State of New York
Unified Court System

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Lawrence K. Marks
Chief Administrative Judge

MEMORANDUM

July 24, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso

From: Lawrence K. Marks LM

Subject: Revised Procedure for Addressing Residential and Commercial Foreclosure Proceedings

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In light of recent revisions in statewide restrictions on the filing and prosecution of foreclosure matters in New York State arising during the course of the COVID-19 public health emergency, attached please find a copy of AO/157/20 (Attachment A), effective July 27, 2020, which amends the temporary protocol for handling of those proceedings in several significant respects. In broad outline, those revised procedures are as follows:

- A stay of commencement and enforcement of commercial foreclosure matters against certain mortgagors (including those "facing financial hardship due to the COVID-19 pandemic"), initiated by Governor Cuomo's Executive Order 202.28, remains in effect until August 19, 2020. In addition, further proceedings in particular matters may continue to be governed by the suspension of "any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as described by the procedural laws of the state," set forth in Executive Orders 202.8, 202.14, 202.28, 202.38, and 202.48.[1] However, the general stay of foreclosure proceedings directed by Administrative Order since mid-March shall no longer be in effect as of July 27.

- Filing and service of documents in foreclosure proceedings continue to be governed by AO/121/20. Consequently, initiating documents by represented plaintiffs must be filed through NYSCEF or mail only at this time. (Unrepresented parties may file papers in person.)

[1] Executive Order 202.48 extended this suspension through August 5, 2020.

- Commencement papers in commercial and residential foreclosure proceedings are required to include the form notice indicating that defendant-tenants may be eligible for an extension of time to respond to the complaint. (As noted in my memorandum of July 7, 2020, a form plaintiff's attorney affirmation is no longer required.)

- Prior to any further proceedings in a foreclosure matter, the court must initiate a status or settlement conference (including a conference pursuant to CPLR Rule 3408) to address a range of subjects related to the case and COVID-19 concerns.

- After holding such a conference, the court may address and decide any pending or future motion in a foreclosure matter, and may entertain other applications (including post-judgment applications). Motions may be considered in any foreclosure matter, including matters in which one or both parties are self-represented.

- All foreclosure proceedings should be conducted remotely to the fullest extent possible.

- No auction or sale of property may be scheduled to occur prior to October 15, 2020.

- By September 1, each administrative judge responsible for civil matters shall develop a plan for the conducting of auctions within their judicial district in a safe and healthful manner, as well as in a manner that addresses a number of outstanding procedural and administrative concerns in the auction process. (The Office of Policy and Planning shall reach out to each administrative judge on this latter subject in the near future.) These plans shall be reviewed and approved by the appropriate Deputy Chief Administrative Judge.

Questions about these revised procedures may be addressed to the Hon. Sherry Klein Heitler, Chief of Policy and Planning of the New York State Courts (sheitler@nycourts.gov), or to her Chief of Staff, Steven Helfont (shelfont@nycourts.gov).

Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate.

Attachment

c: Hon. Sherry Klein Heitler
Steven Helfont, Esq.

Attachment A

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, at the direction of the Chief Judge, and consistent with the Governor's determination approving the easing of restrictions on commerce imposed due to the COVID-19 health emergency, I hereby direct that, effective July 27, 2020, notwithstanding the terms of any prior administrative order, the following procedures and protocols shall apply to the conduct of residential and commercial foreclosure matters before the New York State courts:

1. Stay of Commencement and Enforcement of Commercial Foreclosure Matters: Consistent with Executive Order 202.28, "[t]there shall be no initiation of a proceeding or enforcement of … a foreclosure of any … commercial mortgage, for nonpayment of such mortgage, owned … by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic" for a period ending on August 19, 2020.

2. Filing and Service: Filing and service of process in residential and commercial foreclosure proceedings shall continue as set forth in Administrative Order AO/121/20 (Exh. A), as amended.

3. Procedures in Pending and Newly-Filed Matters: Except insofar as a matter may be stayed or otherwise governed by Governor Cuomo's Executive Orders 202.8, 202.14, 202.28, 202.38, and 202.48, residential and commercial foreclosure matters may proceed as set forth below.

4. Conferences:

    a. Prior to conducting any further proceedings in any foreclosure matter, the court must initiate a status or settlement conference (including, where applicable, a settlement conference pursuant to CPLR Rule 3408). If any party does not appear at the conference, the court shall reschedule and make a second attempt to hold the conference before undertaking further proceedings.

    b. At the conference, the court shall review the procedural history of the matter; confirm compliance with notice requirements, inquire into the effects, if any, that the COVID-19 pandemic has had upon the parties; review any special relief under state or federal law to which the parties may be entitled in light of the pandemic; refer unrepresented parties to local civil legal service providers and housing counseling agencies; assess any pending and anticipated motions; approve briefing schedules proposed by stipulation of the parties; and use best efforts (including referral to alternative dispute resolution) to resolve any outstanding issues.

5. Remote Proceedings: Any foreclosure conference or proceeding will be conducted remotely to the fullest extent practicable.

6. Motions: Following the conference in a foreclosure matter, the court may (1) direct further briefing of any motion as needed, and (2) issue a decision on any motion, including a motion for foreclosure and sale. Pending and newly-filed motions may be considered and decided in all foreclosure matters -- including residential and commercial matters, matters in which one or both parties are self-represented, and matters commenced prior to and during the COVID-19 pandemic. In ordering relief in a commercial foreclosure matter, the court shall stay enforcement if and as required under Executive Orders 202.28, 202.48, and related Executive Orders.

7. Auctions:

    a. Continued Suspension of Auctions: No auction or sale of property in any residential or commercial foreclosure matter shall be scheduled to occur prior to October 15, 2020.

    b. Assessment of Auction Practices: Prior to September 1, 2020, the appropriate administrative judge for civil matters in each judicial district shall develop appropriate procedures and protocols for the safe and healthful conduct of such auctions within their districts in light of the COVID-19 pandemic.

8. Other Applications and Hearings: Courts may entertain other applications in foreclosure matters, including but not limited to post-judgment applications. Where necessary, courts may also conduct hearings, including but not limited to good-faith hearings pursuant to CPLR 3408(f). All such hearings will be conducted remotely to the fullest extent practicable.

9. This order shall not affect procedures for the filing and service of essential matters, and otherwise supersedes the provisions of any Administrative Order inconsistent with its terms.

Chief Administrative Judge of the Courts

Dated: July 23, 2020

AO/157/20

EXHIBIT A

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

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

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

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

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

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

Chief Administrative Judge of the Courts

Dated: June 9, 2020

AO/121/20