

Amended Foreclosure Auction Plan - Eighth Judicial District

Summary:

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 auctions 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.

Five of the eight counties of the Eighth Judicial District are small counties; the volume of foreclosure auctions is low and it is not anticipated that auctions in all but one of the present locations used will pose challenges for social distancing. In Genesee County, the former location is not conducive to appropriate distancing so it has been changed to the County Courts Facilities Building which is across the street from the former location. In addition, Cattaraugus County previously used 2 locations but, one of these has been eliminated to facilitate easier monitoring and enforcement of safety protocols. Referees conducting auctions in all of these counties will be required to enforce any applicable social distancing and face covering requirements in effect at the time the auction is held and, only one auction at a time may be conducted if more than one happens to be scheduled.

In Erie, Niagara and Chautauqua Counties prior to April 2020, several foreclosure auctions had been scheduled per day and multiple auctions had been scheduled to occur at the same time. Were this practice to continue after October 15, 2020, it would pose significant issues for social distancing in the spaces where auctions are held. This plan implements a scheduling system for auctions to be held in those 3 counties which will permit only one auction to occur every half hour between the hours of 10:00 AM and 3:30 PM; no more than one auction at a time can be conducted at any particular time. In addition, the locations of auctions in Erie and Niagara Counties have been changed to much larger spaces to insure appropriate distancing. As with all counties, Referees conducting auctions in Erie, Niagara and Chautauqua counties will be required to enforce any applicable social distancing and face covering requirements in effect at the time the auction is held.

Erie County

Prior to the COVID-19 health emergency, foreclosure auctions were held in the “Foreclosure Alcove” which is a hallway connecting the old courthouse (92 Franklin Street) to the newer building (25 Delaware) in Buffalo, New York. Now, foreclosure auctions shall be conducted in the “Closing Room” of the Erie County Clerk’s Office located on the first floor of 92 Franklin Street, Buffalo, New York as this is a large, spacious room with very high ceilings and plenty of room to provide space for adequate social distancing. This room was recently retrofitted by the Erie County Clerk with new standing tables and other

equipment to ensure proper distancing.

To further address issues of social distancing for auctions in Erie County during the COVID-19 health emergency, the following procedures will be implemented:

1. **In order to schedule an auction, Plaintiff's attorney must contact the Erie Foreclosure Part at 8jdForeclosures@nycourts.gov and:**
 - a. **Request an AO/157/20 conference be held prior to the foreclosure auction, OR**
 - b. **Request an appointment for an auction and submit an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference is not required because the property is vacant and abandoned.**

The email and associated calendar will be monitored by the clerks assigned to the Erie Foreclosure Part, as well as by the Chief Clerk and Deputy Chief Clerk.

2. **Following the completion of a conference held pursuant to (1)(a) above, the Plaintiff's attorney may request an auction be scheduled pursuant to (1)(b) above.**
3. Only one auction at a time may be conducted and auctions may only be scheduled in half-hour blocks beginning at 10:00 AM and ending at 3:30 PM in order to avoid peak employee and general public entrance/exit times.
4. If the Erie Foreclosure Part becomes aware of parties showing up for an auction which conflicts with an auction scheduled through the Erie Foreclosure Part, the following rules shall apply:
 - a. The Plaintiffs' attorneys and Referees involved in the conflicting sales will be directed to check with their clients and/or other principals to ensure that their auction is set to continue and their file is not on a loss mitigation hold or some other stay;
 - b. If the conflicting auctions need to go forward, the auction that was scheduled through the Erie Foreclosure Part shall occur in the Erie County Clerk's "Closing Room". For the auction that was not properly scheduled, the Referee will either have to: a) hold the auction on the steps of 92 Franklin Street; or b) re-schedule the auction.
5. **Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**
6. Granted judgments of foreclosure and sale shall incorporate and require compliance with the "Foreclosure Auction Rules for the 8th Judicial District" and the "Covid 19 Health Emergency Rules".
7. **The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**

Niagara County

Prior to the COVID-19 health emergency, foreclosure auctions were held in one of three locations:

- 1.) Lobby of Angelo A. DelSignore Civic Building (hereinafter, "DelSignore Building", 775 Third Street, Niagara Falls, New York;
- 2.) Rotunda of Niagara County Courthouse, 175 Hawley Street, Lockport, New York;
- 3.) Lobby of the City Hall of the particular city where the property was located (if located in a city).

