCLMR (FSCLMU)
- Case Dismissed by the court (FSCDISMR) (FSCDISMU)
- Case Settled other than loan modification (FSCOTR) (FSCOTU) loan reinstatement – loan satisfaction- MHA – short sale
- Case Discontinued except by settlement (FSCDISCR) (FSCDISCU) P shall file a Notice of Discontinuance and serve a Certified Copy of such Discontinuance, upon D within (45) days of the date herein.
- Case is not settled and P may proceed with the action (FSCCNSR) (FSCCNSU). Unless otherwise directed by the Court, failure to proceed will result in dismissal of the action.
- Stayed pending other outcome (FSCSTAYR) (FSCSTAYU)
- D failed to appear at the scheduled conference, P to proceed with action. (FSCDFTR) (FSCDFTU)
- The court directs an adjournment to \_\_\_\_\_ at \_\_\_\_\_ for further conference (FSCCTDR) (FSCCTDU)
- The court directs an adjournment to \_\_\_\_\_ at \_\_\_\_\_ for Trial Loan Modification (FSCCTDR) (FSCCTDU)

Directed by:	P acknowledges receipt by signing below:	D acknowledges receipt by signing below:
Date:		

**EXHIBIT B**

## **MEMORANDUM**

**TO:** Administrative Board  
**FROM:** Hon. Sherry Klein Heitler,  
Chief of Policy and Planning, New York State Unified Court System  
**RE:** Statewide Foreclosure Conference Status and Intake Forms  
**DATE:**

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The Office of Policy and Planning has prepared Uniform Foreclosure Settlement Conference Intake and Status Forms (annexed) to be used statewide in Foreclosure Settlement Conference (FSC) Parts in order to standardize case management, streamline the settlement conference process, and provide an accurate record of the proceedings for the litigants and the court.

In 2008, recognizing the value of early settlement conferences in residential mortgage foreclosure actions, the New York State Legislature enacted CPLR 3408 which mandates that a conference be held among the parties and the court to determine whether the parties can resolve their dispute, usually by modifying the defendant's payment schedule. Due to the nature of the loan modification process each case often requires several court conferences to be held over the course of many months before a settlement can be reached. The FSC process also requires that the judge, JHO, referee, or law clerk provide the parties with deadlines and instructions as to the documentation needed to complete a loan modification application. These instructions are very detailed and lengthy, and often require the production of tax information, proof of income, bank records, employment records, and other financial information.

The Uniform Foreclosure Settlement Conference Intake and Status Forms were developed in response to multiple ongoing suggestions, comments and complaints from plaintiff and defense practitioners, including that there was often no record of the FSC proceedings. These two forms were designed after extensive consultation and input over many months from plaintiffs' representatives, private defense practitioners, civil legal service providers, judges and court personnel statewide.

The Intake Form is designed to be used only at the first FSC. It includes:

- An appearance section to ensure that contact information for all parties is available;
- A detailed loan and income information section to assist the parties and the court determine whether a loan modification is feasible;
- A check-list of court directives;
- A section for the judge/JHO/referee to write down other directives and information about the case; and
- A section to provide the date and time of the next FSC, if any.

**The Status Form is designed to be used at all FSC conferences except the first conference. It includes:**

- **An appearance section;**
- **A check-list of follow-up court directives;**
- **Additional space for the judge/JHO/referee to take notes about the progress of the settlement negotiations;**
- **A check-list of dispositions; and**
- **A section to provide the date and time of the next FSC, if any.**

**Both forms can be filled out by the assigned judge or referee, other court personnel, or the parties, based on local practice. The original will be kept by the court with copies to be provided to both sides. They can be pre-printed in triplicate or can be computer-based fillable PDF forms. In the future, minor changes may be made to the forms as deemed necessary.**

**These forms will ensure that all parties have the same clear directions for the loan modification process. In addition, everyone will have a written record of any court directives to be followed prior to the next conference. The forms will be particularly helpful to unrepresented litigants as well as to banks who in many cases utilize per diem counsel. They will also aid the court by providing a record of the settlement conference proceedings to the IAS judge to whom the case would be transferred if the settlement process is not successful. Data entry personnel will also benefit since the forms include data codes keyed to the UCS' computer operating systems.**

**For the foregoing reasons, the Office of Policy and Planning respectfully requests that the annexed Uniform Foreclosure Settlement Conference Intake and Status Forms be mandated for use in all CPLR 3408 Foreclosure Settlement Conferences.**