

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and as required by Chapter 147 of the Laws of 2021 which relates to residential and commercial foreclosures, I hereby direct that, effective immediately, the following procedures and restrictions shall apply to the conduct of foreclosure matters before the New York State Unified Court System:

1. Filings:

- a. No court shall accept for filing commencement papers to foreclose a mortgage related to residential real property as defined by L. 2021, c. 147 (Part C, Subpart B, § 1) unless those papers include affidavits as required by Part C, Subpart B, § 4.
- b. No court shall accept for filing commencement papers to foreclose a mortgage relating to commercial real property as defined by Part B, Subpart B, § 1 unless those papers include affidavits as required by Part B, Subpart B, § 4.
- c. Filing and service of process in all foreclosure proceedings shall continue as set forth in Administrative Order 267/20.

2. Stay of Actions in Which the Mortgagor Provides a Hardship Declaration: In any covered action in which a judgment of sale has not been issued and a covered mortgagor or owner has already submitted or hereafter submits a Hardship Declaration to the foreclosing party, the foreclosing party's agent, or the court, the action shall be stayed (or commencement tolled) until at least January 15, 2022 (Part B, Subpart B, § 5; Part C, Subpart B, § 5).

3. Stay of Actions in Which a Judgment of Sale Has Been Issued But Not Yet Executed: If a judgment of sale has been issued in any covered action but has not yet been executed, execution of the judgment shall be stayed until the court has held a conference with the parties. If a mortgagor or owner has submitted or hereafter submits a Hardship Declaration to the foreclosing party, the foreclosing party's agent, or the court prior to the execution of the judgment, the action shall be stayed until at least January 15, 2022 (Part B, Subpart B, § 6; Part C, Subpart B, § 6).

4. Challenging a Hardship Declaration:

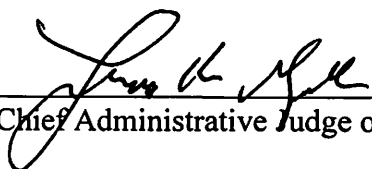
- a. New Action – In a new filing, if the foreclosing party submits a detailed affidavit attesting that the foreclosing party has received a Hardship Declaration from the mortgagor or owner, but the foreclosing party believes in good faith that the hardship certified in the Hardship Declaration does not exist, the matter should be scheduled for a hearing. If, after the hearing, the court finds the Hardship Declaration to be valid, the matter should be stayed

through January 15, 2022. If the court finds that the Declaration is invalid, the matter may proceed in the normal course.

- b. Pending Action - Upon motion by the plaintiff on notice to the defendant, a court must schedule a hearing to determine the validity of the Hardship Declaration. If, after the hearing, the court finds the Hardship Declaration to be valid, the stay shall continue. If the court finds that the Declaration is invalid, the matter may proceed in the normal course (Part B, Subpart B, § 9; Part C, Subpart B, § 9).
5. Case Conferencing – Regardless of whether a Hardship Declaration is on file, courts should continue to actively manage their foreclosure cases and conduct conferences as needed, including settlement conferences in residential mortgage foreclosure matters as required by CPLR 3408. Courts should also continue to determine whether a matter is subject to a government moratorium or forbearance program, refer unrepresented parties to local civil legal service providers and housing counseling agencies, provide unrepresented parties with contact information for the Homeowner Assistance Fund, and use best efforts to resolve any outstanding issues. Where possible, settlements, loan modifications, and other loss mitigation options should be encouraged.
6. Other Provisions – All covered actions shall be conducted as otherwise required by the remaining provisions of L. 2021, c. 147.
7. Auctions: Auctions may resume but shall be permanently conducted in accordance with district/county auction plans. Such plans should be reviewed and updated periodically. If it is anticipated that an auction cannot be held in compliance with the UCS' COVID-19 related protocols, in particular regarding social distancing, the auction shall be relocated, and if necessary, postponed.
8. Resumption of other Residential, Commercial, and Tax Lien Foreclosure Matters: Any residential, commercial, or tax lien foreclosure matter not covered by L. 2021, c. 147 may resume in the normal course, subject to government programs affecting the commencement and prosecution of such matters.
9. Paragraphs 1, 2, 3, 4, and 6 of this order shall expire on January 15, 2022.

This order supersedes Administrative Orders 157/20, 232/20, 341/20, and 159/21. This order further supersedes the provisions of any other Administrative Order inconsistent with its terms and provisions.

Dated: September 9, 2021



Chief Administrative Judge of the Courts

AO/262/21