

**VIA EMAIL (lmarks@nycourts.gov)**

October 20, 2021

The Honorable Lawrence K. Marks  
Chief Administrative Judge  
New York State Unified Court System  
Office of Court Administration  
25 Beaver Street  
New York, NY 10004

**Re: In-Person Kings Supreme Court Foreclosure Hearings**

Dear Judge Marks:

We write concerning the in-person status conferences and COVID hardship hearings ordered by The Honorable Lawrence S. Knipel in Kings Supreme Court (hereinafter referred to as the “Kings Foreclosure Hearings”), scheduled to commence no later than October 25, 2021. Notice of these appearances plainly violate the State’s modified foreclosure moratorium. We request that the Kings Foreclosure Hearings be cancelled immediately and that all New York State judges comply with the foreclosure moratorium.

**I. Background**

The COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (“CEEFFPA”) ensures that New York tenants and homeowners impacted by COVID-19 can safely remain in their homes. In enacting CEEFFPA, the State recognized both the historic public health threat and negative economic impact of COVID-19, emphasizing that “[s]tabilizing the housing situation for tenants, landlords, and homeowners is to the mutual benefit of all New Yorkers and will help the state address the pandemic, protect public health, and set the stage for recovery.” (S. 9114/A.11181.) CEEFFPA was therefore enacted to “avoid as many evictions and foreclosures as possible for people experiencing a financial hardship during the COVID-19 pandemic or who cannot move due to an increased risk of severe illness or death from COVID-19.” (*Id.*) CEEFFPA temporarily suspends eviction and foreclosure proceedings where tenants and homeowners have submitted a hardship declaration.

On September 2, 2021, the State extended CEEFFPA through January 15, 2022, and created a mechanism for plaintiffs to challenge hardship declarations in order to address due process concerns.<sup>1</sup> Although the hardship declaration creates a “rebuttable presumption” that a defendant’s hardship claim is valid, a foreclosing plaintiff may make a motion to dispute that presumption, asserted on a good faith belief that the defendant has not experienced a hardship. The court must thereafter grant a hearing to determine the validity of the hardship declaration. (S. S50001/A. 40001, Part B, Subpart B §§ 8-9.)

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<sup>1</sup> The United States Supreme Court partially enjoined enforcement of CEEFFPA, reasoning that allowing defendant-tenants to self-certify pandemic-related hardships without permitting plaintiffs to contest that certification was a violation of plaintiffs’ due process rights. *Chrysaftis v. Marks*, -- S. Ct. --, 2021 WL 3560766 (Aug. 12, 2021).

On September 9, 2021, Your Honor further ordered that, in any action in which a hardship declaration has been submitted, “the action shall be stayed until at least January 15, 2022,” even if a judgment of sale has been issued. (AO 262/21 ¶¶ 2-3.) Furthermore, “[u]pon motion by the plaintiff on notice to the defendant, a court must schedule a hearing to determine the validity of the Hardship Declaration.” (AO 262/21 ¶ 4.) Regardless of whether a hardship declaration is on file, Your Honor nonetheless encouraged courts to “conduct conferences as needed,” and to refer unrepresented parties to civil legal services and housing counseling agencies. (AO 262/21 ¶ 5.)

Despite CEEFPA and AO 262/21, Kings Supreme Court has now begun scheduling mandatory conferences and hardship hearings, including in cases where the homeowner has filed a hardship declaration and the hardship declaration has not been disputed. These conferences are being held in-person, requiring plaintiffs and defendants for more than thirty cases to be together in a single room for the duration of the calendar. The earliest of the Kings Foreclosure Hearings are scheduled to take place on October 25, 2021. The Kings Foreclosure Hearing notices warn that “[f]ailure to attend could result in the loss of your case.” The notices do not inform defendants of their right to file a hardship declaration and do not include referrals to legal services organizations. Instead, the notices advise unrepresented litigants to “[c]onsult the internet or contact the Court” to obtain information about obtaining free legal services. A copy of the notice is attached.<sup>2</sup>

## **II. The Kings Foreclosure Hearings Violate CEEFPA and AO 262/21.**

Pursuant to CEEFPA and AO 262/21, if a homeowner has filed a hardship declaration, their foreclosure case must be stayed until at least January 15, 2022, unless a foreclosing plaintiff asserts by motion a good faith basis for disputing the existence of the hardship, and the court finds that the declaration is invalid following a hearing.

