

NOTICE TO THE BAR

COMMON FORECLOSURE FILING ISSUES AND DEFICIENCIES

Recent years have brought tremendous challenges in the foreclosure case type to the bench and bar alike. As part of the Judiciary's continuing commitment to ensure due process and fairness, to facilitate timely and efficient case processing, and to communicate areas of mutual concern, this notice addresses foreclosure filing issues and also the most common filing deficiencies that result in motion applications being returned to the filer for correction before being accepted for filing. The information in this notice is presented in question and answer format.

Q: Which types of motions should be directed to the Office of Foreclosure? How does the Superior Court Clerk's Office tell the difference between motions directed to the Office of Foreclosure and motions to be heard by a vicinage judge?

- Rule 1:34-6 specifies that the Office of Foreclosure shall be responsible for recommending the entry of orders or judgments in uncontested foreclosure matters, pursuant to and consistent with Rule 1:6-2(a) and Rule 4:64-9, subject to the approval of a Superior Court judge designated by the Chief Justice. It lists sixteen motion types that may be submitted to the Office of Foreclosure for review and recommendation of entry of orders.
- The notice of motion must indicate whether it is being submitted to the Office of Foreclosure or to a vicinage judge. Rule 4:64-9 sets forth language required to be included in a notice of motion to be submitted to the Office of Foreclosure. This

language directs the motion to the Office of Foreclosure instead of setting a return date for hearing, and alerts the opposing party as to the procedure for filing objections with the Office of Foreclosure.

- Attorneys are encouraged to register to use the Judiciary Electronic Filing and Imaging System (JEFIS) to ensure timely processing of foreclosure filings. Motions submitted via JEFIS for review by the Office of Foreclosure must be submitted as a “Motion-OF” document type. Motions submitted via JEFIS to be heard by a vicinage judge must be submitted as a “Motion” document type.
- Attorneys not currently registered with JEFIS must submit all motions on paper to the Superior Court Clerk’s Office, which will forward each motion either to the assigned vicinage judge or, pursuant to Rule 1:34-6, to the Office of Foreclosure, as designated in the notice of motion.

Q: Which motions must be heard by a vicinage judge?

Motions to obtain the following orders must be heard by a vicinage judge:

- Order to amend pleadings out of time
- Summary judgment order
- Order to strike answer
- Order to vacate default or final judgment by defendant
- Order regarding vacant and abandoned residential property
- Order to reform mortgage (other than minor corrections)
- Order to appoint rent receiver

- Order to appoint guardian ad litem (person appointed by the court to take action on minor's behalf)
- Order to appoint attorney for party in military service
- Order for substituted or special modes of service
- Order to set aside final judgment or summary judgment
- Order to stay foreclosure proceeding
- Order to stay, vacate, or appoint special master for sheriff sale
- Order to stay eviction
- Order to reinstate a dismissed case
- Order for reconsideration
- Any post-judgment orders, including orders to substitute plaintiff or to vacate tax foreclosure judgment
- Any other orders, aside from uncontested orders listed in Rule 1:34-6

Q: Can a motion for entry of final judgment be combined in the same motion application with requests for other relief, such as entry of default or substitution of plaintiff?

- No. A motion for any other relief must be submitted separately, prior to filing the motion for entry of final judgment.
- Because motions for entry of final judgment filed electronically using the appropriate Judgment document types in JEFIS are automatically stored to the case jacket, such motions should include only the motion for entry of final judgment accompanied by required proofs.

- All other applications for relief should be submitted as either a “Motion-OF” or a “Motion” document type in JEFIS, as appropriate.

Q: I filed a motion with the vicinage and then filed the same motion with the Superior Court Clerk’s Office. Why is my motion listed twice?

Directive #01-14 promulgated the New Jersey Judiciary Guidelines for Electronic Records Management in Information Technology Systems Development (“ERM Guidelines”). The ERM Guidelines authorize electronic filing and recordkeeping, and establish that data and documents submitted or maintained electronically shall have the same force and effect as those submitted or maintained in an original paper format. In addition, the ERM Guidelines prohibit alteration, deletion or redaction of documents and/or metadata absent a court order permitting such action.

Pursuant to the ERM Guidelines, JEFIS constitutes the official record for foreclosure actions. All foreclosure pleadings, motions, and other documents being filed by attorneys who are registered to use JEFIS must be submitted electronically through JEFIS. Attorneys not currently registered with JEFIS and self-represented litigants must submit all such documents on paper to the Superior Court Clerk’s Office, P.O. Box 971, Trenton, New Jersey 08625-0971. Foreclosure pleadings, motions, and other documents no longer may be filed on paper in the county of venue.

