

Chief Administrative Judge of the New York Courts Issues Guidance Relating to Recently Enacted Emergency Eviction and Foreclosure Prevention Act

By Kenneth J. Flickinger

On December 31, 2020, Judge Lawrence Marks, the Chief Administrative Judge of the New York Courts, issued [Administrative Order 341/20 \(AO 341/20\)](#), accompanied by a [Memorandum](#), providing guidance relating to the Covid-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (the “Act”). As set forth in a client alert on December 29, 2020, the Act, which became effective December 28, 2020, stays *all* eviction and foreclosures of residential real property for sixty (60) days. With respect to foreclosures, a further stay until May 1, 2021 is available to a mortgagor who submits a “hardship declaration” attesting that the mortgagor is experiencing hardship due to COVID-19. AO 341/20 and the Memorandum provide the following guidance relating to the Act:

- The initial sixty (60) day stay of all pending residential foreclosure actions extends through February 27, 2021.
- The sixty (60) day stay applies to residential foreclosure actions in which a judgment of foreclosure and sale has been entered, but the sale has not been held. A sale may not proceed after February 27, 2021, unless the Court conducts a status conference, and the owner/mortgagor has not submitted a Hardship Declaration. A prior COVID-19 Assessment Conference does not satisfy this new conference requirement for post-judgment cases under the Act.
- The Act applies to any residential foreclosure action in which the owner or mortgagor of the property is a natural person, the owner or mortgagor does not own more than ten (10) units, and one of the ten (1) units owned is the primary residence of the owner or mortgagor seeking COVID relief.
- New residential foreclosure actions commenced through January 27, 2021, shall be stayed for sixty (60) days from commencement. A new foreclosure action will only be accepted for filing if it is accompanied by (1) an affidavit of service of the Hardship Declaration upon the owner/mortgagor, and (2) an affidavit from the foreclosing party that no Hardship Declaration was received from the owner/mortgagor. At the earliest possible opportunity after the commencement of a new action, the Court shall seek confirmation from the owner/mortgagor that he/she received the Hardship Declaration. If the Court determines the owner/mortgagor did not receive the Hardship Declaration, the Court must stay further proceedings for no less than 10 business days to ensure the defendant has received and fully considered whether to submit the Hardship Declaration.
- The Act directs the Court System to mail copies of the Hardship Declaration to all defendants. The Memo states that the Court System is exploring an economic method of performing this task, but also encourages the Courts to work with the bar to ensure that homeowners receive the notices. It remains to be seen whether Courts will ultimately delegate the service requirement to foreclosing Plaintiffs. It may be advisable for foreclosing plaintiffs’ counsel to serve the Notice to Mortgagors and Hardship Declaration on the owners/mortgagors, and file proof of service of same. Doing so may limit the stay beyond February 27, 2021, in the event the Court does not timely mail the Hardship Declaration.

AO 341/20 does not revoke AO 157/20, which requires Courts to conduct a COVID-19 Assessment Conference prior to conducting any further proceedings in residential foreclosure actions. We expect that such conferences will continue to be conducted during the sixty (60) day stay period imposed by the Act. Service of the Hardship Declaration required by the Act is likely to be examined by Courts during future COVID-19 Assessment Conferences.

We have also been advised by the Appellate Division, Second Judicial Department, that appeals in residential foreclosure actions will not be stayed pursuant to the Act.

Our office will continue to monitor developments in the interpretation and implementation of the Act and advise accordingly.