

NOTICE TO THE BAR
REPORT OF THE SUPREME COURT SPECIAL COMMITTEE
ON RESIDENTIAL FORECLOSURES

Published with this notice is the Report of the Supreme Court Special Committee on Residential Foreclosures. Chief Justice Rabner appointed the Special Committee to review current residential mortgage foreclosure practices, policies, court rules, and legislation, and to make recommendations to ensure a timely foreclosure process while preserving due process rights for the litigants. The membership of the Special Committee included representatives from all three branches of government, as well as the private sector. The Special Committee submitted its report to the Supreme Court, which has authorized its publication. The report corrects mischaracterizations of the judicial foreclosure process by certain entities and provides a true record of New Jersey's creative and collaborative handling of the foreclosure deluge of the past decade. It highlights improvements achieved through intergovernmental efforts and recommends practical steps to continue improving outcomes for homeowners, lenders, and communities.

Questions regarding the Special Committee's report may be directed to Michelle M. Smith, Clerk of the Superior Court, at Michelle.Smith@njcourts.gov or 609-815-2900 ext. 54200.



Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: September 20, 2018

Report of the Special Committee on Residential Foreclosures

NEW JERSEY JUDICIARY



New Jersey Courts

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on Residential Foreclosures
August 2018**

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INTRODUCTION

In May 2017, Chief Justice Stuart Rabner established the Special Committee on Residential Foreclosures (“Committee”) to address continued scrutiny of the judicial foreclosure process in New Jersey. The Chief Justice charged the Committee to review current practices, policies, court rules and legislation and suggest ways to ensure a timely foreclosure process while upholding due process rights. In response to its charge, the Committee respectfully submits this report chronicling the foreclosure crisis of the early 2000s, assessing the steps taken to combat the crisis, and offering specific recommendations to improve outcomes for homeowners, lenders, and New Jersey communities.

BACKGROUND

Until 2006, New Jersey averaged approximately 25,000 foreclosures filings per year. The collapse of the housing market in 2008 triggered an escalation in foreclosure filings which peaked at more than 65,000 in 2009. Filings remained elevated for nearly a decade until recently returning to normal levels.

While the effects of the recession extended throughout the nation, jurisdictions with a judicial foreclosure process were unfairly and inaccurately characterized in the media as inefficient and ineffective. Rather than taking a kneejerk approach and shortcutting the court process at the expense of homeowners’ rights, New Jersey’s three branches of government have collaborated to develop workable remedies to improve the judicial foreclosure process,¹ including steps to expedite it wherever possible.

GOVERNMENTAL COLLABORATION AND INITIATIVES

The foreclosure explosion necessitated swift and multifaceted action by the executive, legislative, and judicial branches. Through the Office of the Attorney General, the executive branch funded education and mediation programs to protect against potential misconduct by lenders and facilitate fair outcomes. Guided by then-Assemblyman (now Speaker) Craig Coughlin and Senator Steve Oroho, the Legislature enhanced existing laws and enacted new laws to improve

¹ See Appendix A for a detailed description of the foreclosure process in New Jersey.

safeguards and create alternatives to traditional foreclosure. The Judiciary modified internal procedures and applied technology to increase accountability and move cases to resolution or dismissal without unnecessary delay.

Mediation: Evolving Support for Homeowners

Faced with rising foreclosure rates, Chief Justice Rabner embraced mediation as a way to facilitate fair outcomes for homeowners while expediting resolution. In 2008, the Civil Practice Division instituted and oversaw mediation services provided by volunteer attorneys. When this approach proved unwieldy and overly labor-intensive, the Judiciary streamlined the program and collaborated to transfer administration to the Public Defender's Office of Dispute Settlement.

Funded by the proceeds of certain federal and state settlements with lenders that had engaged in improper practices, foreclosure mediation enabled residential homeowners, with the assistance of housing counselors, to work with lenders to restructure or modify existing loans to avoid foreclosure. In the early years, it included few restrictions, even permitting homeowners to opt for mediation as late in the process as the sheriff's sale. When data demonstrated that early mediation offered the greatest probability of success, the program incorporated a time limit for homeowners to request mediation.

Substantial numbers of homeowners participated in this mediation, in fact, the numbers that participated exceeded the scope of the available funding. As a result, by 2015 housing counselor services could not be sustained, and by 2017 the Office of Dispute Settlement ceased operating the program. The Judiciary again absorbed the mediation program.

Because of Chief Justice Rabner's commitment to sustaining the mediation alternative, the Judiciary restructured the program and situated it in the Superior Court Clerk's Office. The mediations are conducted by trained staff, rather than by paid mediators. In this new incarnation, the Program results in approximately 40 percent of mediated cases being resolved through loan modification, short sale, or other non-foreclosure exit strategy.

Governor Murphy's Administration has demonstrated support for re-implementation of the housing counselor program, starting with solicitation of bids for housing counselors to assist homeowners in the mediation program. As of June 15, 2018 the Murphy Administration, through the New Jersey Housing and Mortgage Association, has appointed at least two counseling agencies

per county to provide this valuable service to homeowners, with even more agencies in some counties.

The Vacant and Abandoned Property Act: Relief for Lenders – and the Community

Vacant and abandoned properties – sometimes called “zombie foreclosures” – continued to depress New Jersey’s housing market and burden communities. In an effort to expedite lenders’ recovery of assets in uncontested foreclosures actions, the Legislature in 2012 enacted the Vacant and Abandoned Residential Property law (N.J.S.A. 2A:50-73). That statute enables a lender to proceed with an expedited foreclosure after establishing that a property has been abandoned by the homeowner. By offering an alternative to the traditional foreclosure process, the law provided a vehicle to expeditiously resolve uncontested foreclosure actions and make properties available for rehabilitation and sale, thereby benefiting not only the mortgage holder but prospective buyers and also the community at large.

