



Order Promulgating Amendments to Administrative Order No. 49

Pursuant to its authority under the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48, the Vermont Supreme Court orders:

1. That ¶ 2 of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):
 2. For these reasons, the Court hereby declares a judicial emergency pursuant to Administrative Order 48. The emergency will go into effect immediately and will extend until January 1, 2022 ~~November 1, 2021~~, unless extended by order of this Court. This Order supersedes any previously issued administrative directive or order, including orders issued in the Superior Court, related to COVID-19.
2. That ¶ 22 of Administrative Order No. 49 be amended to read as follows (new matter underlined):

22. Pleading Requirements in Foreclosure Proceedings:

- a. Notwithstanding the provisions of Rule 80.1 of the Vermont Rules of Civil Procedure, in any action for residential foreclosure filed between March 27, 2020, and December 31, 2021, the plaintiff must attach to the complaint the plaintiff's certification that the filing complies with the federal CARES Act and Regulation X, 12 C.F.R. § 1024.39, or that the CARES Act does not apply to the filing.
- b. If the complaint was filed without the certification required in ¶ 22(a), such certification must be filed with the court by August 14, 2020.
- c. The certification required in ¶ 22(a) must be in substantially the form reflected in Appendix B to this amendment.
- d. In all foreclosures of a one-to-four-unit residential property filed after the effective date of this amendment, and prior to midnight, December 31, 2021, the plaintiff shall attest that the foreclosure filing complies with or is exempt from the requirements of the Consumer Financial Protection Bureau's Temporary COVID-19 Procedural Safeguards Rule at 12 C.F.R. § 1024.41(f)(3), by completing and filing [Appendix C](#), a Certification of Compliance with or Exemption from 12 C.F.R. § 1024.41(f)(3), with the foreclosure complaint.

- e. In all foreclosures of a one-to-four-unit residential property filed on or after August 31, 2021, but before the effective date of this amendment, the Plaintiff shall attest that the foreclosure filing complies with or is exempt from the requirements of the Consumer Financial Protection Bureau’s Temporary COVID-19 Procedural Safeguards Rule at 12 C.F.R. § 1024.41(f)(3), by completing and filing Appendix C, a Certification of Compliance with or Exemption from 12 C.F.R. § 1024.41(f)(3), no later than 21 days from the effective date of this amendment.
- f. The action may be subject to dismissal without prejudice for plaintiff’s failure to comply with ¶ 22(d) or (e).
- g. Permanent Rule Changes. The Advisory Committee on Rules of Civil Procedure shall review the current state of state and federal law concerning foreclosure proceedings and propose any necessary changes to the Civil Rules to take effect upon expiration of this Administrative Order.

3. That the following Explanatory Note be added:

Explanatory Note—October 14, 2021 Amendment

The effective date of the Administrative Order in ¶ 2 is extended until January 1, 2022, to allow for continued flexibility in court operations to respond to the course of the COVID-19 pandemic.

Paragraph 22 is amended to add pleading provisions regarding foreclosure proceedings affecting one-to-four-unit residential properties filed between August 31, and December 31, 2021. These provisions are required to satisfy amendments of Regulation X promulgated by the Federal Consumer Financial Protection Bureau (CFPB) requiring such foreclosure plaintiffs to attest to compliance with CFPB requirements prior to filing for foreclosure. The CFPB amendments were designed to assist mortgage borrowers affected by the COVID-19 emergency. See 86 Fed. Reg. 34899 (June 30, 2021). The final regulation establishes temporary procedural safeguards to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages. 12 C.F.R. § 1024.41 (eff. Aug. 31, 2021).

Paragraph 22(d) requires the plaintiff in such a foreclosure proceeding filed after the effective date of this rule to certify compliance with or exemption from 12 C.F.R. § 1024.41 by filing attached Appendix C with the complaint. New paragraph (e) requires a foreclosure plaintiff in such a proceeding filed on or after August 31, 2021, but filed before the effective date of this rule, to make a similar certification by filing Appendix C within 21 days from the effective date of this rule.

New paragraph (f) is intended to give the trial court discretion to dismiss the foreclosure proceeding without prejudice in the event of noncompliance with paragraph (d) or (e) that the parties are unable to resolve.

Paragraph (g) carries forward former paragraph (d).

The language of Appendix C tracks paragraphs (d) and (e) of the amended rule and has boxes to check specifically indicating compliance with, or exemption from, the requirements of paragraphs (d) and (e). Because of the need for uniformity, the required certification must be in the form reflected in Appendix C.

4. That this order is effective immediately and extends until January 1, 2022, unless extended further by the Court.

5. That the Chief Justice is authorized to report this order to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 14th day of October, 2021.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice