

## **RULE 4:64. Foreclosure Of Mortgages, Condominium Association Liens And Tax Sale Certificates**

### **4:64-1. Foreclosure Complaint, Uncontested Judgment Other Than In Rem Tax Foreclosures**

#### (a) Title Search; Certifications.

(1) Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which R. 4:64-7 does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.

(2) In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:

- (A) that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents being submitted and (ii) confirmed their accuracy; and
- (B) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

(3) Plaintiff's attorney shall also annex to the complaint a certification, executed by the attorney, attesting that the complaint and all documents annexed thereto comport with the requirements of R. 1:4-8(a).

#### (b) Contents of Mortgage Foreclosure Complaint. In an action in the Superior Court to foreclose a mortgage, the complaint shall state:

- (1) the name of the obligor, mortgagor, obligee and mortgagee;
- (2) the amount of the debt secured by the mortgage;
- (3) the dates of execution of the debt instrument and the mortgage;
- (4) the recording date, county recording office, and book and page recording reference of the mortgage securing the debt;
- (5) whether the mortgage is a purchase money mortgage;
- (6) a description of the pertinent terms or conditions of the debt instrument or mortgage and the facts establishing the default;
- (7) the default date;
- (8) if applicable, the acceleration of the debt's maturity date;
- (9) if applicable, any prepayment penalty;
- (10) if the plaintiff is not the original mortgagee or original nominee mortgagee, the names of the original mortgagee and a recital of all assignments in the chain of title;
- (11) the names of all parties in interest whose interest is subordinate or affected by the mortgage foreclosure action and, for each party, a description of the nature of the interest, with sufficient particularity to

give the court and parties notice of the transaction or occurrence on which the interest is based including recording date of the lien, encumbrance, or instrument creating the interest;

(12) a description of the subject property by street address, block and lot as shown on the municipal tax map and a metes and bounds description stating whether the recorded mortgage instrument includes that description; and

(13) if applicable, whether the plaintiff has complied with the pre-filing notice requirements of the Fair Foreclosure Act or other notices required by law.

When a married person who has not executed the mortgage is made a party defendant, the plaintiff shall set out the particular facts relied on to bar the married person's rights and interest in the subject property, including whether the married person's rights and interest in the property were acquired before or after the date of the mortgage.

(c) Definition of Uncontested Action. An action to foreclose a mortgage or to foreclose a condominium lien for unpaid assessments pursuant to N.J.S.A. 46:8B-21 shall be deemed uncontested if, as to all defendants,

- (1) a default has been entered as the result of failure to plead or otherwise defend; or
- (2) none of the pleadings responsive to the complaint either contest the validity or priority of the mortgage or lien being foreclosed or create an issue with respect to plaintiff's right to foreclose it; or
- (3) all the contesting pleadings have been stricken or otherwise rendered noncontesting.

An allegation in an answer that a party is without knowledge or information sufficient to form a belief as to the truth of an allegation in the complaint shall not have the effect of a denial but rather of leaving the plaintiff to its proofs, and such an allegation in an answer shall be deemed noncontesting to the allegation of the complaint to which it is responsive.

(d) Procedure to Enter Judgment in Uncontested Cases; Objections to Amount Due.

- (1) *Application for Judgment.* The application for entry of judgment shall be accompanied by proofs as required by R. 4:64-2. In lieu of the filing otherwise required by R. 1:6-4, the application shall be filed with the Office of Foreclosure in the Administrative Office of the Courts.
- (2) *Prejudgment Notices.* Notice of motion for entry of judgment in the form prescribed by R. 4:64-9 shall be served within the time prescribed by subparagraph (d)(4) of this rule on mortgagors, on all other named parties obligated on the debt, and on all parties who

have appeared in the action, including defendants whose answers have been stricken or rendered noncontesting. The notice shall have annexed a copy of the affidavit of amount due filed with the court. Any other defaulting parties shall be noticed only if application for final judgment is made six months or more after the entry of default.

