



**Supreme Court of the State of New York
County of Kings
360 Adams Street
Brooklyn, NY 11201**

May 3, 2006

Attached are new forms for Order of Reference and Judgment of Foreclosure and Sale to be used for ex-parte applications as well as cases on notice.

Please distribute to all firms. Thank you.

3/14/06

At Part _____ of the
Supreme Court of the State of New
York, held in and for the County of
Kings, at the Courthouse, at Civic
Center, Brooklyn, New York, on the
day of _____, 2006.

PRESENT:
HON. _____,
Justice.

----- X

Plaintiff,

**JUDGMENT OF
FORECLOSURE AND
SALE**

- against -

Defendants.

Index No. _____
Foreclosure of:
(Property Address) _____
(Block and Lot) _____

----- X

On the Summons, Verified Complaint and Notice of Pendency duly filed in this action on the _____ day of _____, 200_, The Order of Reference dated _____, and all proceedings thereon, and on reading and filing the Affirmation of _____, Esq., counsel for plaintiff, dated the _____ day of _____, 200_, from which it appears that each of the defendants herein have been duly served with the Summons and Complaint in this action, or have voluntarily appeared personally or by their respective attorneys, and stating that more than the legally required number of days had elapsed since said defendants were so served and/or appeared; and that none of the defendants had served any answer to said Complaint, nor had their time to do so been extended; and that the Complaint herein and Notice of Pendency containing all the particulars required to be stated therein was duly filed

in the Office of the Clerk of the County of Kings on the _____ day of _____, 200__, and has not been amended to add new parties or to embrace real property not described in the original complaint, and a Referee having been duly appointed to compute the amount due to the plaintiff upon the bond/note and mortgage set forth in the Complaint and to examine and report whether the mortgaged premises can be sold in parcels,

AND, on reading the report of _____, Esq., the Referee named in said Order of Reference, by which Report, dated the _____ day of _____, 200__, attached hereto, it appears that the sum of \$ _____ was due as of _____, and that the mortgaged premises should be sold in one parcel,

NOW, upon proof of due notice of this application upon all parties who had not waived the same, and upon proof of service of the Order of Reference as provided therein,

ON MOTION of _____, attorney for the plaintiff, it is

ORDERED, that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED, that the said Report of _____, Esq., dated _____ be, and the same is hereby in all respects ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that the above-described mortgaged premises or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold, in one parcel, at public

auction in Room 261 of Kings County Supreme Court, 360 Adams Street, Brooklyn, New York 11201, on a Thursday afternoon at 3:00 P.M., by and under the direction of _____, Esq. who is hereby appointed Referee for that purpose, that the said Referee shall set the date of sale and give public notice of the time and place of sale in accordance with RPAPL 231 in _____ and it is further

ORDERED, ADJUDGED AND DECREED that said Referee shall accept at such sale the highest bid offered by a bidder, who shall be identified upon the court record, and shall require that such successful bidder immediately pay to the Referee in cash or certified or bank check payable to such Referee, ten percent of the sum bid and shall execute Terms of Sale for the purchase of the premises, unless such successful bidder is the plaintiff herein, in which case, no deposit against the purchase price shall be required, and it is further

ORDERED, ADJUDGED AND DECREED that in the event that the first successful bidder fails to immediately pay the ten percent deposit as provided herein or fails to execute the Terms of Sale immediately following the bidding upon the subject property, the property shall thereafter immediately, on the same day, be reoffered at auction, and it is further

ORDERED, ADJUDGED AND DECREED that the closing of title shall take place at the office of the Referee or at such other location as the Referee shall determine within forty-five days after such sale unless otherwise stipulated by all parties. The Referee shall transfer title only to the successful bidder at the auction. Any delay or adjournment of the closing date beyond forty-five days may be stipulated among the parties, with the Referee's consent, up to ninety days

from the date of sale, but any adjournment beyond ninety days may be set only with the approval of this Court, and, it is further

