


**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, I hereby promulgate the following motion templates for use in residential mortgage foreclosure proceedings in Supreme Court in cases where a homeowner defendant has defaulted, effective January 1, 2018 (attached):

1. Motion for default judgment and order of reference (Exh. A);
2. Motion to confirm referee report and for a judgment of foreclosure and sale (Exh. B);
and
3. Motion for default judgment, order of reference, and judgment of foreclosure and sale (Exh. C).



Chief Administrative Judge of the Courts

Dated: November 28, 2017

AO/356/17

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO.:

**NOTICE OF MOTION FOR A
DEFAULT JUDGMENT AND
ORDER OF REFERENCE**

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. Appointing a referee to compute the amount due to Plaintiff, examine whether the mortgaged property known as [Insert Street Address] may be sold in parcels, and make his/her computation and report with all convenient speed pursuant to RPAPL §1321;
2. [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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

INDEX NO:

Plaintiff(s),

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

v.

MORTGAGE PROPERTY:
COUNTY:
SBL #:

Defendant(s).

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[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 the 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 supporting 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
[Power of Attorney with Pooling and Servicing Agreement]
[Secretary's Certification]
[Include any additional exhibits here]

Exhibit M
Exhibit N
Exhibit O
Exhibit P

Legalback No. 2 – filed contemporaneous with this motion
Proposed Order of Reference

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. Explain 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 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. According to the affidavit of service, the summons was served together with the complaint. 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. [*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.

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

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. 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 an additional copy 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.

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 and relief requested if any defendant is an infant, in the armed services, or incompetent, as applicable].

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

17. 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].

18. Therefore, it is respectfully requested that the Court grant Plaintiff's motion for a Default Judgment and Order of Reference in accordance with RPAPL §1321 [Include Request for Additional Relief] and award such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff requests an order from this Court:

- A. Appointing a referee to compute the amount due Plaintiff and to examine whether the mortgaged property known as [Insert Street Address] can be sold in parcels, and make his/her computation and report with all convenient speed pursuant to RPAPL §1321;
- B. Removing "John Doe" as a party Defendant to this action [-OR- adding names of tenants or others to be added as defendants];
- C. [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 amend the docket and electronic docket of the Court accordingly;
- D. Determining all non-appearing and non-answering Defendants to be in default;
- E. [Include request for additional relief if applicable];
- F. Granting such additional relief as the Court may deem just and proper.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

DATED: _____
[County], New York

[Attorney's name]

[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]

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]

At Part ____ of the Supreme Court held in the County of _____, at the _____ Courthouse thereof, on the ____ day of _____, 20_____.

PRESENT: _____
JUSTICE OF THE SUPREME COURT

-----X

INDEX NO.:

Plaintiff(s),

**ORDER OF REFERENCE AND
DEFAULT JUDGMENT**

v.

Defendant(s).

MORTGAGED PROPERTY:
COUNTY:
SBL #:

-----X

UPON the Summons, Complaint, and Notice of Pendency filed in this action on the [Day] day of [Month], [Year], the Notice of Motion dated [date], the affirmation of [Plaintiff's Counsel], and the exhibits annexed thereto, the affidavit of merit and amount due by [Name of AOM Signor] who is [AOM Signor's title] of [Name of Company AOM Signor Works For], duly sworn to on [Date AOM Signed], together with the exhibits attached thereto, and all prior papers filed in this action and prior proceedings had herein; and

UPON proof that each of the defendants herein has been duly served with the Summons and Complaint in this action and required notices; and

UPON a Notice of Appearance by [list defendants that filed a notice of appearance];

[If Applicable] AND the court having held a mandatory settlement conference pursuant to CPLR 3408 [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;

[If Applicable] AND it appearing that the defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure;

AND it appearing that [List Defaulting Defendants] time to answer the complaint has expired; and

AND it appearing to the satisfaction of this court that this action was brought to foreclose a mortgage on real property located at [Property Address], in the County of [County Name], State of New York [Section __, Block __, Lot __],

NOW, on motion by [Law Firm Name], attorney for the Plaintiff, it is hereby

ORDERED that defendant(s) [list defendants] are determined to be in default; and it is further

ORDERED that [Name of Referee] with an address of [Referee's Address], is hereby appointed Referee, in accordance with RPAPL §1321, to compute the amount due to Plaintiff and to examine whether the mortgaged property may be sold in parcels; and it is further

ORDERED that the Referee make his/her computation and report with all convenient speed; and it is further

ORDERED that, if necessary, the Referee may take testimony pursuant to RPAPL §1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on

appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), the statutory fee of \$50.00, and in the discretion of the court, a fee of \$_____, shall be paid to the Referee for the computation of the amount due and upon the filing of his/her report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(a); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED [*if any tenants or other defendants are being added to the caption reflect that here and in the caption below; -OR-*] that “John Doe” be removed as a party defendant in this action as no occupants reside at the property and the caption of this action be amended to reflect the removal of “John Doe” as a party defendant; and it is further

[*If applicable*] ORDERED that [*New Note Holder*] be substituted into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court amend the docket and electronic docket accordingly; and it is further

ORDERED that the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO:

v.

MORTGAGED PROPERTY:

COUNTY:

SBL#:

Defendant(s).

-----X

And it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

This constitutes the decision and order of the court.

DATED: _____

ENTER:

J.S.C.