If the premises are residential, the notice of motion for entry of judgment shall be served on each tenant, by personal service or registered or certified mail, return receipt requested, accompanied by the notice of tenants' rights during foreclosure in the form prescribed by Appendix XII-K of the rules of court. Said notice of tenants' rights shall be contained in an envelope with the following text in bold and in at least 14 point type: "Important Notice about Tenants Rights." If the name of the tenant is unknown, the notice may be addressed to Tenant.

(3) *Objections to Amount Due.* Any party having the right of redemption who disputes the correctness of the affidavit of amount due may file with the Office of Foreclosure an objection stating with specificity the basis of the dispute and asking the court to fix the amount due. On receipt of a specific objection to the calculation of the amount due, 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.

(4) *Entry of Judgment.* The court, on motion on 10 days' notice 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) *Priorities; Subsequent Encumbrances.* A party holding a subsequent encumbrance for a sum certain and filing an uncontesting answer may have the encumbrance included for payment in the foreclosure judgment on the filing of proofs pursuant to R. 4:64-2. The judgment shall not order payment to a subsequent encumbrancer unless

- (1) the priority of the encumbrance has been determined; and
- (2) the encumbrancer has filed an affidavit stating that notice of the amount claimed due on the encumbrance has been served on all defendants whose addresses are known or readily ascertainable and none of the defendants, whose names and addresses shall be listed in the affidavit, has, within 10 days after the date of service of the notice made written objection to the validity, priority or amount of the encumbrance; and
- (3) all prior encumbrances of parties to the action, including answering and defaulting parties, have been previously satisfied or ordered paid; and

- (4) the encumbrance extends to the entire interest being foreclosed; and
- (5) no cross-claim pursuant to R. 4:64-5 has been filed.

No judgment by default shall be entered against a defendant postponing that defendant's rights or claims to those of any other defendant unless the priority of the right or claims of the latter and the facts upon which they depend are distinctly set forth in the pleadings. A controversy between such defendants may be settled upon application for surplus moneys pursuant to R. 4:64-3.

(f) Tax Sale Foreclosure; Strict Mortgage Foreclosures. If an action to foreclose or reforeclose a tax sale certificate in personam or to strictly foreclose a mortgage where provided by law is uncontested as defined by paragraph (c), the court, subject to paragraph (h) of this rule, shall enter an order fixing the amount, time and place for redemption upon proof establishing the amount due. The order of redemption in tax foreclosure actions shall conform to the requirements of N.J.S.A. 54:5-98 and R. 4:64- 6(b). The order for redemption or notice of the terms thereof shall be served by ordinary mail on each defendant whose address is known at least 10 days prior to the date fixed for redemption. Notice of the entry of the order of redemption, directed to each defendant whose address is unknown, shall be published in accordance with R. 4:4- 5(a)(3) at least 10 days prior to the redemption date and, in the case of an unknown owner in a tax foreclosure action joined pursuant to R. 4:26-5, a copy of the order or notice shall be posted on the subject premises at least 20 days prior to the redemption date in accordance with N.J.S.A. 54:5-90. The court, on its own motion and on notice to all appearing parties including parties whose answers have been stricken, may enter final judgment upon proof of service of the order of redemption as herein required and the filing by plaintiff of an affidavit of non-redemption. The Office of Foreclosure may, pursuant to R. 1:34-6, recommend the entry of both the order for redemption and final judgment.

(g) Security Interest Foreclosure. A plaintiff in the mortgage foreclosure action who also holds a security interest in personal property located on the subject real estate and who elects to have the personal property sold by the sheriff at public sale together with the real property may, by separate count, seek to foreclose the security interest in the mortgage foreclosure action, and the judgment of foreclosure shall direct a single public sale of the real estate and personal property. Notice of the sale of such personal property shall be given to the debtor and the secured creditors pursuant to N.J.S.A. 12A:9-504. If necessary the court shall apportion the proceeds of sale, and the proceeds allocated to the personal property shall be distributed pursuant to N.J.S.A. 12A:9-504 whether or not the persons entitled thereto are parties to the foreclosure action.

