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Sent: Friday, December 14, 2018 4:49 PM
To: Comments Mailbox
Cc: Nina Thomas; Kathi Fiamingo; Paula Dow; Joann Ezze
Subject: Comments to proposed rule changes - Residential Foreclosure
Attachments: Comments to proposed rule changes - Residential Foreclosure.docx

Thank you for the opportunity to submit the attached comments to the proposed rule changes regarding residential foreclosure.

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Thank you for the opportunity to review the amendments proposed by the Special Committee on Residential Foreclosure. The two tiered system regarding the disposition of foreclosure matters between the Superior Court Clerk's Office and the Superior Court gives civil case management staff insight into the practical ramifications of changes made to the court rules.

Rule 1:34-6 Office of Foreclosure

(b) Where a motion is filed before the Office of Foreclosure, that motion must only contain one form of relief.

Comment: All motions are "filed" before the Office of Foreclosure. A recommendation is to change the word from "filed" to "noticed". The proposed rule would still permit compound motions that are "noticed" to the vicinage to be heard.

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

We support the addition of this rule in which the court provides a forum to enable homeowners and lenders to find an alternative resolution to foreclosure. However, we have comments with respect to subsection (a) and (e)(5), below, since they appear to be in conflict with one another. We will highlight the particular phrases in bold for clarification purposes.

Rule 4:64-1B(a) Purpose – Residential Foreclosure Mediation differs from other types of court-sponsored mediation. Foreclosures are contractual disputes that arise from a homeowner's default of mortgage obligations. **Because there is typically no dispute between the parties that the homeowner has defaulted on the note, the mediation shall not focus on the reasons underlying the default,** but rather shall explore whether an alternative resolution is available to the parties, (remainder omitted).

Rule 4:64-1B(e)(5) – **If the parties are not ready to proceed to Residential Foreclosure Mediation at the conclusion of the 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.**

Contested foreclosures dispute the validity of the mortgage (the lender lacks standing to pursue foreclosure, for example) and/or the amount due on the note. Our recommendation is to delete the term "contested" in the proposed rule and rephrase that "the case shall be administratively referred to a Superior Court judge for review".

Labeling the matter as "contested" confuses the role of the Superior Court Judge; is the judge a finder of fact as to the reason underlying the default of a mortgage obligation (which is what the term "contested" currently means), or is the judge limited to the parameters within the Residential Foreclosure Mediation?

Lastly, contested foreclosure cases that Superior Court Judges do not resolve within a twelve month time frame are considered backlog for statistical purposes. The court's purpose for having such (self-imposed) deadlines is to ensure a Superior Court Judge resolves a legal dispute in a timely and efficient manner. Counting cases as backlog where the issue centers on the delay of a lender, and not the courts, to make a decision regarding the homeowner's request for a loan modification, defeats the purpose of keeping such statistics.

Rule 4:64-1B(f)(4) If the parties are unable to reach a mediated resolution at the conclusion of a second mediation session due to a failure of the lender to timely review the homeowner's financial documentation, the case shall be deemed a contested foreclosure and shall be referred to the Superior Court judge for review.

For the proposed rule, R. 4:64-1B(f)(4), we ask that the phrase "shall be deemed a contested foreclosure and" be deleted, for the same arguments listed above.

Thank you again for the opportunity to respond to the proposed rule changes. We commend the Special Committee on Residential Foreclosure for their diligence and dedication to this project.

Superior Court of New Jersey, Burlington vicinage
Civil case management