

**BRONX SUPREME COURT
FORECLOSURE SETTLEMENT CONFERENCE PART (FSCP) RULES
(CPLR 3408[a] RESIDENTIAL FORECLOSURE ACTIONS)
EFFECTIVE 5/16/2017**

Supervising Referee: Josephine M. Bastone, Esq.
Assoc. Court Atty/Special Referee: Steven Konigsberg, Esq.

Room: 607
Telephone: (718) 618 – 1196
Facsimile: (212) 884 – 8953

Appearances

All parties must appear in person or by counsel at all conferences. Plaintiffs and defendants must produce all documentation required to effectuate a loan modification or other settlement. Plaintiffs and their representatives, including counsel, must be fully knowledgeable as to all aspects of the case, and must be prepared to discuss the loan amount, the default amount, and all other particulars relating to a potential modification of the mortgage. *See* 22 NYCRR 202.12-a (c) (3).

Failure to appear at the scheduled conference without court approval or good cause may result in an appropriate sanction, including forwarding the action to an IAS Part for prosecution of the foreclosure action (defendant's failure to appear), or dismissal of the action pursuant to 22 NYCRR 202.27 (plaintiff's failure to appear).

The action shall remain in the FSCP until settled, or otherwise resolved, or until released to an IAS Part by Order of the Referee.

Waiver of Defenses

No jurisdictional defense is waived by appearance at settlement conferences.

Conduct of Conferences; Court Orders

The parties shall appear at the Conference Part at 9:30 a.m. on the scheduled conference date in order to confer with the other side. Conferences shall be held Tuesday through Friday. The parties, at the initial appearance in FSCP, shall complete the foreclosure conference intake form prepared by the Court.

Each conference will be conducted by a Court Attorney-Referee/Special Referee. The settlement discussion will pertain to the relative rights and obligations of the parties under the mortgage loan documents, including determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing her or his home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to. 22 N. Y.C.R.R. 202.12-a (c) (2). Plaintiffs and defendants should bring all documents needed for the conference, as required by 22 N.Y.C.R.R. 202.12-a (c).

The issues resolved or accomplished, and the matters to be performed by the parties for any subsequent conference, shall be reduced to a writing by the Court Attorney-Referee/Special Referee on a form prepared by the Court, will be executed by the Referee conducting the conference, and shall constitute an order of the Court. Appearing parties are to execute the order acknowledging receipt. The parties are admonished that the Court will enforce its orders to the fullest extent permitted by law.

The plaintiff must file a notice of discontinuance and vacatur of the lis pendens within ninety days after any settlement agreement or loan modification is fully executed. CPLR 3408(g).

Adjournments

This Part, as a general rule, does not accept stipulations to adjourn. All adjournments, even those on consent of all parties, are subject to the discretion and approval of the court. No adjournment will be granted via telephone request, regular mail, or email. Requests for adjournments may be made ONLY by fax to the Part Clerk at 212-884-8953 at least three (3) business days prior to the date of the scheduled conference. The request must set forth the title and index number of the action, the date of the conference, the progress made in the case, and the reason for the adjournment. The reason for the request for an adjournment must be set forth (even if the adjournment is sought on consent of all parties). The Part Clerk will notify the parties if the request is granted or denied as soon as practicable.

Motions Held in Abeyance

No motions, other than those for leave to file a late answer, should be made with respect to the underlying foreclosure action with the RJI, or while the case is assigned to the FSCP. Any such motion, if made contrary to this rule, shall be held in abeyance until the case is released to an IAS Part. 22 NYCRR 202.12-a (c) (7).

Stay of Underlying Residential Foreclosure Action

The underlying foreclosure action, including discovery, is stayed until the case is either discontinued following settlement of the case or is released from the FSCP without settlement. The underlying action may be stayed for an additional period of time as considered appropriate by the Court in its discretion, following the date of release from the FSCP.

Obligation to Negotiate in Good Faith; "Lack of Good Faith" Hearing

CPLR 3408(f) mandates that the parties "shall negotiate in good faith to reach a mutually agreeable resolution, including a loan modification, if possible". CPLR 3408 (f); *see also*, 22 NYCRR 202.12-a (c) (4) ("[t]he court shall ensure that each party fulfills its obligation to negotiate in good faith.")

An oral application for the tolling of sanctions due to a “lack of good faith” may be made before the Referee. A request for a “lack of good faith” hearing before Judge Doris Gonzalez shall be made by Order to Show Cause.

Where lack of good faith on the plaintiff’s part is alleged, compliance with the good faith requirement of CPLR 3408 is not established by proving the absence of fraud or malice on the part of the lender. Instead, the Court will base a determination of good faith, or lack of good faith, on the totality of the circumstances presented.

If a determination of lack of good faith is made, the Court will fashion an appropriate remedy tailored to the circumstances of each given case. With respect to “lack of good faith” findings as to plaintiffs, the Court will consider remedies such as:

- barring the collection of interest, legal fees, and expenses;
- imposing exemplary damages;
- staying foreclosure proceedings;
- imposing a monetary sanction pursuant to 22 NYCRR 130;
- dismissing the action; and
- requiring a bank representative to appear.

With respect to “lack of good faith” findings as to defendants, the Court will consider remedies such as an immediate referral of the action to an IAS Part for the prosecution of the foreclosure action.

Actions Released to an IAS Part

No action released to an IAS Part shall be returned to the FSCP, by referral, motion, or stipulation, except after consultation with the Supervising Referee of the FSCP.