

VALUED CLIENTS:

I write to you from RAS Boriskin, LLC in New York to share a foreclosure and eviction update.

On Tuesday, June 23, 2020, Chief Administrative Judge Marks executed Administrative Order 131/20 addressing the temporary procedure for residential foreclosures. A copy of Chief Administrative Judge Marks' memorandum, administrative order and attorney affirmation are attached hereto.

Chief Administrative Judge Marks' Administrative Order 131/20 provides that effective today, June 24, 2020:

- Until further order, commencement of any residential or commercial foreclosure action (when permitted), will require both a good faith attorney affirmation and a notice to defendants in English and Spanish advising them that they may be eligible for an extension of time to answer the complaint. Copies of these documents are attached as Exhibit B to the Judge's memorandum.
- While foreclosure actions continue to be suspended, in cases where the borrower/defendants are represented by counsel, virtual settlement conferences may take place.
- With respect to vacant and abandoned properties, we can proceed with judgment of foreclosure and sale.
- The courts may not render decisions on motion practice except for motions to discontinue or VAP motions.
- Foreclosure sales, including those for non-payment defaults, are suspended through August 20, 2020, pursuant to Governor Cuomo's EO 202.28.
- Foreclosure plaintiffs may now discontinue a pending foreclosure action.

Next steps: In light of this new Administrative Order, RAS will be working to identify those foreclosure cases which can take advantage of these new directives. RAS will be reaching out to applicable contacts within your organization to confirm post first legal and pre-judgment vacant properties, which may be able to proceed.

Eviction: Chief Judge DiFiore clarified that we may commence the holdover eviction proceeding on or after June 20, 2020, but that consistent with Governor Cuomo's Executive Orders, the proceeding will be stayed and time to answer will not expire until further notice. (See Page 3 of the E-Law attachment).

If you'd like to discuss this further, please do not hesitate to contact me.

Sara Z. Boriskin

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State of New York
Unified Court System



25 Beaver Street New York , N.Y. 10004 (212) 428-2100

MEMORANDUM

June 23, 2020

To:

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

Hon. Sherry Klein Heitler

From:

Lawrence K. Marks M

Subject:

Procedure for Addressing Residential and Commercial Foreclosure Proceedings

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

- Commencement documents in foreclosure proceedings must be filed with the court by NYSCEF or mail only at this time (AO/121/20 [Attach. A]).
- Until further order, commencement papers in commercial and residential foreclosure proceedings are required to include two additional documents (AO/131/20 [Attach. B, with exhibits]):
 - 1. A form plaintiff's attorney affirmation, indicating that counsel has reviewed the various state and federal restrictions and qualifications on foreclosure proceedings and believes in good faith that the proceeding is consistent with those restrictions and qualifications (Attach. B, Exh. 1); and
 - 2. A form notice to defendants-tenants (in English and Spanish), informing them that they may be eligible for an extension of time to respond to the complaint in light of legal directives related to the COVID-19 pandemic, and directing them to a website link for further information (Attach. B, Exhs. 2,3).

- Whether or not an answer is filed in a foreclosure matter, further hearing of the case shall be stayed until such time as gubernatorial Executive Orders suspending statutory timetables for the prosecution of legal matters (i.e., 202.8, as extended by 202.14, 202.28, and 202.38) expire. In conjunction with AO/68/20, the suspension of foreclosure matters (including foreclosure auctions and most motion practice) continues for the time being, with several exceptions:
 - Foreclosure matters in which all parties are represented by counsel shall be eligible for calendaring for both initial and follow-up virtual settlement conferences.
 - Lenders may move for a judgment of foreclosure and sale on the ground that a property is vacant and abandoned.
 - o Lenders may move to discontinue a pending case.
- No motions other than motions to discontinue a pending case shall be entertained or decided. No judgment of foreclosure may issue for any matter other than one addressing vacant and abandoned property.
- At or before the expiration of the Governor's Executive Order suspending statutory timetables, we will issue further directives on the processing of these cases.

Please distribute this memorandum and attachments as necessary.

