


**TENANTS GUIDE TO  
LANDLORD TENANT  
PROCEEDINGS**

Presented by  
Supervising Attorney  
Dan Strafer





**LEGAL SERVICES**  
OF LONG ISLAND

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**Nassau County Courts**

Hempstead  
Glenn Cove  
Long Beach

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# Suffolk County District and Justice Courts

In Suffolk County, summary eviction proceedings are heard in the District Courts in western Suffolk and in the Justice Courts on the East End.

District Courts:

2nd District Court (Town of Babylon) - Tuesdays

3rd District Court (Town of Huntington) - Thursdays

4th District Court (Town of Smithtown) - Tuesdays

5th District Court (Town of Islip)- Thursdays

6th District Court (Town of Brookhaven)- Mondays and Wednesdays



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# Suffolk County District and Justice Courts ctd.

The Justice Courts:

Riverhead Justice Court

- Wednesday 2pm to 5pm

Southold Justice Court

- Friday at 10:30am

East Hampton Justice Court

- Monday mornings at 9:30am and occasionally on Tuesday mornings for trials

Southampton Justice Court

- Wednesday and Friday 9:00am



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## Types of Landlord Tenant Cases

- Non Payment
- Holdover
- Post-Foreclosure Holdover
  1. Prior owner
  2. Tenant of prior owner



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## Notices a tenant may receive before a case is scheduled for court

- 5 day notice of non payment
- 14 day notice of non payment
- Notice to terminate tenancy – 30/60/90
  - Depends upon how long the tenant has lived at the property?



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## How do you know when and where to go to court



**Notice of Petition – Will have date to go to court and which court the proceeding will be held**

**Petition – States the facts of the case**

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## What to expect on your first day in court

- Legal Services
- Go to room 277 (Hempstead) or ask the court officer where to find Legal Services of Long Island
- Adjournment
- Negotiations
- Settlement/Stipulation of settlement
- Timeline of proceedings
- The court calendar and your case



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## Documents the tenant should bring to court

- Notice of Petition/Petition
- Receipts of rent paid
- Pictures of habitability issues
- Lease



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## Common Defenses

### NONPAYMENT

- Paid rent
- Breach of warranty of habitability

### HOLDOVER

- Retaliatory eviction
- Not properly served
- Bona fide tenant (Post-foreclosure)
- Petitioner lacks standing/isn't the owner



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## What to do in between court dates

- Gather necessary documents for the case (lease, receipts, pictures)
- Apprise attorney of changed circumstances
- Save money
- Look for new housing if vacatur is the ultimate goal.



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## Outcomes of a typical Landlord-Tenant case

1. Settlement
2. Dismissal
3. Decision after trial
4. Default
5. Discontinued



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## Stipulation of settlement

1. Payment plan
2. Stay of vacate date
3. Key money
4. Do you owe any money?
5. Repairs by landlord



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## Post stipulation Issues

1. Can't make payments on agreed upon payment plan
2. Cannot vacate on or before agreed upon vacate date
3. Landlord not complying with stipulation



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## What happens if the case is dismissed/discontinued?

- Petitioner brings back an action after a technical defect
- If non-payment is satisfied, then it is unlikely you will be back in court



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## Decision after trial

Typical decisions after trial

1. Dismissal of petitioner's case
2. Warrant of eviction stayed until a date in the future
3. A money judgement is/isnt entered against the respondent



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## Case is discontinued by Petitioner

- Many times, a result of vacatur or satisfaction of a non-payment



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## What happens if a warrant of eviction is entered against you

14-day notice  
Order to show cause



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## Resources

- DSS one shot
- Salvation Army
- Senior Housing
- Options for Community Living
- Section 8
- Town Programs (Babylon and Brookhaven)



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## Thank you for attending!

If you have any questions, please contact  
(631)232-2400.

Check out our website at  
[www.legalservicesli.org](http://www.legalservicesli.org)



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# Fair Housing Law in New York State

Presented by  
Vinicio Cabrera, Esq.

Based on the New York State Home and Community Renewals (HCR)



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## What Are Fair Housing Laws?

- Federal, New York State, and local laws prohibit housing discrimination and promote equal access to housing opportunities.



Fair Housing Law  
in New York State



## Key Laws

- Federal Fair Housing Act
- New York State Human Rights Law
- Local fair housing protections



Fair Housing Law  
in New York State



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## Federal Protected Classes

- Race
- Color
- Religion
- National Origin
- Sex
- Disability
- Familial Status



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## Additional NY Protected Classes

- •Age
- •Marital Status
- •Military Status
- •Sexual Orientation
- •Gender Identity or Expression
- •Lawful Source of Income
- •Domestic Violence Status
- •Citizenship/Immigration Status



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## Housing Covered

- Most housing with three or more units, including apartments, cooperatives, public housing, assisted living, shelters, and condominiums.



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## Limited Exceptions

- •Owner-occupied two-family homes
- •Owner-occupied room rentals
- •Certain religious housing
- •Certain senior housing exemptions



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## Who Must Comply?

- Landlords, brokers, agents, lenders, property managers, developers, homeowner associations, appraisers, and government agencies.



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## Accessibility Requirements

- Many multifamily buildings constructed after 1991 must include accessibility features for persons with disabilities.



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## Reasonable Accommodations

- Changes in rules, policies, or practices necessary to allow persons with disabilities equal use and enjoyment of housing.



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## Examples of Accommodations

- **Service or assistance animals**
- **Application assistance**
- **Transfers to accessible units**
- **Policy modifications**



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## Reasonable Modifications

- Tenants with disabilities may make necessary physical modifications to housing, subject to applicable legal requirements.



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## Prohibited Conduct

- Refusing to rent or sell
- Different terms or conditions
- Steering
- False availability statements
- Retaliation



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## Discriminatory Advertising

- Examples include advertisements stating 'No Children', 'Adults Preferred', or similar discriminatory preferences.



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## Fair Lending Protections

- **Housing discrimination laws also apply to mortgages, home equity loans, insurance, and other housing-related financing.**



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in New York State



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## Source of Income Protections

- New York law prohibits discrimination based on lawful sources of income, including housing vouchers.



Name of PowerPoint



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## Immigrant Housing Rights

- **New Yorkers are protected from housing discrimination regardless of immigration status.**



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## Filing a Complaint

- Complaints may be filed with the New York State Division of Human Rights, HUD, the Attorney General, or fair housing organizations.



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## Best Practices for Housing Providers

- Apply policies consistently.
- Use objective screening criteria.
- Respond promptly to accommodation requests.
- Avoid discriminatory statements.



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## Sources

- New York State Homes and Community Renewal (HCR)
- Fair Housing Information
- New York State Human Rights Law
- Federal Fair Housing Act



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# Warranty of Habitability



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# Warranty of Habitability

Tenants have the right to a livable, safe, and sanitary apartment. This includes the public areas.



Warranty of Habitability



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## Examples of a breach of this warranty

- Failure to provide heat or hot water on a regular basis, or the failure to rid an apartment of an insect infestation.



Warranty of Habitability



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## Warranty of Habitability

Tenants have the right to a livable, safe, and sanitary apartment. This includes the public areas.



Warranty of Habitability



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## Must Not Be Cause By Tenant

Any uninhabitable condition caused by the tenant or persons under the tenant's direction or control does not constitute a breach of the warranty of habitability. In such a case, it is the tenant's responsibility to remedy the condition



Warranty of Habitability



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## Steps to Take to Get the Repairs

- Tell your landlord about the needed repairs and ask when the repairs will be done
- If the landlord doesn't keep their word or doesn't take care of the repairs quickly, send the landlord a letter asking them to make the repairs. Keep a record!



Warranty of Habitability



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## Steps to Take to Get the Repairs

- **Is it that serious? Talk to a Lawyer!**
- **You want to make sure if you pay for the repair, you will get your money back**
- **Can Repair and Deduct (make the repair and take the money out of next month's rent (Risk)- get written estimates and inform LL in writing**



Warranty of Habitability



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## Steps to Take to Get the Repairs

- **Withhold Rent until Repairs Are Made (Eviction Risk) (Rent Withholding)(Very Serious!) (Do not spend rent money on something else until receive judge's order)**



Warranty of Habitability



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## Steps to Take to Get the Repairs

- **Contact the Town's Building Inspector (also called a Code Enforcement Inspector), the Fire Marshall or the County's Department of Health (for things like no heat, cesspool backup, and lead paint issues) to look at the problem.**
- **All Carry Risks of Potential Condemnation!**



Warranty of Habitability



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## Thank you for attending!

If you have any questions, please contact  
(631)232-2400.

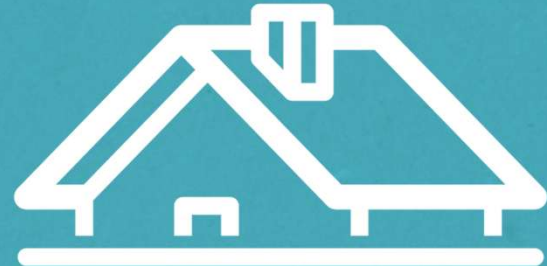
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# HOUSING HELP INC. PROGRAMS



Housing Help Inc.

