

Introduction to Settlement Conferences: who, what, when , where, why, how?

David J. Lawler, Esq.



LEGAL SERVICES
OF LONG ISLAND



1

Introduction

- **WHO:** Legal Services of Long Island established a grant-funded foreclosure defense clinic using a staff attorney, a paralegal, and pro bono volunteers.
- **WHAT:** Free, in-court, counsel and advice, limited representation at conferences, help with pro se answers
- **WHEN:** conference help on initial conference days Tues and Thurs, pro se answer help in court on Wed, or otherwise by appointment.
- **WHERE:** Suffolk County Supreme Court, Riverhead
- **WHY:** Free help for unrepresented litigants of modest means
- **HOW:** limited scope retainer, attorney for a day, limited note of appearance.



Foreclosure Defense Clinic



2

Settlement Conferences

Consultations and Loss Mitigations



LEGAL SERVICES
OF LONG ISLAND



3

CPLR §3408 Mandatory Settlement Conference

- Residential mortgages
- Owner occupied
- Including Reverse Mortgages
- Purpose is settlement negotiations for a possible agreement
- Second chance to Answer within 30 days of initial conference date 3408(m)
- Scheduled by court within 60 days of RJL filing
- Stays litigation while case is in the settlement part 3408(n)
- Parties are obligated to bargain in good faith 3408(f)
- No attorney fees for appearance at settlement part 3408(h)



Foreclosure Defense Clinic



4

CPLR §3408 Mandatory Settlement Conference

- Residential mortgages
- Owner occupied
- Including Reverse Mortgages
- Purpose is settlement negotiations for a possible agreement
- Second chance to Answer within 30 days of initial conference date 3408(m)
- Scheduled by court within 60 days of RJ1 filing
- Stays litigation while case is in the settlement part 3408(n)
- Parties are obligated to bargain in good faith 3408(f)
- No fee shifting for appearance at settlement part 3408(h)



Foreclosure Defense Clinic



5

Preparing for the Conference

- Home value on Redfin or Zillow
- Mortgage debt amount
- Other liens
- Who is the servicer
- Who owns the note/mortgage
- Client's household income

Gather Client provided information as per 3408(e):

- Tax return
- Expenses
- Property tax info
- Previous loss mitigation applications
- Benefits information
- Rental agreements/proof of rental income
- Anything else required by presiding judge



Foreclosure Defense Clinic

6

Interview Client and Basic Information

Type of loan: forward, reverse, zombie (second position without activity)

- Deadline to file an answer
- Client goals
- Client finances
- Strategy to reach goal
- Who is on deed (county clerk website)
- Heirship? Trust?

Who owns the loan:

- Fannie Mae: www.knowyouroptions.com/loanlookup
- Freddie Mac: <https://ww3.freddiemac.com/loanlookup>
- FHA monthly statements for clues like a charge for FHA insurance or a case number or check box for FHA insured
- VA-insured: check loan/billing statement/note/mortgage
- RHS guaranteed loan: closing documents (USDA's "rural housing service" for rural properties)



Foreclosure Defense Clinic



7

Review Loan Documents

- Generally attached as exhibits to the complaint
- NYSCEF has filed docs
- Check caption for indication of junior liens

Who owns the loan:

- Note: personal promise to pay. Check the original loan amount, term, and rate
- Mortgage: review. Standard forms have a paragraph 22 outlining 30-day notice in case of default and default conditions
- Prior Loan Modifications: check dates and terms.

Review the loan history with the client.



Foreclosure Defense Clinic

8

Second Chance to Answer

- CPLR § 3408(m) states a defendant who appears at the first settlement conference but has failed to file a timely answer
- “shall be presumed to have a reasonable excuse for the default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived within thirty days of initial appearance at the settlement conference.
- The default shall be deemed vacated upon service and filing of an answer.”
- If an answer is filed more than 30 days after the first conference, the plaintiff will usually file a notice of rejection. In that case, defendant should file a motion to compel a late answer.
- Referee informs defendant about answers and provides resources (self help website, law library, legal services)
CPLR 3408(c)



Foreclosure Defense Clinic



9

Good Faith Requirement

- CPLR § 3408(f) requires both sides to negotiate in good faith toward an agreement
- Determined by totality of the circumstances:
 1. compliance with 3408, rules, orders, directives
 2. compliance with mortgage servicing laws, rules, regulations, investor directives, and loss mitigation standards or options concerning loan modifications, short sales, deeds in lieu,
 3. Conduct of parties
 - a. no unreasonable delay
 - b. appearing at conferences prepared
 - c. staying prosecution during the settlement part
 - d. providing accurate information



Foreclosure Defense Clinic

10

Good Faith Requirement

- Neither the failure to make a settlement offer nor to accept an offer is sufficient to establish bad faith
- Remedies for bad faith involve costs. For instance, a tolling of interest during the period of bad faith. 3408(j). Defendant bad faith = release from part 3408(k)
- Bad faith does not defeat the central relief of foreclosure



Foreclosure Defense Clinic



11

The Conference

- In referee's office with plaintiff attorney and the borrower
- Referee will ask plaintiff for note/loan and default information
- Referee will ask borrower about household and income and reason for default
- Bank wants the case to be released for litigation
- Borrower wants to meet a particular goal or outcome—usually wants the case retained for a modification schedule
- Mod schedule is four dates: application to borrower; app returned; missing doc letter; reply
- Will schedule conferences as long as a resolution is reasonably expected.
- Argue for retention, if applicable; can also argue for a 30-60 day stay –not as good



Foreclosure Defense Clinic

12

The Deemed Motion

- 3408(b) provides a defendant appearing at the initial conference pro se is deemed to have made a motion to proceed as a poor person under CPLR 1101
- A poor person need not pay court fees (transcript fees are expensive, others are not). Also, a court may appoint an attorney for a poor person, but there is no mechanism for this to happen at present, i.e. 18B panel. CPLR 1102(a)
- A hearing is scheduled with financial information submitted for judge to decide
- Criteria is subjective--unable to pay—nearly always denied
- The delay is costly to a defendant who wants to retain the house
- Generally, it is advisable to waive the motion—an option offered by the referee—after all, we are usually trying to modify and retain and need to show adequate income.
- **Appearance with an attorney defeats the deemed motion**, but it can be made subsequently.



Foreclosure Defense Clinic



13

Terms

- **Deferral** – mortgage loan amount held at 0% interest until the end of the loan
- **FHA** – Federal Housing Association: encourages low income lending by insuring lenders against loss and provides mitigation such as the “partial claim”
- **Forbearance** – temporary pause on payments with the accrual due at end of forbearance period
- **GSE** – government sponsored enterprise (quasi-government like Fannie and Freddie)
- **Loan Modification** – change in terms e.g. principal; rate; term
- **Loss Mitigation Waterfall** – order of mitigation options
- **Partial Claim** – FHA insurance payment to lender
- **Servicer** – handles daily administration of loan for owner and reviews requests for modification



Foreclosure Defense Clinic

14

Thank you for attending!

If you have any questions, please contact
David J. Lawler, Esq.
(631)232-2400 x 3322
dlawler@legalservicesli.org

Check out our website at
www.legalservicesli.org



LEGAL SERVICES
OF LONG ISLAND