Attachment

c: Hon. Edwina Richardson-Mendelson Administrative Judges

Attachment A

ADMINISTRATIVE ORDER OF THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

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

- 1. In courts and case types approved for electronic filing through the New York State Courts Electronic Filing System (NYSCEF), represented parties must commence new matters or proceed in pending matters exclusively by electronic filing through NYSCEF, and must file and serve papers in such matters (other than service of commencement documents) by electronic means through NYSCEF or, where permitted under NYSCEF court rules, by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they expressly opt in to participate in NYSCEF.
- 2. To the extent that NYSCEF electronic filing is unavailable in courts or case types in the trial courts, represented parties must commence new matters exclusively by mail, except where otherwise authorized by the Chief Administrative Judge. Following commencement of a new matter, and in pending matters, represented parties must file papers through the Unified Court System's Electronic Document Delivery System (EDDS) or by mail, and must serve papers (other than commencement documents) by electronic means or by mail. Unrepresented parties must file, serve and be served in such matters by non-electronic means unless they provide written notification to the court and all parties that they wish to file, serve and be served electronically.
- 3. This order shall not affect procedures for the filing and service of papers in essential matters.
- 4. The court shall not request working copies of documents in paper format.

Chief Administrative Judge of the Courts

Dated: June 9, 2020

Attachment B

ADMINISTRATIVE ORDER OF THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

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

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

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

Chief Administrative Judge of the Courts

Dated: June 23, 2020

AO/131/20

Exh. 1

SUPREME C COUNTY O	COURT OF THE STATE OF	
v.	Petitioner	Index NoAFFIRMATION
	Defendant	
	Mortgaged Premise	s:
law, ii Execu Order Relief affirm directi	ncluding but not limited to G ttive Order 202.28, Chief Ad is AO/68/20, AO/121/20, and f, and Economic Security Ac aation is designed to advance	dings were stayed under various provisions of Governor Cuomo's Executive Order 202.8 and Iministrative Judge Marks's Administrative I AO/127/20, and the federal Coronavirus Aid, it of 2020 (Public Law 116-136). This is the purpose of these federal and state ary in-person appearances of parties and
	1 D GDVD	
follows:], Esq., pursuant to CPLR	§2106 and under the penalties of perjury, affirms as
affiliated with captioned fore	the law firm of	ensed to practice in the state of New York and am, attorneys for Plaintiff(s) in the above- h, I am fully aware of the underlying action, as well as
		he COVID-19 pandemic, various state and federal

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

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

- 3. I have reviewed these authorities, have consulted with my client, and affirm that, to the best of my knowledge, information, and belief, the petition and other papers filed or submitted to the Court in this matter comport with the requirements of those state and federal directives -- including the directive, set forth in Executive Order 202.28, that "[t]here shall be no initiation of a proceeding or enforcement of ... a foreclosure of any residential or commercial mortgage, for nonpayment of such mortgage, owned ... by someone that is eligible for unemployment insurance or benefits under state or federal law or otherwise facing financial hardship due to the COVID-19 pandemic for a period of sixty days beginning on June 20, 2020."
- 4. I am aware of my obligations under New York Rules of Professional Conduct (22 NYCRR Part 1200) and 22 NYCRR Part 130.

DATED:			

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

NOTICE TO DEFENDANT

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

PLEASE CONTACT YOUR ATTORNEY FOR MORE INFORMATION.

IF YOU DON'T HAVE AN ATTORNEY,
PLEASE VISIT

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

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

AVISO A DEMANDADO

DURANTE LA EMERGENCIA DEL CORONAVIRUS, ES POSIBLE QUE USTED TENGA DERECHO POR LEY A TOMAR DÍAS O SEMANAS ADICIONALES PARA PRESENTAR UNA RESPUESTA A ESTA PETICIÓN

POR FAVOR CONTACTE A SU ABOGADO PARA MAS INFORMACIÓN.

SI USTED NO TIENE UN ABOGADO,
VISITE

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

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

MESSAGE FROM CHIEF JUDGE JANET DIFIORE <u>June 22, 2020</u>

Thank you for a few minutes of your time as we update you on the latest COVID developments affecting our courts and the justice system.

Last week, our courts in the 5th, 6th and 7th Judicial Districts entered Phase 3 of the State's economic reopening plan, and they are being followed today by the 4th and 8th Judicial Districts. Under Phase 3, our courts have begun hearing an expanded number of in-person matters in our courthouses, including child support proceedings, certain categories of criminal proceedings and a limited number of civil bench trials. While there has been an increase in courthouse traffic, we have been able to safely manage the flow of people by staggering court calendars and courtroom usage, and, of course, we are adhering to all the safety measures, such as personal distancing and the use of face masks, that are key to preventing the spread of the virus.