A Not-for-Profit Housing Counseling Agency

**Executive Director**

**Pilar Moya- Mancera**

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## WHO WE ARE

- Founded in 1966, Housing Help Inc. is a not-for-profit HUD-Approved Housing Counseling Agency serving Long Island
- Housing Help provides housing counseling and education services to:
  - Renters
  - Homeowners
  - First-Time Homebuyers
  - Housing Choice Voucher Participants
  - Households experiencing housing instability
- Our HUD-Certified Counselors provide services in English, Spanish, and Haitian Creole

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## SERVICE LOCATIONS AND OUR PROGRAMS

### Service Locations:

- Nassau County
- Western Suffolk County
- Eastern Suffolk County

### Core Programs:

- Foreclosure Prevention Counseling
- Rental Housing Counseling
- Housing Choice Voucher Outreach and Stability Services
- First-Time Homebuyer Counseling
- Financial Capability and Budget Counseling

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## HOUSING HELP'S ROLE

Housing Help Inc. provides housing counseling and education services.

### We Do:

- ✓ Provide housing counseling
- ✓ Develop individualized action plans
- ✓ Assist clients in accessing available resources
- ✓ Provide financial and housing education
- ✓ Refer clients to legal services when appropriate

### We Do Not:

- X Provide legal advice
- X Represent clients in court
- X Determine eligibility for government benefits
- X Approve loan modifications or housing subsidies

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# WHY HOUSING STABILITY MATTERS

Housing instability affects:

**Families**



**Schools**



**Healthcare systems**



**Employers**



**Local governments**



**Court systems**



Housing counseling serves as an early intervention strategy that can help prevent homelessness, foreclosure, displacement, and loss of housing assistance.

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# HOUSING CHALLENGES WE SEE ACROSS LONG ISLAND

## FOR RENTERS:

- Eviction proceedings
- Rent burden
- Utility arrears
- Housing discrimination concerns
- Voucher compliance issues

## FOR HOMEOWNERS:

- Mortgage delinquency
- Foreclosure filings
- Property tax arrears
- Deed theft concerns
- Loan servicing disputes

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## THE HOUSING HELP SERVICE MODEL

Our Housing Counseling Process:

1. Intake
2. Assessment
3. Housing Counseling
4. Action Plan Development
5. Referral and Resource Coordination
6. Follow-up

Our goal is to help households achieve and maintain housing stability

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## FORECLOSURE PREVENTION COUNSELING:

Housing Help provides:

- Budget and financial analysis
- Mortgage affordability review
- Loss mitigation assistance
- Loan modification application support
- Communication with mortgage servicers
- Foreclosure prevention counseling
- Settlement conference preparation

Goal: Preserve sustainable homeownership whenever possible

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## THE NEW YORK FORECLOSURE SETTLEMENT CONFERENCE PROCESS

Housing counselors assist with:

- Gathering financial documentation
- Reviewing hardship circumstances
- Preparing loss mitigation applications
- Understanding available mortgage options
- Preparing homeowners for settlement conferences

Legal services providers assist with:

- Legal advice
- Court representation
- Litigation support

The most successful outcomes often occur when housing  
counselors and attorneys work together

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## THE HOMEOWNER PROTECTION PROGRAM (HOPP)

Housing Help Inc. is proud to participate in New York State's Homeowner Protection Program.

HOPP Provides:

- Free foreclosure prevention counseling
- Free legal assistance for eligible homeowners
- Mortgage servicing assistance
- Scam prevention education
- Access to housing stability resources

No homeowner should pay upfront fees to save their home from foreclosure.

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## **HOUSING CHOICE VOUCHER OUTREACH PROGRAM**

Purpose: To promote housing stability and prevent avoidable loss of housing assistance

- Missed recertification
- Lease violations
- Repayment agreements
- Eviction notices
- Income reporting issues
- Utility shutoffs
- Housing Authority communication

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## **LEGAL ISSUES IMPACTING VOUCHER HOLDERS**

Housing Choice Voucher participants frequently face:

- Voucher termination proceedings
- Administrative hearings
- Reasonable accommodation requests
- Eviction proceedings
- Landlord disputes
- Housing authority compliance issues

Housing counseling and legal advocacy complement one another in addressing these challenges

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## **RENTAL HOUSING COUNSELING SERVICES**

Housing Help provides:

- Tenant education
- Housing counseling
- Affordable housing information
- Resource navigation
- Referrals to legal services
- Community resource referrals

Our objective is to help households make informed housing decisions and maintain stable housing

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## **COMMUNITY PARTNERSHIPS**

Housing Help Collaborates with:

- Legal Services of Long Island
- Nassau County Bar Association
- Homeowner Protection Program Partners
- Local Housing Authorities
- Domestic Violence Service Providers
- Veteran Service Organizations
- Community-Based Organizations
- Local Governments and Municipalities

Strong partnership strengthen housing outcomes

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## EMERGING HOUSING ISSUES ON LONG ISLAND

Current trends include:

- Rising housing costs
- Increasing rent burdens
- Housing affordability challenges
- Foreclosure prevention needs
- Housing Choice Voucher program retention
- Accessory Dwelling Unit policy discussions
- Fair housing compliance issues

These challenges require coordinated responses from housing counselors, attorneys, advocates, and policymakers.

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## OPPORTUNITIES FOR COLLABORATION

Housing Counselors Provide:

- Housing assessments
- Financial counseling
- Resource coordination
- Client follow-up
- Housing stability planning

Attorneys Provide:

- Legal advice
- Representation
- Litigation support
- Administrative advocacy

Together, we create stronger pathways to housing stability

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# CONTACT INFORMATION FOR HHI

**Pilar's Email: [Pilar@housinghelpinc.org](mailto:Pilar@housinghelpinc.org)**

**Office Number: (631)754-0373**

**[www.housinghelpinc.org](http://www.housinghelpinc.org)**

**Serving Nassau County, Western Suffolk County, and Eastern Suffolk County**

**HUD-Approved Housing Counseling Agency**



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# HOUSING HELP INC. SOCIAL MEDIA

**Follow us on social media to get the latest updates on affordable housing opportunities in Long Island and beyond:**


- Facebook: @housinghelpinc
- Instagram: @housinghelpinc
- Twitter: @housinghelpinc1

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**QUESTIONS?**

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL LETITIA JAMES

# NEW YORK AG'S OFFICE & HOUSING CASES




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## INTRODUCTION

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Travis Holmes, Assistant Attorney  
General, Nassau Regional Office



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## TYPES OF HOUSING CASES

- ❖ Deed Thefts
- ❖ Enforcement of state and federal anti-discrimination housing laws (includes instances of income discrimination)
- ❖ Illegal or Fraudulent Business Activities



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## Deed Thefts

- ❖ Deed thefts occurs when someone steals the title to someone else's home without the homeowner knowing or consenting.
- ❖ Scammers can commit deed theft by forgery; scammer will forge homeowner's signature and records the deed with the Office of City Registrar or County Clerk; or
- ❖ By fraud. Homeowners will sign a deed without realizing what they're signing. Homeowners can be misled by scammers to believe they are receiving help to modify or refinance a loan but the homeowner is in actuality, signing over the deed to the property.
- ❖ Scammers will often look for properties that appear "distressed." So abandoned properties, homes that are in foreclosure or has tax and/or utility liens on it.
- ❖ If someone believes they are the victim of deed theft, it's important to file a Complaint with law enforcement immediately (either the OAG or County DA's Office).
- ❖ Link for submitting deed theft complaints:  
<https://formsnym.ag.ny.gov/OAGOnlineSubmissionForm/faces/OAGDTBHome> can also email [deedtheft@ag.ny.gov](mailto:deedtheft@ag.ny.gov)



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## ENFORCEMENT OF ANTI-DISCRIMINATION LAWS

- ❖ The federal Fair Housing Act and the New York State Human Rights Law (in addition to other local laws) prohibit discrimination by housing providers (includes owners, real estate agents, managing agents, building superintendents, cooperative and condominium boards) and lenders (banks and mortgage companies).
- ❖ The Fair Housing Act makes it illegal to discriminate on the basis of a person's race, familial status (presence of children under the age of 18), color, nation origin, religion, disability (physical or mental), or sex.
- ❖ The New York State Human Rights law covers all the above categories but also protects discrimination based on creed, age, sexual orientation, gender identity or expression, marital status, military status, or lawful source of income (public or housing assistance, social security, supplemental security income, pension, child support, alimony, foster car subsidies, annuities or unemployment benefits).
- ❖ If a person believes they are the victim of housing discrimination, the OAG's Civil Rights Bureau investigates and prosecutes discriminatory policies, and patterns or practices of discrimination.
- ❖ Link for submitting discrimination complaints: <https://pcf.ag.ny.gov/form/CIVIL>



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## Other Types of Cases

- ❖ Executive Law 63(12) empowers the Attorney General to investigate and prosecute acts of repeated fraudulent or illegal business practices. The Office can seek broad remedies under this statute including injunctions, restitutions or damages
- ❖ General Business Law § 349 prohibits unfair, deceptive, or abusive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the state.
- ❖ Example:
  - ❖ Tenants Counsel Network (TCN) Case: TCN advertised itself as a for-profit law firm with a specialization in New York Housing laws. They solicited to tenants facing eviction in New York City and offered legal services from “experienced attorneys.” The tenants who retained TCN as legal counsel faced a number of issues including a lack of communication in the lead up to court dates and numerous missed court dates. OAG investigated after receiving multiple complaints from tenants, advocates and the legal community and reached an agreement to close and dissolve the TCN law firm and refund \$172,257 to the former clients. (<https://ag.ny.gov/press-release/2026/attorney-general-james-shuts-down-predatory-law-firm-targeted-new-york-city> )