The Kings Foreclosure Hearings violate CEEFPA and AO 262/21. First, the Kings Foreclosure Hearings are *sua sponte* hardship hearings, scheduled absent any motion by the plaintiff. To our knowledge, in each case in which a Kings Foreclosure Hearing has been scheduled and a hardship declaration is on file, no party to the litigation has disputed the validity of the hardship. CEEFPA simply does not authorize a court to schedule such a hearing *sua sponte*. Moreover, CEEFPA specifically contemplates that the rebuttable presumption created by a hardship declaration must be rooted in a “good faith belief that the defendant has not experienced a hardship,” made by motion from the plaintiff. By scheduling these hearings *sua sponte*, without regard for whether a declaration has been filed much less disputed, Kings Supreme Court has directly flouted AO 262/21 and CEEFPA.

Second, the Kings Foreclosure Hearings are status conferences that violate the moratorium. For those homeowners who have filed hardship declarations that have not been challenged or invalidated, they are plainly entitled to a stay until at least January 15, 2022. Although AO 262/21 encourages courts to conduct conferences “as needed,” such conferences should not invalidate the stay. Yet Kings Supreme Court is threatening homeowners who have filed valid hardship

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<sup>2</sup> Notably, legal services organizations in Brooklyn have repeatedly reached out to the Kings Supreme Court about how to best refer pro se homeowners to free legal services and included a referral sheet of the legal services organizations serving Brooklyn. Copies of those outreach letters are attached.

declarations that failure to attend the mandatory in-person Kings Foreclosure Hearings “could result in the loss of your case.”

In light of the above, we request that Your Honor require Kings Supreme Court and all other courts in the New York State Unified Court System to manage their dockets in accordance with state law and the Office of Court Administration’s own administrative orders. To the extent these courts require additional guidance as to their responsibilities under CEEFPA and AO 262/21, Your Honor should issue an additional Administrative Order further clarifying that trial courts should not conduct *sua sponte* hardship hearings under any circumstances.

Sincerely,

Brooklyn Bar Association Volunteer Lawyers Project  
Brooklyn Legal Services  
Brooklyn Legal Services Corp. A  
Housing and Family Services of Greater New York, Inc.  
Mobilization for Justice, Inc.  
Legal Services NYC  
New York Legal Assistance Group  
New York State Foreclosure Defense Bar

cc:

Hon. Edwina G. Mendelson  
Senator Brad Hoylman, Chair, Committee on Judiciary, New York State Senate  
Assemblyman Jeffrey Dinowitz, Chair, Committee on Judiciary, New York State Assembly  
Senator Brian Kavanagh, Chair, Committee on Housing, New York State Senate  
Assemblyman Steven Cymbrowitz, Chair, Committee on Housing, New York State Assembly

## NOTICE OF FORECLOSURE CONFERENCE

A status conference and hardship hearing will be held in this case on:

[REDACTED] at [REDACTED] AM

[REDACTED]

360 Adams Street  
Brooklyn, NY 11201

**This is an in-person appearance.**

All current COVID protocols will be followed, including mandatory wearing of a mask.

Failure to attend could result in the loss of your case.

The Court may be contacted at by telephone at (347)401-9169, email at

[360ASupremeCivilForeclosure@nycourts.gov](mailto:360ASupremeCivilForeclosure@nycourts.gov)

or by mail: NYS Supreme Court, 360 Adams St. Brooklyn, NY 11201,

Attn: Foreclosure Dept.