ORDERED, ADJUDGED AND DECREED that the Referee deposit all funds received pursuant to this Order in his/her own name as Referee in Referee's I.O.L.A. account maintained for legal clients at a bank within the City of New York or in an FDIC-insured bank of the Referee's choice within the City of New York [or in _____ Bank], and it is further

ORDERED, ADJUDGED AND DECREED that said Referee on receiving the proceeds of such sale shall forthwith pay therefrom:

FIRST: The statutory fees and commissions of said Referee pursuant to CPLR § 8003 (b) which shall not exceed \$500 unless the sale price (the amount of the accepted bid) exceeds \$50,000. In the event the sale price exceeds fifty thousand dollars and additional compensation (including commissions) in excess of \$500 is sought pursuant to CPLR § 8003(b), and if no surplus monies are produced by the sale, the parties may present a stipulation, signed by the Referee and all parties appearing, agreeing to a stated sum, to be so-ordered by the Court. Where surplus monies will be available following distribution of sums as provided herein, or where the parties are unable to agree to the Referee's proper compensation under CPLR § 8003 (b), application shall be made to this Court on notice to all parties known to be entitled to claim against any surplus monies, including the defaulting owner of the equity of redemption. Such application shall be promptly submitted to the Court within five days of the transfer of the deed and prior to filing the Report of Sale. The five day period for payment of surplus money into Court as set forth in RPAPL § 1354(4), and the thirty day period set

forth in RPAPL § 1355 for the filing of the Report of Sale shall be deemed extended pending the decision of the Court regarding such application.

In the event a scheduled sale is cancelled or postponed, pursuant to CPLR § 8003(a), plaintiff shall compensate the Referee in the sum of \$250.00 for each adjournment or cancellation unless the Referee has requested the delay. Such compensation may be recouped from the proceeds of sale as a cost to plaintiff. This Order shall constitute the necessary prior authorization for compensation as set forth herein.

No compensation in excess of \$550, including compensation authorized pursuant to CPLR § 8003 (a) for computation of the sum due to plaintiff, may be accepted by the Referee without Court approval and compliance with the filing provisions of Section 36.4 of the Rules of the Chief Judge.

SECOND: The expenses of the sale, including the cost of advertising as shown on the bills presented and certified by said Referee to be correct, copies of which shall be annexed to the Report of Sale.

THIRD: Pursuant to Real Property Actions and Proceedings Law § 1354, in accordance with their priority according to law, taxes, assessments, sewer rents, water rates and any charges placed upon the property by a city agency which have priority over the foreclosed mortgage, which are liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment.

FOURTH: Said Referee shall then pay to the plaintiff or its attorney the sum of \$ _____ for costs and disbursements in this action to be taxed by the Clerk and inserted herein, with interest from the date hereof, [together with

an additional allowance of \$ _____ hereby awarded to the plaintiff in addition to costs with interest thereon from the date hereof,] and also the sum of \$ _____ the said amount so reported due as aforesaid, together with interest thereon pursuant to the terms of the Note from _____, the date the interest was calculated to in said Report, to the date of entry of this Order, and thereafter at the statutory post-judgment rate to the date of transfer of title, or so much thereof as the purchase money of the mortgaged premises will pay of the same, together with \$ _____ hereby awarded to the plaintiff as reasonable legal fees, together with any advances as provided for in the note and mortgage which plaintiff may have made for taxes, insurance, principal and interest and any other charges due to prior mortgages or to maintain the premises pending consummation of this foreclosure sale, not previously included in the computation, upon presentation to the Referee of receipts for said expenditures, all together with interest thereon pursuant to the note and mortgage as above provided. Copies of such receipts shall be annexed to the Referee's Report of Sale. Plaintiff shall timely move to confirm the Referee's Report of Sale pursuant to RPAPL § 1355. It is further