Technological Innovation: Automation and Access

Confronted by a surge of new filings, the Judiciary leveraged existing technology to create efficiencies in foreclosure case processing. In 2009, the Judiciary applied its existing Judiciary Electronic Filing/Imaging System (JEFIS) to foreclosure cases in an attempt to better manage the large influx of cases. The successful implementation of JEFIS for foreclosure reduced the time for processing pleadings and transferring contested cases to the vicinages for adjudication. Through JEFIS, the Judiciary standardized processes and improved open access to the courts and court records.

The Judiciary’s technological initiatives in foreclosure continued beyond JEFIS. In 2012, the Superior Court Clerk’s Office identified a significant number of cases on the court docket in which there had been no activity for twelve months or more. To address these dormant matters, the Superior Court reinforced its existing lack of prosecution process, which resulted in the administrative dismissal of tens of thousands of inactive cases, thereby eliminating these cases from the statistics reported by media outlets critical of New Jersey’s judicial foreclosure process.

Pursuant to legislative authorization, the Supreme Court in 2014 revised and supplemented filing fees and other statutory fees for a number of specific purposes, including the development, maintenance and administration of a statewide integrated electronic filing and case management

system (eCourts), including for foreclosure. The eCourts program provides enhanced processing and efficiencies to the foreclosure process. Expansion of eCourts in foreclosure allows for greater access by Judiciary partners and stakeholders, including County Sheriffs and tax assessors, whose work supports post-judgment sales of foreclosed properties.

The latest Judiciary application in development will enable self-represented litigants to electronically view and receive notices about their specific cases. This innovation will launch statewide by December 2018, continuing the Judiciary's progress in enhancing access to the courts and court records.

COMMITTEE RECOMMENDATIONS

As the baseline for its efforts, the Committee reviewed and evaluated the foregoing efforts by the three branches to deal with foreclosures in New Jersey. Informed by that historical context, the Committee developed and respectfully proposes 17 specific recommendations in the areas of **public outreach**, **legislative proposals**, and **judicial solutions**. The following section summarizes the Committee's recommendations.

Public Outreach

The Committee's public outreach subcommittee explored existing and new ways to educate creditors and homeowners on the foreclosure process and alternatives. The subcommittee proposed – and the full Committee endorsed – four initiatives: (1) developing educational outreach programs aimed at creditors and homeowners (Recommendation 1); (2) creating informational materials for self-represented litigants (Recommendation 2); (3) restructuring the Foreclosure Mediation Program, particularly with regard to eligibility and participation requirements (Recommendation 3); and (4) enabling access to the electronic foreclosure docket via a public portal (Recommendation 4).

The Committee recognizes that a lack of understanding of the foreclosure process contributes to negative public perception of the courts on this topic. To combat that lack of understanding, the Committee recommends creating and launching two sets of educational seminars, one designed for the legal community and one designed for the public. For attorneys, the Committee proposes quarterly court-sponsored educational seminars conducted by members of the Lenders' and Borrowers' Bars, developed in collaboration with the Superior Court Clerk's

Office and vicinage judicial and administrative leadership. For non-attorneys, the Committee suggests a multi-pronged approach that would include live seminars at courts and other county locations, production and posting of an educational video explaining the foreclosure process, and public service announcements.

As part of improved educational outreach, the Committee advocates review of existing informational materials and development of new resources, including Judiciary publications for homeowners navigating the foreclosure process without legal representation. Contemplated materials include: a guide to prudent borrowing to avoid foreclosure; Frequently Asked Questions (FAQs) on the foreclosure process and alternatives; an overview of timeframes in the foreclosure process; and instructions on the three phases of public access to the electronic foreclosure docket. Anticipated materials for self-represented litigants would provide concise summaries of the foreclosure and mediation processes as well as litigation forms, such as uniform applications to adjourn Sheriff's sales and evictions.

The Committee also recommends a new court rule codifying the eligibility and participation requirements for foreclosure mediation, to provide continued support for that important resource.

Lastly in the public outreach realm, the Committee proposes continued use of technology to enhance public access and transparency, specifically through development of a public access portal to the Court's electronic foreclosure docket.

Legislative Proposals

The Committee recommends review and revision of existing laws to ensure more effective notice to homeowners and enforce fair but expeditious timeframes for case processing. As advocated by Senator Oroho and Speaker Coughlin and the legislative subcommittee, the Committee also proposes consideration of a number of new statutory enactments.

The Committee recommends the Fair Foreclosure Act, N.J.S.A. 2A:50-53 et seq. to require the filing of a foreclosure complaint within six months of service of the Notice of Intent to Foreclose (Recommendation 5). Adopting this timeframe will not only expedite case initiation and processing but ensure provision of current information to the homeowner.

The Committee proposes modification of the procedures for foreclosure sales set forth in N.J.S.A. 2A:50-64 to ensure that Sheriff's sales occur within the time period anticipated by statute

(Recommendation 7). Specifically, the Committee recommends amending N.J.S.A. 2A:50-64(a)(3)(a) to require sales to occur within 120 days. As a corollary to the statutory amendment, the Committee suggests developing and requiring submission of a uniform sheriff's deed, prepared by plaintiff's counsel, and authorization to use a special master to handle sales of multiple properties. The Committee proposes extending the length of an adjournment of a sale from 14 days to 30 days, pursuant to N.J.S.A. 2A:17-36, while preserving the court's discretion to adjourn a sale for good cause.

With regard to existing laws, the Committee recommends further review and potential revision of the Vacant and Abandoned Residential Property statute, N.J.S.A. 2A:50-73 (Recommendation 8), as well as adoption by statute of parameters for foreclosure counseling and mediation, which programs could be funded through an increased fee for reinstatement of a foreclosure complaint (Recommendation 6). The Committee suggests new legislation to establish a statewide foreclosure database to track properties in the foreclosure process, to be funded by increasing the fee for filing a Lis Pendens. Senate Bill 1139 and Assembly Bill 108, presently pending in the Legislature, contain many of these components.

