NOTICE TO THE BAR

RESIDENTIAL MORTGAGE FORECLOSURE RULES – AMENDMENTS TO RULES 4:64-1 AND 4:64-2; REVISED FORM CERTIFICATIONS/AFFIDAVITS

A January 31, 2011 Notice to the Bar sought comments on the December 20, 2010 emergent amendments to the residential mortgage foreclosure rules. After reviewing the comments received, the Supreme Court has adopted further amendments to Rules 4:64-1 and 4:64-2. Published with this notice (as Attachment A) are the Court's June 9, 2011 Order and those amendments, which are effective immediately. The Court's Order also contains instructions for counsel in all pending residential mortgage foreclosure actions.

A January 7, 2011 Notice to the Bar promulgated the model form certifications of diligent inquiry required to be annexed to residential mortgage foreclosure complaints and to notices of motion for judgment and to be filed in pending mortgage foreclosure actions pursuant to the Court's December 20, 2010 Order. Accompanying this Notice are model forms that supersede those previously promulgated forms effective immediately. The new model forms promulgated by this Notice are as follows: (1) Certification of Diligent Inquiry to be Annexed to Residential Mortgage Foreclosure Complaints Pursuant to Rules 1:5-6(c)(1)(E) and 4:64-1(a)(2) and (a)(3) (Attachment B); (2) Affidavit of Diligent Inquiry to be Annexed to Notices of Motion for Judgment in Residential Mortgage Foreclosure Actions Pursuant to Rule 4:64-2 and That Must be Submitted in Actions Pending Judgment or Sale as of June 9, 2011 (Attachment C); and (3) Affidavit of Amount Due to be Annexed to Notices of Motion for Judgment in Residential Mortgage Foreclosure Actions Pursuant to Rule 4:64-2 and That Must be Submitted in Foreclosure Actions Pending as of June 9, 2011 (Attachment D).

Questions concerning these rule amendments and the revised certification and affidavit forms may be directed to Kevin M. Wolfe, Assistant Director for Civil Practice Division, at (609) 292-8470 or Kevin.Wolfe@judiciary.state.nj.us.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: June 9, 2011

Attachment A

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 4:64-1 and 4:64-2 of the Rules Governing the Courts of the State of New Jersey are adopted to be effective immediately.

It is FURTHER ORDERED with regard to residential mortgage foreclosure actions pending as of the date of this Order, that before entry of judgment, plaintiff's counsel shall be required to file an affidavit, which shall be served on the parties identified in *Rule* 4:64-1(d)(1)(A) as those required to be served with the notice of motion for judgment (a) stating that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer (1) who personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage, and recorded assignments, if any, submitted to the court, and (2) who confirmed the accuracy of those documents; (b) setting out the date and mode of communication employed; (c) setting out the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated; and (d) attesting that the complaint and all subsequent documents filed with the court comport with the requirements of Rule 1:4-8(a).

It is FURTHER ORDERED that in all residential mortgage foreclosure actions in which judgment has been entered but no sale of the property has

occurred as of the June 9, 2011 date of this Order, plaintiff's counsel before the sale of the property shall be required to file an affidavit, which shall be served on the parties identified in *Rule* 4:64-1(d)(1)(A) as those required to be served with the notice of motion for judgment (a) stating that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer (1) who personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage, and recorded assignments, if any, submitted to the court, and (2) confirmed their accuracy; (b) setting out the date and mode of communication employed; (c) setting out the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated; and (d) attesting that the complaint and all subsequent documents filed with the court comport with the requirements of *Rule* 1:4-8(a).

For the Court,

Chief Justice

Dated: June 9, 2011

4:64-1. Foreclosure Complaint, Uncontested Judgment Other Than In Rem Tax Foreclosures

(a) Title Search; Certifications.

(1) ...no change.

(2) In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry [stating]:

(A) confirming that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer (i) who [(i) personally reviewed the documents being submitted and (ii) confirmed their accuracy; and] personally reviewed the complaint and confirmed the accuracy of its content, as mandated by paragraphs (b)(1) through (b)(10) and (b)(12) through (b)(13) of this Rule, based on business records kept in the regular course of business by the plaintiff or the plaintiff's mortgage loan servicer, and (ii) who, if employed by the plaintiff's mortgage loan servicer, (a) identified the relationship between the mortgage loan servicer and the plaintiff, and (b) confirmed the authority of the mortgage loan servicer to act on behalf of the plaintiff; and

(B) stating the date and mode of communication employed and the name(s), title(s) and responsibilities in those titles of the plaintiff's or plaintiff's mortgage loan servicer's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

(3) ...no change.