Going forward, all foreclosure auctions shall be conducted in the area known as the Jury Assembly/Hearing Room (Part 8) located in the basement of the DelSignore Building in Niagara Falls, New York. It is a large room which will permit appropriate distancing for many people.

To further address issues of social distancing for auctions in Niagara County during the COVID-19 health emergency, the following procedures will be implemented:

1. **In order to schedule an auction, Plaintiff's attorney must contact the Niagara Foreclosure Part at NiagaraCountyForeclosure@nycourts.gov and:**
 - a. **Request an AO/157/20 conference be held prior to the foreclosure auction, OR**
 - b. **Request an appointment for an auction and submit an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference is not required because the property is vacant and abandoned.**

The email and associated calendar will be monitored by the clerks assigned to the Niagara Foreclosure Part, as well as by the Chief Clerk and Deputy Chief Clerk.

2. **Following the completion of a conference held pursuant to (1)(a) above, the Plaintiff's attorney may request an auction be scheduled pursuant to (1)(b) above.**
3. Only one auction at a time may be conducted and auctions may only be scheduled in half-hour blocks beginning at 10:00 AM and ending at 3:30 PM in order to avoid peak employee and general public entrance/exit times.
4. If the Niagara Foreclosure Part becomes aware of parties showing up for an auction which conflicts with an auction scheduled through the Niagara Foreclosure Part, the following rules shall apply:
 - a. The Plaintiffs' attorneys and Referees involved in the conflicting sales will be directed to check with their clients and/or other principals to ensure that their auction is set to continue and their file is not on a loss mitigation hold or some other stay;
 - b. If the conflicting auctions need to go forward, the auction that was scheduled through the Niagara Foreclosure Part shall occur in the Lobby of the DelSignore Building. For the auction that was not properly scheduled, the Referee will either have to: a) hold the auction on the steps of the DelSignore Building; or b) re-schedule the auction.

5. **Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**
6. Granted judgments of foreclosure and sale shall incorporate and require compliance with the "Foreclosure Auction Rules for the 8th Judicial District" and the "Covid 19 Health Emergency Rules".
7. **The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**

Chautauqua County

Prior to the COVID-19 health emergency, foreclosure auctions were held under the Rotunda of the Chautauqua County Courthouse, Mayville, New York. Foreclosure auctions will continue at this location based upon the suitability of the area considering its size and ability to permit social distancing.

To further address issues of social distancing for auctions in Chautauqua County during the COVID-19 health emergency, the following procedures will be implemented:

1. **In order to schedule an auction, Plaintiff's attorney must contact the Chautauqua Foreclosure Part at ChautauquaForeclosure@nycourts.gov and:**
 - a. **Request an AO/157/20 conference be held prior to the foreclosure auction, OR**
 - b. **Request an appointment for an auction and submit an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference is not required because the property is vacant and abandoned.**

The email and associated calendar will be monitored by the clerks assigned to the Chautauqua Foreclosure Part, as well as by the Chief Clerk and Deputy Chief Clerk.

2. **Following the completion of a conference held pursuant to (1)(a) above, the Plaintiff's attorney may request an auction be scheduled pursuant to (1)(b) above.**
3. Only one auction at a time may be conducted and auctions may only be scheduled in half-hour blocks beginning at 10:00 AM and ending at 3:30 PM in order to avoid peak employee and general public entrance/exit times.
4. If the Chautauqua Foreclosure Part becomes aware of parties showing up for an auction which conflicts with an auction scheduled through the Chautauqua Foreclosure Part, the following rules shall apply:
 - a. The Plaintiffs' attorneys and Referees involved in the conflicting sales will be directed to check with their clients and/or other principals to ensure that their auction is set to continue and their file is not on a loss mitigation hold or some other stay;
 - b. If the conflicting auctions need to go forward, the auction that was

scheduled through the Chautauqua Foreclosure Part shall occur under the Rotunda of the Chautauqua County Courthouse. For the auction that was not properly scheduled, the Referee will either have to: a) hold the auction on the steps of the Chautauqua County Courthouse; or b) re-schedule the auction.

