

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF

-----X

Plaintiff(s),

INDEX NO.:

**NOTICE OF MOTION FOR A  
DEFAULT JUDGMENT AND  
ORDER OF REFERENCE**

v.

MORTGAGED PROPERTY:

COUNTY:

SBL #:

Defendant(s)

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PLEASE TAKE NOTICE that, upon the affirmation of [*Attorney Name*] dated [*Date*], the affidavit of [*Name of Bank Representative*], sworn to [*Date*], the exhibits attached thereto, and all prior proceedings in this case, Plaintiff [*Name of Plaintiff*] will move this court at [*Insert Date and Time*] before [*Insert Appropriate Part of Court*], at the Supreme Court, [*Insert County Name*] County, [*Insert Court Address*], or as soon thereafter as the parties may be heard, for an order:

1. Appointing a referee to compute the amount due to Plaintiff, examine whether the mortgaged property known as [*Insert Street Address*] may be sold in parcels, and make his/her computation and report with all convenient speed pursuant to RPAPL §1321;
2. [*Choose One*] Adding names of tenant(s) residing at mortgaged property as named defendants pursuant to RPAPL §1311, amending the caption to add [*Names of Tenant(s) Residing at Mortgaged Property as Defendants*], and removing “John Doe” as a party defendant in this action -OR- Removing “John Doe” as a party defendant in this action as no tenants reside at the property and amending the caption to reflect the

- removal of “John Doe” as a party defendant;
3. *[If Requesting a Substitution]* Substituting *[New Note Holder]* into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court amend the docket and electronic docket of the Court accordingly;
  4. Declaring that all non-appearing and non-answering defendants are in default pursuant to CPLR 3215; and
  5. Such additional relief as to the Court may deem just and proper.

**[Add any additional requests for relief here]**

**PLEASE TAKE FURTHER NOTICE** that, pursuant to CPLR 2214(b), answering papers and notice of cross-motion, with supporting papers, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion.

DATED:

\_\_\_\_\_  
*[County]*, New York

\_\_\_\_\_  
*[Attorney's Name]*

*[Law Firm]*

Attorneys for Plaintiff *[Name of Plaintiff]*

*[Address]*

*[Telephone]*

**TO: [All Defendants must be noticed and their addresses listed here]**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF

-----X

INDEX NO:

Plaintiff(s),

**ATTORNEY AFFIRMATION  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR A DEFAULT  
JUDGMENT AND ORDER OF  
REFERENCE**

v.

MORTGAGE PROPERTY:  
COUNTY:  
SBL #:

Defendant(s).

-----X

[*Attorney's name*], pursuant to CPLR 2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law and a[n] [*Partner, Of Counsel, Associate*] with [*Name of Law Firm*] the attorneys of record for the Plaintiff. I am fully familiar with the facts, court papers and proceedings of this action based upon a review of the file maintained by my office.

2. True and accurate copies of the following supporting documents are attached hereto:

<b><u>Document</u></b>	<b><u>Tab</u></b>
Affirmation pursuant to Admin Order 431/11 or Certificate of Merit	Exhibit A
Note	Exhibit B
Mortgage	Exhibit C
Assignments	Exhibit D
Notice of Default	Exhibit E
RPAPL §1304 90 Day Notice	Exhibit F
Department of Defense Search results	Exhibit G
Summons and Complaint	Exhibit H
Notice of Pendency	Exhibit I
Affidavits of Service	Exhibit J
Affidavit of Service by Mail pursuant to CPLR 3215(g)(3)(iii)	Exhibit K
Affidavit of Merit and Amount Due	Exhibit L

Affirmation of Regularity  
[Power of Attorney with Pooling and Servicing Agreement]  
[Secretary's Certification]  
[Include any additional exhibits here]

Exhibit M  
Exhibit N  
Exhibit O  
Exhibit P

Legalback No. 2 – filed contemporaneous with this motion  
Proposed Order of Reference

All personal non-public information has been redacted from the attached supporting documents.

3. This residential mortgage foreclosure action was commenced by filing the summons and complaint in the [County Name] County Clerk's office on [Date] in the County where the mortgaged property is located. The action was brought to foreclose a residential mortgage executed by [List Mortgagors, Explain Mortgage and Note/CEMA as applicable.]

