

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

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August 18, 2006

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Shari Seffer, Esq.
Fein Such Kahn & Shepard, PC
7 Century Drive, Suite 201
Parsippany, NJ 07054

Dear Ms. Seffer:

Re: New Foreclosure Rules

Attached find copies of *Rules* 4:64-1(a) (title search receipt and review), 4:64-1(b) (content of foreclosure complaint) and 1:5-6(c)(1)(E) (title search certification). These rules have been adopted by the Supreme Court and are in effect on September 1, 2006.

As authorized by *Rule* 1:5-6(c)(1)(E), if a title search receipt and review certification is not part of the complaint, the complaint may be returned by the Superior Court Clerk "received, but not filed (date)."

Rule 4:64-1(b) has been amended to require that certain elements and information are contained in every mortgage foreclosure complaint. The Office of Foreclosure may review newly filed mortgage foreclosure complaints to confirm that the contents specified in *R.* 4:64-1(b) are included therein. If a reviewed complaint is deficient, the Office of Foreclosure will endeavor to notify the plaintiff's attorney of the deficiency. However, apart from this review, plaintiffs' attorneys are responsible to ensure that their pleadings conform to the rules, statutes and case law. Filing and serving a deficient complaint may result in problems when requests to enter default are based upon service of a deficient complaint. Where a deficiency is identified, either by the Office of Foreclosure or your internal controls supervising your firm's attorneys and staff, filing an amended complaint before service is attempted is recommended to avoid the Office of Foreclosure rejecting subsequent requests to enter default. Attached is a draft of the non-conforming notice that the Office of Foreclosure and Clerk of the Superior Court will utilize. Please note, the Supreme Court will be asked to correct the title to *Rule* 4:64-1(b) to recognize that that paragraph of the rule applies only to mortgage foreclosure.

Re: New Foreclosure Rules
Page 2 of 2

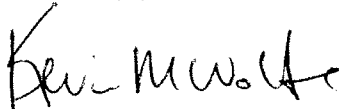
Also, *Rule 1:5-7*, non-military affidavit, has been amended. Attached is a copy of the rule and the August 7, 2006 Notice to the Bar concerning the same. The Office of Foreclosure will be looking for a Department of Defense statement, a statement from each military branch that the defendant is not in military service or an affidavit on personal knowledge as to the defendant's military status. Where a plaintiff is unable to determine whether the defendant is in the military, the court may require the plaintiff to post a bond.

The Office of Foreclosure has received several inquiries concerning *Rule 4:64-1(b)(12)*, namely, the requirement of a metes and bounds description. Almost all mortgages incorporate metes and bounds descriptions; however, if a mortgage securing indebtedness does not contain a metes and bounds description, but incorporates some other property description, then assert this fact. For example:

The mortgaged property is delineated by municipal tax map block and lot reference in the aforementioned mortgage and not by a metes and bounds description.

Finally, the Fair Foreclosure Act now requires lenders to provide debtors with a 14-day notice to cure that includes the name and address of the lender and the telephone number of a representative of the lender whom debtors may contact to obtain the amount required to cure a default. A copy of the 14-day notice must be attached to the application for final judgment. *N.J.S.A. 2A:50-58 (P.L. 2006 c. 13)*.

Cordially yours,



Kevin M. Wolfe

KMW/dma

Attachments

c: General Equity Presiding Judges

Jane F. Castner

Stephen Krisch

1:5-6. Filing

(a) ...no change

(b) ...no change

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by R. 4:5-1 in the form set forth in Appendix XII to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by R. 5:4-2(f), the Parents Education Program registration fee required by N.J.S.A. 2A:34-12.2, or the Confidential Litigant Information Sheet as required by R. 5:4-2(g) in the form prescribed in Appendix XXIV; or

(D) the signature of an attorney permitted to practice law in this State pursuant to R. 1:21-1 or the signature of a party appearing *pro se*, provided, however, that a *pro se* appearance is provided for by these rules[.]; or

(E) a certification of title search as required by R. 4:64-1(a).

If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within ten days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(2) [Except in mortgage and tax foreclosure actions,] if an answer is presented by a defendant against whom default has been entered other than in a mortgage or tax foreclosure action, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(3) a [A] demand for trial de novo may be rejected and returned if not filed within the time prescribed in R. 4:21A-6 or if it is submitted for filing by a party in default or whose answer has been suppressed.