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

(f) ...no change.

(g) ...no change.

(h) ...no change.

(i) ...no change.

Note: Source — *R.R.* 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as paragraph (a)(1), and new subparagraphs (a)(2) and (a)(3) added December 20, 2010 to be effective immediately; subparagraphs (a)(2)(A) and (B) amended June 9, 2011 to be effective immediately.

4:64-2. Proof; Affidavit

(a) ...no change.

(b) ...no change.

(c) Time; signatory. The affidavit prescribed by this rule shall be sworn to not more than 60 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, [on personal knowledge of all the facts recited therein, and if the affiant is not the plaintiff, it shall also state that the affiant is authorized to make the affidavit] on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records kept in the regular course of business. In the affidavit the affiant shall confirm:

(1) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;

(2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;

(3) that the financial information contained in the affidavit is accurate; and

(4) that the default remains uncured.

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer who (A) personally reviewed the [documents] affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and [(3)] (4) that the aforesaid documents comport with the requirements of *R.*1:4-8(a).

Note: Source — *R.R.* 4:82-3. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; text amended and designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2008 to be effective September 1, 2008; caption amended and new paragraph (d) added December 20, 2010 to be effective immediately; paragraphs (c) and (d) amended June 9, 2011 to be effective immediately.

ATTACHMENT B

CERTIFICATION OF DILIGENT INQUIRY TO BE ANNEXED TO RESIDENTIAL MORTGAGE FORECLOSURE COMPLAINTS PURSUANT TO RULE 1:5-6(c)(1)(E) AND RULE 4:64-1(a) (2) and (a) (3)

_____, Esq., of full age, hereby certifies and says:

1. On [*insert date*], I communicated by [*insert mode of communication*] with the following named employee(s) of [*insert the plaintiff's name or insert the plaintiff's mortgage loan servicer's name*], who stated that he/she personally reviewed the complaint to be filed with the court and that he/she confirmed compliance with *Rule* 4:64-1(b)(1) through (b)(10) and (b)(12) through (b)(13).

2. The name, title and responsibilities of the plaintiff's employee(s) or plaintiff's mortgage loan servicer's employee(s) with whom I communicated are: [*insert the employee's name*] [*insert the employee's title*] [*insert the employee's responsibilities*].

3. [*If an employee of the plaintiff's mortgage loan servicer*] The above-named employee(s) stated that the relationship between his/her employer and the plaintiff is: [*insert description of the relationship*], and confirmed that his/her employer is authorized to act on behalf of the plaintiff in this action.

3/4. Based on my communication with the above-named employee(s) of plaintiff or plaintiff's mortgage loan servicer, as well as my own inspection of the loan information supplied by the plaintiff or the plaintiff's mortgage loan servicer and other diligent inquiry, I execute this certification to comply with the requirements of Rules 1:4-8(a), 1:5-6(c)(1)(E), and 4:64-1(a)(2) and (a)(3).

4/5. I am aware that I have a continuing obligation under Rule 1:4-8 to amend this certification if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support for any factual assertions proffered by plaintiff in any court filings or documents in this case.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

[*Insert Name of Law Firm*]

By: _____
Attorney sign above and type/ print name below

ATTACHMENT C

AFFIDAVIT OF DILIGENT INQUIRY TO BE ANNEXED TO NOTICES OF MOTION FOR JUDGMENT IN RESIDENTIAL MORTGAGE FORECLOSURE ACTIONS PURSUANT TO RULE 4:64-2 AND THAT MUST BE SUBMITTED IN ACTIONS PENDING JUDGMENT OR SALE AS OF JUNE 9, 2011

Name of Law Firm
Law Firm Address
Telephone Number
Attorney for Plaintiff

Superior Court of New Jersey
Chancery Division _____ County
General Equity

[*Insert Plaintiff's Name*],	Docket No: F
Plaintiff,	CIVIL ACTION
v.	*RULE* 4:64-2(d) AFFIDAVIT OF DILIGENT INQUIRY AND ACCURACY OF FORECLOSURE DOCUMENTS AND FACTUAL ASSERTIONS
[*Insert First Defendant's Name*], *et al,*	
Defendant.	