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## RESOURCES

- ❖ Homeowner Protection Program (HOPP)
  - ❖ 1-855-HOME-456
  - ❖ Homeownerhelpny.org
  
- ❖ OAG Nassau Regional Office
  - ❖ Main Line: (516) 248-3302
  - ❖ Consumer Frauds: (516) 248-3301, (516) 248-3300
  - ❖ Address: 200 Old Country Road, Suite 240, Mineola NY 11501
  - ❖ Office Hours: 8:30 am to 5:00 pm, Mon-Fri
  
- ❖ OAG Suffolk Regional Office
  - ❖ Main Line: (631) 231-2424
  - ❖ Consumer Frauds: (631) 231-2401
  - ❖ Address: 300 Motor Parkway, Suite 230, Hauppauge NY 11788
  - ❖ Office Hours: 8:30 am to 5:00 pm, Mon-Fri



# Introduction to Settlement Conferences: who, what, when, where, why, how?

*David J. Lawler, Esq.*



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## Introduction

- **WHO:** Legal Services of Long Island established a grant-funded foreclosure defense clinic using a staff attorney, a paralegal, and pro bono volunteers.
- **WHAT:** Free, in-court, counsel and advice, limited representation at conferences, help with pro se answers
- **WHEN:** conference help on initial conference days Tues and Thurs, pro se answer help in court on Wed, or otherwise by appointment.
- **WHERE:** Suffolk County Supreme Court, Riverhead
- **WHY:** Free help for unrepresented litigants of modest means
- **HOW:** limited scope retainer, attorney for a day, limited note of appearance.



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# Settlement Conferences

Consultations and Loss Mitigations



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## CPLR §3408 Mandatory Settlement Conference

- Residential mortgages
- Owner occupied
- Including Reverse Mortgages
- Purpose is settlement negotiations for a possible agreement
- Second chance to Answer within 30 days of initial conference date 3408(m)
- Scheduled by court within 60 days of RJJ filing
- Stays litigation while case is in the settlement part 3408(n)
- Parties are obligated to bargain in good faith 3408(f)
- No attorney fees for appearance at settlement part 3408(h)



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## CPLR §3408 Mandatory Settlement Conference

- Residential mortgages
- Owner occupied
- Including Reverse Mortgages
- Purpose is settlement negotiations for a possible agreement
- Second chance to Answer within 30 days of initial conference date 3408(m)
- Scheduled by court within 60 days of RJ1 filing
- Stays litigation while case is in the settlement part 3408(n)
- Parties are obligated to bargain in good faith 3408(f)
- No fee shifting for appearance at settlement part 3408(h)



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## Preparing for the Conference

- Home value on Redfin or Zillow
- Mortgage debt amount
- Other liens
- Who is the servicer
- Who owns the note/mortgage
- Client's household income

Gather Client provided information as per 3408(e):

- Tax return
- Expenses
- Property tax info
- Previous loss mitigation applications
- Benefits information
- Rental agreements/proof of rental income
- Anything else required by presiding judge



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## Interview Client and Basic Information

Type of loan: forward, reverse, zombie (second position without activity)

- Deadline to file an answer
- Client goals
- Client finances
- Strategy to reach goal
- Who is on deed (county clerk website)
- Heirship? Trust?

Who owns the loan:

- Fannie Mae: [www.knowyouroptions.com/loanlookup](http://www.knowyouroptions.com/loanlookup)
- Freddie Mac: <https://ww3.freddiemac.com/loanlookup>
- FHA monthly statements for clues like a charge for FHA insurance or a case number or check box for FHA insured
- VA-insured: check loan/billing statement/note/mortgage
- RHS guaranteed loan: closing documents (USDA's "rural housing service" for rural properties)



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## Review Loan Documents

- Generally attached as exhibits to the complaint
- NYSCEF has filed docs
- Check caption for indication of junior liens

Who owns the loan:

- Note: personal promise to pay. Check the original loan amount, term, and rate
- Mortgage: review. Standard forms have a paragraph 22 outlining 30-day notice in case of default and default conditions
- Prior Loan Modifications: check dates and terms.

Review the loan history with the client.



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## Second Chance to Answer

- CPLR § 3408(m) states a defendant who appears at the first settlement conference but has failed to file a timely answer
- “shall be presumed to have a reasonable excuse for the default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived within thirty days of initial appearance at the settlement conference.
- The default shall be deemed vacated upon service and filing of an answer.”
- If an answer is filed more than 30 days after the first conference, the plaintiff will usually file a notice of rejection. In that case, defendant should file a motion to compel a late answer.
- Referee informs defendant about answers and provides resources (self help website, law library, legal services)  
CPLR 3408(c)



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## Good Faith Requirement

- CPLR § 3408(f) requires both sides to negotiate in good faith toward an agreement
- Determined by totality of the circumstances:
  1. compliance with 3408, rules, orders, directives
  2. compliance with mortgage servicing laws, rules, regulations, investor directives, and loss mitigation standards or options concerning loan modifications, short sales, deeds in lieu,
  3. Conduct of parties
    - a. no unreasonable delay
    - b. appearing at conferences prepared
    - c. staying prosecution during the settlement part
    - d. providing accurate information



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## Good Faith Requirement

- Neither the failure to make a settlement offer nor to accept an offer is sufficient to establish bad faith
- Remedies for bad faith involve costs. For instance, a tolling of interest during the period of bad faith. 3408(j). Defendant bad faith = release from part 3408(k)
- Bad faith does not defeat the central relief of foreclosure



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## The Conference

- In referee's office with plaintiff attorney and the borrower
- Referee will ask plaintiff for note/loan and default information
- Referee will ask borrower about household and income and reason for default
- Bank wants the case to be released for litigation
- Borrower wants to meet a particular goal or outcome—usually wants the case retained for a modification schedule
- Mod schedule is four dates: application to borrower; app returned; missing doc letter; reply
- Will schedule conferences as long as a resolution is reasonably expected.
- Argue for retention, if applicable; can also argue for a 30-60 day stay –not as good



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## The Deemed Motion

- 3408(b) provides a defendant appearing at the initial conference pro se is deemed to have made a motion to proceed as a poor person under CPLR 1101
- A poor person need not pay court fees (transcript fees are expensive, others are not). Also, a court may appoint an attorney for a poor person, but there is no mechanism for this to happen at present, i.e. 18B panel. CPLR 1102(a)
- A hearing is scheduled with financial information submitted for judge to decide
- Criteria is subjective--unable to pay—nearly always denied
- The delay is costly to a defendant who wants to retain the house
- Generally, it is advisable to waive the motion—an option offered by the referee—after all, we are usually trying to modify and retain and need to show adequate income.
- **Appearance with an attorney defeats the deemed motion**, but it can be made subsequently.



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## Terms

- **Deferral** – mortgage loan amount held at 0% interest until the end of the loan
- **FHA** – Federal Housing Association: encourages low income lending by insuring lenders against loss and provides mitigation such as the “partial claim”
- **Forbearance** – temporary pause on payments with the accrual due at end of forbearance period
- **GSE** – government sponsored enterprise (quasi-government like Fannie and Freddie)
- **Loan Modification** – change in terms e.g. principal; rate; term
- **Loss Mitigation Waterfall** – order of mitigation options
- **Partial Claim** – FHA insurance payment to lender
- **Servicer** – handles daily administration of loan for owner and reviews requests for modification



Foreclosure Defense Clinic

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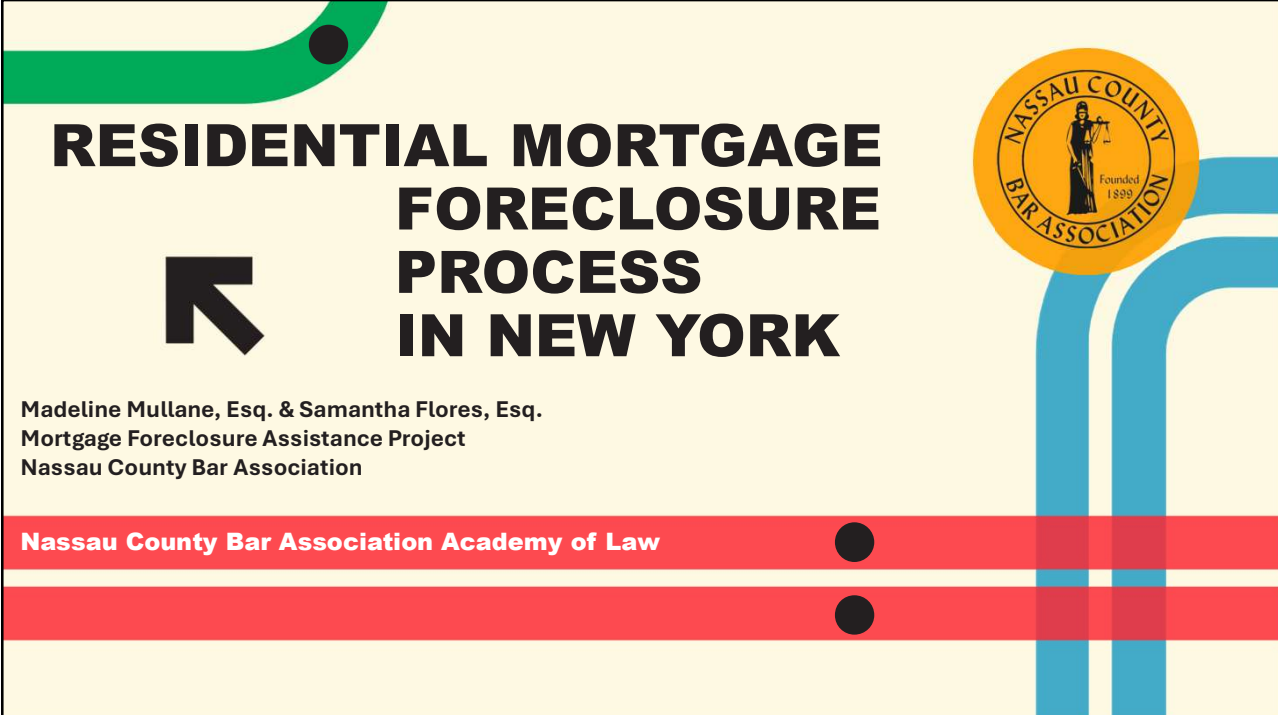
# Thank you for attending!