Motions submitted or maintained in JEFIS must be processed in accordance with the ERM Guidelines. The Superior Court Clerk’s Office may not alter, delete or redact a duplicate motion in JEFIS absent a court order authorizing such action. As a result, a motion submitted twice –

once with the vicinage and once with the Superior Court Clerk's Office – would be listed twice on the judge's calendar.

After receipt of a motion submitted for filing, the Superior Court Clerk's Office will forward the motion to the assigned vicinage judge or, pursuant to Rule 1:34-6, to the Office of Foreclosure, as designated in the notice of motion. One courtesy copy of the motion, if requested by the vicinage judge and plainly marked as such (e.g., "Courtesy Copy for Judge"), may be mailed or e-mailed to the judge's chambers simultaneously with the submission of the motion to the Superior Court Clerk's Office. A list of Courtesy Copy Judicial Preferences for the Conference of General Equity Presiding Judges provides information for foreclosure attorneys as to which judges wish to receive such courtesy copies. The Judicial Preferences list was issued with an April 15, 2014 Notice to the Bar, and also can be found on the Judiciary's web site at <http://www.judiciary.state.nj.us/jefis/index.htm>. No courtesy copy need be supplied for motions designated to the Office of Foreclosure pursuant to Rule 1:34-6.

Please note that the Superior Court Clerk's Office cannot refund filing fees for duplicate or erroneously filed documents.

Q: I do not see the document I filed in the case jacket. What should I do?

Again, attorneys are encouraged to register to use JEFIS to ensure timely processing of foreclosure filings. Several document types filed through JEFIS store automatically to the case jacket and are available immediately after filing. JEFIS also provides attorney filers with a

confirmation tracking number, referred to as a “filing ID,” which assists the Superior Court Clerk’s Office in locating electronically filed documents.

In contrast, documents filed on paper require a processing period of five days or more from the date received by the Superior Court Clerk’s Office since the documents must be manually scanned and entered into JEFIS.

For information about the status of a foreclosure case or document, please contact the Superior Court Clerk’s Office at (609) 421-6100 or SCCOForeclosure.Mailbox@judiciary.state.nj.us. To register as an electronic filer through JEFIS, please e-mail the Superior Court Clerk’s Office Public Access Services Team at PublicAccess.Mailbox@judiciary.state.nj.us.

Q: My document was returned to me marked “received not filed,” accompanied by a deficiency notice from the Superior Court Clerk’s Office. What does this mean?

“Received not filed” indicates that the Superior Court Clerk’s Office received the filing, but could not enter it onto the docket because of a deficiency with the document. The Superior Court Clerk’s Office sends a deficiency notice for all documents “received not filed” pursuant to Rule 1:5-6. If a pleading returned pursuant to Rule 1:5-6(c) is resubmitted to the Superior Court Clerk’s Office with the appropriate correction within ten (10) days of the date of the deficiency notice, the pleading will be deemed received as of the original received date. The following are reasons why a document may be received, but not filed:

1. Rule 1:5-6(c) requires the Superior Court Clerk's Office to return documents as "received not filed" where the document filed is unaccompanied by the following:
 - a. the required filing fee; or
 - b. a completed Case Information Statement as required by Rule 4:5-1 in the form set forth in Appendices XII-B1 or XII-B2 to the New Jersey Rules of Court; or
 - c. in Family Part actions, the affidavit of insurance coverage required by Rule 5:4-2(f), the Parents Education Program registration fee required by N.J.S.A. 2A:34-12.2, the Affidavit of Verification and Non-Collusion required by Rule 5:4-2(c), the Confidential Litigant Information Sheet required by Rule 5:4-2(g) in the form prescribed by the Administrative Director of the Courts, the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives required by Rule 5:4-2(h) in the form prescribed in Appendix XXVII-A or XXVII-B of the Rules of Court, or the kinship caregiver assessment required in the kinship legal guardianship petition pursuant to N.J.S.A. 3B:12A-5(b);
 - d. the signature of an attorney permitted to practice law in this State pursuant to Rule 1:21-1 or the signature of a party appearing *pro se*, provided, however, that a *pro se* appearance is permitted by the Rules of Court; or
 - e. a certification of title search as required by Rule 4:64-1(a).
2. Aside from motions to reinstate, any documents filed in cases that have been administratively dismissed for lack of prosecution pursuant to Rule 4:64-8 will be marked "received not filed." Motions for entry of final judgment and other auto-stored filings in such cases will be denied.