(h) Minors; Mentally Incapacitated Persons; Military Service. Except as otherwise provided by law or by R. 4:26-3 (virtual representation) no judgment or order for redemption shall be entered under this rule against a

minor or mentally incapacitated person who is not represented by a guardian or guardian ad litem appearing in the action. No judgment or order for redemption shall be entered against a defendant in military service of the United States who has defaulted by failing to appear unless that defendant is represented in the action by an attorney authorized by the defendant or appointed to represent defendant in the action and who has appeared or reported therein.

(i) Answer by United States and State of New Jersey. Rule 4:6-1(a) notwithstanding, the United States of America and the State of New Jersey, if a party defendant to a mortgage foreclosure action, shall have 60 days from the date of service of the complaint upon it to file and serve its answer.

**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 April 30, 2019 to be effective May 1, 2019.

#### **4:64-1A. Foreclosure of Vacant and Abandoned Residential Property.**

- (a) Verified Complaint and Order to Show Cause. In addition to the content required by R. 4:64-1(a) and (b), a complaint for foreclosure of vacant and abandoned residential property as established by N.J.S.A. 2A:50-73 shall set out facts that the plaintiff alleges demonstrate that the property is vacant and abandoned. The complaint shall have attached the R. 4:64-2(b) affidavit or certification of amount due that the plaintiff will rely upon to establish the judgment amount and the R. 4:64-2(d) affidavit of diligent inquiry. Copies of such affidavits or certifications shall be served with the R. 4:67-1 order to show cause.
- (b) Notice of Motion to Proceed Summarily. An application to proceed summarily for foreclosure of vacant and abandoned residential property as established by N.J.S.A. 2A:50-73 shall have attached the R. 4:64-2(b) affidavit or certification of amount due that the plaintiff will rely upon to establish the judgment amount and the R. 4:64-2(d) affidavit of diligent inquiry. Copies of such affidavits or

certifications shall be served with the R. 4:67-2 notice of motion to proceed summarily.

(c) Procedure to Enter Judgment.

- (1) *Application for Judgment.* The application for judgment shall be accompanied by proofs as required by R. 4:64-2 not already of record. In lieu of the filing otherwise required by R. 1:6-4, the application shall be filed with the Office of Foreclosure in the Administrative Office of the Courts.
- (2) *Notices.* Notwithstanding the procedure for judgment set forth in R. 4:64-1(d)(2), where residential property is vacant and abandoned as established by N.J.S.A. 2A:50-73, a notice of motion for entry of judgment and the notice of tenants' rights during foreclosure in the form prescribed by Appendix XII-K of the Rules of Court are not required to be served.
- (3) *Entry of Judgment.* Notwithstanding the procedure for judgment set forth in Rule 4:64-1(d)(4), if the court determines that residential property is vacant and abandoned as established by N.J.S.A. 2A:50-73, the court on the order to show cause return date or the order to proceed summarily return date may enter final judgment. The Office of Foreclosure may recommend entry of final judgment pursuant to R. 1:34-6.

**Note:** Adopted July 22, 2014 to be effective September 1, 2014.

**4:64-1B. Mediation of Eligible Residential Foreclosure Cases**

(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. Residential foreclosure mediation shall explore whether an alternative solution is available to the parties, including but not limited to a loan modification agreement, repayment plan, reinstatement, or other acceptable form of home retention resolution, or a non-retention option such as a deed in lieu of foreclosure, cash of keys, short sale or market sale. Although the parties are not required to accept an 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, 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 notice 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 a 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 to four family dwelling.
- (5) All borrowers who execute the Note must agree to participate in the mediation. Absent a court order or an agreement by the lender or servicer that provides otherwise, Residential Foreclosure Mediation is not available unless each borrower is willing to participate.
- (6) The homeowner is not presently in bankruptcy.