5. **Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**
6. Granted judgments of foreclosure and sale shall incorporate and require compliance with the "Foreclosure Auction Rules for the 8th Judicial District" and the "Covid 19 Health Emergency Rules".
7. **The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**

Allegany County

Prior to the COVID-19 health emergency, foreclosure auctions were held in the Allegany County Courthouse in Belmont, New York. Foreclosure auctions in Allegany County occur at a frequency of less than 1 auction a week. In addition, the auctions only draw one to three bidders. As the volume and attendance of foreclosure auctions is low, it is not anticipated that resuming auctions in Allegany County will pose issues of social distancing in the spaces where those auctions are held. In addition, only one auction at a time may be conducted if more than one happen to be scheduled. Granted judgments of foreclosure and sale shall include the following language: Granted judgments of foreclosure and sale shall incorporate and require compliance with the "Foreclosure Auction Rules for the 8th Judicial District" and the "Covid 19 Health Emergency Rules".

In addition, the following procedures will be implemented:

1. **In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the court at AlleganySupreme@nycourts.gov and either:**
 - a. **Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference is not required because the property is vacant and abandoned, OR**
 - b. **Request an AO/157/20 conference.**
2. **Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**
3. **The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157/20 conference has**

been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.

As stated above, only one auction may be conducted at a time.

Cattaraugus County

Prior to the COVID-19 health emergency, foreclosure auctions were held in either the Lobby of Courthouse in Little Valley or the Lobby of Courthouse in Olean, depending on where the property or counsel were located. Foreclosure auctions in Cattaraugus County occur at a frequency of less than 1 auction a week. In addition, the auctions only draw one to three bidders. The volume of foreclosure auctions is low and while the use of both locations would permit social distancing, from an administrative perspective it would be better to conduct all of the auctions in only one location. Therefore, going forward, all foreclosure auctions shall be held in the Lobby of the Courthouse in Little Valley, New York. In addition, only one auction at a time may be conducted if more than one happen to be scheduled. Granted judgments of foreclosure and sale shall incorporate and require compliance with the "Foreclosure Auction Rules for the 8th Judicial District" and the "Covid 19 Health Emergency Rules".

In addition, the following procedures will be implemented:

- 1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the court at CattaraugusSupreme@nycourts.gov and either:
 - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference is not required because the property is vacant and abandoned, OR**
 - b. Request an AO/157/20 conference.****
- 2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**
- 3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**

As stated previously, only one auction may be conducted at a time.

Genesee County

Prior to the COVID-19 health emergency, foreclosure auctions were held in the Lobby of County Building #1 in Batavia, New York; location of the Genesee County Clerk's Office. Foreclosure auctions in Genesee County occur at a frequency of less than 1 auction a week and the auctions only draw one to three bidders. However, the present location cannot accommodate more than a few people. Therefore, going forward, all foreclosure auctions shall be held at the Genesee County Courts Facility, One West Main Street, Batavia, New

York to provide adequate space for social distancing. In addition, only one auction at a time may be conducted if more than one happen to be scheduled. Granted judgments of foreclosure and sale shall incorporate and require compliance with the "Foreclosure Auction Rules for the 8th Judicial District" and the "Covid 19 Health Emergency Rules".

In addition, the following procedures will be implemented:

1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the court at GeneseeSupreme@nycourts.gov and either:
 - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference is not required because the property is vacant and abandoned, OR
 - b. Request an AO/157/20 conference.
2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.
3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.

As stated above, only one auction may be conducted at a time.

Orleans County

Prior to the COVID-19 health emergency, foreclosure auctions were held on the steps of the Orleans County Courthouse in Albion, New York. Foreclosure auctions in Orleans County occur at a frequency of less than 1 auction a week. In addition, the auctions only draw one to three bidders. As the volume of foreclosure auctions is low and, considering the auctions are held outside, it is not anticipated that resuming auctions in Orleans County will pose issues of social distancing in the space where those auctions are held. Further, only one auction at a time may be conducted if more than one happen to be scheduled. Granted judgments of foreclosure and sale shall incorporate and require compliance with the "Foreclosure Auction Rules for the 8th Judicial District" and the "Covid 19 Health Emergency Rules".