ORDERED, ADJUDGED AND DECREED that in case the plaintiff be the purchaser of said mortgaged premises at said sale, said Referee shall not require the plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver only to the plaintiff a deed of the premises sold upon the payment to said Referee of the sum awarded to him or her under the above provisions marked "FIRST", "SECOND", and "THIRD" if such expenses were paid by the Referee, or in lieu of the payment of said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing payment thereof. The balance of the amount bid, after deducting therefrom the

aforementioned payments to the Referee for compensation and expenses, taxes, assessments, sewer rents, water rates, and priority liens of a city agency, shall be allowed to the plaintiff and applied by said Referee upon the amounts due to the plaintiff as specified in item marked "FOURTH". If upon so applying the balance of the amount bid, there shall be a surplus over and above the said amounts due to the plaintiff, the plaintiff shall pay to the said Referee, upon delivery to plaintiff of said Referee's deed, the amount of such surplus [which shall be applied by the Referee, upon motion made pursuant to RPAPL § 1351(3) and proof satisfactory to the Referee of the sums due thereon, to any subordinate mortgage duly recorded against the property, pursuant to RPAPL § 1354 (3), which payment shall be reported in the Referee's Report of Sale.] Any surplus remaining after all payments as herein provided shall be deposited into Court in accordance with RPAPL § 1354 (4) and the Referee shall immediately give notice of such surplus to the owner of the mortgaged premises as identified by plaintiff at the time of the sale, and it is further

ORDERED, ADJUDGED AND DECREED that said Referee take the receipt of the plaintiff or plaintiff's attorney for the amounts paid as hereinbefore directed in item marked "FOURTH", and file it with his/her Report of Sale, that he/she deposit the surplus monies, if any, with the Kings County Clerk within five days after the same shall be received unless such period be deemed extended by the filing of an application for additional compensation as set forth herein, to the credit of this action, to be withdrawn only upon order of the Court, signed by a Justice of the Court; that said Referee make his/her Report of such Sale under oath showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payment was made, and file it with the Kings County Clerk, with a copy to the Chambers of the Appointing Justice, within thirty days

after completing the sale and executing the proper conveyance to the purchaser or within thirty days of the decision of the court with respect to any application for additional compensation; and it is further

ORDERED, ADJUDGED AND DECREED, that if the proceeds of such sale be insufficient to pay the amount reported due to the plaintiff with interest and costs as aforesaid, the plaintiff may recover of the defendant(s) (name) _____ the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgaged debt remaining unsatisfied after the sale of the mortgaged premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made as prescribed by Section 1371 of the Real Property Actions and Proceeding Law within 90 days of the delivery of the deed by the Referee, and the amount thereof is determined and awarded by an order of this Court as provided for in said action; and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at such sale be let into possession on production of the Referee's deed or deeds; and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the defendants in this action, and all persons claiming under any of them after the filing of such Notice of Pendency of this action, be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said mortgaged premises and each and every part thereof; and it is further

ORDERED, ADJUDGED AND DECREED, that said premises is to be sold in one parcel in "as is" physical order and condition on the day of sale, subject to any state of facts that an inspection of the premises would disclose, any state of facts that an accurate survey of the premises would show, any covenants, restrictions, declarations, reservations, easements, right of way and public utility agreements of record, any building and zoning ordinances of the municipality in which the mortgaged premises is located and possible violations of same, any rights of tenants or persons in possession of the subject premises, prior liens of record, if any, except those liens addressed in section 1354 of the Real Property Actions and Proceedings law, and any equity of redemption of the United States of America to redeem the premises within 120 days from the date of sale. Risk of loss shall not pass to purchaser until closing of title.

ORDERED, that in Absence of the Referee, the Court may designate a Substitute Referee forthwith; and it is further

ORDERED, that the Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED, that a copy of this Judgment with Notice of Entry shall be served upon the designated Referee, the owner of the equity of redemption as of the date of this Order, any tenants named in this action and any other party entitled to notice within twenty days of entry and no less than thirty days prior to sale; and it is further

ORDERED, that the Plaintiff shall serve a copy of the Notice of Sale upon the Ex Parte Office at least ten (10) days prior to the scheduled sale.

