NOTICE TO THE BAR

CLARIFICATION: FORECLOSURE COMMONLY ASKED QUESTIONS

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, the following notice sets forth questions and answers to common problems, concerns or questions presented to the Superior Court Clerk's Office regarding foreclosure practice.

1. **Q: My motion was denied by the Office of Foreclosure for improper Notice of Motion language. What is the reason for the denial?**

Rule 4:64-9 sets forth language that must be contained in a Notice of Motion to be submitted to the Office of Foreclosure. Rule 4:64-9 (c) requires the following language in the notice of motion:

> "IF YOU WANT TO OBJECT TO THIS MOTION YOU MUST DO SO IN WRITING WITHIN 10 DAYS AFTER THE DAY YOU RECEIVED THIS MOTION. ANY OBJECTION MUST ADDRESS THE SUBJECT OF THE MOTION AND DETAIL WITH SPECIFICITY THE BASIS OF THE OBJECTION TO THE MOTION. YOU MUST FILE YOUR OBJECTION WITH THE OFFICE OF FORECLOSURE, P.O. BOX 971, 25 MARKET STREET, TRENTON, NEW JERSEY 08625, AND SERVE A COPY ON THE MOVING PARTY. THE OFFICE OF FORECLOSURE DOES NOT

CONDUCT HEARINGS. YOUR PERSONAL APPEARANCE AT THE OFFICE WILL NOT QUALIFY AS AN OBJECTION. IF YOU FILE A SPECIFIC OBJECTION TO THE MOTION, THE CASE WILL BE SENT TO A JUDGE FOR RESOLUTION. YOU WILL BE INFORMED BY THE JUDGE OF THE TIME AND PLACE OF THE HEARING ON THE MOTION."

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 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. This language directs the motion to the Office of Foreclosure and alerts the opposing party as to the procedure for filing objections with the Office of Foreclosure. Motions submitted to the Office of Foreclosure without the proper language for the notice of motion shall be denied by the Office of Foreclosure.

2. **Q: My motion for final judgment was returned by the Office of Foreclosure for improper Notice of Motion language. What is the reason for the deficiency and return notice?**

Rule 4:64-9 sets forth language that must be contained in a Notice of Motion to be submitted to the Office of Foreclosure. Rule 4:64-9(b) requires the following language in the notice of motion:

"IF YOU WANT TO OBJECT TO THE CALCULATION OF AMOUNT DUE YOU MUST DO SO IN WRITING WITHIN 10 DAYS AFTER THE DAY YOU RECEIVED

THIS MOTION. ANY OBJECTION TO THE CALCULATION OF THE AMOUNT DUE MUST ADDRESS AND DETAIL WITH SPECIFICITY THE BASIS OF THE OBJECTION OF THE AMOUNT DUE. YOU MUST FILE YOUR OBJECTION WITH THE OFFICE OF FORECLOSURE, P.O. BOX 971, 25 MARKET STREET, TRENTON, NEW JERSEY 08625, AND SERVE A COPY ON THE MOVING PARTY. THE OFFICE OF FORECLOSURE DOES NOT CONDUCT HEARINGS. YOUR PERSONAL APPEARANCE AT THE OFFICE WILL NOT QUALIFY AS AN OBJECTION. IF YOU FILE A SPECIFIC OBJECTION TO THE CALCULATION OF THE AMOUNT DUE, ON RECEIPT OF A SPECIFIC OBJECTION TO THE CALCULATION OF THE AMOUNT DUE PURSUANT TO RULE 4:64-1(d)(1)(A), THE OFFICE OF FORECLOSURE SHALL REFER THE MATTER TO THE JUDGE IN THE COUNTY OF VENUE, WHO SHALL SCHEDULE SUCH FURTHER PROCEEDINGS AND NOTIFY THE PARTIES OR THEIR ATTORNEYS OF THE TIME AND PLACE THEREOF."

This language directs the motion to the Office of Foreclosure and alerts the opposing party as to the procedure for filing objections with the Office of Foreclosure. Filing parties are required to utilize the language as set forth in the court rule. Motions for final judgment submitted to the Office of Foreclosure without the proper notice of motion language are currently returned by the Office of Foreclosure as deficient for improper language. The filing party has twenty (20) days to cure the deficiency. Failure to take the necessary steps to cure the deficiency results in the denial of the motion for final judgment.

Effective September 1, 2015, all motions submitted without the required language of Rule 4:64-9(b) and (c), shall be denied by the Office of Foreclosure. The filing party will be required to refile the motion with the corresponding fee and serve the motion on the defendant(s).

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

No. A motion for any other relief must be submitted separately, prior to filing the motion for entry of final judgment.

Effective September 1, 2015, the Office of Foreclosure shall deny a motion for final judgment where additional relief is required and the filing party failed to move for that relief prior to filing the motion for final judgment.

4. **Q: My motion was denied for "lack of required signature," but my documents contain electronic signatures. Who can electronically sign documents in foreclosure?**

Only licensed New Jersey attorneys may use an electronic signature when using JEFIS to file documents with the Office of the Superior Court Clerk pursuant to Rule 1:32-2A. For all documents submitted on paper, an original handwritten signature is required. Documents signed by anyone other than a licensed New Jersey attorney must be signed with an original handwritten signature whether submitted electronically or on paper.