If you have any questions, please contact  
David J. Lawler, Esq.  
(631)232-2400 x 3322  
dlawler@legalservicesli.org



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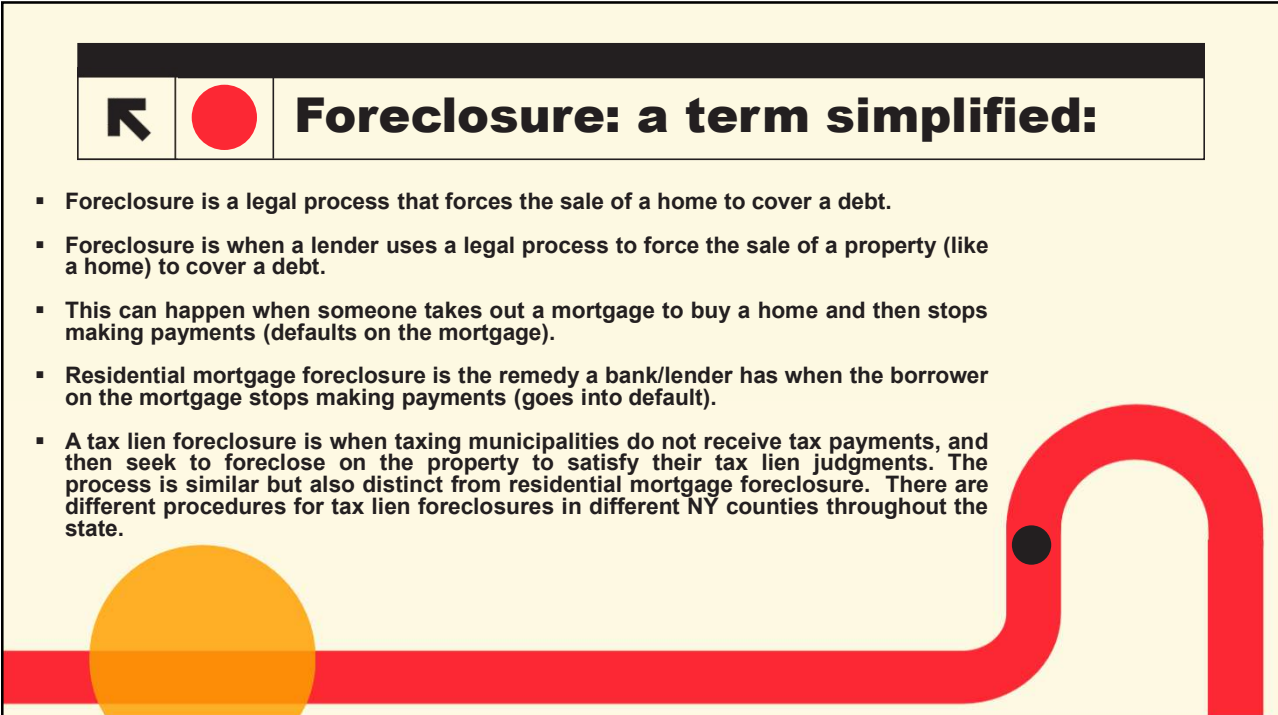


# RESIDENTIAL MORTGAGE FORECLOSURE PROCESS IN NEW YORK

Madeline Mullane, Esq. & Samantha Flores, Esq.  
Mortgage Foreclosure Assistance Project  
Nassau County Bar Association

**Nassau County Bar Association Academy of Law**

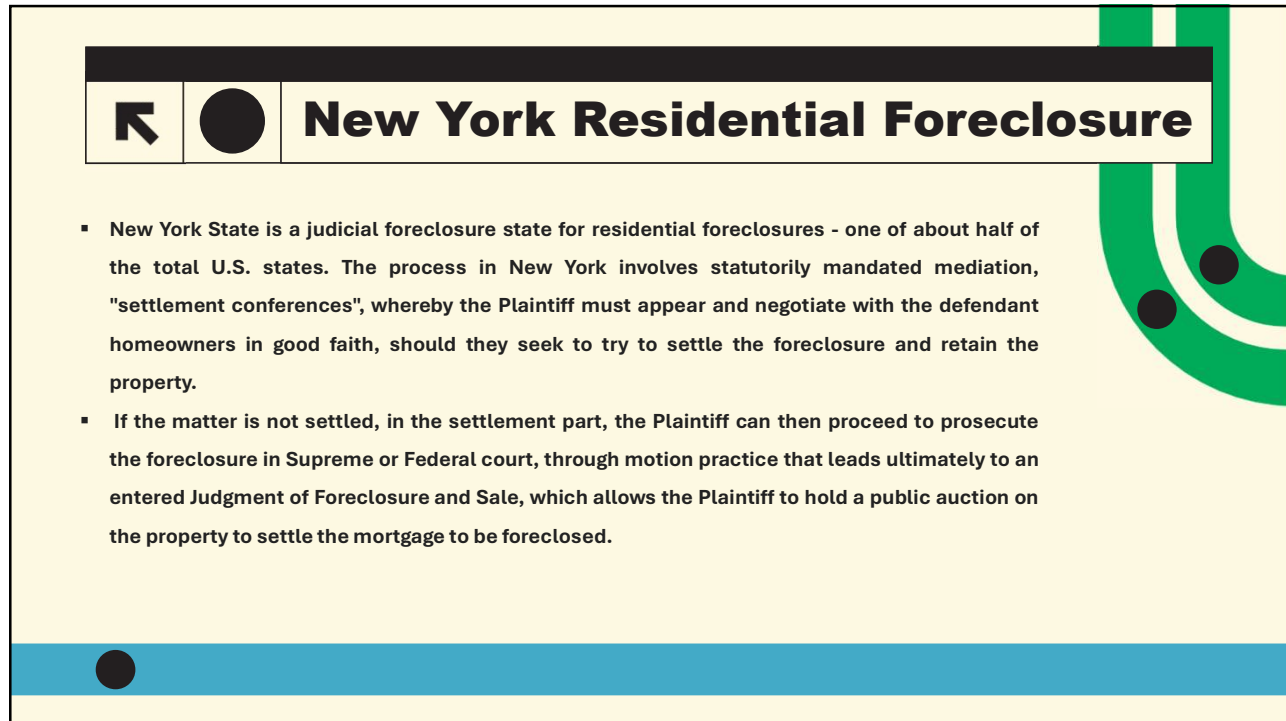
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## Foreclosure: a term simplified:

- Foreclosure is a legal process that forces the sale of a home to cover a debt.
- Foreclosure is when a lender uses a legal process to force the sale of a property (like a home) to cover a debt.
- This can happen when someone takes out a mortgage to buy a home and then stops making payments (defaults on the mortgage).
- Residential mortgage foreclosure is the remedy a bank/lender has when the borrower on the mortgage stops making payments (goes into default).
- A tax lien foreclosure is when taxing municipalities do not receive tax payments, and then seek to foreclose on the property to satisfy their tax lien judgments. The process is similar but also distinct from residential mortgage foreclosure. There are different procedures for tax lien foreclosures in different NY counties throughout the state.