Elsewhere, our courts in the 3rd and 9th Districts, and the 10th District on Long Island, are now proceeding and operating smoothly

under Phase 2, with planning underway for the transition into Phase 3 following the Governor's announcement.

And, of course, in New York City, our judges and professional staff have been back at work in their assigned courthouses since June 10th, coinciding with the City's entry into Phase 1 of economic reopening, and all has been going well.

As of today, New York City has officially entered Phase 2 of reopening, and our courts in the City will follow suit this Wednesday, June 24th. While there will be a measured increase in courthouse activity and staffing under Phase 2, the vast majority of non-essential matters will continue to be heard virtually.

So, we are encouraged by the smooth and steady progress being made all across the state as we gradually restore in-person court operations, but we do recognize that there are many difficult challenges ahead of us, especially with regard to our high-volume courthouses in New York City and other populous areas of the state.

As we have managed our way through this public health crisis, our first priority has always been, and remains, the health and safety of our

judges, professional staff and all court users and visitors. We have been consulting with an epidemiologist to help guide our decision making process and ensure that we are following all responsible public health protocols as we navigate the challenges of gradually restoring inperson service. And the challenges, and our concerns, are particularly acute with respect to our busiest courthouses.

In our Housing Courts, we know and understand that we must be careful to avoid any adverse public health consequences that could result from a sudden influx of cases involving crowds of unrepresented tenants appearing personally in our buildings. So, in response to this and other very real concerns, we have adopted new practices for both residential and commercial evictions.

Effective June 20th, commencement documents in eviction proceedings must be filed by mail or through NYSCEF only. And petitions must now include two additional documents. The first is an affirmation from the petitioner, or petitioner's counsel, stating that they have reviewed all of the state and federal legal restrictions on commencing new eviction proceedings and believe in good faith that the petition is consistent with those provisions. The second document is a plain language notice advising tenants that they may be eligible for

an extension of time to answer the petition and providing telephone numbers and website links where tenants can get further information about their rights. Finally, whether or not an answer is filed by the tenant, the proceeding will be stayed until further notice, consistent with the Governor's Executive Orders that are still in place suspending the timetables for prosecution of legal matters.

All those interested in learning more about the plan for Housing Court can go to our website for additional details, to read the Administrative Orders addressing these matters and for updates relating to these protocols.

Despite our continuing relentless focus on responding to the imperatives of the COVID pandemic, we have not lost sight of the broader values and longer-term objectives of our court system. Last week, I appointed a new Commission to help formulate a comprehensive, long-term vision for how our court system can leverage technology, online platforms and other innovations to expand access to justice and improve the delivery and quality of justice services in the future.

Our Commission to Reimagine the Future of New York's Courts is comprised of a highly distinguished group of judges, including my colleague at the Court of Appeals, Leslie Stein, and leading lawyers, academics and technology experts. It will be led by Hank Greenberg, the immediate-Past President of the State Bar and a partner at Greenberg Traurig, LLP. The Commission's charge is two-fold: offering short-term recommendations to help our court system safely manage its ongoing return to in-person operations, and the formulation of our long-term blueprint for how we create the court system of tomorrow.

Over the last months, we have experienced, in the most profound ways, the tragic impact that the COVID pandemic has had on our families, on our communities and on our economy. But this crisis has also been an impetus for positive innovation, and in the courts we have seen that first-hand with our incredible transformation to a virtual court system. In every crisis, there are opportunities. And this crisis has presented us with a unique opportunity to learn from the pandemic's impact on court operations and embrace the latest technologies and innovations, in order that we may build a new, and better court system for the future, a court system well-equipped to meet the evolving justice needs of our fellow New Yorkers. And I want

to thank Hank Greenberg, and the members of the Commission, for taking on this important assignment.

So, this past week has been yet another busy and eventful week for our court system. And while we continue to make encouraging progress toward restoring in-person court operations across the state, we also remain focused on our constant and overarching obligation to serve the public and earn their trust and confidence -- by rallying our court family around the imperative to eliminate systemic racism and foster inclusion and diversity, and reimagining our court system of the future.

As a final note today, I want to thank our dedicated judges and court professionals who have never faltered in meeting every challenge presented to us with competence, professionalism and resilience. Your support and service to the public has been extraordinary.

So, stay well, continue to take the necessary precautions to keep yourselves, your families and those around you safe -- and stay tuned for additional updates. Thank you.