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June 26, 2014

The Honorable Lawrence K. Marks
First Deputy Chief Administrative Judge
Office of Court Administration
25 Beaver Street
New York, NY 10004

Dear Judge Marks:

On behalf of the New York City Bar Association (and its Mortgage Foreclosure Task Force), I am forwarding to you our recommended revision to 22 NYCRR §202.12-a(c)(2).

Rule 202.12-a(c)(2) of the Uniform Rules for N.Y.S. Trial Courts provides that settlement conferences in residential foreclosure actions shall include discussions pertaining to (i) the relative rights and obligations of the parties under the mortgage loan documents, (ii) whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and (iii) the potential for a resolution through payment schedule and amount modifications or other workout options.

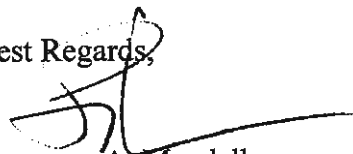
The revision we are proposing was developed in response to the observations of practitioners representing both borrowers and lenders that: (i) referees are not permitting and/or facilitating a discussion of available workout options other than loan modifications at settlement conferences, and (ii) representatives participating in settlement conferences are arriving at the conferences without authority to dispose of the cases.

With respect to the first issue, we have added language which explicitly states that workout options include, but are not limited to, loan modifications, and which specifies some additional examples of workout options. This clarification is in line with and contemplated by the language of CPLR 3408(a).

With respect to the second issue, we have added language which directly imports language from CPLR 3408(c), which requires that any representative participating in the conference be “fully authorized to dispose of the case.”

Attached please find our proposed revision to Rule 202.12-a(c)(2), in which our proposed changes to the original text are underlined.

Best Regards,

A handwritten signature in black ink, appearing to be 'LAM', with a long horizontal line extending to the right.

Lawrence A. Mandelker

LAM/cb
Encls.

§202.12-a Residential Mortgage Foreclosure Actions; Settlement Conference

(c) Settlement conference.

(1) The court shall promptly send to the parties a Notice scheduling a settlement conference to be held within 60 days after the date of the filing of the RJI. The Notice shall be mailed to all parties or their attorneys, which must include mailing to the address of the property subject to the mortgage. The Notice shall be on a form prescribed by the Chief Administrator, and it shall set forth the purpose of the conference, the requirements of CPLR Rule 3408, instructions to the parties on how to prepare for the conference, and what information and documents to bring to the conference. The Notice shall further provide that the defendant contact the court by telephone, no later than seven days before the conference is scheduled, to advise whether the defendant will be able to attend the scheduled conference.

(2) The conference shall include settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, including but not limited to loan modifications, “short sales” and “deeds in lieu of foreclosure” or any other loss mitigation options. The court may also use the conference for whatever other purposes the court deems appropriate. Where appropriate, the court may permit a representative of the plaintiff to attend the conference telephonically or by video-conference, but any representative participating in the conference, whether in person, telephonically or by video conference, shall, as required by CPLR 3408(c), be fully authorized to dispose of the case.