Issues to be addressed consist of settlement and COVID related hardship. Please bring any documents concerning your loan and current financial situation. These may include, but are not limited to: current pay stubs, list of monthly expenses, recent mortgage and property tax statements and prior correspondence with your lender.

If you are represented by an attorney, you should make them aware of this appearance.

If you are not represented by an attorney, you should retain counsel. Consult the internet or contact the Court to obtain information about counsel who may represent you at no cost.

# Exhibit A



January 5, 2021

By Email

Hon. Lawrence Knipel  
Administrative Judge for Civil Matters  
Kings County Supreme Court  
360 Adams Street  
Brooklyn, NY 11201

**Re: Foreclosure Procedures in Kings County**

Dear Judge Knipel:

I write with regard to the recent New York state legislation providing for a stay of pending foreclosure matters and additional relief for homeowners who attest by affidavit that they have been impacted by the ongoing COVID-19 pandemic.

As you are aware—and as the Office of Court Administration has committed to implementing—the Court system must notify all defendants in foreclosure actions of their rights under the new law by mail. *See* COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020, Part B, Subpart A, Section 3; *see also* Dec. 31, 2020 Memorandum of Judge Lawrence K. Marks. We ask that, as part of this mandated mailing, you include a list of locally-available legal services (*see* Exhibit A attached containing an updated listing), to facilitate homeowners' access to legal advice and assistance.

Brooklyn Legal Services' 10 foreclosure prevention attorneys, paralegals, and executive secretary form a team that typically represents dozens of homeowners each year in foreclosure matters and advises hundreds more *pro se* litigants. Many of the borrowers who have called us during the pandemic are unaware of their rights under the various forbearance and foreclosure relief programs and have not had the opportunity to mitigate the harms of the pandemic nor obtain necessary relief. They report to us about the increased difficulty of finding legal assistance while the court buildings are physically closed. Including contact information from legal assistance providers in communications from the court will go a long way to ensuring homeowners in foreclosure can access the legal services they need.

Brooklyn Legal Services and the other legal services providers operating in Brooklyn are committed to assisting Brooklyn's homeowners in distress and assisting the Court in implementing state and federal provisions aimed at home-saving assistance. We would be happy to set up a time for legal services providers to meet with the court to discuss how best assist

foreclosure defendants to gain access to justice in Kings County. Please let me know if we can assist in setting up a meeting, or in any other way.

Sincerely,

/s/  
Rachel Geballe  
Supervising Attorney  
Brooklyn Legal Services  
718-237-5573  
rgeballe@lsnyc.org

Cc: Judge Robin K. Sheares  
Judge Mark Partnow  
Judge Kenneth Sherman  
Eric Newton, Foreclosure Supervisor, Kings County  
Jacob Inwald, Director of Foreclosure Prevention, Legal Services NYC

Revised Exhibit A to Letter of January 5, 2021  
List of Foreclosure Prevention Legal Services, Kings County

**Brooklyn Legal Services**

Foreclosure Prevention Project

*Call Intake Line at 718-246-3279 any time*

**Brooklyn Legal Services Corp A**

Consumer & Economic Advocacy

*Call Intake Line at 718-487-2300 during business hours or email [info@bka.org](mailto:info@bka.org)*

**CAMBA**

Foreclosure Prevention Services Program

*Call Intake Line at 718-940-6311 x79223 or email [patrickp@camba.org](mailto:patrickp@camba.org) any time*

**Grow Brooklyn**

Foreclosure Prevention

*Call Intake line at 347-682-5607 or email [info@growbrooklyn.org](mailto:info@growbrooklyn.org) any time*

**Mobilization for Justice**

Foreclosure Prevention Project

*Call Intake Line at 212-417-3777 any time, live intake on Tuesdays 12pm to 5 pm*

