

**FIFTH JUDICIAL DISTRICT FORECLOSURE SALE COVID-19 PROTOCOLS**

In an Administrative Order of the Chief Administrative Judge of the Courts dated July 23, 2020 (AO 157/20), Chief Administrative Judge Lawrence Marks required each judicial district to assess auction practices within the district and to develop “appropriate procedures and protocols for the safe and healthful conduct of such actions within their districts in light of the COVID-19 pandemic” (AO 157/20). The policies and procedures set forth below will take effect immediately on approval and remain in effect during the COVID-19 health emergency. The policies and procedures herein will best ensure the requirements of social distancing and any requirement for face coverings. The filing and service of documents in foreclosure proceedings shall continue to be governed by AO/121/20. The requirement of a status or settlement conference in all foreclosure matters shall remain in effect in AO/157/20 as follows:

4. Conferences:

- a. Prior to conducting any further proceedings in any foreclosure matter, the court must initiate a status or settlement conference (including, where applicable, a settlement conference pursuant to CPLR Rule 3408). If any party does not appear at the conference, the court shall reschedule and make a second attempt to hold the conference before undertaking further proceedings.
- b. At the conference, the court shall review the procedural history of the matter; confirm compliance with notice requirements, inquire into the effects, if any, that the COVID-19 pandemic has had upon the parties; review any special relief under state or federal law to which the parties may be entitled in light of the pandemic; refer unrepresented parties to local civil legal service providers and housing counseling agencies; assess any pending and anticipated motions; approve briefing schedules proposed by stipulation of the parties; and use best efforts (including referral to alternative dispute resolution) to resolve any outstanding issues.

Pursuant to AO/232/20, the requirement of a status or settlement conference in all foreclosure matters (including matters where a judgment of foreclosure issued or an auction was scheduled prior to March 17), set forth in AO/157/20 shall remain in effect, with two modifications as follows:

- (i) Conference Requirement for Vacant and Abandoned Property: No conference need be held in a foreclosure matter where the foreclosing lender submits an affirmation to the court averring that, following diligent inquiry, it knows the property at issue to be currently abandoned and vacant.
- (ii) Conference Requirement for In Rem Foreclosures: The conference requirement shall apply to in rem foreclosure proceedings only where the enforcing officer (e.g., the county attorney or other person filing the proceeding) deems such a conference to be in the public interest (for example, the conference is likely to result in a settlement beneficial to all parties).

The Court shall attach to the Judgment of Foreclosure and Sale a copy of the COVID-19 protocols that will be implemented at the foreclosure auction/sale. The Amended Judgment of Foreclosure and Sale shall direct that a COVID-19 Notice shall be included in the advertisement published in the local newspaper stating that COVID-19 safety protocols will be followed at the foreclosure sale.

Each Supreme Court Clerk in the Fifth Judicial District shall establish a centralized telephone, email or similar system to allow the Referee, attorneys, parties and participants to utilize for scheduling purposes and to obtain any information relating to the auction, including the date, place and time. No more than one public auction may be conducted at one time. Auctions must be scheduled at least 30 minutes apart.

All Orders appointing the Referee shall include a provision that the Referee agrees to comply with these Fifth Judicial District Foreclosure Sale Protocols, including social distancing and PPE guidelines.

Before entering the Courthouse, the Referee, attorneys and any member of the public shall undergo standard COVID-19 and New York State Travel Advisory questioning, be instructed to wear a face covering and have their temperature taken. Anyone with a fever will be excused from attending the foreclosure sale, as well as anyone answering the screening questions in the affirmative. The location of any foreclosure sale shall be held in a large venue to ensure appropriate social distancing as set forth below.

During the auction/sale, the Referee, attorneys and any potential bidders shall stand or sit at least six (6) feet from one another. The Lobby or designated area should be prepared and marked to ensure appropriate social distancing. All attendees shall wear a face mask at all times, no exceptions. In addition, the Referee may wear a face shield. Court Security shall be present to enforce all safety protocols. In the rare event that an auction/sale shall exceed the space required for appropriate social distancing, the Referee shall immediately request the Supreme Court Clerk to relocate the sale to a larger room.

The Referee shall not conduct an auction and/or shall stop an auction where COVID-19 protocols, including social distancing cannot be followed (AO/232/20). The Referee is further authorized to contact the Chief Clerk and/or Supreme Court Judge to request a larger space to conduct the auction.

The Referee may, upon application to the Court, and upon good cause shown, apply to allow participants/bidders to appear virtually, provided the Chief Clerk is given three (3) business days' advance notice of the need for virtual capability.

The Supreme Court Clerk of each County shall ensure that there is sufficient room and space to allow the Referee, participants and winning bidder to complete paperwork after the auction in an area that meets all safety protocols.

### Onondaga County

The foreclosure auction shall be held in the Onondaga County Courthouse, Second Floor Lobby outside the County Clerk's Office. The Lobby is very large and will allow for adequate social distancing. A Court Security Officer shall be in attendance to ensure compliance with all COVID-19 protocols.

### Oswego County

The foreclosure auction shall be held in the Main Lobby of the Oswego County Courthouse. A Court Security Officer shall be in attendance to ensure compliance with all COVID-19 protocols.

### Oneida County

The foreclosure auction shall be held in the Lobby of the Rome Supreme Courthouse to accommodate social distancing. A Court Security Officer shall be in attendance to ensure compliance with all COVID-19 protocols.

### Jefferson County

The foreclosure auction shall be held at the Jefferson County Court Complex in the front vestibule area with any overflow into the Lobby. Only bidding parties would be permitted in together with the Referee. The vestibule can accommodate four (4) people and the Lobby would add 5-6. Historically, this is more than enough space. The Referee shall immediately notify the Supreme Court Clerk if the need for a larger space is anticipated.

### Herkimer County

The foreclosure auction shall be held in the Lobby of the Fifth Floor of the County Court Facility. Court Security shall supervise the area for social distancing and PPE guidelines.

Lewis County

The foreclosure auction shall be held in the Main Lobby of the Lewis County Courthouse, Lowville, NY. Court Security shall supervise the area for social distancing and PPE guidelines.