5. **Q: My residential final judgment package was returned as deficient due to missing documents. What is required to be filed to obtain a residential final judgment in foreclosure?**

The following documents must be included when filing a residential mortgage foreclosure final judgment:

- Notice of Motion addressed to the borrowers at their last known address;
- Notice should also be addressed to any attorney who appeared on behalf of the borrowers;
- Notice must be addressed to any answering defendants;
- Notice must be addressed to any defendants defaulted more than six months prior;
- Proof of Mailing of Notice of Motion which should list specifically the documents sent i.e. Proof of amount Due, Certification of Diligent Inquiry and Notice of Motion;
- Proof of Amount Due signed no more than 90 days prior to FILING of the judgment package (not prior to MAILING);
- Certification of Diligent Inquiry for Final Judgments;
- Certification of Mailing of Request to Enter Default or Default Order;
- Certification of Non Military for all individual defendants including judgment creditors;
- Certification of Search Fees and Costs;
- Certified True Copies of the Note, Mortgage, Assignments, Loan Modification;
- Form Final Judgment;
- Form Writ of Execution with Schedule A attached.

In order to obtain a final judgment in residential matters, the plaintiff must file certain documents along with a fee of $100 ($50 for the motion and $50 for the proposed writ). The filing party's failure to include any of these documents shall result in a denial of the motion for final judgment or a deficiency notice. Plaintiffs are encouraged to verify that all of the

documents listed above are contained in their submission before electronically transmitting it or mailing it to the Superior Court Clerk's Office.

6. Q: What costs can be included in the proof of amount due?

The following expenses can be included in the certification of proof of amount due:

- Principal Balance;
- Late fees up to the date of the filing of the complaint;
- Interest up to the date the PAD is signed;
- Taxes – include a breakdown of the amount of payment and date of payment;
- Insurance– include a breakdown of the amount of payment and date of payment;
- Property Preservation– include a breakdown of the amount of payment and item being paid;
- Prior servicer advances- include a breakdown of the amount of payment and date of payment;

Plaintiffs are required to submit a certification of proof of amount due as support for the notice of motion for judgment. Certifications of proof of amount due require itemization of all costs over $100.00. Failure to provide the required itemization will result in a deficiency notice by the Office of Foreclosure permitting the plaintiff twenty (20) days to cure the defect.

Effective September 1, 2015, failure to itemize costs in the certification of proof of amount due will result in a denial of the motion for final judgment by the Office of Foreclosure.

Certifications of proof of amount should not include cosmetic repairs, appraisals and "prior servicers' advancements." The expenses are not recoverable for the Plaintiff. Prior servicer advances must be itemized and clearly identified. The failure to itemize will result in a denial and the plaintiff will be directed to move before a vicinage judge for relief. Plaintiff are

required to submit a certification detailing all internal codes used in business records submitted as support for the motion of final judgment.

7. **Q: What are the most common reasons for return notices by the Office of Foreclosure?**

These are the most common reasons that the Office of Foreclosure returns filings:

1. Incorrect language in the Final Judgment and Writ regarding contract/lawful interest. Please review the form language contained 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. Tables are 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 only clients' screen prints will result in denial as of September 1, 2015. In addition, flat totals identified as real estate taxes paid through a specific date are not acceptable, a breakdown as described herein is required.
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 or electronic postal receipt 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.

8. **Q: Which unit in the Judiciary should I send corrections required by the deficiency notice?**

All responses to a deficiency notice must be submitted to the Superior Court Clerk's Office electronically for JEFIS filers or on paper for non-JEFIS filers. Staff of the Superior Court Clerk's Office cannot accept facsimile copies or email copies of documents submitted in response to a deficiency notice by the Office of Foreclosure. Plaintiffs are required to respond to the deficiency notice, even if it is believed all of the documents were correctly filed. Failure to respond to a deficiency notice within twenty (20) days will result in the denial of the notice of motion for final judgment.

Attorneys filing electronically through JEFIS are required to adhere the system requirements, as set forth in the attorney filer manual. Electronic filers should scan documents at no less than 300 dpi and select black and white on the settings menu. Failure to meet these requirements may result in a degraded image which will delay the processing of your judgment application pending submission of legible documents.

9. Q: My amended complaint was marked "received not filed." When can I file an amended complaint?

A filing party may amend a complaint as a matter of right to plead additional parties or to add a cause of action pursuant to Rule 4:9-1, so long as a party has not filed an answer. In all other circumstances, one must file a motion with the court to request additional relief. Thus, a party seeking to correct a defendant's name, substitute the plaintiff, correct scriveners' error or correct the metadata must do so upon motion to the court.

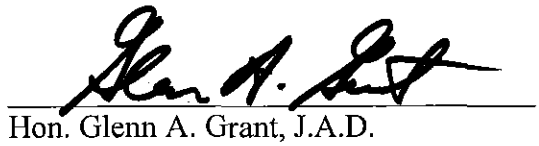
10. Q: There has been a delay in scheduling mediation for my client. Where can I get information?

All requests for mediation are being timely processed by the Superior Court Clerk's Office. To be considered for mediation, defendants must meet the following criteria: (1) file a Mediation Request form within 60 days of service of the complaint, (2) the home must be the defendant's primary resident, (3) all signors of the notes must sign the Mediation Request statement and participate in mediation and (4) defendant must not be currently involved in a bankruptcy matter.

All requests received outside of the 60 days require a motion before the Chancery Judge requesting the ability to participate in mediation. For inquiries related to mediation, please contact the Superior Court Clerk's Office 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 phone at (609) 984-4200 or by e-mail at michelle.smith@judiciary.state.nj.us. 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.



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

Dated: May 29, 2015