

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

INDEX NO.:

Plaintiff(s),

**NOTICE OF MOTION FOR A
DEFAULT JUDGMENT, ORDER OF
REFERENCE, AND JUDGMENT OF
FORECLOSURE AND SALE**

v.

MORTGAGED PROPERTY:

COUNTY:

SBL#:

Defendant(s).

-----X

PLEASE TAKE NOTICE that, upon the affirmation of [*Attorney Name*] dated [*Date*], the affidavit of [*Name of Bank Representative*], sworn to [*Date*], the exhibits attached thereto, and all prior proceedings in this case, Plaintiff [*Name of Plaintiff*] will move this court at [*Insert Date and Time*] before [*Insert Appropriate Part of Court*], at the Supreme Court, [*Insert County Name*] County, [*Insert Court Address*], or as soon thereafter as the parties may be heard, for an order:

1. Declaring that all non-appearing and non-answering defendants are in default pursuant to CPLR 3215;
2. Determining the amount due to Plaintiff in accordance with RPAPL §1321;
3. Granting a judgment of foreclosure and sale pursuant to RPAPL §1351;
4. Appointing a referee to conduct an auction sale pursuant to applicable law;
5. Directing the distribution of the sale proceeds pursuant to RPAPL §1354;
6. [*Choose One*] Adding names of tenant(s) residing at mortgaged property as named defendants pursuant to RPAPL §1311, amending the caption to add [*Names of Tenant(s) Residing at Mortgaged Property as Defendants*], and removing “John Doe” as a party defendant in this action -OR- Removing “John Doe” as a party defendant in

this action as no tenants reside at the property and amending the caption to reflect the removal of “John Doe” as a party defendant;

7. *[If Requesting a Substitution]* Substituting *[New Note Holder]* into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court be directed to amend the docket and electronic docket of the Court accordingly;
8. Such additional relief as the Court may deem just and proper.

[Add any additional requests for relief here]

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers, if any, are to be served upon the undersigned no later than seven (7) days prior to the return date of the within motion.

DATED: _____
[County], New York

_____, Esq.
[Attorney's Name]
[Law Firm]
Attorneys for Plaintiff *[Name of Plaintiff]*
[Address]
[Telephone]

TO: [All Defendants must be noticed and their addresses listed here]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO.:

v.

**AFFIRMATION IN SUPPORT OF
PLAINTIFF'S MOTION FOR A
DEFAULT JUDGMENT, ORDER OF
REFERENCE, AND JUDGMENT OF
FORECLOSURE AND SALE**

MORTGAGED PROPERTY:
COUNTY:
SBL#:

Defendant(s)

-----X

[Attorney's name], pursuant to CPLR 2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law and a[n] [Partner, Of Counsel, Associate] with [Name of Law Firm] the attorneys of record for Plaintiff [Name of Plaintiff]. I am fully familiar with the facts, court papers and proceedings of this action based upon a review of the file maintained by my office.

2. True and accurate copies of the following documents are attached hereto:

<u>Document</u>	<u>Tab</u>
Affirmation pursuant to Admin Order 431/11 or Certificate of Merit	Exhibit A
Note	Exhibit B
Mortgage	Exhibit C
Assignments	Exhibit D
Notice of Default	Exhibit E
RPAPL §1304 90 Day Notice	Exhibit F
Department of Defense Search results	Exhibit G
Summons and Complaint	Exhibit H
Notice of Pendency	Exhibit I
Affidavits of service	Exhibit J
Affidavit of Service by Mail pursuant to CPLR 3215(g)(3)(iii)	Exhibit K
Affidavit of Merit and Amount Due	Exhibit L
Affirmation of Regularity	Exhibit M
Attorney Fee Affirmation	Exhibit N
<u>[Power of Attorney with Pooling and Servicing Agreement]</u>	Exhibit O
<u>[Secretary's Certification]</u>	Exhibit P

[Include any additional exhibits here]

Exhibit Q

Legalback No. 2 - filed contemporaneously with this motion
Costs and Disbursements of Plaintiff with Supporting Invoices

Legalback No. 3 - filed contemporaneously with this motion
Proposed Judgment of Foreclosure and Sale

All personal non-public information has been redacted from the attached supporting documents.

3. This residential mortgage foreclosure action was commenced by filing the summons and complaint in the [County Name] County Clerk's office on [Date] in the County where the mortgaged property is located. The action was brought to foreclose a residential mortgage executed by [List Mortgagors, Describe Mortgage and Note/CEMA as applicable.]

