

**STATE OF VERMONT
VERMONT SUPREME COURT
FEBRUARY TERM, 2022**

Order Promulgating Amendment to Administrative Order No. 49

Pursuant to the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48, it is hereby ordered:

1. That ¶ 2 of Administrative Order No. 49 be amended 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 ~~March 1, 2022~~ May 31, 2022, 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 as follows (new matter underlined):

22. Pleading Requirements in Foreclosure Proceedings:

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g. Vermont Homeowner Assistance Program (VHAP). The requirements of ¶ 22(g) apply in all one-to-four-unit residential property foreclosure actions pursuant to 12 V.S.A. § 4941 or 12 V.S.A. § 4945 and residential mobile home replevin actions pursuant to 9A V.S.A. § 9-609.

i. Notice and Pleading Requirement.

For actions filed on or after February 22, 2022, the plaintiff must complete and file with proof of service of the complaint, a certification in substantially the form of [Appendix E](#), attesting that the plaintiff served the defendant with notice of the availability of the VHAP at the time of service of the complaint, or that ¶ 22(g) does not apply because the subject property is not owned and occupied by a borrower defendant as a primary residence. The notice must be in the form provided by [Appendix F](#).

In all pending actions filed before February 22, 2022, the plaintiff must file a certification in substantially the form of [Appendix E](#) within 21 days of February 22, 2022.

If the plaintiff fails to file the certification required by ¶ 22(g)(i), the court may stay the case until the certification is filed.

- ii. Automatic Stay. In any action under ¶ 22(g) where a defendant files a request to stay, and sends a copy to the plaintiff, representing that the defendant has submitted a VHAP application and believes the requirements of the program are met, any entry of judgment, notice of sale, sale of the property, or issuance of an order of replevin will be automatically stayed without further order of the court for a period of 60 days from the date the court received the request. The request need not comply with the requirements of Rule 7 of the Vermont Rules of Civil Procedure.

Any plaintiff objecting to the 60-day automatic stay may file a motion to terminate the stay. The court may terminate the stay if it finds that the request to stay has been filed solely for the purpose of delay, the arrearage exceeds the \$30,000 VHAP program maximum and the defendant is unable to make up the difference through other sources, or a stay is not necessary for the borrower to access VHAP funds. If neither party notifies the court of a decision on the VHAP application prior to the end of the 60-day period or seeks an extension of the stay, the stay will automatically expire.

If a plaintiff has knowledge that a defendant in the action has applied for VHAP, the plaintiff must timely inform the court of the pending VHAP application, and the court may stay the case or take other appropriate action.

- iii. Mediation. Unless otherwise agreed by the parties or ordered by the court, a stay under ¶ 22(g) will not stay an order for foreclosure mediation pursuant to 12 V.S.A. § 4632 and the parties may participate in foreclosure mediation while the stay is in effect.
- iv. Denial of VHAP Application. Upon notice from the plaintiff or the defendant that the VHAP application has been denied, the court will terminate the stay.
- v. Expiration. Paragraph 22(g) will expire on September 30, 2025, or upon notice to the Court Administrator from the Vermont Housing Finance Agency that VHAP funding has been exhausted, whichever is earlier. The Court Administrator will notify members of the Vermont Bar upon receipt of notice from the Vermont Housing Finance Agency that VHAP funding has been exhausted.

- h. 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—February 7, 2022 Amendment

Paragraph 2 is amended to extend the effective date of the Administrative Order until May 31, 2022. The Court will continue to respond to the changing situation by amending provisions of the order as necessary but anticipates that some portions will continue to be necessary due to the ongoing impacts of the pandemic.

Administrative Order 49 ¶ 22(g) is added to provide a procedure and standards in one-to-four-unit residential property foreclosure and replevin actions involving the now-available federal funds under the Vermont Homeowner Assistance Program (VHAP) to assist borrowers with overdue mortgages in hopes of reducing foreclosures. The provision expires on September 30, 2025, or on the earlier exhaustion of VHAP funds.

In essence, ¶ 22(g) requires plaintiff in a covered action to serve notice on defendant borrower of the availability of VHAP funds. If a defendant who has applied for VHAP funds so requests, any entry of judgment, notice of sale, sale of the property, or issuance of an order of replevin is automatically stayed for 60 days. The stay does not apply to foreclosure mediation unless ordered by the court. The court may terminate the stay if the plaintiff requests on a showing of one or more specific objections. The stay is terminated automatically after 60 days if no VHAP action has been reported and an extension is not sought. If plaintiff learns that defendant has applied to VHAP, plaintiff must report that fact to the court, which may take appropriate action. The court will terminate a stay upon notification by either party that the VHAP application was denied.

Appendix E provides a form for plaintiffs to certify compliance with the notice requirement. Plaintiff must certify that plaintiff served defendant with notice of the availability of VHAP funds and the opportunity to request a stay using the form provided in Appendix F or that ¶ 22(g) does not apply. Plaintiff can also certify that an Order Confirming Sale or a Writ of Replevin was previously issued and therefore no notice is required because a stay of the orders would not be available.

The purpose of new ¶ 22(g) is to avoid placing the burden on overwhelmed court staff either to issue notices in each case as to the availability of funds, or for the court to issue stay orders in each case on notice that a VHAP application is filed, and then subsequent orders ending the stays. Therefore, ¶ 22(g) places the burden on

plaintiffs to send notices about the program and makes the stay of certain steps in a case automatic once the court and plaintiff have notice. Because a handful of lawyers handle almost all foreclosure cases, they will not need notice from the court to know the stay is triggered.

Further, ¶ 22(g) is clear about the remedy when the plaintiff fails to file a certification: The court may stay a case until certification is filed.

Third, rather than staying the entire case, which could lead the banks to refrain from taking any steps forward (such as preparing a motion to file when the stay ends, or preparing to schedule a sale if the case does not resolve), ¶ 22(g) is specific about what acts are stayed.

Fourth, ¶ 22(g) does not require denial of a request to stay based on a VHAP application merely because the court receives a letter rather than the exact form that is being provided. Thus, Appendix F provides that the homeowner “should,” rather than “must” use the form provided.

Fifth, ¶ 22(g) avoids the built-in delays that would be necessitated by requiring a motion that includes a response from the plaintiff (and of course the reply time for the movant—for a total of 34 days) before the stay goes into effect, as it is likely that in most cases there will not be any objection. Thus, ¶ 22(g) places the burden on the plaintiff to file a motion to terminate the stay if plaintiff objects.

Finally, Appendix F does not list the entities that can assist defendants (other than Legal Aid) because that list is subject to change. The form contains the VHFA website address which lists currently available supporting agencies.

Former ¶ 22(g), requiring the Civil Rules Committee to consider appropriate permanent rules changes to be made after A.O. 49 expires, has been redesignated as ¶ 22(h).

4. That this order is effective February 22, 2022 and extends until May 31, 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 7th day of February, 2022.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice