

**Bronx Supreme Court  
Foreclosure Settlement Conference Part (FSCP) Rules  
(CPLR 3408 (a) Residential Foreclosure Actions)  
Effective 7/3/14**

**Supervising Justice:** Sharon A.M. Aarons, J.S.C.

**Room:** 607  
**Telephone:** 718-618-1196  
**Facsimile:** 212-884-8953

**Appearances**

All parties must appear in person or by counsel at all conferences. Defendants must produce all documentation required to effectuate a loan modification or other settlement. Plaintiffs and their representatives, including counsel, must be fully knowledgeable as to all aspects of the case, and must be prepared to discuss the loan amount, the default amount, and all other particulars relating to a potential modification of the mortgage, either under the Home Affordable Modification Program (HAMP) guidelines, or other settlement. *See* 22 NYCRR 202.12-a (c) (3).

**Failure to appear at the scheduled conference without court approval or good cause may result in an appropriate sanction, including forwarding the action to an IAS Part for prosecution of the foreclosure action (defendant's failure to appear), or dismissal of the action pursuant to 22 NYCRR 202.27 (plaintiff's failure to appear).**

**The action shall remain in the FSCP until settled, or otherwise resolved, or until released to an IAS Part by Order of the Supervising Justice.**

**Waiver of Defenses**

No jurisdictional defense is waived by appearance at settlement conferences. All statements of fact made at the conference shall be deemed made in an effort to reach a settlement, and will not be admissible in the underlying foreclosure action. *See* CPLR 4547.

**Conduct of Conferences; Court Orders**

Conferences shall be held Tuesday through Friday at 10:00 A.M.. The parties, at the initial appearance in FSCP, shall complete the foreclosure conference intake form prepared by the Court.

Each conference will be conducted by a Principal Law Clerk/Court Attorney/Court Attorney Referee. The settlement discussion will pertain 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. 22 NYCRR 202.12-a (c) (2).

In accordance with 22 NYCRR 202.12-a (c), plaintiffs should bring the following documents to the conference: current payoff and reinstatement documents; mortgage and note; payment history; workout forms or packet; copies of any recent paperwork regarding reinstatement, settlement offers or loan modification proposals; and an itemization of the amounts needed to cure and pay off the loan. Defendants should bring the following documents to the conference: current income documentation, including pay stubs and benefits information; list of monthly expenses; recent mortgage statements, property tax statements, and income tax returns; loan resolution proposals; and any information from previous workout attempts.

Issues not resolved by the Principal Law Clerk/Court Attorney/Court Attorney Referee shall be heard by the Court that same day, or as soon as practicable.

The issues resolved or accomplished, and the matters to be performed by the parties for any subsequent conference, shall be reduced to writing by the Principal Law Clerk/Court Attorney/Court Attorney Referee on a form prepared by the Court, and will be executed by the Presiding Justice and constitute an order of the Court. The parties are admonished that the Court will enforce its orders to the fullest extent permitted by law. "If the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity." *Kihl v. Pfeffer*, 94 N.Y.2d 118, 123, 722 N.E.2d 55, 700 N.Y.S.2d 87 (1st Dept. 1999).

#### **Adjournments**

This Part, as a general rule, does not accept stipulations to adjourn. All adjournments, even those on consent of all parties, are subject to the discretion and approval of the Court. No adjournment will be granted via telephone request, regular mail or email. Requests for adjournments may be made ONLY by fax to the Part Clerk at 212-884-8953 at least three (3) business days prior to the date of the scheduled conference. The request must set forth the title and index number of the action, the date of the conference, and the reason for the adjournment. The reason for the adjournment must be set forth (even if the adjournment is sought on consent of all parties). The Part Clerk will notify the parties if the request is granted or denied as soon as practicable.

#### **Motions Held in Abeyance**

No motions should be made with respect to the underlying foreclosure action with the RJL, or while the case is assigned to the FSCP. Any such motion, if made contrary to this rule, shall be held in abeyance until the case is released to an IAS Part. 22 NYCRR 202.12-a (c) (7).

#### **Stay of Underlying Residential Foreclosure Action**

The underlying foreclosure action, including discovery, is stayed until the case is either discontinued following settlement of the case or is released from the FSCP without settlement. The underlying action may be stayed for an additional period of time not to exceed 30 days following the date of release from the FSCP.

#### **Obligation to Negotiate in Good Faith; "Lack of good faith" Hearing**

CPLR 3408(f) mandates that the parties "shall negotiate in good faith to reach a mutually agreeable resolution, including a loan modification, if possible." CPLR 3408 (f); *see also*, 22 NYCRR 202.12-a (c) (4) ("[t]he court shall ensure that each party fulfills its obligation to negotiate in good faith.")

The Court may grant a “lack of good faith” hearing on oral application.

Where lack of good faith on the plaintiff’s part is alleged, compliance with the good faith requirement of CPLR 3408 is not established by proving the absence of fraud or malice on the part of the lender. Instead, the Court will base a determination of good faith, or lack of good faith, on the totality of the circumstances presented. *Wells Fargo Bank, N.A. v. Van Dyke*, 101 A.D.3d 638, 958 N.Y.S.2d 331 (1st Dept. 2012).

If a determination of lack of good faith is made, the Court will fashion an appropriate remedy “tailored to the circumstances of each given case.” *Wells Fargo Bank, N.A. v. Meyers*, 108 A.D.3d 9, 966 N.Y.S.2d 108 (2d Dept. 2013). With respect to “lack of good faith” findings as to plaintiffs, the Court will consider remedies imposed by other courts, including:

- barring the collection of interest, legal fees, and expenses;
- imposing exemplary damages;
- staying foreclosure proceedings;
- imposing a monetary sanction pursuant to 22 NYCRR 130;
- dismissing the action; and
- requiring a bank representative to appear.

With respect to “lack of good faith” findings as to defendants, the Court will consider remedies imposed by other courts, including an immediate referral of the action to an IAS Part for the prosecution of the foreclosure action.

#### **Actions Released to an IAS Part**

No action released to an IAS Part shall be returned to the FSCP, by referral, motion or stipulation, except by Order of the Supervising Justice of the FSCP.