(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) Prior to the date of the Initial Conference the plaintiff shall mail the defendant homeowner the following loss mitigation documents by regular and certified mail:

- A. An itemized loan transaction history with accompanying information, written in plain language, to explain any codes used in the history which are not otherwise self-explanatory;
- B. An itemized statement of the amount necessary to reinstate the mortgage loan;
- C. A statement of the amount necessary to pay off the mortgage loan;
- D. Copies of the Note, Mortgage and any agreements modifying such documents; and
- E. The name, business mailing address, electronic mailing address, facsimile number and direct telephone number of an individual able to respond with reasonable adequacy and promptness to questions relative to loss mitigation process.

(3) 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.

(4) 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 45 days from the date of the Initial Conference, unless deemed necessary by the mediator. Subsequent conferences shall only be scheduled if deemed necessary by the Superior Court Clerk's Office.

(5) In the event that a homeowner misses the Initial Conference due to an emergency or other unforeseen circumstances, the Superior Court Clerk's Office may, at its discretion, schedule another Initial Conference for the homeowner.

(6) 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 exercise best efforts to provide complete financial documentation or to attend the scheduled session(s), the case shall be removed from the Residential Foreclosure Mediation Program.

(7) 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 and the completion of the Conference, the Superior Court Clerk's Office shall enter an Administrative Order scheduling a Residential Foreclosure Mediation no later than 30 days from the date the Conference was completed. 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) Designated judicial staff shall conduct the Residential Foreclosure Mediation. The purpose of the mediation is to explore whether an alternative resolution is available to the parties, including but not limited to a loan modification agreement, repayment plan, reinstatement, or other acceptable form of home retention resolution, or non-retention option such as a deed in lieu of foreclosure, cash for keys, short sale or market sale. The mediation shall be attended by a representative of the lender and by each homeowner who executed the Note, unless otherwise agreed to by the lender or servicer or ordered by the court.

(3) Residential Foreclosure Mediation shall be conducted at the courthouse where the case is venued. The parties are required to communicate special needs, such as an interpreter or handicapped access, to the vicinage where the mediation will be conducted.

(4) If, following the first scheduled mediation session, the parties have been unable to agree to an alternative resolution, the mediator may in his or her discretion schedule a second mediation session no later than 15 days from the date of the first scheduled mediation. No third mediation session shall be scheduled absent a court order.

(5) 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.

(h) Good Faith.

Both the lender and the homeowner shall negotiate in good faith to reach a mutually agreeable resolution. At a minimum, good faith requires:

(1) Compliance with this rule and applicable court rules, court orders, and directives by the court or its designee pertaining to the Residential Foreclosure Mediation Program;

(2) Compliance with applicable mortgage servicing laws, rules, regulations, and investor directives;

(3) Conduct consistent with efforts to reach a mutually agreeable resolution, including but not limited to, avoiding unreasonable delay, appearing at the mediation with complete settlement authority and providing accurate information to the court and the parties.

(i) The court may impose appropriate sanctions against the noncomplying party including:

- (1) Tolling of interest, fees and costs;
- (2) Reasonable attorney's fees;
- (3) Monetary sanctions;
- (4) Any other relief that the court deems just and proper.

(j) A party to a foreclosure action may not charge, impose or otherwise require payment from the other party for any cost, including but not limited to attorney's fees for the participation at or in the Residential Foreclosure Mediation Program, except by court order.

**Note:** Adopted April 30, 2019 to be effective May 1, 2019.

#### **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) Contents of Proof of Amount Due. If the action is uncontested, the plaintiff shall file with the Office of Foreclosure an affidavit of amount due, which shall have annexed a schedule as set forth in Appendix XII-J of these rules. The schedule shall state the principal due as of the date of default; advances authorized by the note or mortgage for taxes, hazard insurance and other stated purposes; late charges, if authorized by the note or mortgage, accrued to the date of the filing of the complaint; a computation of accrued interest; a statement of the per diem interest accruing from the date of the affidavit; and credit for any payments, credits, escrow balance or other amounts due the debtor. Prejudgment interest, if demanded in the complaint, shall be calculated on rate of interest provided by the instrument of indebtedness. A default rate of interest, if demanded in the complaint and if reasonable, may be used to calculate prejudgment interest from the date of default to the judgment. The schedule shall include notice that there may be surplus money and the procedure for claiming it. The proof of amount due affidavit may be supported by computer-generated entries.

