

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend, effective December 20, 2016, section 202.12-a of the Uniform Rules for the Supreme Court and the County Court, addressing residential mortgage foreclosure actions, to read as follows:

=====

§202.12-a Residential Mortgage Foreclosure Actions; Settlement Conference

(a) Applicability. This section shall be applicable to residential mortgage foreclosure actions involving a home loan secured by a mortgage on a one- to four-family dwelling or condominium, in which the defendant is a resident of the property subject to foreclosure.

(b) Request for judicial intervention.

(1) 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 RJI shall contain the name, address, telephone number and e-mail address, if available, of the defendant in the action, and the name of the mortgage servicer, and shall request that a settlement conference be scheduled. If the mortgage servicer involved in the case and listed on the RJI is changed at any time following the filing of the RJI, plaintiff shall file with the court and serve on all the parties a notice setting forth the name and contact information of the new or substituted mortgage servicer.

(2) Upon the filing of the RJI, the court shall send either a copy of the RJI, or the defendant's name, address and telephone number (if available), to a housing counseling agency or agencies **funded on a list designated by the New York State Office of the Attorney General's Homeowner Protection Program** ~~Division of Housing and Community Renewal~~ for the judicial district in which the defendant resides, for the purpose of that agency making the homeowner aware of **free** ~~housing counseling and~~ foreclosure prevention services and options available to the parties.

(3) In such county or counties as the Chief Administrator shall direct, in the event that a plaintiff fails to file proof of service of the summons and complaint in a residential mortgage foreclosure action with the county clerk within one hundred twenty days after the commencement of the action, or fails to file the RJI at the time of the filing of proof of service, the county clerk shall provide the Chief **Administrator** ~~Administrative Judge~~ with the case name, index number, property address, and contact information of parties and counsel in the action. The Chief Administrator may take such further action as she deems fit with respect to such case or cases, including but not limited to (a) placing a case on a delinquency calendar; (b) providing case information to a housing counseling agency or agencies; and (c) ordering a status conference.

(c) Settlement conference.

(1) The court shall promptly send to the parties a Notice scheduling a settlement conference to be held within 60 days after the date of the filing of the RJI. The Notice shall be mailed to all parties or their attorneys, which must include mailing to the address of the property subject to the mortgage. The Notice shall be on a form prescribed by the Chief Administrator, and it shall set forth the purpose of the conference, the requirements of CPLR Rule 3408, instructions to the parties on how to prepare for the conference, and what information and documents to bring to the conference **as specified in CPLR Rule 3408(e)**. The Notice shall further provide that the defendant contact the court by telephone, no later than seven days before the conference is scheduled, to advise whether the defendant will be able to attend the scheduled conference. **The court shall also provide in such mailing a copy of the current Consumer Bill of Rights published by the New York State Department of Financial Services pursuant to RPAPL §1303-3-a.**

(2) The conference shall **be held to conduct** ~~include~~ settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, including but not limited to loan modifications, “short sales” and “deeds in lieu of foreclosure” or any other loss mitigation options. The court may also use the conference for whatever other purposes the court deems appropriate. Where appropriate, the court may permit ~~a-representatives of the plaintiff~~ **either party** to attend the conference telephonically or by video-conference. Any representative participating in the conference, whether in person, telephonically or by video conference, shall be fully authorized to dispose of the case, as required by CPLR **Rule** 3408(c).

(3) If the parties appear by counsel, such counsel must be fully authorized to dispose of the case. If the defendant appears at the conference without counsel, the court shall treat the defendant as having made a motion to proceed as a poor person and shall determine whether permission to so appear shall be granted pursuant to the standards set forth in CPLR § 1101. If the court appoints defendant counsel pursuant to CPLR § 1102(a), it shall adjourn the conference to a date certain for appearance of counsel and settlement discussions, and otherwise shall proceed with the conference.

(4) The parties shall engage in settlement discussions in good faith to reach a mutually agreeable resolution, including a loan modification if possible, **consistent with CPLR Rule 3408(f)**. The court shall ensure that each party fulfills its obligation to negotiate in good faith and shall see that conferences not be unduly delayed or subject to willful dilatory tactics so that the rights of both parties may be adjudicated in a timely manner. **The court shall ensure that procedures are in place to enforce the duty to negotiate in good faith, as defined in CPLR Rule 3408(f), consistent with the mandates of CPLR Rule 3408(i), (j) and (k).**

(5) Documents.

(i) Plaintiff **and Defendant shall** should bring **all documents enumerated in CPLR Rule 3408(e) to each conference held pursuant to CPLR Rule 3408, in addition an any other documents required by the judge, referee or judicial hearing officer presiding over the case.** the following documents to the conference: current payoff and reinstatement documents; mortgage and note; payment history; workout forms or packet; copies of any recent paperwork regarding reinstatement, settlement offers or loan modification proposals; and an itemization of the amounts needed to cure and pay off the loan. The Chief Administrator may require that the parties bring additional documents to the settlement conference.

(ii) Defendants should bring the following documents to the conference: current income documentation, including pay stubs and benefits information; list of monthly expenses; recent mortgage statements, property tax statements, and income tax returns; loan resolution proposals; and any information from previous workout attempts.

(6) **At the first conference held pursuant to CPLR Rule 3408, the court shall determine if the defendant has answered the complaint and shall provide defendants who have not answered information as mandated by CPLR Rule 3408(1). The court shall ensure that procedures are in place to note the vacatur of any defaults upon service and filing of answers pursuant to CPLR Rule 3408(m).** The court **shall** may schedule such other conferences as may be necessary to help resolve the action.

(7) **MotionsAll motions, other than motions addressing compliance with CPLR Rule 3408 or this rule,** shall be held in abeyance while settlement conferences are being held pursuant to this section. A party may not charge, impose or otherwise require payment from the other party for any cost, including but not limited to attorneys' fees, for appearance at or participation in the settlement conference.

(8) Plaintiff must file a notice of discontinuance **or stipulation of discontinuance** and vacatur of the **notice of pendency** ~~is pendens~~ within **90** ~~150~~ days after any settlement agreement or loan modification **agreement** is fully executed.

(d) Training. The Chief Administrator shall establish requirements for education and training of all judges and nonjudicial personnel assigned to conduct foreclosure conferences pursuant to this section.

(e) Reports. The Chief Administrator shall submit a report no later than the first day of November of each year to the Governor, and to the legislative leaders set forth in section 10-a(2) of chapter 507 of the Laws of 2009, on the adequacy and effectiveness of the settlement conferences, which shall include number of adjournments, defaults, discontinuances, dismissals, conferences held and the number of defendants appearing with and without counsel.

(f) The Chief Administrator of the Courts may continue to require counsel to file affidavits or affirmations confirming the scope of inquiry and the accuracy of papers filed in residential mortgage foreclosure actions addressing both owner-occupied and (notwithstanding section [a] supra) non-owner-occupied residential properties.



Chief Administrative Judge of the Courts

Dated: December 6, 2016

AO/225/16