(4) a paper shall be returned stamped "Received but not Filed (date)" if it does not conform to the requirements of R. 1:4-9 with notice that if the document is retransmitted on conforming paper within 10 days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(d) ...no change

(e) ...no change

Note: Source – R. R.1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a) (first and second sentence), 4:5-7 (first sentence), 5:5-1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d) redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2), adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1),(3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (c)(1) and (c)(3) amended July 28, 2004 to be effective September 1, 2004; subparagraph (c)(1)(E) adopted, paragraphs (c)(2) and (c)(3) amended, and paragraph (c)(4) adopted July 27, 2006 to be effective September 1, 2006.

1:5-7. Non-Military Affidavit

[An affidavit setting forth facts showing that the defendant is not in military service shall be filed as required by law before entry of judgment by default against such defendant. Such affidavit may be included as part of the affidavit of proof. Unless based on facts admissible in evidence, the affidavit shall have attached to it a statement from the Department of Defense or from each branch of the armed forces that defendant is not in military service.]

Before entry of judgment by default, an affidavit, which may be filed as part of the affidavit of proof, shall be filed as required by law setting forth facts showing that the defendant is not in military service. Unless based on facts admissible in evidence, the affidavit shall have attached to it a statement from the Department of Defense or from each branch of the armed forces that the defendant is not in the military service. If the plaintiff is unable to determine whether the defendant is in military service, the affidavit shall so state, and the court, before entering judgment, may require the plaintiff to post a bond in an amount approved by the court to indemnify the defendant, if later found to have been in military service, against any loss or damage resulting from the judgment should it be set aside. The bond shall remain in effect until expiration of the time for appeal and setting aside of the judgment.

Note: Source – R.R. 7:9-3; amended July 28, 2004 to be effective September 1, 2004; amended July 27, 2006 to be effective September 1, 2006.

4:64-1. Uncontested Judgment: Foreclosures Other Than In Rem Tax Foreclosures

(a) Title Search. Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which R. 4:64-7 does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.

(b) Contents of Foreclosure Complaint. In an action in the Superior Court to foreclose a lien described in paragraph (a) of this rule, the complaint shall state:

- (1) the name of the obligor, mortgagor, obligee and mortgagee;
- (2) the amount of the debt secured by the mortgage;
- (3) the dates of execution of the debt instrument and the mortgage;
- (4) the recording date, county recording office, and book and page recording reference of the mortgage securing the debt;
- (5) whether the mortgage is a purchase money mortgage;
- (6) a description of the pertinent terms or conditions of the debt instrument or mortgage and the facts establishing the default;
- (7) the default date;
- (8) if applicable, the acceleration of the debt's maturity date;
- (9) if applicable, any prepayment penalty;
- (10) if the plaintiff is not the original mortgagee or original nominee mortgagee, the names of the original mortgagee and a recital of all assignments in the chain of title;

(11) the names of all parties in interest whose interest is subordinate or affected by the mortgage foreclosure action and, for each party, a description of the nature of the interest, with sufficient particularity to give the court and parties notice of the transaction or occurrence on which the interest is based including recording date of the lien, encumbrance, or instrument creating the interest;

(12) a description of the subject property by street address, block and lot as shown on the municipal tax map and a metes and bounds description stating whether the recorded mortgage instrument includes that description; and

(13) if applicable, whether the plaintiff has complied with the pre-filing notice requirements of the Fair Foreclosure Act or other notices required by law.

When a married person who has not executed the mortgage is made a party defendant, the plaintiff shall set out the particular facts relied on to bar the married person's rights and interest in the subject property, including whether the married person's rights and interest in the property were acquired before or after the date of the mortgage.

[(a)] (c) Definition of Uncontested Action. ...no change to text

[(b)] (d) Procedure to Enter Judgment. ...no change to text

[(c)] (e) Priorities; Subsequent Encumbrances. ...no change to text

[(d)] (f) Tax Sale Foreclosure; Strict Mortgage Foreclosures. ...no change to text

[(e)] (g) Security Interest Foreclosure. ...no change to text

[(f)] (h) Minors; Mentally Incapacitated Persons; Military Service. ...no

change to text

NOTICE TO THE BAR

AFFIDAVIT OF NON-MILITARY SERVICE

NOTE: This notice supersedes the August 9, 2004 Notice to the Bar on this subject.

