

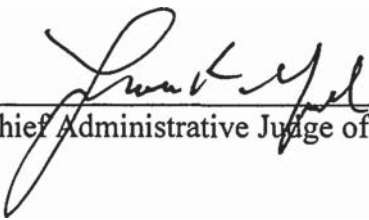
ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and as required by L. 2020, c. 381 (the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 [“Act”; Exh. 1]), I hereby direct that, effective December 28, 2020, the following procedures and restrictions shall apply to the conduct of residential foreclosure matters before the New York State courts:

1. Stay of Pending Residential Foreclosure Proceedings: Any action to foreclose a mortgage relating to residential real property as defined in the Act (“Action”), pending on December 28, 2020, and any Action commenced on or before January 27, 2021, shall be stayed for sixty days (Act, Part B, Subpart A, §§1, 3).
2. Requirement of Additional Affidavits in Newly-Commenced Actions: No court shall accept for filing commencement papers in an Action unless those papers include affidavits as required by Part B, Subpart A, §6 of the Act.
3. Stay of Actions in Which the Mortgagor Provides a Hardship Declaration: In any Action in which a judgment of sale has not been issued and the mortgagor submits a hardship declaration as defined in the Act to the foreclosing party, the court, or an agent of the foreclosing party or the court, the Action shall be stayed until at least May 1, 2021 (Act, Part B, Subpart A, §§2, 7).
4. Stay of Actions in Which a Judgment of Sale Has Been Issued But Not Yet Executed: If a judgment of sale has been issued in any Action 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. If the mortgagor submits a hardship declaration as defined in the Act 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).

All Actions shall be conducted as required by the further provisions of the Act.

This order shall remain in force through May 1, 2021.

  
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Chief Administrative Judge of the Courts

Dated: December 31, 2020

AO/341/20



NEW YORK STATE  
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS  
CHIEF ADMINISTRATIVE JUDGE

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,<sup>1</sup> 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.

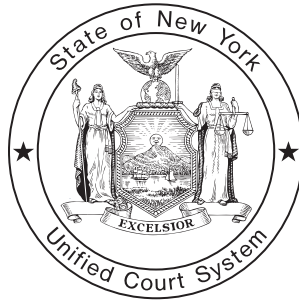
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Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate. Questions on the subject may be addressed to Steven Helfont of the Office of Policy and Planning ([shelfont@nycourts.gov](mailto:shelfont@nycourts.gov)).

c: Hon. Edwina Mendelson  
Steven Helfont

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<sup>1</sup> 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).



## **NOTICE TO MORTGAGOR:**

If you have lost income or had increased costs during the COVID-19 pandemic, and you sign and deliver this hardship declaration form to your mortgage lender or other foreclosing party, you cannot be foreclosed on until at least May 1, 2021. If your mortgage lender or other foreclosing party provided you with this form, the mortgage lender or other foreclosing party must also provide you with a mailing address and e-mail address to which you can return this form. If you are already in foreclosure proceedings, you may return this form to the court. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid mortgage payments and lawful fees to your lender. You should also keep careful track of what you have paid and any amount you still owe.

## **MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP**

I am the mortgagor of the property at (address of dwelling unit):

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Including my primary residence, I own, whether directly or indirectly, ten or fewer residential dwelling units. I am experiencing financial hardship, and I am unable to pay my mortgage in full because of one or more of the following:

1. Significant loss of household income during the COVID-19 pandemic.
2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.

4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.
5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.
6. One or more of my tenants has defaulted on a significant amount of their rent payments since March 1, 2020.

To the extent I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

I understand that I must comply with all other lawful terms under my mortgage agreement. I further understand that lawful fees, penalties or interest for not having paid my mortgage in full as required by my mortgage agreement may still be charged or collected and may result in a monetary judgment against me. I also understand that my mortgage lender or other foreclosing party may pursue a foreclosure action against me on or after May 1, 2021, if I do not fully repay any missed or partial payments and lawful fees.