(c) Time: Signatory. 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) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;
- (2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;
- (3) that the financial information contained in the affidavit is accurate; and
- (4) that the default remains uncured.

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) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer who (A) personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and (4) that the aforesaid documents comport with the requirements of R. 1:4-8(a).

**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 April 30, 2019 to be effective May 1, 2019.

#### **4:64-3. Surplus Moneys**

(a) Applications Made by Parties Named in the Judgment of Foreclosure.

Applications for withdrawal of surplus moneys in foreclosure actions may be presented at any time after the sale on motion, in accordance with R. 1:6-3, and notice to all parties, including defaulting defendants whose claims are not directed in the execution to be paid out of the proceeds of sale. Such motions made by a party named in the

judgment of foreclosure shall be filed with the Office of Foreclosure. The Office of Foreclosure shall report on and recommend the entry of orders for the withdrawal of surplus money provided the motion is unopposed. The report of the Office of Foreclosure shall list the priority of all lien claims and shall include the amounts due any lien holder who has filed a claim to surplus money supported by proofs required by Rule 4:64-2.

(b) Motions by Others. A motion made by a non-party to the judgment of foreclosure shall be filed in the vicinage. A motion for payment of surplus money prior to the delivery of the deed also shall be filed in the vicinage. The sheriff or other officer making the sale shall accept the receipt or order of the person to whom such surplus, or any part of it, is ordered to be paid, as payment to that extent of the purchase money, or may pay the same to such person. Payments shall be made in accordance with R. 4:57-2.

(c) The following must accompany a notice of motion for the payout of foreclosure surplus moneys 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 moneys;

(B) Proof that the applicant is the party named in the foreclosure action, unless the applicant is proceeding under Rule R:64-3(b);

(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 moneys 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) Where the applicant is a business entity, an affidavit by an executive officer or the governing board's resolution, under the seal of the business entity, stating that the representative making the application is a duly authorized representative of the business entity.

(6) Where the applicant is deceased, appropriate testate or intestate probate letters issued no more than 60 days prior to the surplus moneys application to establish the personal representative's right to act for the decedent's estate.

paragraphs (a) and (b), and paragraph (a) to be effective September 1, 2008; new paragraph (c) adopted April 30, 2019 to be effective May 1, 2019.

#### **4:64-4. Abandonment of Action by Plaintiff; Right of Defendants to Proceed**

If the plaintiff makes prior or subsequent encumbrancers parties to the action to foreclose a mortgage, and they answer, and the plaintiff neglects or refuses to proceed, the defendants, or any of them, may make application to the court for an order permitting them to proceed with the action to judgment and execution. Plaintiff by such order shall not be allowed costs.

**Note:** Source-R.R. 4:82-5; amended July 13, 1994 to be effective September 1, 1994.

#### **4:64-5. Joinder of Claims in Foreclosure**

Unless the court otherwise orders on notice and for good cause shown, claims for foreclosure of mortgages shall not be joined with non-germane claims against the mortgagor or other persons liable on the debt. Only germane counterclaims and cross-claims may be pleaded in foreclosure actions without leave of court. Non-germane claims shall include, but not be limited to, claims on the instrument of obligation evidencing the mortgage debt, assumption agreements and guarantees. A defendant who chooses to contest the validity, priority or amount of any alleged prior encumbrance shall do so by filing a cross-claim against that encumbrancer, if a co-defendant, and the issues raised by the cross-claim shall be determined upon application for surplus money pursuant to R. 4:64-3, unless the court otherwise directs.

