

## **202.5-bb. Electronic Filing in Supreme Court; Mandatory Program.**

### **(a) Application.**

(1) Except where otherwise required by statute, all documents filed and served in Supreme Court shall be filed and served by electronic means in such classes of actions and such counties as shall be specified by order of the Chief Administrator of the Courts and only to the extent and in the manner prescribed in this section.

Except to the extent that this section shall otherwise require, the provisions of section 202.5-b of these rules shall govern electronic filing under this section.

(2) Notwithstanding the foregoing, the Chief Administrator shall not eliminate the requirement of consent to participate in electronic filing in the following classes of cases:

(i) matrimonial actions as defined by the civil practice law and rules;

(ii) election law proceedings;

(iii) proceedings brought pursuant to article 70 or 78 of the civil practice law and rules;

(iv) proceedings brought pursuant to the mental hygiene law;

(v) residential foreclosure actions involving a home loan as such term is defined in section 1304 of the real property actions and proceedings law other than actions commenced prior to September 1, 2017 in Erie, Essex, New York, Queens, Rockland, Suffolk and Westchester Counties; provided, however, the Chief Administrator may require that the initial filing of papers required for the commencement of such actions in any county, where made by a party represented by counsel, be electronically filed; and

(vi) proceedings related to consumer credit transactions as defined in subsection (f) of section 105 of the civil practice law and rules other than proceedings commenced prior to September 1, 2017 in Erie, New York, Onondaga, Rockland and Westchester Counties; provided, however, the Chief Administrator may require that the initial filing of papers required for the commencement of such actions in any county, where made by a party represented by counsel, be electronically filed.

### **(b) Commencement of Actions Under this Section.**

(1) Mandatory commencement in general. Except as otherwise provided in this section, every action authorized by subdivision (a) of this section shall be commenced by electronically filing the initiating documents with the County Clerk through the NYSCEF site.

(2) Emergency exception. Notwithstanding paragraph (1) of this subdivision, an action otherwise required to be commenced electronically may or shall be commenced by the filing of initiating documents in hard copy where permitted or required by statute or court order, and may be so commenced provided such documents are accompanied by the affirmation or affidavit of the filing attorney or party stating that: (i) the statute of limitations will expire on the day the documents are being filed or on the following business day; and (ii) the attorney, party or filing agent therefor is unable to electronically file such documents because of technical problems with his or her computer equipment or Internet connection. In the event a filer shall file initiating documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of these rules, and the filer shall file those documents with the NYSCEF site within three business days thereafter. For purposes of this section, such an action shall be deemed to have been commenced electronically.

(3) Service of initiating documents. Personal service of initiating documents upon a party in an action that must be commenced electronically in accordance with this section shall be made as provided in Article 3 of the Civil Practice Law and Rules, or the Real Property Tax Law, or by electronic means if the party served agrees to accept such service. Such service shall be accompanied by a notice, in a form approved by the Chief Administrator, advising the recipient that the action is subject to electronic filing pursuant to this section. A party served by electronic means shall, within 24 hours of

service, provide the serving party or attorney with an electronic confirmation that the service has been effected.

(c) Filing and Service of Documents After Commencement in Actions Under this Section.

(1) All documents to be filed and served electronically. Except as otherwise provided in this section, filing and service of all documents in an action that has been commenced electronically in accordance with this section shall be by electronic means.

(2) Addition of parties after commencement of action. Notwithstanding any other provision of this section, a party to be added in an action that has been commenced electronically in accordance with this section shall be served with initiating documents in hard copy together with the notice specified in paragraph (3) of subdivision (b) of this section. A proposed intervenor or other non-party who seeks relief from the court in such an action shall make his or her application for such relief by electronic means as provided by the NYSCEF system.

(3) Emergency exception; other hard copy filings. Notwithstanding paragraph (1) of this subdivision, where documents are required to be filed and served electronically in accordance with such paragraph (1), such documents may nonetheless be filed and served in hard copy where permitted by paragraph (1) of subdivision (d) of section 202.5-b of these rules. In the event a filer shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b, and the filer shall, as required, file those documents with the NYSCEF site within three business days thereafter.

(d) County Clerk and Clerk of Court Not to Accept Hard Copies of Documents for Filing Where Electronic Filing Is Required. As provided in section 202.5(d)(1) of these Rules, a County Clerk and a Chief Clerk of Supreme Court, as appropriate, shall refuse to accept for filing hard copies of documents sought to be filed in actions where such documents are required to be filed electronically.

(e) Exemptions From the Requirement of Electronic Filing.

(1) *Exemption of unrepresented litigants.* Notwithstanding the foregoing, an unrepresented litigant or a proposed intervenor or other non-party seeking relief from the court who is unrepresented is exempt from having to file and serve documents electronically in accordance with this section. No such party shall be compelled, directly or indirectly, to participate in e-filing. As to each unrepresented litigant, the clerk shall explain his or her options for e-filing in plain language, including the option for expedited processing, and shall inquire whether he or she wishes to participate, provided however the unrepresented litigant may participate in the e-filing program only upon his or her request, which shall be documented in the case file, after he or she has been presented with sufficient information in plain language concerning the program. Where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring.

(2) *Exemption of represented parties.* Notwithstanding the foregoing, an attorney or a representative of a property owner designated as such as provided in Real Property Tax Law § 730 ("small claims assessment filing agent"), shall be exempt from having to file and serve documents electronically in accordance with this section upon filing with the County Clerk and the clerk of the court in which the action is or will be pending a form, prescribed by the Chief Administrator, on which the attorney or small claims assessment filing agent certifies, in good faith that he or she:

(i) lacks the computer hardware and/or connection to the Internet and/or scanner or other device by which documents may be converted to an electronic format; or

(ii) lacks the requisite knowledge in the operation of such computers and/or scanners necessary to comply with this section (for purposes of this paragraph, the knowledge of any employee of an attorney, or any employee of the attorney's law firm, office or business who is subject to such attorney's direction, shall be imputed to the attorney).

(3) *Exemption of counsel upon a showing of good cause.* Nothing in this section shall prevent a judge from exempting an attorney from having to file and serve documents electronically in accordance with this section upon a showing of good cause therefor.

(4) *Procedures applicable to exempt attorneys and small claims assessment filing agents.* Where an attorney or small claims assessment filing agent is exempt from having to file and serve documents electronically in accordance with this section, he or she shall serve and file documents in hard copy, provided that each such document shall include the notice required by paragraph (1) of subdivision (d) of section 202.5-b of these rules. The County Clerk or the court, with the approval of the Chief Administrator, may require an exempt attorney or small claims assessment filing agent to submit an additional, unbound hard copy of documents being presented in hard copy to the court.

(5) *Procedures applicable to e-filing attorneys and other persons.* In any action in which an attorney or other person is exempt pursuant to this subdivision, all other attorneys, small claims assessment filing agents, unrepresented litigants, proposed intervenors, or others participating in e-filing and seeking relief from the court shall continue to be required to file and serve documents electronically, except that, whenever they serve documents upon a person who is exempt from having to file and serve documents electronically in accordance with this section, they shall serve such documents in hard copy, bearing full signatures, and shall file electronically proof of such service.

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