

## **Foreclosure Auction Plan - Seventh Judicial District**

### **Summary:**

In an Administrative Order of the Chief Administrative Judge of the Courts dated July 23, 2020 (AO 157/20), Chief Administrative Judge Lawrence Marks required each judicial district to assess auction practices within the district and to develop “appropriate procedures and protocols for the safe and healthful conduct of such auctions within their districts in light of the COVID-19 pandemic” (AO 157/20). The policies and procedures set forth below will take effect immediately on approval and remain in effect during the COVID-19 health emergency. The policies and procedures herein will best ensure the requirements of social distancing and any requirement for face coverings.

Seven of the eight counties of the Seventh Judicial District are small counties; the volume of foreclosure auctions is low and it is not anticipated that any auction in those counties will pose challenges for social distancing on the spaces where those auctions are held. Referees conducting auctions in those counties will be required to enforce any applicable social distancing and face covering requirements in effect at the time the auction is held.

In Monroe County prior to April 2020, several foreclosure auctions had been scheduled per day and multiple auctions had been scheduled to occur at the same time. Were this practice to continue after October 15, 2020, it would pose significant issues for social distancing on the space where auctions are held in Monroe County. This plan implements a scheduling system for auctions to be held in Monroe County, which will permit only one auction to occur every half hour between the hours of 10:00 AM and 3:30 PM. In addition, Referees conducting auctions in those counties will be required to enforce any applicable social distancing and face covering requirements in effect at the time the auction is held.

### **Monroe County**

Prior to the COVID-19 health emergency, foreclosure auctions were held in the lower atrium of the Hall of Justice in Rochester, New York. The lower atrium is a covered location outside of the entrance to the Hall of Justice, which is the equivalent to the “courthouse steps.” Reviewing published schedules of foreclosure auctions for the months of February-March 2020 revealed the following:

#### **February 2020**

- On average, 15 auctions were scheduled per week.
- On average, overlapping auctions (auctions scheduled at the same date/time were scheduled on 2 of the 5 days of the business week
- On one day during the week of February 3, 2020, 6 overlapping auctions were scheduled, and one day during the week of February 24, 2020, 5 overlapping auctions were scheduled.

March 2020

- On average, 19 auctions were scheduled per week.
- On average, overlapping auctions (auctions scheduled at the same date/time were scheduled on 3 of the 5 days of the business week.
- On one day during the week of March 9, 2020, 5 overlapping auctions were scheduled.

To address issues of social distancing for auctions in Monroe during the COVID-19 health emergency, the following procedures will be implemented:

1. In order to schedule an auction, Plaintiff's attorney must contact the Monroe Foreclosure Part at [monroeforeclosure@nycourts.gov](mailto:monroeforeclosure@nycourts.gov) and
  - a. Request an AO/157 conference be held prior to the foreclosure auction OR
  - b. Request an appointment for an auction and submit an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned.

The email and associated calendar will be monitored by the two clerks assigned to the Monroe Foreclosure Part, as well as by the Chief Clerk and Deputy Chief Clerk.
2. Following the completion of a conference held pursuant to (1)(a) above, the plaintiff's attorney may request an auction be scheduled pursuant to (1)(b) above.
3. Only one auction may be scheduled at one time and auctions may only be scheduled in half-hour blocks beginning at 10:00 AM and ending at 3:30 PM in order to avoid peak employee and general public entrance/exit times.
4. Should the Monroe Foreclosure Part become aware of multiple auctions scheduled for the same time: the following rules shall apply
  - a. The Plaintiff attorneys involved shall be directed to contact each other to ensure that their auction is set to continue and their file is not on a loss mitigation hold.
  - b. If one of the Plaintiff attorneys for the conflicting foreclosure auctions failed to contact the Monroe Foreclosure Part, the auction that was scheduled through the Monroe Foreclosure Part shall occur in the lower atrium. For the auction that was not properly scheduled, the Plaintiff attorneys will either have to a) hold the auction outside in the courtyard; or b) re-schedule the auction (see below for language to be inserted into judgments of foreclosure).
5. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.
6. A podium has been provided to facilitate the Referee and the successful bidder to complete post-auction paperwork.

7. Granted judgments of foreclosure and sale shall include the following language:
  - a. Should the Referee be unable to conduct the sale at the location due to social distancing restrictions, the sale shall occur outside in the upper courtyard.
  - b. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.
8. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.

**Cayuga County**

Prior to the COVID-19 health emergency, foreclosure auctions were held in the Cayuga County Courthouse. Foreclosure auctions in Cayuga County occur at a frequency of less than 1 auction a week. As the volume of foreclosure auctions is low it is not anticipated that resuming auctions in Cayuga County will pose issues of social distancing on the spaces where those auctions are held. Granted judgments of foreclosure and sale shall include the following language:

- a. Should the Referee be unable to conduct the sale at the location due to social distancing restrictions, the sale shall occur outside of the building as close to the main entrance of the building as practicable.
  - b. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.
1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the Court at [7thforeclosure@nycourts.gov](mailto:7thforeclosure@nycourts.gov) and either
    - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned or
    - b. Request an AO/157 conference.
  2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.
  3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.