**Note:** Former rule deleted September 5, 1969 to be effective September 8, 1969. New rule adopted July 14, 1992 to be effective September 1, 1992.

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

(a) Severance Upon Answer. In any action in the Superior Court to foreclose the right to redeem from the lien of a certificate for the nonpayment of taxes or other municipal lien, whether brought under the In Rem Tax Foreclosure Act or otherwise, if the defendant's answer sets up the defense of the invalidity of the tax or other lien, or the invalidity of the proceedings to sell, or the invalidity of the sale, those questions shall be tried in the action. Upon the filing of such answer, there shall be a severance of the proceedings as to the parcel or parcels of land which have been made the subject of such answer. In the event of such a severance, the plaintiff shall pay to the clerk fees due as on the commencement of a new action and the clerk shall so docket the severed proceeding cross-indexing it to the original action.

(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 is 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 April 30, 2019 to be effective May 1, 2019.

#### **4:64-7. In Rem Tax Foreclosure**

(a) Contents of Complaint. In an action in the Superior Court to foreclose the right to redeem from the lien of a certificate for the nonpayment of taxes or other municipal lien, brought under the In Rem Tax Foreclosure Act, the complaint shall be verified by the tax collector and shall set forth (1) the tax foreclosure list; (2) the name of the person or one of the persons who, according to the records in the office of the county recording officer, appears as a transferee or purchaser of title to the land to be affected by the tax foreclosure proceedings, and the book and page or date and instrument number of the instrument by which such person acquired title; or the word "unknown" if no such person can be discovered by a search of the records of ownership in the county recording officer's office for a period of 60 years next preceding the preparation of the tax foreclosure list; and (3) a demand for relief pursuant to the act. The complaint may also include a description by metes and bounds of the land to be affected.

(b) Publication; Contents of Notice. The plaintiff shall publish once a notice of foreclosure in a newspaper generally circulated in the municipality where the lands affected are located stating (1) that it has commenced an action in the Superior Court by filing a complaint on a specified date to foreclose and forever bar any and all rights of redemption of the parcels described in the tax foreclosure list contained in the notice and that the action is brought against the land only and no personal judgment may be entered therein; (2) that any person desiring to protect a right, title or interest in any said parcel by redemption or to contest plaintiff's right to foreclose, must do so by paying the amount required to redeem (which shall be set forth in the notice) plus interest to the date of redemption and such costs as the court may allow, prior to the entry of judgment therein, or by filing and serving an answer to the complaint setting forth defendant's answer within 45 days after the date of publication of the notice; and (3) that in the event of failure of redemption or answer by a person having the right to redeem or answer, such person shall be forever barred and foreclosed of all right, title and interest and equity of redemption in and to the parcels of land described in the tax foreclosure list. The notice shall contain a copy of the tax foreclosure list.

(c) Service. The plaintiff shall, within 7 days after the date of publication of the notice of foreclosure, serve a copy thereof in the manner hereinafter provided on each person whose name appears as an owner in the tax foreclosure list at his or her last known address as it appears on the last municipal tax duplicate. The plaintiff shall also make such service upon all other persons having an ownership or lien interest recorded in the office of the Superior Court Clerk or the county recording officer on the date of the filing of the complaint and upon all other persons who, pursuant to N.J.S.A. 54:5-104.48, as amended, have filed a notice with the tax collector specifying a title, lien, claim or interest in any of the lands sought to be affected by said complaint. Such service shall be made in the manner provided by R. 4:4-4(a)(1) or (c) or by simultaneously mailing to the last known address by registered or certified mail, return receipt requested, and by ordinary mail. In addition to the foregoing, the plaintiff shall mail a copy of the notice of foreclosure, by ordinary mail, to the Attorney General.

(d) Posting. The plaintiff shall, within 15 days after the date of the publication of the notice, cause a copy thereof to be posted in the office of the tax collector of the plaintiff municipality and in the office of the county recording officer of the county in which the land to be affected by the action is, and in 3 other conspicuous places within the taxing district in which the land is located.