Judicial Solutions

The Committee recommends amending existing court rules as follows:

- R. 1:34-6: so as to authorize the Office of Foreclosure to recommend entry of an order vacating a dismissal for lack of prosecution and reinstating the matter; and to require that a motion filed with the Office of Foreclosure contain only one form of requested relief (Recommendation 9).
- R. 4:4-4(a)(9): so as to permit service on a junior judgment creditor by mail to the last known address or by publication (Recommendation 10).
- R. 4:64-1(d)(4): so as to eliminate the 30-day notice requirement and enable the Office of Foreclosure to recommend entry of final judgment on a 10-day notice of motion, regardless of encumbrances (Recommendation 11).
- R. 4:64-2(c): so as to eliminate the requirement that the proof of amount due must be dated within 90 days of presentation to the court (Recommendation 13).

- R. 4:64-3(c): to set forth the documents that must be submitted in support of a motion for the payout of foreclosure surplus money in the custody of the Superior Court Trust Fund (Recommendation 14).
- R. 4:64-6: to add a requirement that the redemption date in an Order Setting Time, Place, and Amount of Redemption be 60 days from the date of the order (Recommendation 15).
- R. 4:64-8: so as to allow a Motion for an Order Setting Time, Place and Amount of Redemption to qualify as a required pleading to prevent lack of prosecution dismissal; and to permit no more than two dismissals before requiring a new complaint; and, in the event of dismissal, to require an escalating fee for restoration (Recommendation 16).
- R. 4:64-8A: so as to permit the Clerk of the Superior Court to require a certification setting forth the status of a foreclosure matter aged 12 months or older (Recommendation 17).

In addition to the above-described amendments, the Committee recommends adopting a new rule, proposed as R. 4:64-1B, to codify the eligibility and participation requirements for foreclosure mediation (Recommendation 12).

Attachment B provides the full annotated text of the proposed amended and new rules. Taken together, the Committee's rule recommendations impose reasonable timeframes and enable circumscribed administrative action to expedite case processing while codifying the core elements of an effective foreclosure mediation program.

CONCLUSION

Over the past decade, the executive, legislative, and judicial branches have worked together to improve the judicial foreclosure process in New Jersey. This collaboration has achieved impressive results, reducing case inventory from 144,032 active foreclosure cases in June 2011 to 27,229 active foreclosures in June 2018 (including only 20,949 residential properties), and decreasing dispositional timeframes to an average of 148 days from complaint to judgment in 2018. More than statistical trends, enhancements to the foreclosure process have expedited resolutions for homeowners and lenders.

Despite progress, fallout from the foreclosure crisis remains a significant problem in need of continued remediation. The Committee acknowledges that some delays in foreclosure case processing flow from preexisting circumstances, specifically the assignment and reassignment of mortgages between lenders and servicers as a result of the transfer of assets between lenders. The Committee recommends specific actions to address other roadblocks to efficiency, including the existing requirements for service on judgment-creditors and noticing to the defendant homeowners, while enabling heightened oversight of languishing cases by the Superior Court.

The Committee recognizes that despite overall progress, thousands of cases aged three years and older remain on the docket. Unresolved foreclosures cause measurable harms far worse than unfavorable media coverage: lingering foreclosures depress property values, burden municipalities, and reduce tax revenues necessary to support education, emergency response, and other public services. Vacant and abandoned properties detract from New Jersey's communities and cause economic and safety risks that undermine quality of life.

Working together, the executive, legislative, and judicial branches of government have reduced the extraordinary number of pending foreclosures in New Jersey while recognizing the rights of both lenders and homeowners. The Committee's recommendations will further assist parties in resolving housing disputes in a fair and equitable manner to enhance outcomes in individual cases and benefit homeowners, lenders, and the people of New Jersey.

TABLE OF RECOMMENDATIONS

Public Outreach

- Recommendation 1 *Implement educational outreach programs for the legal community and for homeowners.*
- Recommendation 2 *Develop informational materials, including for self-represented litigants.*
- Recommendation 3 *Restructure the Foreclosure Mediation Program, particularly with regard to eligibility and participation requirements.*
- Recommendation 4 *Provide a public access portal to the electronic foreclosure docket.*

Legislative Proposals

- Recommendation 5 *Review and revise the Fair Foreclosure Act, N.J.S.A. 2A:50-53 et seq., in particular to require filing within six months of the notice of intent to foreclose.*
- Recommendation 6 *Provide statutory parameters for foreclosure counseling and foreclosure mediation, using the increased fee for reinstatement as a funding source.*
- Recommendation 7 *Revise a number of the procedures for foreclosure sales set forth in N.J.S.A. 2A:50-64.*
- Recommendation 8 *Review and revise the Vacant and Abandoned Residential Property statute, N.J.S.A. 2A:50-73.*

Judicial Solutions

- Recommendation 9 *Amend R. 1:34-6 to authorize the Office of Foreclosure to recommend vacating dismissal, and to require that a motion contain only one form of requested relief.*
- Recommendation 10 *Amend R. 4:4-4(a)(9) to reduce the standard for service on junior judgment creditors by permitting service by mail to the last known address or by publication.*
- Recommendation 11 *Amend R. 4:64-1(d)(4) to reduce the notice requirement for entry of final judgment from 30 days to 10 days.*

- Recommendation 12 *Adopt a new rule, R. 4:64-1B, codifying the eligibility and participation requirements for mediation.*
- Recommendation 13 *Amend R. 4:64-2(c) to eliminate the requirement that proof of amount due be dated within 90 days of presentation to the court.*
- Recommendation 14 *Amend R. 4:64-3(c) to codify the documents required to be submitted in a surplus money motion.*
- Recommendation 15 *Amend R. 4:64-6 to add a requirement that the redemption date be 60 days from the date of an Order Setting Time, Place, and Amount of Redemption.*
- Recommendation 16 *Amend R. 4:64-8 to allow a Motion for an Order Setting Time, Place and Amount to prevent dismissal for lack of prosecution; to require filing of a new complaint after two dismissals; and to impose restoration fees of \$100 for an application made within 30 days of dismissal and \$300 if made after 30 days.*
- Recommendation 17 *Amend R. 4:64-8A to permit the Superior Court Clerk to require a certification setting forth the status of a matter once a case is aged 12 months or more.*

COMMITTEE MEMBERSHIP

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APPENDIX A: UNDERSTANDING THE FORECLOSURE PROCESS

A mortgage foreclosure occurs when a homeowner fails to comply with the material terms and conditions of the document evidencing the debt, *i.e.*, the note, or of the mortgage that secures the note. The failure to pay, commonly referred to as default, causes an acceleration of all monies due on the underlying contractual obligation, subject to rights under the Fair Foreclosure Act (FFA) or federal programs.