In addition, the following procedures will be implemented:

1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the court at OrleansSupreme@nycourts.gov and either:
 - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference is not required because the property is vacant and abandoned, OR

- b. Request an AO/157/20 conference.**
- 2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**
- 3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**

As stated above, only one auction may be conducted at a time.

Wyoming County

Prior to the COVID-19 health emergency, foreclosure auctions were held under the Rotunda of the Wyoming County Courthouse in Warsaw, New York. Foreclosure auctions in Wyoming County occur at a frequency of less than 1 auction a week. In addition, the auctions only draw one to three bidders. As the volume of foreclosure auctions is low and, it is not anticipated that resuming auctions in Wyoming County will pose issues of social distancing in the space where those auctions are held. In addition, only one auction at a time may be conducted if more than one happen to be scheduled. Granted judgments of foreclosure and sale shall incorporate and require compliance with the "Foreclosure Auction Rules for the 8th Judicial District" and the "Covid 19 Health Emergency Rules".

In addition, the following procedures will be implemented:

- 1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the court at WyomingSupreme@nycourts.gov and either:**
 - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference is not required because the property is vacant and abandoned, OR**
 - b. Request an AO/157/20 conference.**
- 2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**
- 3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157/20 conference has been held or that an AO/157/20 conference was not required because the property is vacant and abandoned.**

As stated above, only one auction may be conducted at a time.

Foreclosure Auction Rules - Eighth Judicial District

The following rules shall be applicable for foreclosure auctions held within the Eighth Judicial District and shall be incorporated into the Terms of Sale for foreclosure auctions held within the Eighth Judicial District

1. A successful bidder must have in his/her possession at the time of the bid the full 10% of the sum bid, in cash or certified or bank check to be made payable to the Referee.
2. No sale will be deemed final until the full 10% deposit has been paid to the Referee and a Memorandum of Sale has been signed, which must be completed immediately following the sale.
3. If a successful bidder fails to immediately pay the deposit and sign the Memorandum of Sale, the Referee will strike the bid and the second-highest bidder shall be permitted to tender the 10% deposit and sign the Memorandum of Sale.
4. Bidders are cautioned that the failure to pay the full purchase price bid and appropriate closing costs at a closing to be scheduled no later than thirty (30) days following the auction (unless otherwise stipulated by all parties to the sale) may result in the forfeiture of the 10% deposit.
5. If the successful bidder defaults in concluding the transaction at the purchase price, he/she may be liable for the difference if the property is subsequently sold at auction for a lower price in a subsequent sale.
6. It is the responsibility of the bidder to acquaint him/herself with the property, any encumbrances thereon, and the Terms of Sale before placing a bid and to be certain that adequate funds are available to make good the bid.

COVID-19 Health Emergency Rules

During the COVID-19 health emergency, the Referee must require the observance of any governmental health requirements in effect at the time of the foreclosure auction and at any subsequent closing. Prior to scheduling any auctions, Plaintiff's counsel should confer with the assigned Referee to ascertain whether the Referee wishes to continue to serve as a Referee during the COVID-19 health emergency. Should the Referee not wish to continue to serve as a Referee, the Plaintiff's attorney shall promptly make application to have a Successor Referee appointed.

The following must be incorporated into the Terms of Sale for auctions held during the COVID-19 health emergency:

1. All participants in the foreclosure auction (including bidders and prospective bidders, the Referee, and the Plaintiff's agent) must comply with any face covering rule, regulation, or order in effect at the time of the foreclosure auction. The Referee shall refuse to accept any bid placed by a bidder not complying with this requirement. Should the Plaintiff's agent fail to comply with this requirement, the Referee shall cancel the auction and advise Plaintiff's counsel the reason for the cancellation. Should the Referee cancel the auction due to Plaintiff's agent's failure to comply with this requirement, Plaintiff shall not recover any costs associated with rescheduling the sale.
2. All participants shall maintain appropriate social distancing during the auction. The Referee, the successful bidder, and the Plaintiff's agent shall maintain appropriate distancing while executing the Memorandum of Sale and the tendering of the deposit.
3. All participants in the closing must comply with any face covering rule, regulation, or order in effect at the time of the closing. Should a bidder fail to comply, the Referee may cancel the closing and hold the bidder in default.