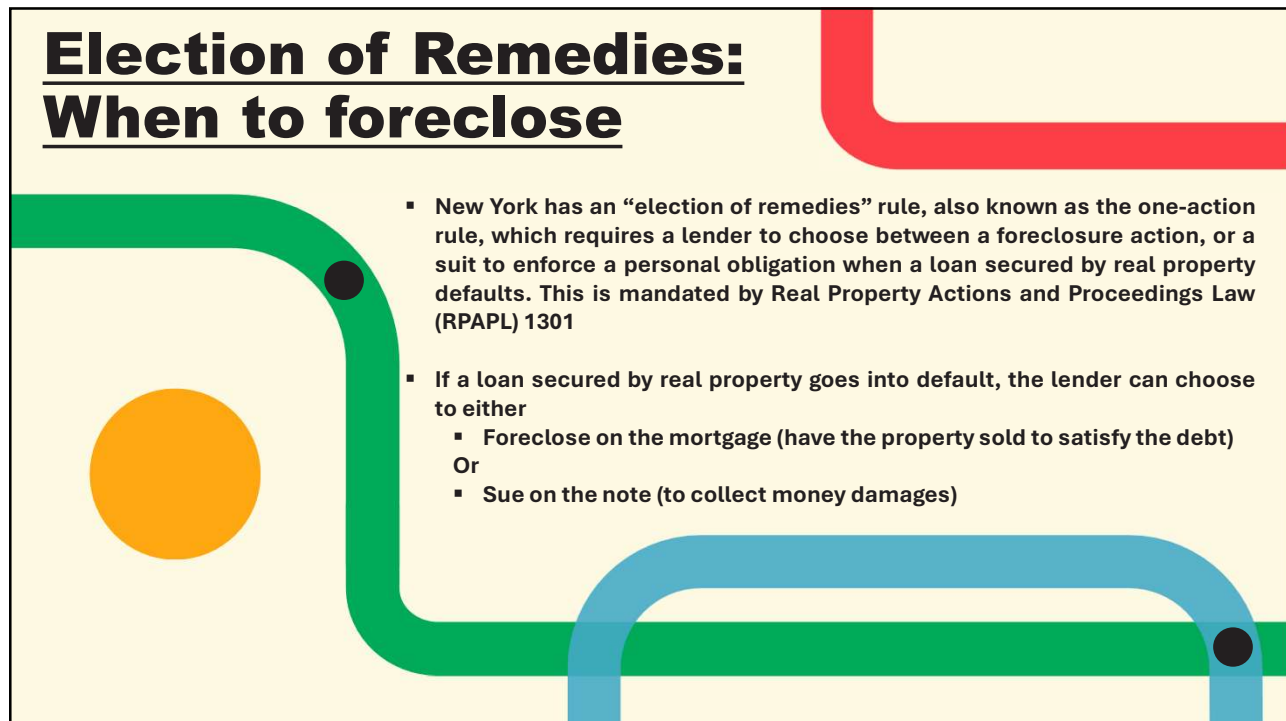
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## New York Residential Foreclosure

- New York State is a judicial foreclosure state for residential foreclosures - one of about half of the total U.S. states. The process in New York involves statutorily mandated mediation, "settlement conferences", whereby the Plaintiff must appear and negotiate with the defendant homeowners in good faith, should they seek to try to settle the foreclosure and retain the property.
- If the matter is not settled, in the settlement part, the Plaintiff can then proceed to prosecute the foreclosure in Supreme or Federal court, through motion practice that leads ultimately to an entered Judgment of Foreclosure and Sale, which allows the Plaintiff to hold a public auction on the property to settle the mortgage to be foreclosed.

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## Election of Remedies: When to foreclose

- New York has an "election of remedies" rule, also known as the one-action rule, which requires a lender to choose between a foreclosure action, or a suit to enforce a personal obligation when a loan secured by real property defaults. This is mandated by Real Property Actions and Proceedings Law (RPAPL) 1301
- If a loan secured by real property goes into default, the lender can choose to either
  - Foreclose on the mortgage (have the property sold to satisfy the debt)
  - Or
  - Sue on the note (to collect money damages)

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## Six-year Statute of Limitations

- New York has a six-year statute of limitations (SOL) on foreclosure actions
- The six-year SOL begins when the lender accelerates the debt (starts the foreclosure action and calls the entire debt due and owing)
- Acceleration is the commencement of the foreclosure action against the borrower
- The lender/Plaintiff cannot file a new action on the same default after the six-year period has elapsed
- A lender/Plaintiff's voluntary discontinuance (due to reinstatement, loan modification, or law firm/lender decision), can keep the six-year SOL running

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- The SOL bars recovery of only installments (monthly mortgage payments) that became due more than six-years prior to the commencement of the action
- Recovery of payments due within the six-year period is permitted—thus a Plaintiff can commence an action which has not yet been commenced, despite being on a default older than six years old, if they seek only to collect the payments due within the six-years of acceleration (commencement of the foreclosure action)
- The SOL can be tolled by the Court as a punitive measure against Plaintiffs who do not act in good faith in foreclosure settlement conferences

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# FAPA

## Foreclosure Abuse Prevention Act (2022)

- The Foreclosure Abuse Prevention Act (FAPA) was signed into law by Gov. Kathy Hochul in 2022 and was legislatively intended to prevent lenders/Plaintiffs from extending the statute of limitations through unilateral actions (related to stopping and starting the acceleration of the debt, to extend the ability to prosecute the foreclosure and collect on the debt outside the six-year period)
- FAPA has been heavily litigated since it was enacted
- New York courts have issued differing opinions about whether the statute applies retroactively to cases prior to its enactment and whether retroactive application is unconstitutional

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## Foreclosures are complex causes of action

- **Residential foreclosures span Supreme, Federal and District Court**

Most residential foreclosure actions are brought in Supreme Court of the County where the property to be foreclosed is located.

Some foreclosures are brought in Federal court through diversity jurisdiction (lender is from out of state and the amount in controversy is over the required amount of \$75,000.00)

- **Residential foreclosures are often intertwined with other causes of action, including:**
  - bankruptcy,
  - consumer debt,
  - matrimonial,
  - family,
  - Surrogate/probate,
  - and other real estate issues, including title issues or issues with prior recordings of mortgages against the property or satisfactions of those mortgages.

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## Path to Foreclosure Commencement in New York

**Borrower stops making mortgage payments**

**Lender retains New York foreclosure counsel**

**90 day pre-foreclosure notice is sent –  
RPAPL 1304**

**Foreclosure counsel files summons & complaint  
and lis pendens against the property to be foreclosed**

**Service is commenced upon all borrowers,  
residents/tenants, and subordinate mortgages/junior lienholders**

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## **RPAPL 1303- required prior notices:**

**New York's Real Property Actions and Proceedings Law (RPAPL 1303) The foreclosing party in a mortgage foreclosure action, involving residential property, shall provide notice to:**

- (a) Any mortgagor if the action relates to an owner-occupied one-to-four family dwelling; and**
- (b) Any tenant of a dwelling unit**

**RPAPL 1303 prescribes specific language that must be used in a notice that has to be delivered with the foreclosure summons and complaint**

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## RPAPL 1304- required prior notices:

**New York's Real Property Actions and Proceedings Law (RPAPL 1304) requires lenders to send borrowers written notices at least 90 days before initiating a foreclosure action**

- **The statute prescribes specific language and size 14 font, which must be used by the lender in their pre-foreclosure notice**
- **The notice must state that the loan is in default, and include the days in default and the amount of the default**
- **The notice must also be sent to reverse mortgage borrowers in default**
- **The notice states in plain language that there is free help available**

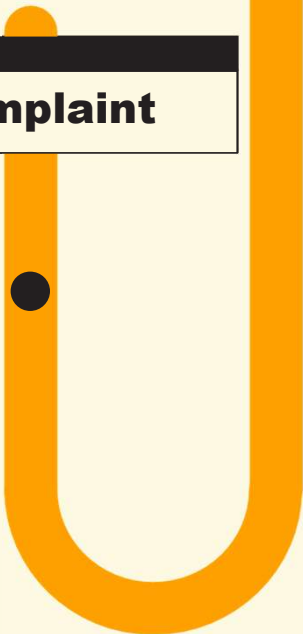
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### RPAPL 1304- REQUIRED NOTICE LANGUAGE (CONT.)

- **Borrower stops making payments**
  - **After borrower misses 3 months or 90 days of payments, the lender sends a requisite 90-day pre-foreclosure notice, pursuant to RPAPL 1304**
  - **Under RPAPL 1306, the notice must be filed with the NYS Department of Financial Services within three days of mailing the 90 day pre-foreclosure notice**
  - **If the notices are not sent, or the proof of filing is not available or states a date outside of the three day period, the lender may not be able to successfully bring a foreclosure action.**

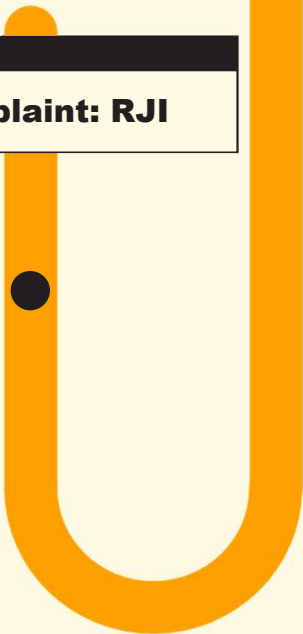
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- **After the borrower's default in payments and the sending of the required notices, the lender can commence the foreclosure action**
- **For the Plaintiff to prove a prima facie case for a mortgage foreclosure, the Plaintiff must establish:**
  - **1- the mortgage**
  - **2-the unpaid note**
  - **3- evidence of default**
- **If the homeowner defendant raises certain defenses, additional proof may need to be submitted by the Plaintiff to prove their prima facie case.**

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		<h2 data-bbox="527 1239 1307 1281">Next up after the summons &amp; complaint: RJI</h2>
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- **After service of the summons & complaint is completed on all necessary parties, the lender/Plaintiff's firm will file a Request for Judicial Intervention (RJI), advising the Court that it is a residential foreclosure action and that the Court must schedule a mandatory settlement conference, pursuant to CPLR 3408**
- **Some counties have "bulk conference" days for lender/mortgage servicers. If the RJI is filed in these counties, it may be added to a bulk conference calendar date, which is a date set by the Court in advance for all cases from one Plaintiff/lender/servicer**

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		<h2>CPLR 3408 - PURPOSE AND SCOPE OF CONFERENCE</h2>
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- **3408 applies to residential home loans- eligibility for the conference part depends on if the borrower resides at the property to be foreclosed.**
- **The Court shall hold a mandatory conference within sixty days after the date when proof of service (Affidavit of Service) is filed with the County Clerk ... “for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited to, determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, and for whatever purposes the court deems appropriate”**

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		<b>CPLR 3408 – DOCUMENTS TO BRING TO CONFERENCE</b>
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- 3408 provides the following as to what the parties must do and bring to the conference appearance:
  - (e) the Court shall promptly send a notice to the parties advising them of the time and the place of the settlement conference, the purpose of the conference and the requirements of this section. The notice shall be in a form prescribed by the office of court administration... [and it ] shall advise the parties of the documents they should bring to the conference.
    - For the **Plaintiff**, such documents should include, but are not limited to, payment history, an itemization of the amounts needed to cure and pay off the loan, and the mortgage and note.
    - For the **Defendant**, such documents should include, but are not limited to, proof of current income such as the most recent two pay stubs, most recent tax return, and most recent property tax statements.

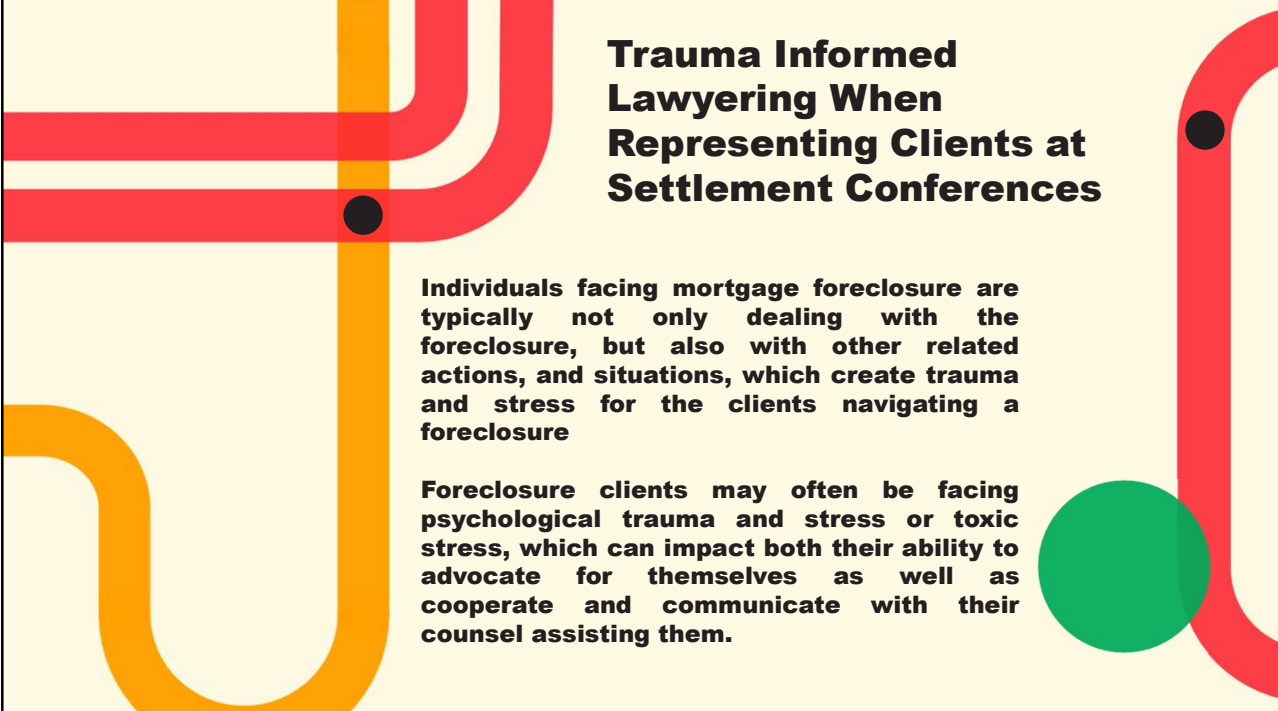
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		<b>CPLR 3408 – GOOD FAITH NEGOTIATION STANDARD</b>
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**3408 (f) Requires “both the plaintiff and defendant shall negotiate in good faith to reach a mutually agreeable resolution, including a loan modification, if possible.**

**This is interpreted to mean that both sides must comply with court deadlines, provide all information requested, and work together to determine if resolution is available**

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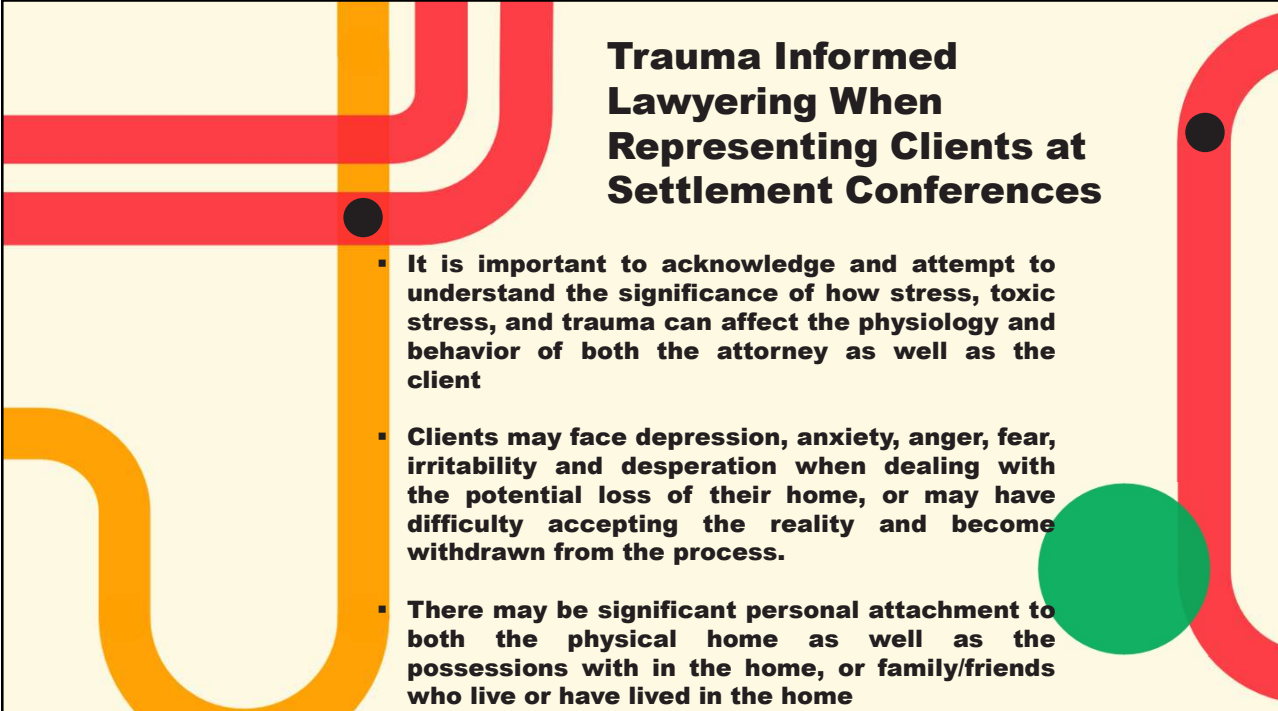


## Trauma Informed Lawyering When Representing Clients at Settlement Conferences

Individuals facing mortgage foreclosure are typically not only dealing with the foreclosure, but also with other related actions, and situations, which create trauma and stress for the clients navigating a foreclosure

Foreclosure clients may often be facing psychological trauma and stress or toxic stress, which can impact both their ability to advocate for themselves as well as cooperate and communicate with their counsel assisting them.

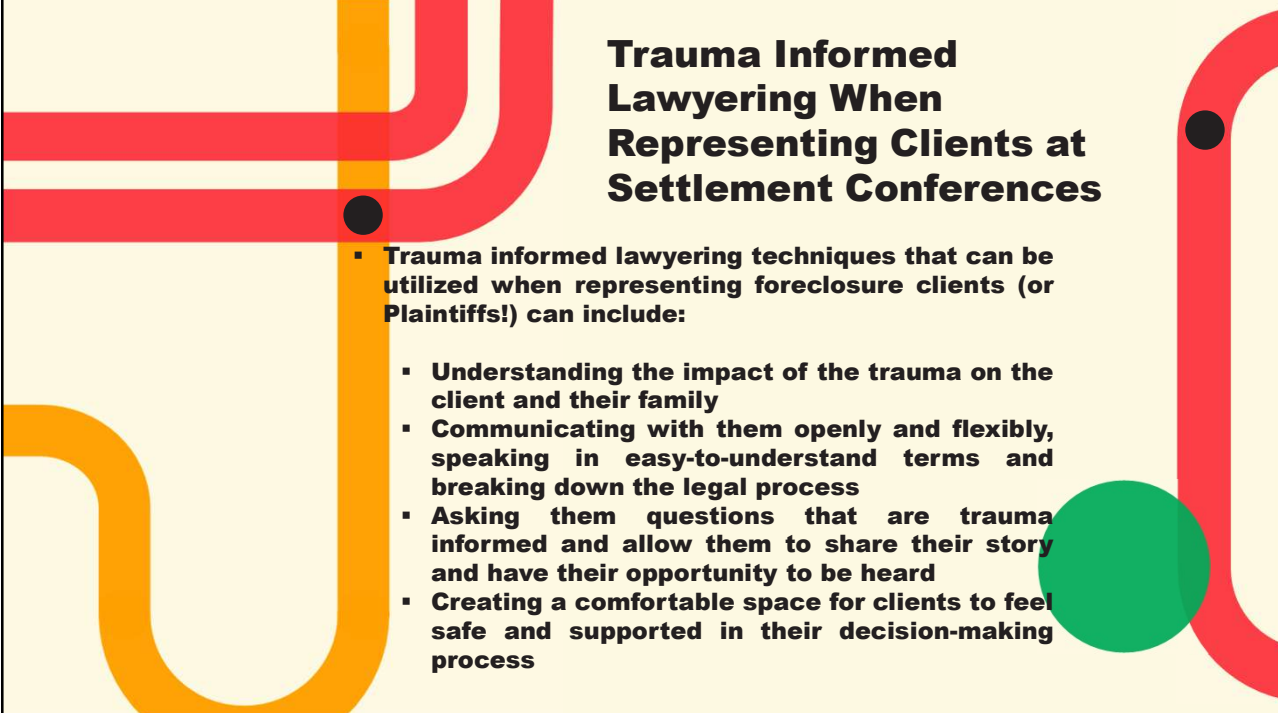
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## Trauma Informed Lawyering When Representing Clients at Settlement Conferences

- It is important to acknowledge and attempt to understand the significance of how stress, toxic stress, and trauma can affect the physiology and behavior of both the attorney as well as the client
- Clients may face depression, anxiety, anger, fear, irritability and desperation when dealing with the potential loss of their home, or may have difficulty accepting the reality and become withdrawn from the process.
- There may be significant personal attachment to both the physical home as well as the possessions with in the home, or family/friends who live or have lived in the home


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## Trauma Informed Lawyering When Representing Clients at Settlement Conferences

- Trauma informed lawyering techniques that can be utilized when representing foreclosure clients (or Plaintiffs!) can include:
  - Understanding the impact of the trauma on the client and their family
  - Communicating with them openly and flexibly, speaking in easy-to-understand terms and breaking down the legal process
  - Asking them questions that are trauma informed and allow them to share their story and have their opportunity to be heard
  - Creating a comfortable space for clients to feel safe and supported in their decision-making process

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## Post Settlement Conference:

After conferences are held, the case becomes marked either:

- 1- settled (and the foreclosure will be discontinued), or
- 2- the case is not settled, but the Plaintiff may now proceed with the foreclosure

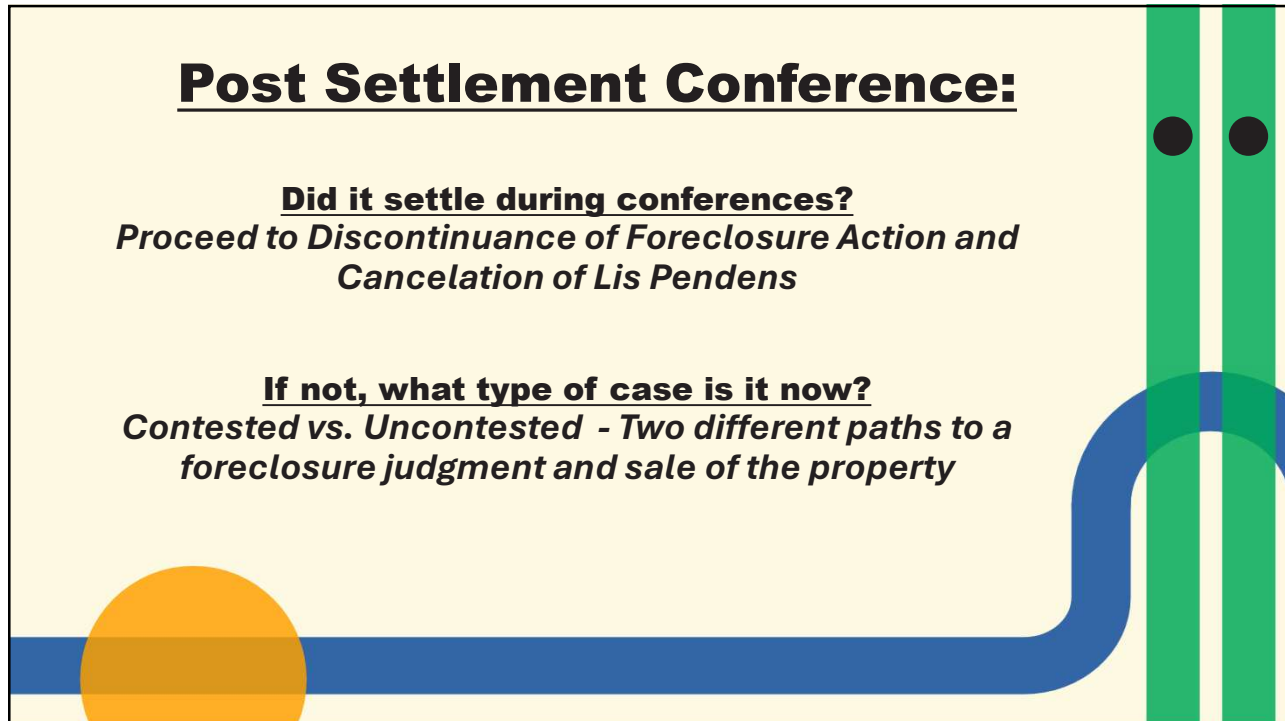
The Plaintiff may be subject to a Stay of 30, 45, 60 or 90 days depending on the Referee hearing the conference, and jurisdiction. The purpose of the Stay is to allow the homeowner to review and reconsider their options now that the case did not settle after Court overseen mediations.

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## Post Settlement Conference:

**Did it settle during conferences?**  
*Proceed to Discontinuance of Foreclosure Action and Cancellation of Lis Pendens*

**If not, what type of case is it now?**  
*Contested vs. Uncontested - Two different paths to a foreclosure judgment and sale of the property*



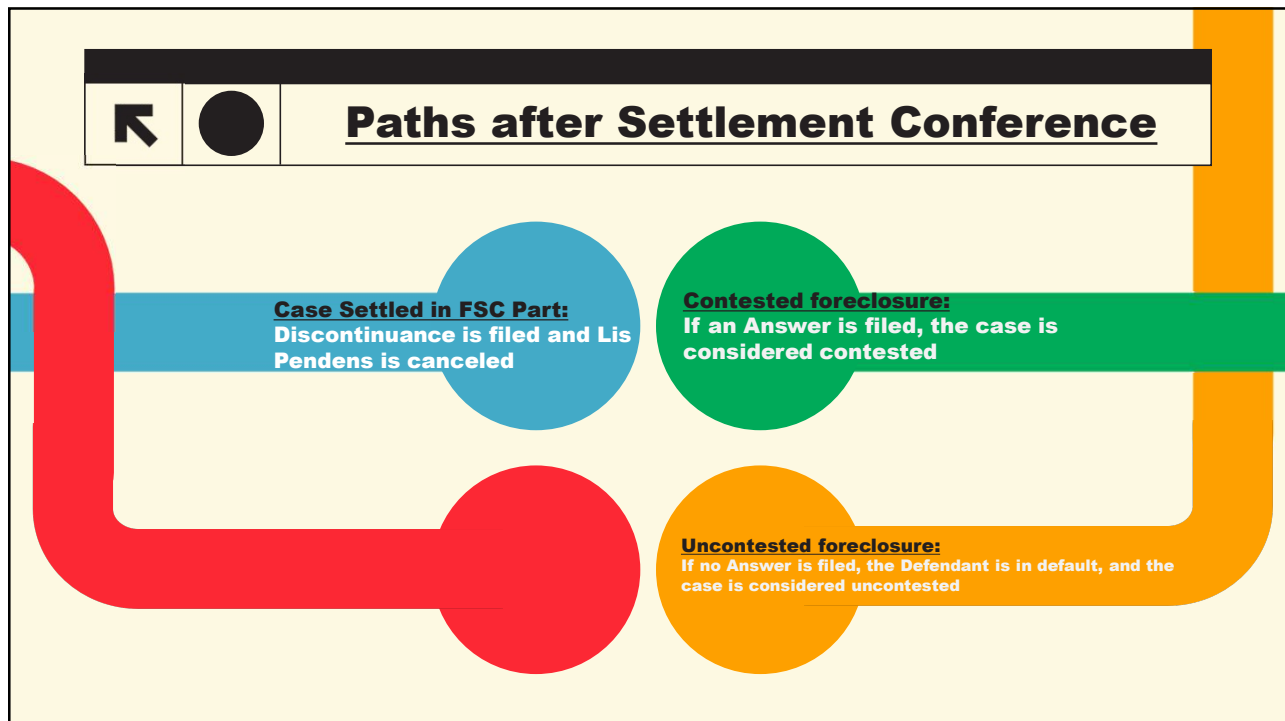
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### ↖ ● Paths after Settlement Conference