Foreclosure is a judicial process in New Jersey. However, for decades New Jersey has operated under a hybrid judicial-administrative model, based on whether a defendant contests the validity and priority of the mortgage. The foreclosure process is outlined and guided by New Jersey Court Rules 4:64-1 *et seq.* All foreclosures require the filing of a complaint, service of process, and notice to the homeowner. All pleadings are filed centrally with the Superior Court Clerk's Office, and are reviewed and recommended for disposition to the assigned Chancery Judge by the Office of Foreclosure. This ensures that the due process rights of the homeowner are protected, regardless of whether the matter is contested or uncontested and insures the quick recovery of the asset by the lender when there is no dispute.

The Office of Foreclosure is an administrative office created by the courts to review and process uncontested foreclosures. In New Jersey, more than 92% of the matters filed with the Superior Court proceed as an uncontested administrative foreclosures that are reviewed, processed and have judgment recommended by the Office of Foreclosure, as authorized by Rule 1:34-6. In instances where a homeowner files an answer to the foreclosure that raises factual disputes, the matter is classified as contested, and the dispute requires resolution by the Chancery judge. Once all disputes have been resolved and the matter is no longer classified as contested, it is returned to the Office of Foreclosure for the entry of Final Judgment of Foreclosure and issuance of the Writ of Execution.

A foreclosure action extinguishes any ownership interest or claim of possession by the debtor, and the claims of junior lienholders (judgments creditors who obtained judgments after the execution of the note and mortgage) in the mortgaged premises. The foreclosure process does not extinguish accrued municipal real estate taxes and prior liens. Stated simply, foreclosure is a title clearing process making the property insurable.

The primary purpose of a mortgage foreclosure action is to have the mortgaged property sold and the proceeds of sale applied against the debt. All debt that is not recovered may be recouped by a deficiency action against the homeowner. The county sheriff usually conducts a forced sale, at a public auction, to raise as much money as possible to partially or fully satisfying the debt. Occasionally, a foreclosure sale results in an amount greater than that which is bid (often referred to as surplus funds) and that surplus enables subsequent mortgage holders, judgment creditors or the former owners to receive funds representing the equity of redemption. The successful bidder may be the lender or a third party.

The Judiciary's residential foreclosure process has been routinely criticized in the press, with articles indicating that the average length of time to complete a foreclosure process is greater than 1000 days. New Jersey's judicial process in foreclosure is often cited as being the primary

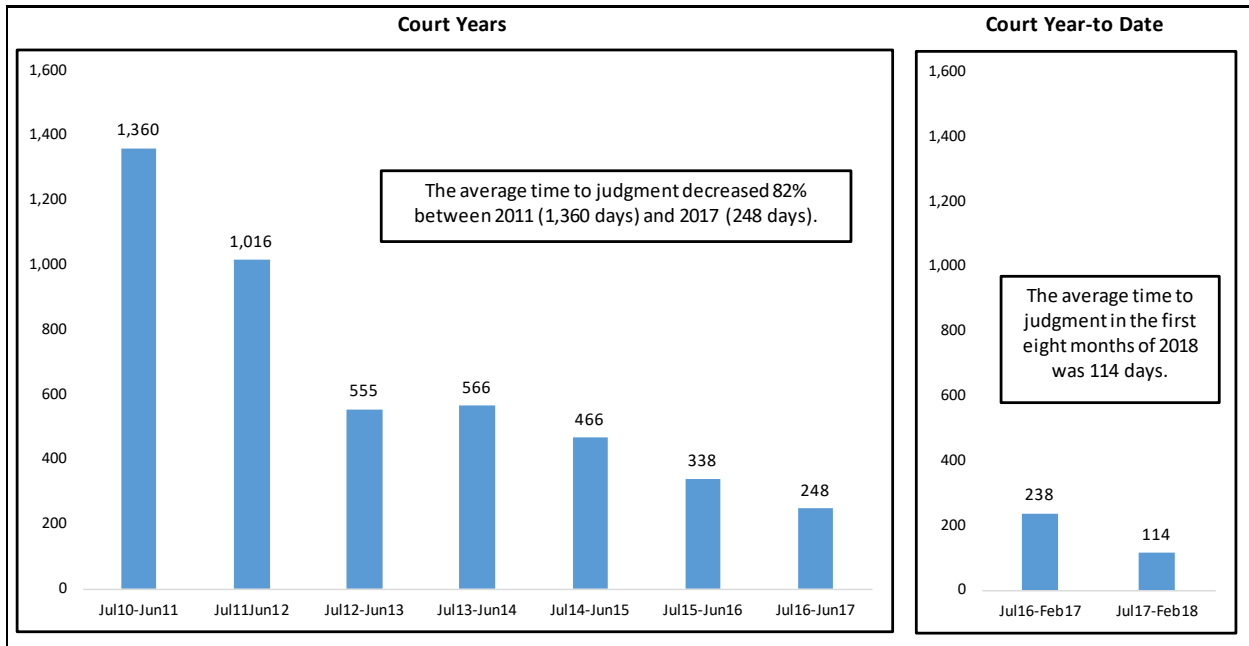
cause of delay in moving foreclosure properties to sale. However, there is little emphasis placed on the decreasing inventory pending before the courts and the considerable delay caused by lenders, servicers and their counsel in complying with federal and state requirements.