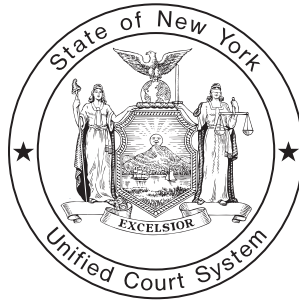
Signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Date signed: \_\_\_\_\_

**NOTICE:** You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.





## **AVISO AL DEUDOR HIPOTECARIO:**

Si ha perdido ingresos o han aumentado sus gastos durante la pandemia de COVID-19 y firma y entrega este formulario de declaración de adversidad a su acreedor hipotecario o a otra parte que haya iniciado una ejecución hipotecaria, a usted no se le someterá a una ejecución hipotecaria por lo menos hasta el 1 de mayo de 2021. Si su acreedor hipotecario u otra parte que haya iniciado una ejecución hipotecaria le proporcionó este formulario, el acreedor hipotecario o la parte que inició una ejecución hipotecaria también debe proporcionarle una dirección postal y una dirección de correo electrónico a las que pueda enviar este formulario. Si ya se encuentra en medio de un procedimiento de ejecución hipotecaria, podrá entregar este formulario al tribunal. Debe conservar una copia o fotografía del formulario firmado para sus archivos. Usted aún debe la hipoteca impaga y las cuotas legales a su acreedor. También debe mantener un registro detallado de lo que ha pagado y de los importes que aún debe.

## **DECLARACIÓN DEL DEUDOR HIPOTECARIO DE PENURIA DEBIDA AL COVID-19**

Soy el(la) deudor(a) hipotecario(a) del inmueble situado en (dirección de la vivienda):

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Incluyendo mi residencia principal, poseo, de manera directa o indirecta, diez o menos unidades de vivienda residencial. Estoy sufriendo adversidades financieras y no puedo pagar mi hipoteca en su totalidad por una o más de las siguientes causas:

1. Pérdida significativa de ingresos familiares durante la pandemia de COVID-19.
2. Aumento en los gastos propios necesarios para el desempeño de trabajos esenciales o relacionados con efectos sobre la salud de la pandemia de COVID-19.

3. Las responsabilidades de cuidado de menores o las responsabilidades de cuidar a un familiar anciano, discapacitado o enfermo durante la pandemia de COVID-19 han afectado negativamente mi capacidad o la capacidad de un integrante de mi hogar para obtener un empleo productivo o para obtener ingresos, o han aumentado mis gastos necesarios.
4. Los gastos de mudanza y la dificultad de conseguir otra vivienda me dificultan excesivamente mudarme a otra residencia durante la pandemia de COVID-19.
5. Otras circunstancias relacionadas con la pandemia de COVID-19 han afectado negativamente mi capacidad para obtener un empleo productivo o para obtener ingresos, o han reducido significativamente los ingresos de mi hogar, o aumentado significativamente mis gastos.
6. Uno o más de mis inquilinos han incumplido con la entrega de una cantidad significativa de sus pagos de alquiler desde el 1 de marzo de 2020.

En la medida en que he perdido ingresos de mi hogar o han aumentado mis gastos, la asistencia pública que he recibido desde el inicio de la pandemia de COVID-19, que incluye el seguro de desempleo, la asistencia para desempleo por pandemia, el seguro de incapacidad y la licencia familiar pagada, no compensa por completo la pérdida de los ingresos o el aumento de los gastos de mi hogar.

Entiendo que debo cumplir con todos los demás términos legales de mi contrato hipotecario. Además, entiendo que aún se pueden acumular o cobrar las cuotas legales, multas e intereses por no haber liquidado mi hipoteca según lo establecido en mi contrato hipotecario, y que pueden redundar en un fallo monetario en mi contra. Además, entiendo que mi acreedor hipotecario u otra parte que haya iniciado una ejecución hipotecaria pueden iniciar una demanda de ejecución hipotecaria en mi contra a partir del 1 de mayo de 2021, si no liquido en su totalidad todos los pagos omitidos y parciales y las cuotas legales.

Firmado: \_\_\_\_\_

Nombre impreso: \_\_\_\_\_

Fecha firmada: \_\_\_\_\_

**AVISO:** Está firmando y enviando este formulario bajo pena de ley. Esto significa que es ilegal hacer a sabiendas una declaración falsa en este formulario.