ENTER:

J.S.C.

3/14/06

At Part of the
Supreme Court of the State of New
York, held in and for the County of
Kings, at the Courthouse, at Civic
Center, Brooklyn, New York, on the
day of , 2006.

P R E S E N T:
HON.,
Justice

-----X

,
Plaintiff,

Index No.

ORDER OF REFERENCE

- against -

Foreclosure of:
(Property Address)
(Block and Lot)

,
Defendants.

-----X

UPON review of the Notice of Motion dated _____, the
Summons, Verified Complaint and Notice of Pendency filed in this action on
_____, annexed thereto, and upon the
Affirmation of _____ of (name of firm)
_____, counsel for plaintiff, dated _____, from
which it appears that this action was brought to foreclose a certain mortgage on
real property situated in the County of Kings, State of New York,
at _____ (address) _____

(Section ____ Block ____ Lot ____) by reason of certain defaults as alleged in the Complaint, and upon the Affidavit of _____, who is (nature of authority) _____ sworn to _____, and it further appearing that all of the Defendants have been duly served with a copy of the Summons and Complaint or have appeared herein, copies of such affidavits of service being annexed to the motion as Exhibit _____ [except the Defendants "JOHN DOE #1 through JOHN DOE #10" who were not served copies of the Summons and Complaint and are not necessary parties to this action,] and no answer has been interposed by the Defendants though the time so to do has expired; and it appearing that none of the Defendant [s] is an infant, incompetent or absentee, or in the military, and that since the filing of the Notice of Pendency of this action on _____, the complaint has not been amended in any manner whatsoever; on the pleadings and papers heretofore filed herein and no one appearing in opposition hereto,

NOW, on the motion of _____, attorneys of record for the Plaintiff, it is

ORDERED, that the motion is granted; and it is further

ORDERED, that this action be, and the same is hereby referred to _____, having an office at _____, telephone number _____,

as Referee to ascertain and compute the amount due to the Plaintiff herein for principal, interest, and other disbursements advanced as provided for by statute and in the Note and Mortgage upon which this action was brought, to examine and report whether or not the mortgaged premises should be sold in parcels, and that the Referee make his/her report no later than 60 days of the date of this order and

that, except for good cause shown, the Plaintiff shall move for judgment no later than 60 days of the date of the Referee's report and it is further

ORDERED, that upon submission of the Referee's Report, Plaintiff shall pay \$250 to the Referee as compensation for his/her services, which sum may be recouped as a cost of litigation.

ORDERED that the Referee appointed herein is subject to the requirements of Rule 36.2 (c) of the Chief Judge, and, if the Referee is disqualified from receiving an appointment pursuant to the provision of that Rule, the Referee shall notify the Appointing Judge forthwith; 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 NYCCR Part 36), including but not limited to, section 36.2(e) ("Disqualifications from appointment"), and section 36.2(d) ("Limitations on appointments based upon compensation"), and it is further

ORDERED, that a default judgment in favor of the Plaintiff be granted as to the claim described in the Plaintiff's Complaint herein, and it is further

[**ORDERED**, that the caption of this action be amended by striking therefrom the remaining Defendants sued herein as "John Doe #1" to "John Doe #10, all without prejudice to the proceedings heretofore had herein, and it is further

ORDERED, that the caption of this action as amended, shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

,
Plaintiff,

Index No. _____

-against-

,
Defendant(s).

]

and it is further

ORDERED, that a copy of this Order with Notice of Entry shall be served

upon the designated Referee, the **owner of the equity of redemption**, any **tenants** named in this action and any other party entitled to notice within 20 days of entry and no less than 30 days prior to any hearing before the Referee. The Referee shall not proceed to take evidence as provided herein without proof of such service, which proof must accompany any application for Final Judgment of Foreclosure and Sale.

ENTER,

Hon. **J.S.C.**