In June 2011, active foreclosure filings reached a record high with more than 143,000 matters pending in the Superior Court in New Jersey. As of May 1, 2018, there were 28,035 pending foreclosure matters with the Courts. In slightly less than six years, the courts reduced the number of active, pending foreclosures by 80%. This is attributed to extraordinary measures taken by the Judiciary to reduce the number of active pending foreclosure matters, including increasing staffing, centralizing operations, developing and implementing outreach strategies to the public, dismissing cases that lenders failed to timely prosecute and placing emphasis on moving cases aged greater than 18 months.

Despite these efforts, New Jersey continues to suffer under dramatic headlines placing New Jersey in the top 3 worst foreclosure states in the country. Lenders consistently bemoaned the length of time the foreclosure process took in New Jersey. Entities such as Realtytrac, a popular real estate site often quoted by newspapers, news organizations and blogs, regularly cited New Jersey as one of states in the worst foreclosure position. For example, Realtytrac in 2014, highlighted a decrease in the number of new filings reported for 2014 nationally, while noting that New Jersey was among several states to see an increase. Realtytrac reported that foreclosure filings were down 16% nationwide in 2014 when compared to 2013 and 61% when compared to 2010- -the reported “peak” of foreclosure filings. Conversely, review of this state’s foreclosure filings indicated that New Jersey experienced an 11% increase in 2014, with 53,433 new filings, as compared to the 49,088 filings in 2013. This article failed to take into account the new processes instituted to insure the due process rights of homeowners and the time needed by lenders to institute this process.

In several articles, Realtytrac reported that New Jersey was second in the country in length of time to move foreclosures to judgment, requiring approximately 1,057 days for the process to be completed. Realtytrac further represented that Atlantic City was the metropolitan area with the most foreclosures in 2014. It is important to note that Realtytrac tracked its statistics from 30 days after missed payment on the mortgage through to REO, and not from the date the complaint was filed. This adds significant time to the time allocated to the Judicial process, as it is usually at least ten months before the filing of the complaint and in 2014 it could take years for the case to move to sheriff sale and then out of a bank’s REO inventory. Those time periods before the complaint and after judgment are not the responsibility of the court. As shown by the graph below the time period to judgment has been significantly reduced.

New Jersey Foreclosure Average Days to Judgment



A statistical review of foreclosures filed in 2017, show that the majority of cases are disposed of within 9 months from the date the complaint is filed. The numbers for 2018 continue to show a dramatic decrease in the judicial time frame with matters averaging 114 days from complaint to judgment. Any lengthening of the time frame beyond the above can be attributed to the assignment and reassignment of mortgages between lenders and servicers; the transfer of assets between lenders, service on judgment-creditor defendants (which requires additional motion practice) and noticing to the defendant homeowners. In those cases that are not being resolved within 9 months, lenders most often have submitted insufficient proofs or have failed to comply with rule requirements requiring the motion for judgment to be re-filed and re-served.

APPENDIX B: RECOMMENDED RULE AMENDMENTS AND PROPOSED NEW RULE

Rule 1:34-6. Office of Foreclosure

There shall be an Office of Foreclosure within the Administrative Office of the Courts. This office shall be responsible for recommending the entry of orders or judgments in uncontested foreclosure matters pursuant to R. 4:64-1 and R. 4:64-7 subject to the approval of a Superior Court Judge designated by the Chief Justice. The Office of Foreclosure may also recommend the entry of the following orders in uncontested actions:

- (1) correcting [a] clerical errors in [orders, judgments,] court documents and metadata;
- (2) correcting the defendant's name;
- (3) correcting venue;
- (4) substituting the plaintiff if, during the course of the foreclosure action, the original plaintiff reorganizes, merges with another entity, is acquired by another entity, or assigns the mortgage to another entity;
- (5) entering default;
- (6) extending time to answer;
- (7) filing an amended complaint, provided no new cause of action or claim for relief is set forth in the amended complaint;
- (8) vacating a default entered by the clerk;
- (9) vacating judgment and execution, reinstating bond or note and mortgage and, with the consent of answering defendants, dismissing the proceedings;
- (10) authorizing sheriff to collect additional lawful sums;
- (11) dismissing the tax foreclosure action as to any parcel redeemed; and
- (12) vacating an in rem foreclosure judgment upon application of the municipality owner.
- (13) correcting minor technical irregularities in the mortgage, note or legal description, if a substantial right of a party is not prejudiced;
- ~~(14)~~ substituting heirs and personal representative for deceased defendants; ~~and~~
- (15) disbursing surplus foreclosure money; and
- (16) vacating a dismissal for lack of prosecution and reinstating the matter.

(b) Where a motion is filed before the Office of Foreclosure that motion must only contain one form of relief.

Note: Adopted July 22, 1983 to be effective September 12, 1983; subparagraphs (1) and (2) amended, subparagraphs (3) through (7) renumbered as (8) through (12), subparagraphs (9) through (12) amended, new subparagraphs (3) through (7) and (13) through (15) adopted July 9, 2008 to be effective September 1, 2008.

Rule 4:4-4 Service of summons, writs and complaints shall be made as follows:

- (a) Primary Method of Obtaining In Personam Jurisdiction. The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State pursuant to R. 4:4-3, as follows:
- (1) Upon a competent individual of the age of 14 or over, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member of the household of the age of 14 or over then residing therein, or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual's behalf;
 - (2) Upon a minor under the age of 14, by delivering a copy of the summons and complaint personally to a parent or the guardian of the minor's person or to a competent adult member of the household with whom the minor resides;
 - (3) Upon a mentally incapacitated person, by delivering a copy of the summons and complaint personally to the guardian of the person of the mentally incapacitated individual or to a competent adult member of the household with whom the mentally incapacitated person resides, or if the mentally incapacitated person resides in an institution, to the director or chief executive officer thereof;
 - (4) Upon individual proprietors and real property owners, provided the action arises out of a business in which the individual is engaged within this State or out of any real property or interest in real property in this State owned by the individual, by delivering a copy of the summons and complaint to the individual if competent, or, whether or not the individual proprietor or property owner is competent, to a managing or general agent employed by the individual in such business or for the management of such real property, or if service cannot be made in that manner, then by delivering a copy of the summons and complaint to any employee or agent of the individual within this State acting in the discharge of his or her duties in connection with the business or the management of the real property;
 - (5) Upon partnerships and unincorporated associations subject to suit under a recognized name, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on an officer or managing agent or, in the case of partnership, a general partner;
 - (6) Upon a corporation, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on any officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof, or, if service cannot be made on any of those persons, then on a person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then on any employee of the corporation within this State acting in the discharge of his or her duties, provided, however, that a foreign corporation may be served only as herein prescribed subject to due process of law;