(e) Affidavit of Compliance. Final judgment shall not be entered as to any parcel of land until affidavits have been filed showing compliance with the publication, posting and service requirements of this rule.

(f) Answer. Any person having or claiming to have a right, title or interest in or to, or lien upon any parcel of land described in the complaint may file an answer within 45 days after the date of publication of the notice of foreclosure setting forth in detail the nature of the interest and the grounds of the defense. The caption of such answer shall refer to the cause or causes of action applicable to the land affected. Upon the filing of the answer the action shall proceed in accordance with R. 4:64-6.

(g) Final Judgment if Answer Not Filed or Stricken. If no answer is filed as to any parcel or the answer is stricken, the court may enter final judgment as to the parcel on the basis of the verified complaint, proof of publication, posting and service and an affidavit of nonredemption. The judgment shall describe the lands affected by the description and identification thereof as the same appears in the complaint and tax foreclosure list, and shall identify each parcel of land affected by such judgment by the name of the persons appearing in the complaint and tax foreclosure list, and the book and page or date or record or instrument number, where the record of each foreclosed certificate of tax sale may be found in the office of the county recording officer. The judgment may also contain a description of metes and bounds of any parcel, together with such other identifying description as the plaintiff desires to insert.

**Note:** Source-R.R. 4:82-7(a)(b)(c)(d)(e)(f)(g)(h)(i); paragraphs (c), (e) and (g) amended July 29, 1977 to be effective September 6, 1977; paragraph (c) amended July 16, 1981 to be effective September 14, 1981; paragraph (c) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended June 29, 1990 to be effective September 4, 1990; paragraphs (b), (c) and (f) amended July 13, 1994 to be effective September 1, 1994.

#### **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, an answer, motion for default, or motion for judgment 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 April 30, 2019 to be effective May 1, 2019.

#### **4:64-8A. Administrative Conversion of Uncontested Case into a Contested Matter**

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 Clerk of the Superior Court may issue an administrative order requiring plaintiff to file that certification, with the plaintiff having fifteen days to respond by filing the status certification. Where the plaintiff fails to comply with such administrative order by not filing the status certification, the Clerk of the Superior Court shall administratively transfer the uncontested matter to the General Equity judge for case management as a contested matter.

**Note:** Adopted April 30, 2019 to be effective May 1, 2019.

#### **4:64-9. Motions in Uncontested Matters**

(a) Contents of Notice of Motion; General. A notice of motion filed with the Office of Foreclosure pursuant to Rules 1:34-6, 4:64-1, and/or 4:64-2 shall not state a time and place for its resolution. The notice of motion shall state the address of the Office of Foreclosure and that the order sought will be entered in the discretion of the court unless the attorney or *pro se* party on whom it has been served notifies in writing the Office of Foreclosure and the attorney for the moving party or the *pro se* party within ten days after the date of service of the motion that the responding party objects to the entry of the order.

(b) Notices of Motion for Entry of Final Judgment; Objection to Amount Due. Every notice of motion for entry of Final Judgment in a foreclosure action filed with the Office of Foreclosure pursuant to Rules 1:34-6, 4:64-1 and 4:64-2 shall include the following language:

"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 TO 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 R. 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."

On receipt of a specific objection to the calculation of the amount due pursuant to R. 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.

(c) Contents of Notice of Motion; Specific Language. All other notices of motion in uncontested foreclosure actions filed with the Office of Foreclosure pursuant to Rule 1:34-6 and Rule 4:64-1(c) shall include the following language:

"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."

On receipt of a specific objection to the motion, 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.

**Note:** Adopted July 9, 2008 to be effective September 1, 2008; amended July 23, 2010 to be effective September 1, 2010; former text deleted, new paragraphs (a), (b), and (c) adopted July 22, 2014 to be effective September 1, 2014.