**New York City Bar Justice Center**

Homeowner Stability Project

*Call Intake Line at 212-382-6766 any time*

**New York Legal Assistance Group**

Foreclosure Prevention

*Call Intake Line at 212-946-0349 or email [contactfpp@nylag.org](mailto:contactfpp@nylag.org) any time*

**Brooklyn Bar Association Volunteer Lawyer's Project**

Foreclosure Intervention

*Call Intake Line at 718-624-3894 any time*

September 20, 2021

By Email and First Class Mail

Hon. Lawrence Knipel  
Administrative Judge for Civil Matters

Hon. Robin K. Sheares  
Foreclosure Residential Part 1

Kings County Supreme Court  
360 Adams Street  
Brooklyn, NY 11201

**Re: Foreclosure Procedures in Kings County**

Dear Judges Knipel and Sheares:

The signatories below represent advocates for Brooklyn homeowners in or at risk of foreclosure. We write to introduce ourselves to Judge Sheares, and to connect about residential foreclosure actions in Kings County Supreme Court, as the New York State moratorium affecting foreclosures comes to an end.

The Brooklyn Foreclosure Prevention Advocates are a group comprised of housing counselors, legal services providers, and members of the New York State Foreclosure Defense Bar, all of whom work with, and support, homeowners in financial distress in the borough. We meet periodically to discuss current challenges to homeowners and staff a foreclosure prevention network of clinics, intake, friend of the court, and outreach that ensures Brooklyn homeowners have access to foreclosure prevention and consumer protection services, with the ultimate goal of home retention and neighborhood preservation. We have long provided these services in partnership with the Kings County Supreme Court administration both inside and outside court proceedings.

In the face of the coronavirus pandemic, Kings County has employed virtual conferencing as a means to move cases forward, where possible. Unfortunately, because of the digital divide, many homeowners do not have easy access to the technology required to participate meaningfully in virtual conference proceedings. Those who do, are still stymied by the barriers to access their proceedings. This combination of factors has resulted in a striking, and troubling, drop in pro se homeowner participation. With the restart of proceedings in the Foreclosure Settlement Conference Part and the resumption of

foreclosure auctions, we are reaching out to provide feedback, with the goal of improving the Court's outreach to pro se homeowners, ensuring access for all parties to virtual proceedings, and facilitating pro se homeowner defendants' connection with legal services and housing counseling.

#### Improving Notices for Homeowners

When scheduling conferences, Kings County uses a form notice for homeowners, attached as Exhibit A to this letter. This notice, sent out to homeowners by mail and uploaded in efiled cases, could be meaningfully improved to increase access and information sharing, in the following ways. We attach notices currently in use in Queens (Exhibit B) and the Bronx (Exhibit C), and highlight ways in which those notices incorporate elements that could meet the stated goals:

- *Highlight the urgency of attending and responding.* This is important to improve the visibility of the notice and impress on homeowners (who may not have heard from the court in years) the importance of setting aside the time and making arrangements to be able to participate in conferences. *See* Exhibit B for language like “YOU COULD LOSE YOUR HOME.”
- *Include contacts for legal services and housing counseling.* This is crucial for homeowners who have not yet reached out for assistance. If homeowners reach out in advance of their conference, this will improve the efficiency of the conference. *See* both Exhibit B and Exhibit C.
- *Include link, phone number, and instructions for connecting with the conference.* As conferences are scheduled in advance, the Court can provide the link and phone number in advance, and reduce the need for back and forth communications with pro se litigants. Both Exhibit B and Exhibit C incorporate this strategy; *see* Exhibit C for well-organized connection instructions.
- *Encourage homeowners to review papers already served.* This could prevent homeowners from missing deadlines, facilitate connection with opposition counsel, and possibly promote settlement. *See* Exhibit B.
- *Highlight for homeowners that they may have additional time to answer if they come to their first conference and may be entitled to legal fees.* Through this notice, the Court can inform pro se homeowners of important right. *See* Exhibit B.
- *Provide a short summary of issues that may be addressed and documents to gather and bring to the conference.* This will facilitate efficient use of the conference. *See* Exhibit C.