Only one auction may be conducted at one time.

### **Livingston County**

Prior to the COVID-19 health emergency, foreclosure auctions were held in the Government Center in Geneseo, New York. Foreclosure auctions in Livingston County occur at a frequency of less than 1 auction a week. As the volume of foreclosure auctions is low it is not anticipated that resuming auctions in Livingston County will pose issues of social distancing on the space where those auctions are held. Granted judgments of foreclosure and sale shall include the following language:

- a. Should the Referee be unable to conduct the sale at the location due to social distancing restrictions, the sale shall occur outside of the building as close to the main entrance of the building as practicable.
  - b. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.
1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the Court at [7thforeclosure@nycourts.gov](mailto:7thforeclosure@nycourts.gov) and either
    - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned or
    - b. Request an AO/157 conference.
  2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.
  3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.

Only one auction may be conducted at one time.

### **Ontario County**

Prior to the COVID-19 health emergency, foreclosure auctions were held on the front steps of the Ontario County Courthouse. Foreclosure auctions in Ontario County occur at a frequency of 1 auction per week. As the volume of foreclosure auctions is low it is not anticipated that resuming auctions in Ontario County will pose issues of social distancing on the space where those auctions are held. Granted judgments of foreclosure and sale shall include the following language:

- a. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.
- b. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.

1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the Court at 7thforeclosure@nycourts.gov and either
  - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned or
  - b. Request an AO/157 conference.
2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.
3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.

Only one auction may be conducted at one time.

### **Seneca County**

Prior to the COVID-19 health emergency, foreclosure auctions were held in the lobby of the Seneca County Courthouse. Foreclosure auctions in Seneca County occur at a frequency of less than 1 auction per week. As the volume of foreclosure auctions is low it is not anticipated that resuming auctions in Seneca County will pose issues of social distancing on the space where those auctions are held. Granted judgments of foreclosure and sale shall include the following language:

- a. Should the Referee be unable to conduct the sale at the location due to social distancing restrictions, the sale shall occur outside of the building as close to the main entrance of the building as practicable.
  - b. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.
1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the Court at 7thforeclosure@nycourts.gov and either
    - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned or
    - b. Request an AO/157 conference.
  2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.
  3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.

Only one auction may be conducted at one time.

### **Steuben County**

Prior to the COVID-19 health emergency, foreclosure auctions were held in the Steuben County Courthouse. Foreclosure auctions in Steuben County occur at a frequency of less than 1 auction per week. As the volume of foreclosure auctions is low it is not anticipated that resuming auctions in Steuben County will pose issues of social distancing on the space where those auctions are held. Granted judgments of foreclosure and sale shall include the following language:

- a. Should the Referee be unable to conduct the sale at the location due to social distancing restrictions, the sale shall occur outside of the building as close to the main entrance of the building as practicable.
  - b. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.
1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the Court at [7thforeclosure@nycourts.gov](mailto:7thforeclosure@nycourts.gov) and either
    - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned or
    - b. Request an AO/157 conference.
  2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.
  3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.

Only one auction may be conducted at one time.

### **Wayne County**

Prior to the COVID-19 health emergency, foreclosure auctions were held in the Wayne County Hall of Justice. Foreclosure auctions in Wayne County occur at a frequency of less than 1 auction per week. As the volume of foreclosure auctions is low it is not anticipated that resuming auctions in Wayne County will pose issues of social distancing on the space where those auctions are held. Granted judgments of foreclosure and sale shall include the following language:

- a. Should the Referee be unable to conduct the sale at the location due to social distancing restrictions, the sale shall occur outside of the building as close to the main entrance of the building as practicable.
- b. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.

1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the Court at [7thforeclosure@nycourts.gov](mailto:7thforeclosure@nycourts.gov) and either
  - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned or
  - b. Request an AO/157 conference.
2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.
3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.

Only one auction may be conducted at one time.

### **Yates County**

Prior to the COVID-19 health emergency, foreclosure auctions were held in the Yates Courthouse. Foreclosure auctions in Yates County occur at a frequency of less than 1 auction per week. As the volume of foreclosure auctions is low it is not anticipated that resuming auctions in Yates County will pose issues of social distancing on the space where those auctions are held. Granted judgments of foreclosure and sale shall include the following language:

- a. Should the Referee be unable to conduct the sale at the location due to social distancing restrictions, the sale shall occur outside of the building as close to the main entrance of the building as practicable.
  - b. The Referee must enforce any requirements currently in effect at the time of sale regarding social distancing and face coverings and the terms of sale for the auction must include these requirements.
1. In preparation of conducting a foreclosure auction, Plaintiff's attorney must contact the Court at [7thforeclosure@nycourts.gov](mailto:7thforeclosure@nycourts.gov) and either
    - a. Notify the court of the date and time of the scheduled auction and include an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned or
    - b. Request an AO/157 conference.
  2. Prior to the scheduled auction, Plaintiff's attorney must provide the Referee with an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.
  3. The Referee shall include, in the Referee's Report, a statement that Plaintiff's attorney has affirmed either that an AO/157 conference has been held or that an AO/157 conference was not required because the property is vacant and abandoned.