- (7) Upon the State of New Jersey, by registered, certified or ordinary mail of a copy of the summons and complaint or by personal delivery of a copy of the summons and complaint to the Attorney General or to the Attorney General's designee named in a writing filed with the Clerk of Superior Court. No default shall be entered for failure to appear unless personal service has been made under this paragraph. In an action under N.J.S.A. 2A:45-1 et seq. (lien or encumbrance held by the State), the notice in lieu of summons shall be in the form, manner and substance prescribed by N.J.S.A. 2A:45-2, and shall be served, together with a copy of the complaint, on the Attorney General or designee as herein provided, but if the lien or encumbrance arises by reason of a recognizance entered into in connection with any proceeding in the Superior Court or any criminal judgment rendered in such court, the notice, together with a copy of the complaint, shall be served on the county prosecutor or the prosecutor's designee named in a writing filed with the Clerk of the Superior Court;
- (8) Upon other public bodies, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a) (1) of this rule on the presiding officer or on the clerk or secretary thereof.
- (9) Upon a junior judgment creditor defendant in a foreclosure action, by delivering a copy of the summons and complaint via mail to the last known address or by publication where the last known address cannot be ascertained after diligent inquiry.

The foregoing subparagraphs (a) (1) through (a) (8) notwithstanding, in personam jurisdiction may be obtained by mail under the circumstances and in the manner provided by R. 4:4-3.

(b) Obtaining In Personam Jurisdiction by Substituted or Constructive Service.

- (1) By mail or personal service outside the State. If it appears by affidavit satisfying the requirements of R. 4:4-5(b) that despite diligent effort and inquiry personal service cannot be made in accordance with paragraph (a) of this rule, then, consistent with due process of law, in personam jurisdiction may be obtained over any defendant as follows:
 - (A) personal service in a state of the United States or the District of Columbia, in the same manner as if service were made within this State or by a public official having authority to serve civil process in the jurisdiction in which the service is made or by a person qualified to practice law in the State or in the jurisdiction in which service is made; or
 - (B) personal service outside the territorial jurisdiction of the United States, in accordance with any governing international treaty or convention to the extent required thereby, and if none, in the same manner as if service were made within the United States, except that service shall be made by a person specially appointed by the court for that purpose; or
 - (C) mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, and, simultaneously, by ordinary mail to: (1) a competent individual of the age of 14 or over, addressed to the individual's dwelling house or usual place of abode; (2) a minor under the age of 14 or a mentally incapacitated person, addressed to the person or persons on whom service is authorized by paragraphs (a)(2) and (a)(3) of

this rule; (3) a corporation, partnership or unincorporated association that is subject to suit under a recognized name, addressed to a registered agent for service, or to its principal place of business, or to its registered office. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2.

(2) As provided by law. Any defendant may be served as provided by law.

(3) By court order. If service can be made by any of the modes provided by this rule, no court order shall be necessary. If service cannot be made by any of the modes provided by this rule, any defendant may be served as provided by court order, consistent with due process of law.

- (c) Optional Mailed Service. Where personal service is required to be made pursuant to paragraph (a) of this rule, service, in lieu of personal service, may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto, and provided further that default shall not be entered against a defendant who fails to answer or appear in response thereto. This prohibition against entry of default shall not apply to mailed service authorized by any other provision of these rules. If defendant does not answer or appear within 60 days following mailed service, service shall be made as is otherwise prescribed by this rule, and the time prescribed by R. 4:4-1 for issuance of the summons shall then begin to run anew.

Rule 4:64-1. Foreclosure Complaint, Uncontested Judgment Other Than In Rem Tax Foreclosures

- (a) (no change)
- (b) (no change)
- (c) (no change)
- (d) Procedure to Enter Judgment in Uncontested Cases; Objections to Amount Due.
 - (1) (no change)
 - (2) (no change)
 - (3) (no change)
 - **(4) Entry of Judgment.** The court, on motion on 10 days notice ~~if there are no other encumbrancers and on 30 days notice if there are other encumbrancers~~, and subject to paragraph (h) of this rule, may enter final judgment upon proofs as required by R. 4:64-2. The Office of Foreclosure may recommend entry of final judgment pursuant to R. 1:34-6.
- (e) (no change)
- (f) (no change)
- (g) (no change)
- (h) (no change)
- (i) (no change)

Note: Source - R.R. 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as paragraph (a)(1), and new subparagraphs (a)(2) and (a)(3) added December 20, 2010 to be effective immediately; subparagraph (a)(2) amended June 9, 2011 to be effective immediately; paragraph (d) amended July 22, 2014 to be effective September 1, 2014.

Proposed R. 4:64-1B Mediation of Eligible Residential Foreclosure Cases

(a) Purpose.

Residential Foreclosure Mediation differs from other types of court-sponsored mediation. Foreclosures are contractual disputes that arise from a homeowner's default of mortgage obligations. Because there is typically no dispute between the parties that the homeowner has defaulted on the Note, the mediation shall not focus on the reasons underlying the default, but rather shall explore whether an alternative resolution is available to the parties including but not limited to a loan modification agreement or a deed in lieu of foreclosure. Although the parties are not required to accept a loan modification or other alternative resolution, mediation may provide an opportunity for the homeowner to continue to reside in the mortgaged premises, and may afford the lender an opportunity to avoid foreclosure costs and carrying charges, and to reduce the number of non-performing loans in their portfolio.