4. On [Date], Plaintiff filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65, a copy of which is attached hereto as exhibit _____. [*Add if notice of pendency expired: On [Date], Plaintiff re-filed the notice of pendency in accordance with RPAPL §1331 and CPLR Article 65].*

5. The summons, complaint, and notice of pendency are in the form prescribed by statute and contain all of the particulars required by law. The summons complies with the requirements of RPAPL §1320, contains the required notice in boldface type and is in the format required by statute. Copies of the summons, complaint, notice of pendency, and affidavits of service are attached hereto as exhibits _____.

6. On [Date Action Filed], Plaintiff was [Specify Holder, Assignee, Transferee, etc.] of the subject note. See Affidavit of [Insert Name of Affiant], attached hereto as exhibit ____.

7. The [certificate of merit pursuant to CPLR 3012-b] OR [attorney affirmation required pursuant to Administrative Order 4311/11] was filed with supporting documents and is attached hereto as exhibit _____.

8. [If Requesting a Substitution] Since the commencement of this action the underlying note and mortgage were validly assigned from Plaintiff to [Current Owner and Holder] by [*Describe the factual basis justifying the substitution*]. Said assignment was executed on [Date] and recorded with the [County Name] County Clerk's office (or the Office of the City Register, [County Name] County Office under City Register File No. [Insert File Number] on [Date]). A copy of said assignment is attached hereto as Exhibit D.

9. [If Applicable] Pursuant to CPLR 3408 the court held a mandatory settlement conference in this action. [*Choose a or b*]:

- a. A settlement was not reached and the case was released from the settlement conference part on [Date].
- b. Plaintiff attended a settlement conference on [Date] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part.

10. [If Applicable] The defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure. See Affidavit of [*Insert Name of Affiant*], attached hereto as exhibit __.

11. According to the affidavit of service filed in the [County Name] County Clerk's Office, the summons was served with the complaint. Defendant(s) were served with the notice required by RPAPL §1303 printed on colored paper together with the summons and complaint printed on white paper. The RPAPL §1303 notice complies with the requirements of that statute, with the title in bold, 20-point type and the text in bold, 14-point type. The RPAPL §1303 notice was delivered to the mortgagors on its own separate page, together with the summons and complaint. Defendant(s) were timely served with the 90-Day Pre-Foreclosure notice required by RPAPL § 1304. Plaintiff filed the name, address and telephone number of the Defendant(s), the amount claimed to be due, and the type of loan at issue with the superintendent of banks within

three business days of the mailing of the 90-day Pre-Foreclosure notice as required by RPAPL 1306. Copies of these notices and affidavits of service are attached hereto as exhibits _____ .

12. Plaintiff served defendants with copies of the summons in compliance with CPLR 3215(g)(3). The affidavit of service by mail is attached hereto as exhibit _____.

13. [*Choose a or b*]

- a. Defendants captioned as “John Doe” are not necessary parties. Accordingly, the defendants captioned as “John Doe” were not served with copies of the summons and complaint. Plaintiff requests that the “John Doe” defendants be excised from the caption of the action without prejudice to any of the proceedings herein.
- b. Tenants reside at the mortgaged property. Therefore Plaintiff requests that [*Names of Tenant(s) Residing at Mortgaged Property*] be added as named defendants in this action pursuant to RPAPL §1311, and that the caption be amended to add [*Names of Tenant(s) Residing at Mortgaged Property*] in place of the “John Doe” defendants as party defendants to this action.

14. The following defendant(s) did not answer or appear and their time to answer has expired: [*Insert Names*]. Accordingly, these defendants are in default pursuant to CPLR 3215.

15. No defendant is an infant. No defendant is in the armed services of the United States of America. Upon information and belief, no defendant is incompetent. The following defendants were served out of state: [*insert names*]. [*Add facts if any defendant is an infant, in the armed services, or incompetent.*]

16. [*Include any additional request for relief here*].

17. [*If Applicable*] Plaintiff hereby waives any deficiency judgment pursuant to RPAPL §1371. Plaintiff has not made any previous motion for this or like relief [-OR- Plaintiff’s

previous motion dated [*date*] for this relief was [*denied/declined/withdrawn*] by order dated [*date, attach prior motions/orders as exhibits*].

PLAINTIFF IS ENTITLED TO A JUDGMENT OF FORECLOSURE AND SALE

18. Plaintiff requests that the court grant this judgment on default of defendant(s) [*insert names*] pursuant to RPAPL §1321, that the mortgaged property be sold pursuant to RPAPL §1351, and that the sale proceeds be distributed in accordance with RPAPL §1354.

