

# **Legal Assistance of Western New York, Inc. ®**

What Is A Home M

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

[www.lawny.org](http://www.lawny.org)

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## **What Is A Home Mortgage?**

A home mortgage is a debt secured against your house. If you do not make the payments required by your mortgage agreement, your lender can try to take your home. The lender does this by starting a foreclosure action against you in Supreme Court.

### **What If I Start To Fall Behind on My Mortgage Payments?**

Once you miss a few mortgage payments, the lender will contact you to tell you that you are behind (in default). After missing several payments, the lender will send you a letter stating that you have violated the terms of the mortgage. The letter will tell you that you have about 30 days to bring the payments current. If you do not bring the payments current within that time, the lender may start a foreclosure proceeding.

At least 90 days before bringing the foreclosure proceeding, the lender must give you pre-foreclosure notice. The notice will advise you that you are in danger of losing your home and how much you need to pay to bring the mortgage current. The notice will give you the names and telephone numbers of approved not-for-profit housing counseling agencies.

### **How Can A Housing Counselor Help Me?**

Housing counselors can give you advice on your options at little or no cost. They may also negotiate with your lender. A list of approved not-for-profit housing foreclosure counselors can be found at the New York State Department of Banking web site ([www.dfs.ny.gov/consumer/mortg\\_nys\\_np\\_counseling\\_agencies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm)). If you want to save your home, it's a good idea to call a counselor for help right away.

### **What Happens if I Am Served with Court Papers for Foreclosure?**

If the lender starts a foreclosure action against you, you will be served a summons and complaint. If you are personally served, you generally have twenty (20) days to respond by filing and serving an answer. The purpose of an answer is to raise any defenses or counterclaims

that you may have against the lender. At this point, you should contact Legal Assistance of Western New York or a private attorney immediately.

You do not need to move out of the house just because you are served with court papers. You have the right to continue to live in the house while the foreclosure action is pending in court.

### **What Is a Settlement Conference?**

A settlement conference is a part of the foreclosure process where you have an opportunity to try to work out a resolution with your lender. Some homeowners (but not all) have the right to attend settlement conferences. You should receive a notice from the court letting you know the date and time of the first settlement conference. The notice will tell you what to bring to court. If you do not receive this notice, you should contact the court and request a settlement conference.

### **What Options Are There For Me to Try to Prevent My House From Being Foreclosed?**

If your lender has started a foreclosure action, you do have options to avoid losing your house. These options include:

Reinstatement: you agree to “reinstate” the loan -- pay the lender the entire past-due amount, plus any late fees and/or costs, by a certain date. This option may be appropriate if your problem paying the mortgage was temporary and you now have enough money (or access to money) to reinstate.

Repayment: you agree to repay the past amount of the mortgage payments you owe (called arrears) over time, usually a period of 12 - 24 months. In a repayment plan, you are responsible for paying these arrears *in addition to* your on-going monthly mortgage payments. This option may be appropriate if you got behind as a result of a temporary hardship, and you are able to afford higher monthly mortgage payments during the repayment period.

Forbearance: the lender agrees to temporarily reduce or suspend your monthly payments for a short period, usually six months. At the end of the forbearance period, you have to make your regular payments and pay an extra amount to make up for payments missed during the forbearance period or else modify your loan. This option may be appropriate if you are receiving unemployment benefits, and you hope to return to work.

Loan Modification: depending on the type of loan you have, the lender adjusts the terms of the loan to make it more affordable. The lender may lower your interest rate, extend the term (the maturation date) of your loan, or forbear or forgive some of your principal. In a loan modification, the past due amount, plus costs, are added into your principal (mortgage debt). This option may be appropriate if your income has permanently changed. This option does not necessarily mean a lower monthly payment.

Short Sale/Deed in lieu of foreclosure: If you do not want to keep your house or do not qualify for any of the options discussed above, a short sale or a deed in lieu of foreclosure allows you to give up your house, oftentimes without a judgment entered against you. In a short sale, the lender allows you to sell your house for less than what you owe. You want to make sure that the

lender accepts the proceeds of the sale as payment in full, without holding you responsible for the difference between what your house sells for and the amount due on the loan (called a “deficiency”). Similarly, with a deed in lieu of foreclosure, you surrender the home to the lender, with the lender agreeing to not hold you responsible for any deficiency. However, lenders usually require that you try a short sale before agreeing to a deed-in-lieu. In both these options there may be tax consequences arising from any forgiven (or cancelled) debt so it’s important to talk with a tax advisor.

### **What Happens If I Am Able To Work Something Out With the Lender through the Settlement Conference Process?**

If you work out something with the lender during the settlement conference the foreclosure action will be discontinued by the lender.

### **What Happens If I Am Not Able To Work Something Out With the Lender?**

If you are not able to work something out with the lender during the settlement conference or decide not to participate in a settlement conference, the lender will file paperwork with the court asking the court to allow them to foreclose on the house. If you served an answer, a copy of the lender’s paperwork should be sent to you at the time it is sent to the court and you have the right to respond to this paperwork. If you did not serve an answer, you can still request this paperwork by filing a Notice of Appearance with the court after your settlement conference.

### **What Happens If the Court Gives the Lender Permission to Foreclose?**

The court will allow the lender to sell the house at a foreclosure auction. Notice of the public sale must be posted and published at least 30 days before the sale. Anyone, including you, has the right to bid on the house at the public auction, so long as the bidder shows proof of funds. Whoever buys the house at auction (oftentimes, it’s the lender), has to take you to court to evict you, if you’re still living in the home.

You should be aware that you are responsible for any difference between the amount you owed on the mortgage and the amount the house sold for at the foreclosure auction. This is called a deficiency, and the lender may try to collect that deficiency judgment. More information on how judgments are collected can be found at [LawNY.org](http://LawNY.org).

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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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