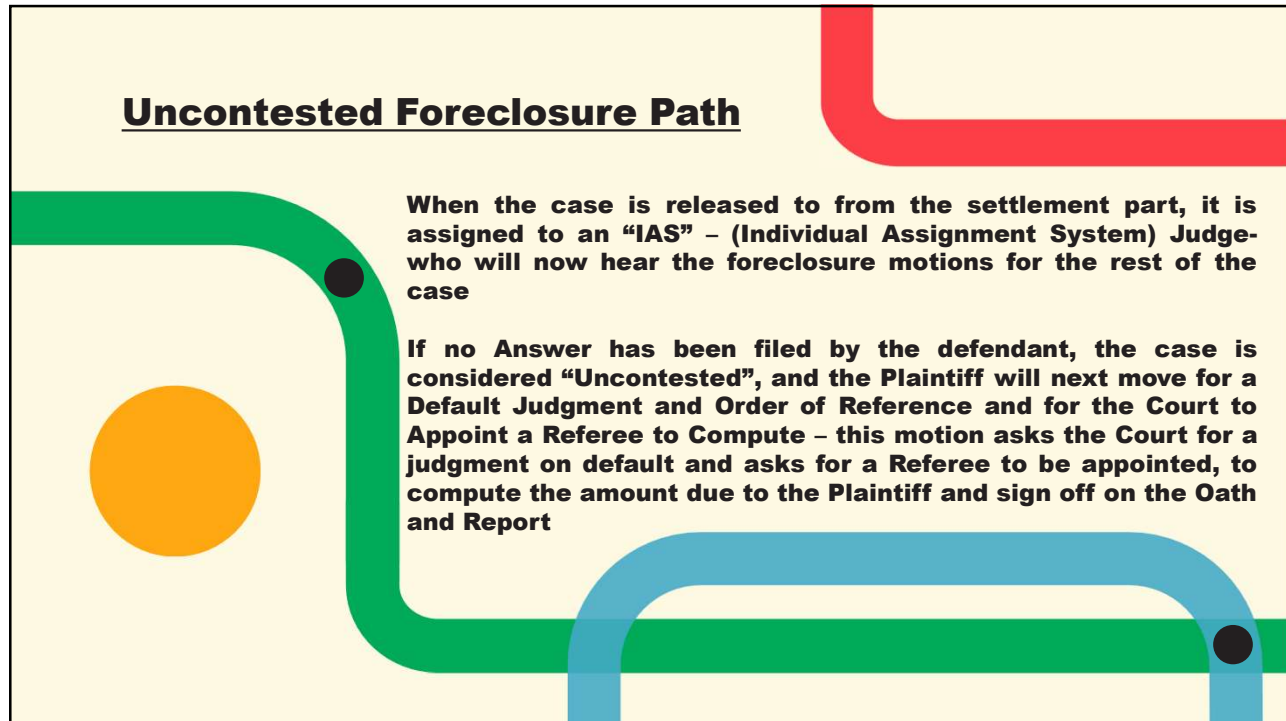
**Case Settled in FSC Part:**  
Discontinuance is filed and Lis Pendens is canceled

**Contested foreclosure:**  
If an Answer is filed, the case is considered contested

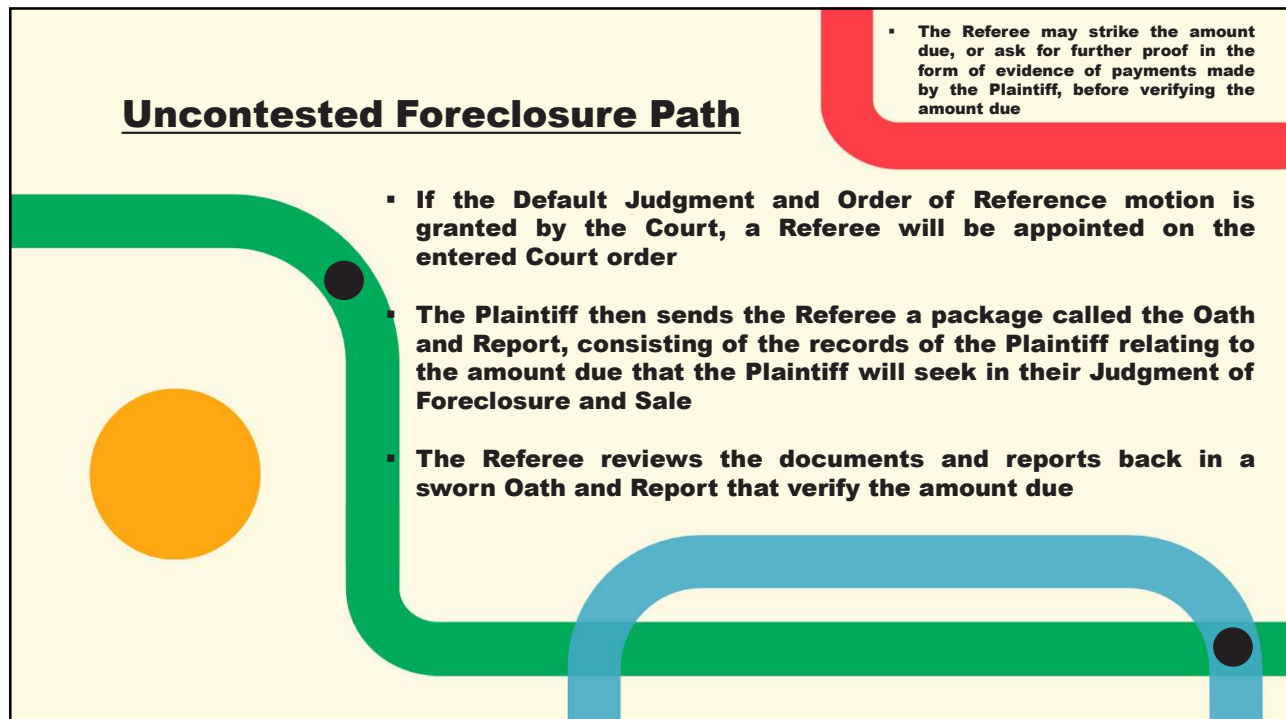
**Uncontested foreclosure:**  
If no Answer is filed, the Defendant is in default, and the case is considered uncontested



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## Sale Canceled (!)

- A defendant may file an **Order to Show Cause (OTSC)** to ask the Court to stay a foreclosure sale on an emergency basis, within days before the sale or even on the morning of the foreclosure sale date.
- The OTSC is heard before an emergency Judge, and a determination is made as to whether the sale will be stayed.
- The Plaintiff's OTSC must specifically ask to have the Sale canceled by Temporary Restraining Order (TRO) to stop the Sale from being held

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## Sale Canceled (!)

- If the OTSC is granted, the Referee cannot hold the sale; it is postponed and an adjourn date is given for Plaintiff to respond to Defendant's OTSC motion papers.
- Once the OTSC is fully considered by the Judge, the Judge will either deny the OTSC and allow the Plaintiff to proceed with sale, or depending the legal arguments presented, may have the Plaintiff's motions vacated etc. and have to go backwards in the foreclosure action to prove their case, particularly if prior motion practice was uncontested (defendant did not oppose OOR or JFS)

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## Sale Canceled (!)

- If an OTSC is denied with enough time before the sale day, a defendant may still file a Bankruptcy to automatically trigger a cancellation of the foreclosure sale. This cancels the sale until the Bankruptcy is either confirmed or dismissed.
- If the Bankruptcy is dismissed, the Plaintiff must request the Court to set a new sale date, advertise, and hold another foreclosure sale.
- Bankruptcy proceedings eventually are considered to be “abusive filings” if the filer is only filing to thwart a foreclosure sale. Eventually, a Bankruptcy filing, if not converted into an actual case, will not even trigger an automatic stay of the sale if the filer has filed too many times within the specified period

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## Post-Sale:

### Surplus Monies

### Landlord Tenant Cause of Action

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## Surplus Monies Action (Post-Sale)

- If the property is sold for more than is owed to satisfy the Plaintiff bank's mortgage, the funds are considered "surplus monies" after the foreclosure sale
- These surplus monies are held by the County where the property was sold, and are disbursed to parties with an interest in or liens against the property, in priority order
- In the Referee's Report of Sale, the amount of surplus monies is recorded in addition to the sale price of the property
- All defendants seeking surplus monies (including the prior homeowners) must make a motion for surplus monies and file it with the Court, along with their proof of claim for the funds (homeowner, junior lienholder mortgages, tax liens, creditor judgments, etc).
- Should the property sell for less than what is owed to the Plaintiff, they may elect to seek a deficiency judgment against the borrower for the difference in the amount owed vs. the amount recovered through the foreclosure sale process. This remedy is not available if the defendant has filed and entered bankruptcy, as they can no longer be personally liable for the debt.

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## From record owner to holdover tenant :

**What happens if the homeowner must be evicted after the foreclosure sale?**


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## Landlord Tenant Action

- If a prior homeowner, now holdover tenant, will not relinquish physical occupation of the property after foreclosure sale, the purchaser may have to commence a landlord-tenant action in District Court, to evict the holdover tenant
- Briefly, this process involves serving an eviction notice to the residents of the property after the foreclosure sale, filing the action in District court, motion practice, and court appearances. If the Court appearances do not result in any successful settlement, the tenant is eventually given 14 days to vacate the premises, before they are evicted by law enforcement.
- Working with the purchaser of a foreclosed property to attempt to have a mutually agreeable and amicable vacatur of the property by the holdover tenants can be done but it can also be a contested and litigated situation - there can also occasionally be settlements entered into by the parties whereby vacating the property will happen by a date certain, sometimes even with cash incentives for the holdover tenants to vacate before they have to go through the eviction process in Court.

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**NCBA Mortgage  
Foreclosure Assistance  
Project Contact  
Information:**



**[mortgageforeclosure@nassaubar.org](mailto:mortgageforeclosure@nassaubar.org)**  
→ for clients, or foreclosure related questions

↖

**[probono@nassaubar.org](mailto:probono@nassaubar.org)**  
**[sflores@nassaubar.org](mailto:sflores@nassaubar.org)**  
→ for information about volunteer opportunities

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