

THE FORECLOSURE PROCESS IN NEW YORK STATE

NOTE:
This process is for residential homes where a defendant is living in the home.

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 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 Answered Complaint

You DID answer the complaint.

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.

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

Trial

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

You win trial

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.

Judge Signs Foreclosure Judgment

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

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.

Last Review Date: July 2017

This document updates and modifies a document from NEDAP (New Economy Project). This document was created with funding support from the New York State Interest on Lawyer Account Fund (IOLA).

© 2017 Legal Assistance of Western New York, Inc. ®