Pursuant to Rule 1:5-7 and in accordance with the Servicemembers' Civil Relief Act, 50 U.S.C. Appx. 521, unless otherwise based on facts admissible in evidence, an affidavit of non-military service must have appended thereto a statement from the Department of Defense or from each branch of the armed services that the defendant is not in military service. The Defense Manpower Data Center maintains a website at <https://www.dmdc.osd.mil/scra/owa/home> that is searchable for information regarding an individual's military status. Use of that website requires entry of the last name and social security number of the person whose military status is being verified, which results in electronic generation of a report with the seal of the Department of Defense and the signature of the Center's Director.

If the website cannot be accessed or otherwise used, a statement still may be obtained from the Defense Manpower Data Center at no cost by mailing a request setting out the same information noted above, along with a pre-addressed and stamped return envelope, to the following address:

Defense Manpower Data Center
Attn: Military Verification
1600 Wilson Boulevard, Suite 400
Arlington, Va. 22209-2593

Certificates from the individual branches of the armed services may be obtained from the addresses listed below. Requests for such certificates should contain the defendant's full name, social security number, and date of birth. If the social security number is not known, this fact should be noted. A statement of why the information is needed and a pre-addressed and stamped return envelope must also be included. A postal money order or a certified, cashier's or personal check, made payable as indicated below in the amount of \$5.20 for each defendant, must accompany each request.

AIR FORCE

Worldwide Locator
HQ AFPC/DPDXIDL
550 C Street, West, Suite 50
Randolph AFB, TX 78150-4752
[Note: Make check payable to DAQ-DE.]

ARMY

Commander USA EREC
Attn: AHRC-ERP
8899 East 56th Street
Indianapolis, IN 46249-5031
[Note: Make check payable to Finance Officer.]

COAST GUARD

USCG – Personnel Command
Military Records Branch (ADM-3)
4200 Wilson Blvd., Suite 1100
Arlington, VA 22203-1804
Attn: Coast Guard Locator Assistant
[Note: Make check payable to U.S. Coast Guard.]

MARINE CORPS

Headquarters U.S. Marine Corps
Personnel Management
Support BRMMSB 10, Suite 201
2008 Elliott Road Suite 203
Quantico, VA 22134-5030
[Note: Mark bottom of envelope
"Official Business" and make check
payable to United States Treasurer.]

NAVY

Naval Personnel Command
5720 Integrity Drive
Millington, TN 38055-3120
[Note: Make check payable to
United States Treasurer.]

Also, effective September 1, 2006, the Supreme Court has amended Rule 1:5-7 to give the trial court discretion to require the posting of a bond when the military status of a defendant cannot be determined. That provision mirrors the language of the Servicemembers' Civil Relief Act.

/s/ Philip S. Carchman

Philip S. Carchman, J.A.D.
Acting Administrative Director of the Courts

Dated: August 7, 2006

ADMINISTRATIVE OFFICE OF THE COURTS, OFFICE OF FORECLOSURE
CLERK OF THE NEW JERSEY SUPERIOR COURT

Date: _____

Case Name: _____ v. _____

Docket No: F- _____ - _____

RECEIVED, BUT NOT FILED NOTICE

The enclosed document has been stamped, "received, but not filed" and is being returned pursuant to Rule 1:5-6(c) for the following reason(s):

- Filing fee was not received or is insufficient. First paper (Complaint) \$200, Answer \$135.
- Pleading not signed with an original signature by the attorney or *pro se* litigant.
- Pleading does not comply with R. 1:4-9. Paper size, weight, font size or double space.
- Rule 4:64-1(a) title search certification is missing.

If the pleading is resubmitted within 10 days of the date of this notice, filing will be deemed to have been made on the stamped/received date. Motions filed under rule will receive the next available return date.

NON-CONFORMING PLEADING NOTICE

The enclosed document has been filed "non-conforming pursuant to R. 1:5-6(c)" for the following reason:

- Mortgage foreclosure complaint is non-conforming. Deficient R. 4:64-1(b) content. An amended complaint should be filed to correct this deficiency before original service of process on all parties is attempted to avoid default/ judgment entry problems.
- Default out of time. Rule 4:43-1 motion is required.
- Motion or consent required for filing amended complaint. Answer filed. R. 4:9-1.
- Entry of default requires proof of service. R. 4:43-1
- Proof of service deficient.
- Facsimile pleading/signature not permissible. R. 1:4-4(c) and R. 1:5-6(b).
- Business entity, other than sole proprietorship, must appear by attorney. R. 1:21-1(c).
- Other: _____

PLEASE RETURN A COPY OF THIS TRANSMITTAL WHEN RESUBMITTING YOUR PLEADINGS.

Staff Initials