4. On [Date], Plaintiff filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65, a copy of which is attached hereto as exhibit \_\_\_\_\_. [*Add if notice of pendency expired: On [Date] Plaintiff re-filed the notice of pendency in accordance with RPAPL §1331 and CPLR Article 65.*]

5. The summons, complaint and notice of pendency are in the form prescribed by statute and contain all the particulars required by law. The summons complies with the requirements of RPAPL §1320, contains the required notice in boldface type and is in the format required by statute. According to the affidavit of service, the summons was served together with the complaint. Copies of the summons, complaint, notice of pendency and affidavits of service are attached hereto as exhibits \_\_\_\_\_.

6. On [Date Action Filed], Plaintiff was [Specify Holder, Assignee, Transferee, etc.] of the subject note. See Affidavit of [Insert Name of Affiant], attached hereto as exhibit \_\_\_\_.

7. [*If Requesting a Substitution*] Since the commencement of this action the

underlying note and mortgage were validly assigned from Plaintiff to [*Current Owner and Holder*] by [*Describe the factual basis justifying the substitution*]. Said assignment was executed on [*Date*] and recorded with the [*County Name*] County Clerk's office (or the Office of the City Register, [*County Name*] County Office under City Register File No. [*Insert File Number*]) on [*Date*]. A copy of said assignment is attached hereto as exhibit D.

8. The [certificate of merit required pursuant to CPLR 3012-b] OR [attorney affirmation required pursuant to Administrative Order 4311/11] was filed together with supporting documents and is attached hereto as exhibit \_\_\_\_\_.

9. [*If Applicable*] Pursuant to CPLR 3408 the court held a mandatory settlement conference in this action. [*Choose a or b*]:

- a. A settlement was not reached and the case was released from the settlement conference part on [*Date*].
- b. Plaintiff attended a settlement conference on [*Date*] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part.

10. [*If Applicable*] The defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure. See Affidavit of [*Insert Name of Affiant*], attached hereto as exhibit \_\_.

11. Defendant(s) were served with the notice required by RPAPL §1303 printed on colored paper together with the summons and complaint printed on white paper. The RPAPL §1303 notice complies with the requirements of that statute, with the title in bold, 20-point type and the text in bold, 14-point type. The RPAPL § 1303 notice was delivered to the mortgagors on its own separate page, together with the summons and complaint. Defendant(s) were timely

served with the 90-Day Pre-Foreclosure notice required by RPAPL § 1304. Plaintiff filed the name, address and telephone number of the Defendant(s), the amount claimed to be due, and the type of loan at issue with the superintendent of banks within three business days of the mailing of the 90-day Pre-Foreclosure notice as required by RPAPL § 1306. Copies of these notices and affidavits of service are attached hereto as exhibits \_\_\_\_\_.

12. Plaintiff served an additional copy of the summons in compliance with CPLR 3215(g)(3). The affidavit of service by mail is attached hereto as exhibit \_\_\_\_\_.

13. [*Choose a or b*]

a. Defendants captioned as “John Doe” are not necessary parties. Accordingly, the defendants captioned as “John Doe” were not served with copies of the summons and complaint. Plaintiff requests that the “John Doe” defendants be excised from the caption of the action without prejudice to any of the proceedings herein.

b. Tenants reside at the mortgaged property. Therefore, Plaintiff requests that [*Names of Tenant(s) Residing at Mortgaged Property*] be added as named defendants in this action pursuant to RPAPL §1311 and that the caption be amended to add [*Names of Tenant(s) Residing at Mortgaged Property*] in place of the “John Doe” defendants as party defendants to this action.

14. The following defendant(s) did not answer or appear and their time to answer has expired: [*Insert Names*]. Accordingly, these defendants are in default.

15. No defendant is an infant. No defendant is in the armed services of the United States of America. Upon information and belief no defendant is incompetent. The following defendants were served out of state: [*insert names*]. [*Add facts and relief requested if any defendant is an infant, in the armed services, or incompetent, as applicable*].



attorney for Plaintiff in this action, hereby certifies that, to the best of his/her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this pleading, affidavit (or motion if applicable), and the contentions contained herein are not frivolous as defined by 22 NYCRR 130-1.1(c).

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[Attorney's name]

**ATTORNEY'S AFFIRMATION**

The undersigned, \_\_\_\_\_, Esq., pursuant to CPLR 2106 and under penalties of perjury affirms as follows:

That he/she is the attorney of record for Plaintiff in the above-captioned action, that the foregoing disbursements have been incurred in this action and are reasonable in amount, and that the copies of documents or papers charged for herein were actually and necessarily obtained.

**DATED:** \_\_\_\_\_  
[*County*], New York

\_\_\_\_\_  
[*Attorney's name*]  
[*Law Firm*]  
*Attorneys for Plaintiff* [*Name of Plaintiff*]  
[*Address*]  
[*Telephone*]