State of New York
Unified Court System

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New York, N.Y. 10004
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Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

June 23, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso
Hon. Sherry Klein Heitler

From: Lawrence K. Marks LM

Subject: Procedure for Addressing Residential and Commercial Foreclosure Proceedings

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In light of continuing restrictions on the filing and prosecution of foreclosure matters in New York State arising during the course of the COVID-19 public health emergency, we have established the following temporary protocol for handling of residential and commercial foreclosure proceedings, effective June 24, 2020:

- Commencement documents in foreclosure proceedings must be filed with the court by NYSCEF or mail only at this time (AO/121/20 [Attach. A]).

- Until further order, commencement papers in commercial and residential foreclosure proceedings are required to include two additional documents (AO/131/20 [Attach. B, with exhibits]):

  1. A form plaintiff's attorney affirmation, indicating that counsel has reviewed the various state and federal restrictions and qualifications on foreclosure proceedings and believes in good faith that the proceeding is consistent with those restrictions and qualifications (Attach. B, Exh. 1); and

  2. A form notice to defendants-tenants (in English and Spanish), informing them that they may be eligible for an extension of time to respond to the complaint in light of legal directives related to the COVID-19 pandemic, and directing them to a website link for further information (Attach. B, Exhs. 2,3).

- Whether or not an answer is filed in a foreclosure matter, further hearing of the case shall be stayed until such time as gubernatorial Executive Orders suspending statutory timetables for the prosecution of legal matters (i.e., 202.8, as extended by 202.14, 202.28, and 202.38) expire. In conjunction with AO/68/20, the suspension of foreclosure matters (including foreclosure auctions and most motion practice) continues for the time being, with several exceptions:

    - Foreclosure matters in which all parties are represented by counsel shall be eligible for calendaring for both initial and follow-up virtual settlement conferences.

    - Lenders may move for a judgment of foreclosure and sale on the ground that a property is vacant and abandoned.

    - Lenders may move to discontinue a pending case.

- No motions other than motions to discontinue a pending case shall be entertained or decided. No judgment of foreclosure may issue for any matter other than one addressing vacant and abandoned property.

- At or before the expiration of the Governor's Executive Order suspending statutory timetables, we will issue further directives on the processing of these cases.

Please distribute this memorandum and attachments as necessary.

Attachment

c: Hon. Edwina Richardson-Mendelson
Administrative Judges

Attachment A

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and consistent with the Governor's determination approving the easing of restrictions on commerce imposed due to the COVID-19 health emergency, I hereby direct that, effective June 10, 2020:

1. In courts and case types approved for electronic filing through the New York State Courts Electronic Filing System (NYSCEF), represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF or, where permitted under NYSCEF court rules, by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.

2. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the trial courts, represented parties must commence new matters exclusively by mail, except where otherwise authorized by the Chief Administrative Judge. Following commencement of a new matter, and in pending matters, represented parties must file papers through the Unified Court System's Electronic Document Delivery System (EDDS) or by mail, and must serve papers (other than commencement documents) by electronic means or by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.

3. This order shall not affect procedures for the filing and service of papers in essential matters.

4. The court shall not request working copies of documents in paper format.

Chief Administrative Judge of the Courts

Dated: June 9, 2020

AO/121/20

Attachment B

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, I hereby order and direct that, effective June 24, 2020, commencement papers in foreclosure proceedings involving residential or commercial property shall require the inclusion of (1) an attorney affirmation in the form attached as Exh. 1 and (2) a Notice to Respondent, in English and Spanish, in the form attached as Exhs. 2 and 3.

Consistent with prior and current gubernatorial Executive Orders (EO/202.8, EO/202.14, EO/202.28, EO/202.38) and Administrative Order AO/68/20, foreclosure matters commenced on or before March 16, 2020 shall continue to be suspended until further order; foreclosure proceedings filed after March 16, 2020 shall, upon the filing of a complaint (if no answer is filed thereafter) or the filing of an answer, be suspended until further order; initial mandatory settlement conferences in residential foreclosures pursuant to CPLR 3408 shall not be scheduled; and foreclosure auctions shall continue to be suspended until further order. Notwithstanding the foregoing, foreclosure matters in which all parties are represented by counsel shall be eligible for calendaring for both initial and follow-up virtual settlement conferences; lenders may move for a judgment of foreclosure and sale on the ground that a property is vacant and abandoned; and lenders may move to discontinue a pending case.

