

## How do you know if your home is in foreclosure?

### **Have you received the statutorily required pre-foreclosure notice stating the amount needed to cure the default, and providing a list of local, non-profit housing counseling agencies that may assist with loss mitigation applications?**

Mortgagee loan service providers (your bank or lender) are required to send all homeowners a notice at least ninety (90) days prior to the commencement (start) of a foreclosure action.

Notices must be sent to the last known address of the borrower by registered or certified mail AND by first-class mail. (NY RPAPL § 1304)

### **Have you received a Summons to appear in court?**

Receiving a Summons means that your home is officially in the foreclosure stage within court. This means that a lis pendens has been filed on your property, informing the public of the ongoing foreclosure.

You will have received the Summons with a Complaint attached, either in person or by mail. It is important to consult with an attorney to see whether you must appear in court or file an Answer to the Summons.

If the Summons and Complaint were personally handed or delivered to you, then you may only have twenty (20) days to answer the Complaint. If you received the Summons and Complaint by some other method (mail, another person accepted it for you), then you will have at least thirty (30) days to answer\*. You should seek legal advice when you receive it. You may have legal defenses to the foreclosure action. Homeowners will have up to 30 days after their first scheduled mandatory settlement conference, requiring their appearance, to answer the foreclosure complaint.

\*Homeowners in foreclosure actions will get additional time to answer the Complaint, to 30 days after their appearance at the first mandatory settlement conference, scheduled by the Court. Although the foreclosure process in New York can be quite lengthy, you should get help as soon as possible to preserve your rights and try to work out an alternative to foreclosure.



## **What to Expect in Court**

**It is important to know which court you are required to appear in during the foreclosure action and where to file a timely Answer to the Complaint.**

Have you received a Settlement Conference Court date?

In New York State, many homeowners are entitled to a mandatory foreclosure settlement conference. It is strongly advised that you seek an attorney's assistance prior to appearing in court for the conference. (CPLR § 3408)

At the settlement conference(s), held at the courthouse before a Judge or Court Referee, the parties must negotiate in good faith, in an effort to avoid foreclosure, such as a possible modification of your loan terms, or other loss mitigation. See CPLR 3408.

## **What documents will I need to apply for a loan modification?**

Documents that you may need to apply for a loan modification include:

- a hardship letter explaining when and why you fell behind in making your monthly mortgage payments
- proof of current monthly income in the form of pay stubs, profit and loss statements (if you are self-employed), benefit award letters (Social Security, Worker's Compensation, Public Assistance, Food Stamps, Unemployment Insurance, etc.) with proof of current receipt.
- two most recent bank statements for all bank accounts
- two most recent tax returns, signed and dated
- a recent utility bill

You should have your most recent mortgage statement and the property tax bill, even if you have not been paying the property taxes.

The information contained in this material is not legal advice. Legal advice depends upon the specific facts of each situation. Also, the law may vary from state to state, so some information from our website may not be correct for your jurisdiction. Finally, this information is not guaranteed to be up to date. The material contained on this site cannot replace the advice of competent legal counsel licensed in your state.

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# FORECLOSURE SETTLEMENT CONFERENCES: Common Mortgage Terms

**Mortgagee:** the bank/lender, including those who obtain the Note and Mortgage from the original lender.

**Mortgagor:** the person(s) who borrowed the money, signing the note and mortgage.

**Mortgage servicer:** the managing agent for the entity who claims ownership of the note. The borrower must be notified of any change in servicer. The servicer is responsible for sending monthly statements, including where to send notices of errors and requests for information, and receives recurring payments for principal, interest and escrow payments for taxes and/or homeowner's insurance.

**Note:** the borrower's signed promise to repay the loan amount within the time stated at the stated interest rate (fixed or adjustable).

**Mortgage:** a security instrument signed by the borrower and any other owners on the deed, allowing the lender to foreclose on the home in case of a default under the terms set in the Note and Mortgage.

**Lis pendens (Notice of Pendency):** a document filed with the County Clerk at the time the foreclosure action is filed with the court, making the public aware that there is a foreclosure action and prohibiting the sale of the home without the bank's/lender's consent.

**Referee:** an individual who is appointed by the court, usually upon motion by the lender, to calculate the amount due to the lender. A referee is appointed before the judgment of foreclosure is obtained by the lender.

**Short sale:** If the amount due on the loan is more than the value of the property, a short sale may be an option to foreclosure. In this case, the lender may agree to allow the homeowner to sell the home for the current fair market value and forgive the balance owed on the loan. (Contact an accountant, tax specialist, about income tax considerations based on a loan forgiveness)

**Deed-in-lieu of foreclosure:** As an alternative to foreclosure, the bank may allow the option where the homeowner conveys the deed of the property to the bank. (Contact an accountant, tax specialist, about income tax considerations based on a loan forgiveness)

**Foreclosure and Public Sale at Auction:** If the foreclosure proceeds to judgment in court, the property will be sold at a public auction to satisfy part or all of the foreclosure judgment amount.

**Post foreclosure eviction:** If the homeowner still resides at the property after the sale at auction, the new owner (which could be the foreclosing lender), will have to obtain a further judgment from the court, most often in a summary eviction proceeding brought in another courthouse, authorizing the County Sheriff to execute a warrant of eviction on the original homeowner from the home.