_____, Esq., of full age, being duly sworn according to law, depose and say:

1. I am an attorney at law duly licensed to practice in the state of New Jersey and am affiliated with the law firm of [*insert law firm name*], attorneys of record for the plaintiff in the above-captioned residential mortgage foreclosure action. I am responsible for this mortgage foreclosure action and am fully familiar with the pleadings and documents filed in this action and the facts set forth in this affidavit.

2. On [*insert date(s)*], I communicated by [*insert mode of communication*] with the following named employee(s) of [*insert the name of the plaintiff or the name of the plaintiff's mortgage loan servicer*], who informed me that he/she personally reviewed

the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, about to be submitted to the court; and that he/she confirmed the accuracy of those documents:

Name of the employee(s):

Title of the employee(s):

Responsibilities of the employee(s):

3. Based on my communication with the above-named employee(s) of the plaintiff or the plaintiff's mortgage loan servicer, as well as my own inspection of the documents about to be filed with the court and other diligent inquiry, I execute this affidavit to comply with the requirements of Rule 4:64-2(d) and Rule 1:4-8(a).

4. I am aware that I have a continuing obligation under Rule 1:4-8 to amend this affidavit if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support for any factual assertion proffered by the plaintiff in any court filings and documents in this case.

[*Insert Name of Law Firm*]

By: _____
Attorney sign above and type/print name below

Sworn to and Subscribed before me, this
_____ day of _____, 20____

_____
Notary Public of the State of _____
My Commission Expires: _____

[*NOTARY SEAL*]

ATTACHMENT D

AFFIDAVIT OF AMOUNT DUE TO BE ANNEXED TO NOTICES OF MOTION FOR JUDGMENT IN RESIDENTIAL MORTGAGE FORECLOSURE ACTIONS PURSUANT TO RULE 4:64-2 AND THAT MUST BE SUBMITTED IN FORECLOSURE ACTIONS PENDING AS OF JUNE 9, 2011

Name of Law Firm
Law Firm Address
Telephone Number
Attorney for Plaintiff

Superior Court of New Jersey
Chancery Division _____ County
General Equity

[*Insert Plaintiff's Name*],	Docket No: F
Plaintiff,	CIVIL ACTION PROOF OF AMOUNT DUE AFFIDAVIT AND SCHEDULE
v.	
[*Insert First Defendant's Name*], *et al,*	
Defendant.	

_____, of full age, being duly sworn according to law, depose and say:

1. [*If by an employee of the plaintiff]* I, *[insert the affiant's name*], am employed by the plaintiff at its [*insert the city/state location where the affiant works*] office as a [*insert the affiant's title/position*]. My responsibilities in this position are [*insert affiant's responsibilities*]. I am authorized to make this affidavit on the behalf of the plaintiff.

1. [*If by an employee of plaintiff's mortgage loan servicer*] I, [*insert the affiant's name*], am employed by [*insert the plaintiff's mortgage loan servicer's name*] at its [*insert the city/state location where affiant works*] office as a [*insert the affiant's title/position*]. My responsibilities in this position are: [*insert affiant's responsibilities*]. Said mortgage loan servicer is authorized to service and handle mortgage transactions on behalf of the plaintiff involving the borrowers named in the plaintiff's complaint. The plaintiff has not revoked said mortgage loan servicer's authority and, as such, I have the authority to make, on behalf of the plaintiff, the amount due computation presented in the attached schedule of amount due.

2. I have thoroughly reviewed [*insert the plaintiff's or plaintiff's mortgage loan servicer's*] books and business records concerning the note and mortgage loan described in the plaintiff's complaint.

3. Said books and business records indicate that the default of the defendants-borrower(s), _____, remains uncured and there is due to the plaintiff in this action the sum of $_____, as set forth in the Proof of Amount Schedule annexed hereto. I have reviewed all entries and calculations, and they are correct. *Per diem* interest, as set forth in the annexed schedule, will accrue on the principal from _____, 20__.

4. The property described in the complaint in this action cannot be divided and should be sold as a single tract.

5. There are no just debts, set-offs, credits or allowances due or to become due from the plaintiff to the defendant-borrower(s), other than those set forth herein.

6. The plaintiff is the owner/ holder of the aforesaid note and mortgage.

7. I understand that the court will rely upon this affidavit in support of the plaintiff's application for a foreclosure judgment in the within action.

_____
Sign Above and Type or Print Name Below

Sworn to and Subscribed before me, this
_____ day of _____, 20____

_____
Notary Public of the State of _____
My Commission Expires: _____

[*NOTARY SEAL*]

[Attach *Court Rule* Appendix XII-J Proof of Amount Schedule]