

COMMITTEE ON MORTGAGE FORECLOSURES FOR THE
SEVENTH JUDICIAL DISTRICT

RECOMMENDED TERMS OF SALE (11/15/05 Version) ¹

The premises commonly know as No. _____ Street _____ PO _____
_____, NY Zip _____ (Tax Acct. # _____) and described in the Notice
of Sale which has been published in the newspaper and which will be read to you, will be sold by
me, that is _____, as Referee, in one parcel upon the following terms:

1. Ten percent (10%) of the purchase price for the premises will be required to be paid by
certified check or bank check here today at the completion of the sale for which a Referee's
receipt will be given. I, as Referee, will give full credit for any deposit in excess of ten
percent (10%).
2. The balance of the purchase price will be required to be paid to me, as Referee, at my office
at No. ____ Street _____ PO _____, NY Zip ____ at 10:00 A.M. on
_____ (*will be as close as practicable to, but no later
than, forty-five days from the date of sale*) (Tel. ___/___ - _____) when the Referee's deed
will be delivered. I, as Referee, will not send any notice to the purchaser and if he or she
neglects to call at the time and place above specified, to receive the deed, unless I deem it
proper to extend the time for the completion of the purchase of up to an additional fifteen
(15) days. The Plaintiff will have the option in its sole discretion, and without leave of court,
to (1) adjourn the closing at the request of the purchaser, in which event the purchaser will
be charged with interest at 9% per annum from today's date through the eventual closing date
on the whole of the purchase price as well as assuming responsibility for any and all

¹ Note to Referee: Do not read *italics*

reasonable costs incurred as a result of the adjournment, or (2) sell to the second highest bidder and the 10% deposit will be applied to the deficiency and interest at 9% per annum from today's date through the eventual closing date on the whole of the purchase price, as well as any and all reasonable costs incurred as a result of purchaser's failure to complete the purchase or (3) elect to reschedule the foreclosure sale and the 10% deposit will be retained by me, as Referee, and applied to the proceeds of the rescheduled foreclosure. The Purchaser will be held liable for any deficiency there may be between the sum for which the premises shall be struck down upon this sale and the price for which the premises may be purchased at the rescheduled sale, plus interest and costs, as I have just described. Should there be an excess, it will be returned. My retention and application of the deposit shall not be deemed a waiver of any of the rights of the plaintiff to seek and obtain damages from the defaulting bidder.

3. The Referee is authorized to accept a written opening bid from the plaintiff or the plaintiff's attorneys, just as though the plaintiff appeared in person. If the plaintiff is the successful bidder, the deposit required by paragraph "1" above will be waived.
4. The premises shall be sold in "as is" physical order and condition as of this date and subject to:
 - (a) rights of the public and others in and to any part of the mortgaged premises which lie within the bounds of any street or highway.
 - (b) restrictions and easements of record, provided the same do not render title unmarketable.
 - (c) any state of facts that an accurate survey would show.
 - (d) the rights of tenants who have been named party defendants, month to month tenants,

or tenants at sufferance, if any. It shall be the responsibility of the purchaser to evict or remove any such tenant in possession of the premises. There shall be no adjustment in favor of the purchaser for any rents that are paid for a period of up to two months after the date of this sale.

(e) local zoning, building and land use planning ordinances and laws.

(f) *(read only if United States or a Federal Agency is a party)*. The United States shall have one year from the date of sale within which to redeem this property except that with respect to a lien arising under the Internal Revenue Law, the period shall be 120 days, and except in any case in which the provisions of Section 505 of the Housing Act of 1950 apply, where there is no right of redemption.

5. I, as Referee, shall pay out of the proceeds all taxes, assessments, sewer rents and water rates, including interest and penalties, if any, which are liens upon the premises as of this date and I will redeem the property sold from any sales for unpaid taxes, assessments, sewer rents, or water rates which have not apparently become absolute.

6. No abstract of title or survey will be furnished, except that the court has required the Plaintiff's attorneys to provide the successful bidder with the original of any abstract and legible copies of any title notes, reports, polices and surveys actually in their possession within five (5) business days of this date. The cost of the preparation and continuation of abstracts of title, surveys, as well as all expenses of recording the referee's deed, including real estate transfer taxes, recording and filing fees, shall be paid by the purchaser.

7. Risk of loss shall not be shifted to the purchaser until delivery of the deed, or transfer of possession, whichever occurs first.

8. The purchaser may refuse to close if title is unmarketable (*see Jorgensen v Endicott Trust*

Company, 100 AD 2d 647 and Regan v Lanze, 40 NY 2d 475). In such event, his or her deposit shall be returned and purchaser's remedy shall be limited to the return of his or her deposit. Except if bad faith is shown, neither the referee nor the plaintiff or plaintiff's attorneys shall be liable to the purchaser for any consequential or other damages whatsoever.

9. The purchaser shall, at this place, upon becoming the successful bidder, today sign a memorandum of his or her purchase and an agreement to comply with the terms and conditions herein contained which I have just read to you.

Referee

Form adopted from the Yates County Bar Association's 5/05 Recommended Terms of Sale