



MEMORANDUM

December 31, 2020

To: Hon. George J. Silver
Hon. Vito C. Caruso

From: Lawrence K. Marks LM

Subject: Residential Foreclosure Proceedings Under the COVID-19 Emergency
Eviction and Foreclosure Prevention Act of 2020 (L. 2020, c. 381)

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As you may know, earlier this week Governor Cuomo signed into law chapter 381 of the Laws of 2020 (the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 [“Act” (effective December 28, 2020); Exh. A]), which, *inter alia*, provides substantial COVID-related protections through May 1, 2021 for defendants in residential foreclosure matters. **In brief: the Act immediately stays pending residential foreclosure actions for sixty days, and provides that, where a mortgagor/owner submits to the foreclosing party or the court a declaration attesting to hardship arising from or during the COVID-19 pandemic, proceedings will be further stayed (or commencement tolled) until May 1, 2021.** Additional highlights of the Act are as follows:

1. Stay of Pending Foreclosure Matters: The Act immediately stays pending residential foreclosure matters for sixty days (i.e., through February 27, 2021), including actions in which a judgment of sale has been issued but not yet executed (see paragraph 6 below). Residential foreclosure matters commenced between December 28, 2020 and January 27, 2021 shall also be stayed for sixty days from commencement (Act, Part B, Subpart A, §§1, 3). An administrative order effectuating this stay (AO/341/20) is attached as Exh. B.

2. Covered matters: The Act applies to any action to foreclose a mortgage relating to real property if the owner or mortgagor of the property is a natural person (regardless of how title is held) and owns ten or fewer dwelling units. Those units may be in more than one building, must include the primary residence of the owner/mortgagor seeking COVID relief, and must otherwise be occupied by a tenant or available for rent. Shares assigned to a unit of a residential condominium are included (Act, Part B, Subpart A, §1). The Act applies to tax lien foreclosure matters, with special provisions discussed in section 8 below.

Not covered: The Act does not cover vacant and abandoned property that was first listed on the statewide vacant and abandoned property electronic registry before March 7, 2020

and remains on that registry (Act, Part B, Subpart A, §1(b)). Nor does the Act apply to or affect mortgage loans “made, insured, purchased or securitized by a corporate governmental agency of the state constituted as a political subdivision and public benefit corporation” (Act, Part B, Subpart A, §1).

3. Notice to Owner or Mortgagor and Hardship Declaration – Publication and Translation: The Act contains a Notice to Mortgagor and a mortgagor Hardship Declaration (collectively, “Hardship Declaration”; Exh. C), to be provided in blank format to defendants in foreclosure proceedings, setting forth various grounds by which an owner/mortgagor might be adversely affected by the COVID-19 pandemic (Act, Part B, Subpart A, §4). As the Act requires, the Hardship Declaration will be posted on the Court System’s website in English, Spanish and the six other most common (non-English) languages in New York City in the near future; other translations will be made available thereafter as practicable (Act, Part B, Subpart A, §9).

4. Mailing of Hardship Declaration in Pending Matters: The Act directs the Court System to mail copies of the Hardship Declaration (in English and, to the extent practicable, the mortgagor/owner’s primary language) to all defendants in pending covered residential foreclosure matters (Act, Part B, Subpart A, §3). Our Division of Technology is currently exploring an economical method of performing this task. Courts are encouraged to work with their local plaintiffs’ and defense bars, civil legal service providers, and housing counselors to ensure that homeowners receive these notices.

5. Further Stay of Pre-Judgment Foreclosure Proceedings, or Tolling of Commencement of Proceedings, Upon Submission of a Mortgagor’s Hardship Declaration: **Where an owner or mortgagor delivers a Hardship Declaration to the foreclosing party or an agent of the foreclosing party, the Act requires that an action be stayed until at least May 1, 2021, or that its commencement be tolled until May 1, 2021 (Act, Part B, Subpart A, §§5,7). Where no Hardship Declaration is submitted, the matter may proceed in the normal course following expiration of the 60-day stay or the holding of the appropriate status conference or hearing.**

6. Stay of Actions in Which a Judgment of Sale Has Been Issued But Not Yet Executed: In a pending action where a judgment of sale was issued on or before December 28, 2020 but has not yet been executed, execution of the judgment shall be stayed at least until the court has held a status conference with the parties. During this conference, if the defendant submits a Hardship Declaration to the foreclosing party, the court, or an agent of the foreclosing party or the court prior to the execution of the judgment, the Action shall be stayed until at least May 1, 2021 (Act, Part B, Subpart A, §8). A prior COVID-19 Assessment Conference does not satisfy this new conference requirement for post-judgment cases under the Act.

7. Court Practice Upon Commencement of a New Proceeding: The court cannot accept a new residential foreclosure proceeding filing unless it is accompanied by both (1) an affidavit of service of the Hardship Declaration,¹ and (2) an affidavit from the foreclosing party or agent of the foreclosing party stating that no Hardship Declaration has been received from the owner/mortgagor (Act, Part B, Subpart A, §6).

“At the earliest possible opportunity” following a new filing, the court must seek confirmation by the owner/mortgagor, on the record or in writing, that the owner/mortgagor has received the blank Declaration and has not submitted a completed Declaration to the foreclosing party or an agent of the foreclosing party. If the court determines an owner/mortgagor has not yet received a Hardship Declaration, the court must stay further proceedings for no less than 10 business days to ensure that the defendant has received and fully considered whether to submit a Declaration (Act, Part B, Subpart A, §6). **Where these procedures have been followed and an owner/mortgagor fails to deliver a Hardship Declaration to a foreclosing party, agent of a foreclosing party, or the court, the matter may proceed in the normal course.**

8. Tax Lien Foreclosure Matters: The Act also applies to any action to foreclose on delinquent taxes or sell a tax lien relating to residential real property. This includes in-rem tax foreclosures commenced pursuant to article 11 of the real property tax law, but also any other local law related to real property tax lien sales or real property tax foreclosures (including, but not limited to, the New York City Tax Law). Importantly, courts are not required to mail Hardship Declarations to respondents in these cases. Instead, it is the responsibility of the enforcing officer (or other entity conducting the tax lien sale) to notify the respondent of their rights under the Act at least thirty days prior to the date on which a sale of a tax lien is scheduled to occur, or upon the filing of a new petition of foreclosure of a tax lien. Should the respondent submit a Hardship Declaration, the Act requires that the proceeding be stayed through May 1, 2021.

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Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate. Questions on the subject may be addressed to Steven Helfont of the Office of Policy and Planning (shelfont@nycourts.gov).

c: Hon. Edwina Mendelson
Steven Helfont

¹ Foreclosing parties or agents are required to serve a blank copy of the Hardship Declaration, a translation of the Declaration in the mortgagor’s primary language, and contact information with all future notices provided to the owner/mortgagor (Act, Part B, Subpart A, §4).