Only one auction may be conducted at one time.

## **Foreclosure Auction Rules - Seventh Judicial District**

The following rules shall be applicable for foreclosure auctions held within the Seventh Judicial District and shall be incorporated into the Terms of Sale for foreclosure auctions held within the Seventh Judicial District

1. A successful bidder must have in his/her possession at the time of the bid the full 10% of the sum bid, in cash or certified or bank check to be made payable to the Referee. In cases of a tax lien certificate foreclosure, the amount required is 25%.
  
2. No sale will be deemed final until the full 10% deposit has been paid to the Referee and a Memorandum of Sale has been signed, which must be completed immediately following the sale.
  
3. If a successful bidder fails to immediately pay the deposit and sign the Memorandum of Sale, the Referee will strike the bid and the second-highest bidder shall be permitted to tender the requisite deposit and sign the Memorandum of Sale.
  
4. Bidders are cautioned that the failure to pay the full purchase price bid and appropriate closing costs at a closing to be scheduled no later than thirty (30) days following the auction (unless otherwise stipulated by all parties to the sale) may result in the forfeiture of the 10% deposit.
  
5. If the successful bidder defaults in concluding the transaction at the purchase price, he/she may be liable for the difference if the property is subsequently sold at auction for lower price in a subsequent sale.
  
6. It is the responsibility of the bidder to acquaint him/herself with the property, any encumbrances thereon, and the Terms of Sale before placing a bid and to be certain that adequate funds are available to make good the bid.

### **COVID-19 Health Emergency Rules**

During the COVID-19 health emergency, the Referee must require the observance of any requirements in effect at the time of the foreclosure auction and at any subsequent closing. Prior to scheduling any auctions, Plaintiff's counsel should confer with the assigned Referee to ascertain whether the Referee wishes to continue to serve as a Referee during the COVID-19 health emergency. Should the Referee not wish to continue to serve as a Referee, the Plaintiff's attorney shall promptly make application to have a Successor Referee appointed.

The following must be incorporated into the Terms of Sale for auctions held during the COVID-19 health emergency:

1. All participants in the foreclosure auction, including bidders and prospective bidders, the Referee, and the Plaintiff's agent must comply with any face covering rule, regulation, or order in effect at the time of the foreclosure auction. The Referee shall refuse to accept any bid placed by a bidder not complying with this requirement. Should the Plaintiff's agent fail to comply with this requirement, the Referee shall cancel the auction, and advise Plaintiff's counsel the reason for the cancellation. Should the Referee cancel the auction due to Plaintiff's agent's failure to comply with this requirement, Plaintiff shall not recover any subsequent re-publication costs.

2. All participants shall maintain appropriate social distancing during the auction. The Referee, the successful bidder, and the Plaintiff's agent shall maintain appropriate distancing while executing the Memorandum of Sale and the tendering of the deposit. Only one auction may be conducted at one time.

3. All participants in the closing must comply with any face covering rule, regulation, or order in effect at the time of the closing. Should a bidder fail to comply, the Referee may cancel the closing and hold the bidder in default.

### **Scheduling Foreclosure Auctions**

In order to schedule an auction in Monroe County, Plaintiff attorneys must now contact the Monroe Foreclosure Part at [monroeforeclosure@nycourts.gov](mailto:monroeforeclosure@nycourts.gov) for an appointment. Only one auction may be scheduled at one time and auctions may only be scheduled in half-hour blocks beginning at 10:00 AM and ending at 3:30 PM. All emails must provide the following information regarding the scheduled foreclosure auction: (1) the title of the action with index number; (2) the date and time requested for the auction; (3) the Plaintiff attorney; (4) the Referee; and (5) an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned.

In all other counties in the Seventh Judicial District Plaintiff attorneys do not need contact the court prior to scheduling an auction but must email the court of the scheduled auction at [7thforeclosure@nycourts.gov](mailto:7thforeclosure@nycourts.gov).

All emails must provide the following information regarding the scheduled foreclosure auction: : (1) the title of the action with index number; (2) the date and time requested for the auction; (3) the Plaintiff attorney; (4) the Referee; and (5) an affirmation stating either that an AO/157 conference has been held or that an AO/157 conference is not required because the property is vacant and abandoned.