

Notice to the Bar
Rule Amendments Proposed by the Special Committee
on Residential Foreclosure -- Comments Sought

In its report to the Supreme Court (previously published by September 20, 2018 notice to the bar), the Special Committee on Residential Foreclosure suggested a number of amendments to the Rules of Court regarding foreclosures. Those proposed rule amendments, which are appended to this notice, are here separately published for comment.

Comments on these proposed rule amendments should be submitted in writing by Friday, December 14, 2018 to:

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Foreclosure Rule Amendments
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Comments also may be submitted via Internet email to Comments.mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by email should include their name and email address. Comments submitted in response to this notice are subject to public disclosure.



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

Dated: November 14, 2018

Rule 1:34-6. Office of Foreclosure

(a) 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 error in orders or judgments] clerical errors in court documents and metadata;
- (2) ... no change
- (3) ... no change
- (4) ... no change
- (5) ... no change
- (6) ... no change
- (7) ... no change
- (8) ... no change
- (9) ... no change
- (10) ... no change
- (11) ... no change
- (12) ... no change
- (13) ... no change
- (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; text amended and designated as paragraph (a) and new paragraph (b) adopted _____ to be effective _____.

* * * * *

Rule 4:4-4. Summons; Personal Service; In Personam Jurisdiction

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

- (a) ... no change
 - (1) ... no change
 - (2) ... no change
 - (3) ... no change

(4) ... no change

(5) ... no change

(6) ... no change

(7) ... no change

(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)] (a)(9) notwithstanding, in personam jurisdiction may be obtained by mail under the circumstances and in the manner provided by R. 4:4-3.

(b) ... no change

(c) ... no change

Note: Source - R.R. 4:4-4. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (f) amended July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a), (f) and (g) amended November 5, 1986 to be effective January 1, 1987; paragraph (i) amended November 2, 1987 to be effective January 1, 1988; paragraph (e) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; text deleted and new text substituted July 13, 1994 to be effective September 1, 1994; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(3), (b)(1)(A), (b)(1)(C), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 9, 2008 to be effective September 1, 2008; paragraph (b)(1) amended July 23, 2010 to be effective September 1, 2010; paragraph (a) amended _____ to be effective _____.

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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; subparagraph (d)(4) amended _____ to be effective _____.

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Proposed New Rule

Rule 4:64-1B. Mediation of Eligible Residential Foreclosure Cases [new]

(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 08625-0971, 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 provide notice of 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, the Superior Court Clerk's Office shall enter an Administrative Order scheduling a Residential Foreclosure Mediation no later than 45 days from the date of issuance of the acceptance letter. 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) 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, unless otherwise ordered by the court.

(3) Residential Foreclosure Mediation may be conducted by phone or in person at the courthouse in the county where the case is venued. The parties are required to communicate special needs, such as an interpreter or handicapped access, to the Superior Court Clerk's Office prior to the commencement of the mediation.

(4) 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.

Note: Adopted _____ to be effective _____.

* * * * *

Rule 4:64-2. Proof; Certification or Affidavit

(a) Supporting Instruments. Proof required by R. 4:64-1 may be submitted by Affidavit or Certification, unless the court otherwise requires. The moving party shall produce the original mortgage, evidence of indebtedness, assignments, claim of lien (N.J.S.A. 46:8B-21), and any other original document upon which the claim is based. In lieu of an original document, the moving party may produce a legible copy of a recorded or filed document, certified as a true copy by the recording or filing officer or by a New Jersey attorney, or a copy of an original document, if unfiled or unrecorded, certified as a true copy by a New Jersey attorney.

(b) ...no change

(c) [Time; signatory.] 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 or certification 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 or certification, the affiant shall confirm:

(1) ... no change

(2) ... no change

(3) ... no change

(4) ... no change

The affidavit or certification 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 or certification shall provide a description of the relationship between the plaintiff and the employer.

(d) ... no change

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; caption amended, paragraph (a) amended, paragraph (c) caption and text amended _____ to be effective _____.

* * * * *

Rule 4:64-3. Surplus Moneys

(a) ... no change

(b) ... no change

(c) Items to Accompany Notice of Motion. 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; new paragraph (c) adopted _____ to be effective _____.

* * * * *

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

- (a) ... no change
- (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.

Note: Source-R.R. 4:82-6(a)(b); paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended _____ to be effective _____.

* * * * *

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; amended _____ to be effective _____.

* * * * *

NEW RULE

Rule 4:64-8A. Administrative Conversion of Contested Case into a Contested Matter [new]

Except as otherwise provided by rule or court order, if one year after commencement of a foreclosure action 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 Superior Court Clerk may issue an administrative order requiring that

certification in which the plaintiff has fifteen 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.

Note: Adopted _____ to be effective _____.