(b) Notification.

Plaintiff's attorney shall provide notice to the homeowner of the Residential Foreclosure Mediation Program when the Summons and Complaint are served.

(c) Referral to Mediation.

- (1) A homeowner may apply to participate in the Residential Foreclosure Mediation Program by submitting a completed Mediation Request Statement to the Superior Court Clerk's Office, Foreclosure Mediation, P.O. Box 971, 25 Market Street, Trenton, New Jersey 08625, no later than 60 days from the date the homeowner is served with the Summons and Complaint.
- (2) After 60 days from the date a homeowner is served with the Summons and Complaint, and at any time prior to the sale of the property, a homeowner may apply to participate in the Residential Foreclosure Mediation Program only by filing a Motion to Participate in Mediation. The homeowner shall file the motion with the Superior Court Clerk's Office in Trenton, and notice the motion to the vicinage where the case is venued.
- (3) A Superior Court Judge may enter an Order that requires the parties to attend Residential Foreclosure Mediation at any time following the filing of a complaint.

(d) Eligibility.

Participation in the Residential Foreclosure Mediation Program is available only to qualified homeowners. To qualify, the homeowner must satisfy the following criteria:

- (1) The mortgaged premises must be the subject of an active and open residential mortgage foreclosure case. Mediation is not offered in connection with any other type of foreclosure litigation.
- (2) The homeowner must apply to participate in the Residential Foreclosure Mediation Program no later than 60 days from the date they are served with the Summons and Complaint unless a court order is entered directing the parties to attend mediation.
- (3) The mortgaged premises subject to foreclosure must be the homeowner's primary place of residence.
- (4) The mortgaged premises subject to foreclosure must be a one, two or three family dwelling.
- (5) All borrowers who execute the Note must agree to participate in the mediation. Absent a court order that provides otherwise, Residential Foreclosure Mediation is not available unless each borrower is willing to participate.
- (6) The homeowner is not presently in bankruptcy.
- (7) The homeowner desires to continue to reside in the mortgaged premises.

(e) Initial Conference.

- (1) The Superior Court Clerk's Office shall issue a Letter of Mediation Acceptance to each homeowner deemed eligible to participate in the Residential Foreclosure Mediation Program and shall schedule an Initial Conference between the parties no later than 45 days from the date of the letter.
- (2) A Law Clerk or other designated personnel assigned to the Superior Court Clerk's Office shall conduct the Initial Conference by telephone or other electronic means. The purpose of the Initial Conference is to facilitate the timely exchange of relevant financial documentation between the homeowner and the lender.
- (3) If, following the Initial Conference, the parties have not exchanged all of the relevant financial documentation or are not otherwise ready to proceed to Residential Foreclosure Mediation, the Superior Court Clerk's Office shall schedule a Second Conference no later than 15 days from the date of the Initial Conference. No Third Conference shall be scheduled.

- (4) If the parties are not ready to proceed to Residential Foreclosure Mediation at the conclusion of a Second Conference due to a failure of the homeowner to provide complete financial documentation or to attend the scheduled session(s), the case shall be removed from the Residential Foreclosure Mediation Program.
 - (5) If the parties are not ready to proceed to Residential Foreclosure Mediation at the conclusion of a Second Conference due to a failure of the lender to review the homeowner's financial documentation or to attend the scheduled session(s), the case shall be deemed a contested foreclosure and shall be referred to a Superior Court Judge for review.
- (f) Residential Foreclosure Mediation.
- (1) Upon timely submission of the necessary documentation to lender and the completion of the Conference, the Superior Court Clerk's Office shall enter an Administrative Order scheduling a Residential Foreclosure Mediation no later than 30 days from the date the Conference was completed. The Superior Court Clerk's Office shall provide the parties with a copy of the Administrative Order and shall upload the Order to the electronic case jacket.
 - (2) A Chancery Law Clerk or other designated personnel assigned to the vicinage where the case is venued shall conduct the Residential Foreclosure Mediation. The purpose of the mediation is to provide the parties with a forum to explore whether an alternative to foreclosure litigation is available, including but not limited to a loan modification agreement or a deed in lieu of foreclosure. The mediation shall be attended by a representative of the lender and by each homeowner who executed the Note.
 - (3) Residential Foreclosure Mediation shall be conducted at the courthouse where the case is venued. The parties are required to communicate special needs, such as an interpreter or handicapped access, to the vicinage where the mediation will be conducted.
 - (4) If, following the first scheduled mediation session, the parties have been unable to agree to an alternative resolution, the mediator may in his or her discretion schedule a second mediation session no later than 15 days from the date of the first scheduled mediation. No third mediation session shall be scheduled absent a court order.
 - (5) At the conclusion of each Residential Foreclosure Mediation session, the mediator shall complete a Residential Foreclosure Mediation Report. The Report shall identify each mediation participant and shall set forth whether the parties were able to agree to a mediated resolution. If the parties were able to reach an agreement, the Report shall set forth the terms of the agreement in full detail. If the parties were unable to reach an agreement, the Report shall briefly describe the obstacles

the parties were unable to overcome and shall state that the foreclosure litigation shall proceed to conclusion. In the event the parties are scheduled to attend a second mediation session, the Report shall set forth the new date. The mediator shall provide the parties with a copy of the Report and shall cause the Report to be uploaded to the electronic case jacket.

- (6) If the parties are unable to reach a mediated resolution at the conclusion of a second mediation session due to a failure of the lender to timely review the homeowner's financial documentation the case shall be deemed a contested foreclosure and shall be referred to a Superior Court Judge for review.
- (g) Stay of Proceedings.

Absent a court order to the contrary, the commencement of Residential Foreclosure Mediation proceedings shall not stay the underlying foreclosure litigation.

Rule 4:64-2. Proof; Affidavit

- (a) (no change)
- (b) (no change)
- **(c) Time; signatory.** ~~The affidavit prescribed by this rule shall be sworn to not more than 90 days prior to its presentation to the court or the Office of Foreclosure.~~ The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records kept in the regular course of business. In the affidavit the affiant shall confirm:
 - (1) – (4) (no change)

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

- **(d) Affidavit.** Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer who (A) personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and (4) that the aforesaid documents comport with the requirements of R. 1:4-8(a).