19. RPAPL §1354(2) requires the referee conducting the sale of the mortgaged property to pay out of the sale's proceeds all taxes, assessments, and water rates that are liens upon the property and to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute. All expenses of recording the Referee's Deed, including real property transfer tax should be paid by the purchaser at the closing and not by the Referee from sale proceeds since transfer tax is not a lien upon the property nor is it an expense of sale, as that term is used in RPAPL §1351(1). Rather, transfer tax is an expense of recording the deed.

20. Plaintiff is entitled to a Judgment that include reimbursement for Plaintiff's attorney fees for this action in accordance with the terms of the note and mortgage. A detailed affirmation regarding attorney fees is attached hereto as exhibit ____ .

21. Plaintiff is also entitled to a Judgment include reimbursement for Plaintiff's costs, allowances, and disbursements in this matter in accordance with the terms of the note and mortgage and CPLR Article 83. A detailed statement of Plaintiff's costs and disbursements with the supporting invoices has been filed contemporaneously with this motion.

22. Plaintiff has not made any previous motion for this or like relief. [*Explain any prior motions and the resulting outcome. Attach prior orders as exhibits.*]

23. A proposed Judgment of Foreclosure and Sale is provided to the Court together

with this motion.

WHEREFORE, Plaintiff requests and order of this Court:

- A. Directing the entry of a default judgment against all defendants
- B. Determining the amount due to Plaintiff in accordance with RPAPL §1321;
- C. Granting a judgment of foreclosure and sale pursuant to RPAPL §1351;
- D. Appointing a referee to conduct an auction sale pursuant to applicable law;
- E. Adding names of tenant(s) residing at mortgaged property as named defendants pursuant to RPAPL §1311, amending the caption to add [*Names of Tenant(s) Residing at Mortgaged Property as Defendants*], and removing “John Doe” as a party defendant in this action] -OR- Removing “John Doe” as a party defendant in this action as no tenants reside at the property and amending the caption to reflect the removal of “John Doe” as a party defendant;
- F. [*If Requesting a Substitution*] Substituting [*New Note Holder*] into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court be directed to amend the docket and electronic docket of the Court accordingly;
- G. [*Include request for additional relief if applicable*];
- H. Such additional relief as this court deems just and proper.

Dated: _____
[*County*], New York

[*Attorney's name*]

ATTORNEY'S AFFIRMATION

[*Attorney's Name*], Esq., an attorney at law licensed to practice in the State of New York, and the attorney for Plaintiff in this action hereby certifies that, to the best of his/her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this pleading, affidavit (or motion if applicable), and the contentions contained herein are not frivolous as defined by 22 NYCRR 130-1.1(c).

[*Attorney's name*]

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF

-----X

Plaintiff(s),

COSTS OF PLAINTIFF

v.

INDEX NO.:

MORTGAGED PROPERTY:

COUNTY:

SBL #:

Defendant(s).

-----X

COSTS

Costs before Note of Issue - CPLR 8201(1)	\$200.00
Allowance by statute - CPLR 8302(a)(b)	\$ _____
First \$200.00 at 10%	\$20.00
Next \$800.00 at 5%	\$40.00
Next \$2000.00 at 2%	\$40.00
Next \$5000.00 at 1%	\$50.00
	\$150.00
Additional allowance - CPLR 8302(d)	\$50.00
Discretionary costs on motion - CPLR 8303(a)(1)	\$ _____

FEES AND DISBURSEMENTS

Fee for index number -	CPLR 8018(a)	\$ _____
Referee's fee to compute, per order of the court - ...	CPLR 8003(a)	\$ _____
Paid for searches -	CPLR 8301(a)(10)	\$ _____
Serving copy of Summons and Complaint -	CPLR 8301(d)	\$ _____
Reproduction costs -	CPLR 8301(a)(6)	\$ _____
Fees for publication of Summons -	CPLR 8301(a)(3)	\$ _____
Certified copies of papers -	CPLR 8301(a)(4)	\$ _____
Request for judicial intervention	CPLR 8020(a)	\$ _____
Clerk's fee for filing of Notice of Pendency -	CPLR 8021(a)(10)	\$ _____
Skip trace fees -	CPLR 8301(d)	\$ _____
Motion fees -	CPLR 8020(a)	\$ _____
Note of Issue -	CPLR 8020(a)	\$ _____
Total		\$ _____

ATTORNEY'S AFFIRMATION

The undersigned, _____, Esq., pursuant to CPLR 2106 and under penalties of perjury affirms as follows:

That he/she is the attorney of record for Plaintiff in the above-captioned action, that the foregoing disbursements have been incurred in this action and are reasonable in amount, and that the copies of documents or papers charged for herein were actually and necessarily obtained.

DATED:

[County], New York

[Attorney's name]

[Law Firm]

Attorneys for Plaintiff [Name of Plaintiff]

[Address]

[Telephone]