Rule 3410. Face-to-face meeting for foreclosure of reverse cooperative apartment unit loans. (a) For purposes of this rule, default shall only include a borrower's breach of an obligation under the reverse mortgage cooperative loan agreement, and shall not include death of the borrower, except as detailed in paragraph one of subdivision (i) of this rule, or the borrower's permanent vacating of the cooperative unit.

(b) In any action involving a borrower's default under a reverse cooperative apartment unit loan, as defined in paragraph (a) of subdivision one of section six-o of the banking law, the lender shall file a petition with the supreme court of the county in which the cooperative apartment is located stating that the loan is in default and the reason for the default. The petition must be served on the borrower pursuant to section three hundred eight of this chapter. Within ten days of the date of service of the notice to the borrower, the petitioner must file a specialized request for judicial intervention with the clerk. Within sixty days of receipt of the notice or on such adjourned date as has been agreed to by the parties, the court shall hold a mandatory settlement conference for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the loan documents, including, but not limited to:

1. determining whether the parties can reach a mutually agreeable resolution to help the borrower avoid losing his or her cooperative apartment unit, and evaluating the potential for a resolution or other workout options may be agreed; or

2. whatever other purposes the court deems appropriate.

(c) At any meeting held pursuant to this rule, the lender and the borrower shall appear in person or by counsel, and each party's representative at the meeting shall be fully authorized to dispose of the matter. If the borrower is appearing without counsel, the court shall inform the borrower of the nature of the action and his or her rights and responsibilities. Where appropriate, the court may permit the borrower or a representative of the borrower or the defendant to attend the settlement conference telephonically or by video-conference.

(d) Upon the filing of the notice of default with the court, the court shall send either a copy of the notice or the borrower's name, address

and telephone number (if available) to a housing counseling agency or agencies on a list designated by the department for the geographic region in which the borrower resides. Such information shall be used by the designated housing counseling agency or agencies exclusively for the purpose of making the borrower aware of housing counseling and foreclosure prevention services and options available to them.

(e) The court shall promptly send a notice to parties advising them of the time and place of the meeting, the purpose of the meeting and the requirements of this rule. The notice shall be in a form prescribed by the court, and shall advise the parties of the documents that they shall bring to the meeting.

(f) Both the lender and the borrower shall negotiate in good faith to reach a mutually agreeable resolution, including but not limited to a re-payment agreement, or any other loss mitigation, if possible. Compliance with the obligation to negotiate in good faith pursuant to this rule shall be measured by the totality of the circumstances, including but not limited to the following factors:

1. compliance with the requirements of this rule and applicable regulations pertaining to the face-to-face meeting process;

2. compliance with applicable lending and servicing laws, rules, regulations, investor directives, and loss mitigation standards or options; and

3. conduct consistent with efforts to reach a mutually agreeable resolution, including but not limited to, avoiding unreasonable delay, appearing at the meeting with authority to fully dispose of the matter, avoiding moving forward to take possession while loss mitigation applications and attempts are pending, and providing accurate information to the department and all parties.

Neither of the parties' failure to make the offer or accept the offer made by the other party is sufficient to establish a failure to negotiate in good faith.

(g) Upon a finding by the court that the plaintiff failed to negotiate in good faith pursuant to subdivision (f) of this rule, the court shall,

at a minimum, toll the accumulation and collection of interest, costs, and fees during any undue delay caused by the plaintiff, and where appropriate, the court may also impose one or more of the following:

1. compel production of any documents requested by the court or the court's designee during the settlement conference;

2. impose a civil penalty payable to the state that is sufficient to deter repetition of the conduct and in an amount not to exceed twenty-five thousand dollars;

3. the court may award actual damages, fees, including attorney fees and expenses to the defendant as a result of plaintiff's failure to negotiate in good faith; or

4. award any other relief that the court deems just and proper.

(h) A party to a default action may not charge, impose, or otherwise require payment from the other party for any cost, including but not limited to attorneys' fees, for appearance at or participation in the settlement conference process.

(i) This rule shall not apply if:

1. the borrower dies and there is no surviving borrower, unless: (i) the last surviving borrower's spouse, if any, is a resident of the property subject to foreclosure; or (ii) the last surviving borrower's successor in interest who by bequest or through intestacy, owns, or has a claim to the ownership of the property subject to foreclosure, and who was a resident of such property at the time of death of such last surviving borrower; or the borrower does not reside in the unit after such non-occupancy by the borrower as verified by the lender and the lender has taken action as required by subdivision eight of section six-o of the banking law; or

2. a repayment plan or other workout consistent with the borrower's circumstances is entered into to bring the borrower's account current or otherwise cure the default thus making a meeting unnecessary.