

**Westchester Supreme Court
Foreclosure Settlement Conference Part**

Presiding: HON. ALAN D. SCHEINKMAN, JSC
Administrative Judge, Ninth Judicial District

Albert J. Degatano, Court Attorney-Referee
Erin Guven, Court Attorney-Referee

Personnel: Renee McAllister, Part Clerk
Maureen Haberstroh, Part Clerk

Courtroom: 1803

Telephone: (914) 824-5268

Facsimile: (914) 824-5867

Pursuant to rule 3408(a) of the Civil Practice Law and Rules: “In any residential foreclosure action involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property subject to foreclosure, the court shall hold a mandatory conference within sixty days after the date when proof of service is filed with the county clerk . . . for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents.” Said settlement discussions are conducted in the Foreclosure Settlement Conference Part (FSCP).

As of January 17, 2012, residential foreclosure actions in Westchester County must be commenced utilizing the New York State Courts E-Filing (NYSCEF) system in accordance with the program established by the Chief Administrator of the Courts, the Administrative Judge of the Ninth Judicial District, the Westchester County Clerk and the Clerk of the Supreme and County Courts.

Counsel and unrepresented parties to a residential foreclosure action should familiarize themselves with the statewide E-Filing Rules, available at www.nycourts.gov/efile, and the Westchester County E-Filing Protocol available at

<http://www.courts.state.ny.us/courts/9jd/efile/WestchesterCountyJointProtocols.pdf>. General questions about e-filing should be addressed to the E-Filing Resource Center at (646) 386-3033 or efile@nycourts.gov.

Part Rules

Assignment to the Foreclosure Settlement Conference Part

Pursuant to section 202.12-a(b) of the Uniform Civil Rules For The Supreme Court And The County Court (22 NYCRR 202.12-a[b]): “At the time that proof of service of the summons and complaint is filed with the county clerk, plaintiff shall file with the county clerk a specialized request for judicial intervention (RJI), on a form prescribed by the Chief Administrator of the Courts, applicable to residential mortgage foreclosure actions covered by this section.” The FSCP must schedule an initial “settlement conference to be held within 60 days after the date of the filing of the RJI.” 22 NYCRR 202.12-a(c)(1).

Motion Practice

No motions concerning the underlying residential foreclosure action may be filed with the RJI, or while an action is pending in the FSCP. Motions filed in violation of this rule may be summarily denied.

Any application involving a residential foreclosure action must contain a separate statement from the moving party affixed to the front of the application that the action does or does not fit the criteria for assignment to the FSCP and that if it was assigned to the FSCP, the action was released from the FSCP with full authority to proceed with motion practice.

Stay of Underlying Residential Foreclosure Action

Once an action is assigned to the FSCP, the underlying residential foreclosure action, including discovery, is stayed until the action is either discontinued following settlement or the action is released from the FSCP without settlement. The underlying residential foreclosure action may be stayed for an additional period of forty-five (45) days from the date of release from the FSCP.

Settlement Conferences

When an action has been assigned to the FSCP, a letter from the FSCP advising the parties of the date for which the initial conference has been scheduled will be uploaded to the NYSCEF system. Defendants/borrowers who are not represented by counsel and have opted out of the NYSCEF system will receive a copy of the scheduling letter by regular mail.

Plaintiffs are advised that the Court shall make all determinations as to whether a residential foreclosure action is eligible under CPLR 3408 and 22 NYCRR 202.12-a for a mandatory settlement conference. Absent the filing with the RJI of an affidavit from the defendant(s)/borrower(s) affirming that the action is not eligible – e.g., an admission that the property at issue is not owner-occupied – an initial conference will be scheduled and any motion filed with the RJI may be summarily denied.

The regular conference calendar for the FSCP is called in the Westchester County Courthouse, courtroom 1803, Monday through Friday, at 9:30 a.m. Parties and/or their representatives must check in with the clerk in courtroom 1803, and cases are called for conference in the order in which both sides have advised the clerk of their appearance.

Settlement conferences are conducted in person by Court Attorneys and Court Attorney-

Referees in conference rooms adjacent to courtroom 1803. Parties must appear for an initial conference personally or by a representative – i.e., attorney or housing counselor – who is actually present. Attorneys must have formally appeared, or must be of counsel to an attorney who has formally appeared, in the action – i.e., by filing a pleading, notice of appearance as counsel or consent to change counsel. Attorneys who have not formally appeared may not be permitted to participate in the conference. Prior to the initial conference, plaintiff’s counsel should complete the form entitled “Foreclosure Settlement Conference Part Worksheet, Part I,” copies of which are available in courtroom 1803 or may be downloaded below.

If specifically permitted by the Court, attorneys and housing counselors may appear at a subsequent conference by telephone. However, requests for permission to appear by telephone must be made to the Court Attorney / Referee during the conference at which the date for the next conference is being selected.

The business of the FSCP is conducted during settlement conferences at which both parties have appeared. Unless specifically authorized elsewhere in these Part Rules or by a Court Attorney / Referee during a conference in a particular action, neither the clerk for the FSCP nor the Court Attorneys / Referees will accept or respond to telephone calls or correspondence by regular mail, facsimile transmission (FAX) or electronic transmission (E-MAIL), concerning an action pending in the FSCP.

Adjournments

Requests for adjournments of conferences scheduled in the FSCP may be made only by FAX to the office of the clerk of the FSCP at (914) 824-5867; the clerk’s office will not consider a request made by telephone, regular mail or E-MAIL. The FAX must be received by the clerk’s office no less

than two (2) full business days prior to the date for which the conference is scheduled; for example, to request an adjournment of a conference scheduled for a Thursday at 9:30 a.m., and assuming no intervening holiday court closing, the FAX must be received no later than 9:30 a.m. on the preceding Tuesday . The clerk’s office will not consider a request received in violation of this deadline. The FAX must be on the letterhead of the attorney/housing counselor/party by whom the request is submitted, and must include: the title and index number of the action, that the request is on consent of all parties, a date to which the parties agree the conference may be adjourned, and that copies of the FAX have been sent to all parties.

There is no guarantee that a request for adjournment will be granted or that, if granted, the conference will be adjourned to the date requested. The clerk’s office will neither respond to a request for adjournment nor confirm whether an adjournment has been granted. Parties requesting an adjournment should check E-Courts, on the Unified Court System website, the day after making the request to confirm whether the adjournment has been granted.

Actions Settled in the FSCP

An action assigned to the FSCP is deemed “settled” when it is resolved by satisfaction, reinstatement or permanent modification of the subject loan, or by the closing of title following an agreed upon short sale or deed-in-lieu transaction. Pursuant to CPLR 3408(g), “[t]he plaintiff must file a notice of discontinuance [of the underlying residential foreclosure action] and vacatur of the lis pendens within one hundred fifty days after any settlement agreement or loan modification is fully executed.” Thus, a settled action can not be removed from the FSCP until a notice of discontinuance and vacatur of lis pendens has been filed with, and all applicable fees remitted to, the Westchester County Clerk.

Therefore, at the conclusion of the conference at which the parties confirm that they have

reached a settlement, the Court Attorney / Referee will adjourn the case to a Discontinuance Calendar to be called 30-45 days after release. Discontinuance Calendars are called in courtroom 1803, at 2:00 p.m., every third Monday. There will be no adjournments of actions to be called on a Discontinuance Calendar. Defendants/borrowers need not appear for actions called on a Discontinuance Calendar. If plaintiff appears but has not discontinued the action in the interim since it was deemed settled and released from the FSCP or since the last time it was called on a Discontinuance Calendar, it will be repeatedly adjourned to the next Discontinuance Calendar. If plaintiff has discontinued the action in the interim, it will not appear on the next Discontinuance Calendar. If plaintiff fails to appear for an action called on a Discontinuance Calendar, the action will be dismissed pursuant to 22 NYCRR 202.27(b) and (c).

Actions Released from the FSCP Without Settlement

The underlying foreclosure action can not be removed from the FSCP, and prosecution thereof is not resumed, unless and until one of the parties interposes a motion, or files a note of issue or an application for another type of judicial intervention. Therefore, at the conclusion of the conference at which a non-settled action is released, the Court Attorney / Referee will adjourn it to a regular conference calendar “for dismissal.” There will be no adjournments of actions to be called “for dismissal.” Defendants/borrowers need not appear for actions called “for dismissal.” If plaintiff appears but has not resumed prosecution of the action in the interim since the date of release from the FSCP, it may be dismissed for want of prosecution pursuant to CPLR 3215 or 3216. If plaintiff has resumed prosecution of the action in the interim, it will not appear on the calendar. If plaintiff fails to appear for an action called “for dismissal,” the action may be dismissed pursuant to 22 NYCRR 202.27(b) and (c).