This order shall take effect on June 24, 2020, and shall remain in effect for such time as state and federal emergency measures addressing the COVID-19 pandemic amend or suspend statutory provisions governing foreclosure proceedings, or until further order.

Chief Administrative Judge of the Courts

Dated: June 23, 2020

AO/131/20

Exh. 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

_____

Index No. _____

Petitioner

AFFIRMATION

v.

Defendant

Mortgaged Premises:

_____

Please note: As a result of the COVID-19 pandemic, the commencement and prosecution of foreclosure proceedings were stayed under various provisions of law, including but not limited to Governor Cuomo's Executive Order 202.8 and Executive Order 202.28, Chief Administrative Judge Marks's Administrative Orders AO/68/20, AO/121/20, and AO/127/20, and the federal Coronavirus Aid, Relief, and Economic Security Act of 2020 (Public Law 116-136). This affirmation is designed to advance the purpose of these federal and state directives, and to avoid unnecessary in-person appearances of parties and others in courthouses.

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[_____] , Esq., pursuant to CPLR §2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law duly licensed to practice in the state of New York and am affiliated with the law firm of _____, attorneys for Plaintiff(s) in the above-captioned foreclosure proceeding. As such, I am fully aware of the underlying action, as well as the proceedings had herein.

2. I am aware that, as a result of the COVID-19 pandemic, various state and federal authorities have issued statutes and executive orders regulating the time and manner of commencement and prosecution of foreclosure proceedings. These include (without limitation), gubernatorial Executive Orders 202.8 (March 20, 2020), 202.14 (April 7, 2020), 202.28 (May 7, 2020), and 202.38 (June 6, 2020); Chief Administrative Judge Administrative Orders AO/68/20

(March 16, 2020), AO/121/20 (June 9, 2020), and AO/127/20 (June 18, 2020); and federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act, enacted on March 27, 2020), Department of Veterans Affairs Circular 26-20-22 (June 17, 2020), and Department of Housing and Urban Development Mortgagee Letter 2020-19 (June 17, 2020).

3. I have reviewed these authorities, have consulted with my client, and affirm that, to the best of my knowledge, information, and belief, the petition and other papers filed or submitted to the Court in this matter comport with the requirements of those state and federal directives -- including the directive, set forth in Executive Order 202.28, that "[t]here shall be no initiation of a proceeding or enforcement of ... a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, owned ... by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020."

4. I am aware of my obligations under New York Rules of Professional Conduct (22 NYCRR Part 1200) and 22 NYCRR Part 130.

DATED:

_____

Please note: Counsel may augment this affirmation to provide explanatory details, and may file supplemental affirmations or affidavits for the same purpose.

Exh. 2

NOTICE TO DEFENDANT

DURING THE CORONAVIRUS EMERGENCY, YOU MIGHT BE ENTITLED BY LAW TO TAKE ADDITIONAL DAYS OR WEEKS TO FILE AN ANSWER TO THIS COMPLAINT.

PLEASE CONTACT YOUR ATTORNEY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY,

PLEASE VISIT

http://ww2.nycourts.gov/admin/OPP/foreclosures.shtml

OR

https://www.nycourts.gov/courthelp/Homes/foreclosures.shtml

Exh. 3

AVISO A DEMANDADO

DURANTE LA EMERGENCIA DEL CORONAVIRUS,

ES POSIBLE QUE USTED TENGA DERECHO POR LEY

A TOMAR DÍAS O SEMANAS ADICIONALES

PARA PRESENTAR UNA RESPUESTA

A ESTA PETICIÓN

POR FAVOR CONTACTE A SU ABOGADO PARA MAS INFORMACIÓN.

SI USTED NO TIENE UN ABOGADO,

VISITE

http://ww2.nycourts.gov/admin/OPP/foreclosures.shtml

O

https://www.nycourts.gov/courthelp/Homes/foreclosures.shtml