Note: Source-R.R. 4:82-3. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; text amended and designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2008 to be effective September 1, 2008; caption amended and new paragraph (d) added December 20, 2010 to be effective immediately; paragraphs (c) and (d) amended June 9, 2011 to be effective immediately; paragraph (c) amended July 22, 2014 to be effective 1, 2014.

Rule 4:64-3. Surplus Moneys

- (a) (no change)
- (b) (no change)
- (c) The following must accompany a notice of motion for the payout of foreclosure surplus money in the custody of the Superior Court Trust Fund:
 - (1) An affidavit or certification supporting the motion stating:
 - a) The property address that generated the foreclosure surplus money;
 - b) Proof that the applicant is the party named in the foreclosure complaint;
 - c) A computation of the amount due on the applicant's claim, including, if applicable, the original amount due, any credits and a computation showing the amount of accrued interest;
 - d) The identity of other parties with an interest in the surplus money and the factual basis supporting the applicant's claim that his/her/its interest is superior;
 - e) A recital of the property's ownership at the time of the sheriff's sale and, if the owners are different from the party or parties who executed the mortgage, the documents showing how the ownership interest was created.
 - (2) An affidavit or certificate of service evidencing the service of the motion and associated papers on all the parties, including defaulted parties, to which should be attached copies of U.S. Mail return receipt requested green cards or the unclaimed certified mail envelope.
 - (3) The proposed form of order.
 - (4) A copy of the writ of execution.
 - (5) If the applicant is a business entity, an affidavit by the chief executive officer or the governing board's resolution, under the seal of the business entity, should be attached, stating that the representative making the application is a duly authorized representative of the business entity.
 - (6) A representative of a deceased applicant must provide appropriate testate or intestate probate Letters issued less than 60 days prior to the surplus money application to establish the personal representative's right to act for the decedent's estate.

Note: Source-R.R. 4:82-4; amended July 29, 1977 to be effective September 6, 1977; amended July 16, 1981 to be effective September 14, 1981; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; former text amended and reallocated into paragraphs (a) and (b), and paragraph (a) to be effective September 1, 2008.

Rule 4:64-6. Action to Foreclose Tax Sale Certificates; Answer as Stay; Redemption

- (a) Severance Upon Answer. In any action in the Superior Court to foreclose the right to redeem from the lien of a certificate for the nonpayment of taxes or other municipal lien, whether brought under the In Rem Tax Foreclosure Act or otherwise, if the defendant's answer sets up the defense of the invalidity of the tax or other lien, or the invalidity of the proceedings to sell, or the invalidity of the sale, those questions shall be shall be tried in the action. Upon filing of such answer, there shall be a severance of the proceedings as to the parcel or parcels of land which have been made the subject of such answer. In the event of such a severance, the plaintiff shall pay to the clerk fees due as on the commencement of a new action and the clerk shall so docket the severed proceeding cross-indexing it to the original action.
- (b) Dismissal Upon Redemption. In such actions redemption shall be made in the action only, provided notice of the action has been filed in the tax collector's office. Redemption shall be ordered made to the tax collector of the municipality at the collector's official office during business hours but if the tax collector a part-time official with no regular municipal office, the redemption shall be ordered made to the county clerk at the clerk's official office in the court house. The redemption date for an Order Setting Time, Place and Amount of Redemption shall be 60 days from the date of the Order. Redemption may be made at any time until the entry of final judgment, and when made, plaintiff, plaintiff's attorney, or the tax collector shall file an affidavit with the clerk setting forth that redemption has been made as to any parcel of land described in the complaint. Upon the filing of the affidavit redemption shall be deemed to be made in the action and an order shall be entered dismissing the action as to the parcel redeemed.

Rule 4:64-8. Dismissal of Foreclosure Actions for Lack of Prosecution

Except as otherwise provided by rule or court order, when a foreclosure matter has been pending for twelve months without any required action having been taken therein, the Clerk of the Superior Court shall issue written notice to the parties advising that the matter as to any or all defendants will be dismissed without prejudice 30 days following the date of the notice unless, within said period, ~~proof of service of process has been filed, or an answer, motion for default, or motion for judgment or other response by way of motion or acknowledgement has been filed, or an affidavit or certification has been filed with the Clerk of the Superior Court asserting that the failure of filing or taking the next required action is due to exceptional circumstances or a motion setting time and place for redemption has been filed.~~ If the plaintiff fails to respond as herein prescribed, the court shall enter an order of dismissal without prejudice as to any named party defendant who has not been served or has not answered and shall furnish the plaintiff with a copy thereof. An application to reinstate the matter shall be accompanied by payment of a \$100 restoration fee to the Clerk of the Superior Court, made payable to the "Treasurer State of New Jersey," if the motion to reinstate is made within 30 days after entry of the order of dismissal or suppression, or a \$300 restoration fee if the motion is made thereafter.

Reinstatement of the matter after dismissal may be permitted only two times on motion for good cause shown before a new complaint shall be required in order to proceed. The court may issue the written notice herein prescribed in any matter pending on the effective date of this rule amendment, and this rule shall then apply.

Note: Adopted July 28, 2004 to be effective September 1, 2004.

Rule 4:64-8A Administrative Conversion of Contested Case into a Contested Matter

Except as otherwise provided by rule or court order, one year (1) after commencement of a foreclosure action, if the matter remains pending, the Clerk of the Superior Court may require that the plaintiff file a certification setting forth the status of the pending matter and the anticipated date of disposition. The Clerk may issue an administrative order requiring that certification in which the plaintiff has fifteen (15) days to respond by filing the status certification. Where the plaintiff fails to comply with the administrative order the Clerk of the Superior Court shall administratively transfer the uncontested matter to the chancery judge for case management.



Administrative Office of the Courts

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ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS

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AUGUST 2018