3. A complaint filed via JEFIS must be accompanied by metadata containing information as to the parties to the action. If the party information is incorrectly reflected on the docket because of errors in the submitted metadata, subsequent filings will be marked “received not filed” as to the party or parties for which the metadata is incorrect. Because the ERM Guidelines prohibit the Clerk from altering the metadata, a motion must be filed detailing the metadata that was transmitted incorrectly and requesting that the docket be corrected.

Q: Why did I receive a return notice from the Office of Foreclosure?

What follows are the most common reasons that the Office of Foreclosure (as distinguished from the Superior Court Clerk’s Office) returns foreclosure filings:

1. Incorrect language in the Final Judgment and Writ regarding contract/lawful interest. Form language is set forth in New Jersey Practice.
2. Failure to provide clear breakdowns of advances. Plaintiff is required to provide the amount of the advance, a description of the advance, and the date of the advance. Setting this information out in tables is the best way to accomplish this breakdown. Copies of clients’ screen prints are not acceptable. The Office of Foreclosure staff is not trained to interpret clients’ screen prints or the codes contained therein. Submission of clients’ screen prints will result in delays and rejections. In addition, aggregate totals identified as real estate taxes paid through a specific date are not acceptable.
3. Submission of illegible copies of the note and mortgage.
4. Failure to properly dismiss parties; failure to properly change the names of defendants; or inclusion of prior lienholders that cannot be foreclosed.

5. Failure to provide copies of the note, mortgage, all assignments, certifications of scrivener's error, etc.
6. Failure to send the Notice to Cure to the property that is the subject of the foreclosure; instead, the Notice to Cure was only served on the borrower at the address where he/she was served the summons and complaint.
7. Failure to provide the name and address of the lender, or providing only the name and address of the attorney for the lender or servicer, on the Notice to Cure. The Fair Foreclosure Act requires the name and address of the lender to be included in the Notice to Cure.
8. Failure to indicate in the summons or affidavit of service, or by Certification, that the mediation package was served with the summons and complaint.
9. Service issues:
 - a. Failure to submit the Certification of Inquiry for defendants served out-of-state by mail.
 - b. Insufficient support for the Certification of Inquiry regarding defendants who were served by publication; failure to include copies of the searches performed to ascertain an address, or to perform and provide copies of a postal search on the defendant.
 - c. Failure to advise the court that service by regular mail was returned as undeliverable or was not returned, thereby resulting in an assumption that it was received.
 - d. Failure to attach the signed certified mail green card referenced in the certification of mailing as having been received.

10. Failure to include the metes and bounds description of the property in the writ of execution.
11. Failure to provide the Department of Defense website search results with the Affidavit of Non-Military Status, or performance of the search based only on the defendant's surname or on the wrong name. A certification based on the attorney's personal knowledge that the defendant is not in the military is not acceptable.

Q: Whom should I contact with any questions or concerns?

For JEFIS technical problems:

- Contact the Judiciary Problem Reporting Help Desk at (800) 343-7002.

For Office of Foreclosure motions, judgments or returns:

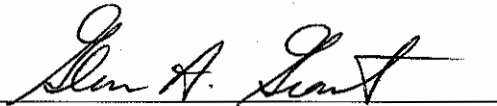
- First, contact the attorney or paralegal listed on the return notice.
- For additional questions, contact Kathryn Gilbertson Shabel, Assistant Chief, at kathryn.shabel@judiciary.state.nj.us, or Kristi Jasberg Robinson, Chief, Civil Practice Liaison, at kristi.robinson@judiciary.state.nj.us.
- Please allow 48 hours for a response.

For the Superior Court Clerk's Office:

- Michelle M. Smith, Clerk of the Superior Court, at michelle.smith@judiciary.state.nj.us
- Elisabeth Ann Strom, Chief, at elisabeth.strom@judiciary.state.nj.us
- Jamar Purnsley, Assistant Chief, at jamar.purnsley@judiciary.state.nj.us.

- For all other inquiries, please contact the Superior Court Clerk's Office Customer Service at (609) 421-6100 or SCCOForeclosure.Mailbox@judiciary.state.nj.us.

Questions or concerns related to this notice may be directed to Michelle M. Smith, Clerk of the Superior Court, by e-mail at michelle.smith@judiciary.state.nj.us or by phone at 609-984-4200, or to Kristi Jasberg Robinson, Chief, Civil Practice Liaison, by phone at 609-292-8470 or by e-mail at kristi.robinson@judiciary.state.nj.us.



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

Dated: April 23, 2014