- *Provide a Court contact number for questions.* Pro se homeowners may have questions in advance of their court appearance. By offering a contact number, the Court can become aware of barriers to access and connect homeowners with legal services and housing counseling services. Court staff should be available in particular at times when conferences are scheduled and litigants may be calling with questions about access or for technical support.
- *Allow for multiple adjournments.* Given the barriers that pro se litigants face accessing the Court's virtual conferencing, the Court should provide pro se litigants with an opportunity for safe, in-person appearances before marking a foreclosure conference held.

#### Increasing Resources for the Foreclosure Settlement Conference Part

In its September 13, 2021 directive, OCA encourages conferencing all active foreclosure matters, and directs conferencing of tax lien foreclosure matters, which were previously excluded from the conference program. This resumption in conferencing is well timed to encourage litigants to access new programs and resources that are becoming available for the resolution of delinquencies and defaults. It also coincides with a period when we anticipate a deluge of new filings, with the expiration of widely-available forbearance programs. As Kings County resumes and ramps up conferencing, we recommend that additional resources be devoted to this key court process. At its height, the foreclosure conference resolution part could handle dozens of cases each day, with three or four referees and one or two clerks working to facilitate efficient, high-quality conferencing. The Court should assign at least this level of resources to work through the backlog of pending conferences and begin processing new cases.

#### Resuming Conferencing in FRP1

With its active conferencing and skilled and experienced court attorneys, FRP1 has long been a state-wide model for fair and efficient resolution of foreclosure matters. FRP1's strategy of ensuring appropriate settlement negotiation has effectively implemented the New York State legislature's goal of resolving foreclosures with home-saving solutions through court-supervised mediation wherever possible. During the coronavirus pandemic, FRP1 and FRP2 have implemented OCA's COVID conference mandate, but have otherwise paused conferencing the active foreclosure calendar. Like those in the foreclosure conference resolution part, the litigants in FRP1 could benefit from active conferencing that will connect all parties to newly available resources that will be essential to fair resolution of these matters. The litigants in the other foreclosure parts would similarly benefit from opportunities to conference their cases. Restoration of these services will require the investment of resources, ideally under the care of Judge Dear's skilled and experienced court attorneys, Monique Holaman, Joseph Etra, and Deema Azizi.

Maintaining Active Communications

We are grateful for the Court's attention to these matters and sensitivity to the needs of Brooklyn's homeowners. We believe Brooklyn's homeowners and the court system would benefit from open lines of communication with foreclosure prevention advocates. We propose that representatives of the Brooklyn Foreclosure Prevention Advocates and leadership of the Kings County Supreme Court foreclosure administration arrange to connect by phone or videoconference at regular intervals while the Court resumes conferencing and the foreclosure parts begin more active adjudication, as was the case in years past.

We would appreciate the opportunity to speak with you to discuss these matters further at your earliest convenience and would be happy to arrange a video-conference. Rachel Geballe of Brooklyn Legal Services is available to coordinate scheduling, and can be reached at 718-237-5573 or [rgeballe@lsnyc.org](mailto:rgeballe@lsnyc.org).

Sincerely,

Brooklyn Bar Association Volunteer Lawyers Project  
Brooklyn Legal Services  
Brooklyn Legal Services Corp. A  
City Bar Justice Center  
Cypress Hills L.D.C.  
Grow Brooklyn  
Legal Services NYC  
MHANY Management, Inc.  
Mobilization for Justice  
New York Legal Assistance Group  
New York State Foreclosure Defense Bar  
NHS Brooklyn

Cc: Chief Judge Janet DiFiore  
Judge Lawrence Marks  
Judge Edwina G. Mendelson  
Judge Mark Partnow  
Eric Newton, Foreclosure Supervisor, Kings County  
Monique Holaman  
Jacob Inwald