

Legal Assistance of Western New York, Inc. ®

We provide free legal aid to people with civil legal problems in western New York.

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Foreclosure Process in New York State

THE FORECLOSURE PROCESS IN NEW YORK STATE



Borrower Misses Payments

When you owe a payment or a part of a payment, you can be considered "delinquent" on the mortgage.

90 Day Pre-foreclosure Notice

Lender must mail you information on getting help at least 90 days before starting a court case. You can avoid a foreclosure case by paying missed payments plus all interest and fees, or by signing an agreement with Lender.

Foreclosure Case Started

Lender files notice of pendency (lis pendens), summons and complaint with the court. Lender then serves you the summons and complaint in person or by mail.

Answer the Complaint

You must submit an answer if you want to tell the judge your defenses. Your answer deadline is 20 days from when you are served if you are served in person. It is 30 days if you are not served in person.

Settlement Conference/Second Chance to File Answer

A settlement conference should be scheduled by the court about three months after you are served with the court papers. Both sides come to court to see if they can settle the case. There may be several conferences over many months. If you can't settle the case in settlement conference, or you don't go, move on to the next step.

NOTE: If you go to your settlement conference, you get a second chance to file an answer. Your deadline to answer is **30 days after your first settlement conference.**

Case Not Settled and Borrower Answered Complaint
You DID answer the complaint.

Case Settled in Settlement Conference
You went to settlement conferences and came to an agreement with Lender. There is no trial and case is over.

Case Not Settled and Borrower Didn't Answer Complaint
You DID NOT answer or your answer was rejected.

Discovery
Both sides gather information from each other.

Motion for Order of Reference
Lender asks the court to appoint someone to decide the amount you owe.

Motion for Summary Judgment
Lender files a motion asking court for a judgment without trial.

You lose motion

Referee Appointed
Lender sends updated information to referee. Referee adds up the amount you owe in a report to Lender. Lender gives report to court.

Lender loses motion

Motion for Judgment of Foreclosure and Sale
Lender makes motion asking court for a judgment of foreclosure and sale. If Lender loses the motion, judge will not order sale of home at this time.

Trial
If case is not settled, Lender must prove its case to the Judge. Both sides testify and show evidence. Judge decides case.

You lose trial

Judge Signs Foreclosure Judgment
Judge orders sale of your home at an auction at the courthouse.

You win trial

Foreclosure Sale Scheduled
Lender and Referee choose auction date for sale. Sale is advertised for at least 21 days.

Foreclosure Dismissed
The case is over. Depending on trial, Lender may or may not be able to sue you again.

Auction Held
Public sale is held. Home sold to highest bidder. The sale price may be more (a surplus) or less (a deficiency) than you owe.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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