

KNOW YOUR RIGHTS: WHAT TO DO IF YOU RECEIVE FORECLOSURE PAPERS

Below are FAQs on foreclosures. If you have received court papers in a foreclosure case, learn more about your rights and seek help immediately!

WHAT IS A FORECLOSURE?

- A foreclosure is a **lawsuit brought against you to take your home**. A foreclosure can be brought by your mortgage lender, claiming that you failed to pay (“defaulted”) on your mortgage loan. A foreclosure can also be brought against you if you get behind on your property taxes or your water bill.
- The party suing you in foreclosure—the “plaintiff”—must prove to the court that it has a legal right to take your house before it can get a judgment and hold a foreclosure auction.

CAN I STAY IN MY HOME AFTER A FORECLOSURE IS STARTED AGAINST ME?

- **Yes**. You own your house and you don’t have to leave unless and until it is sold at auction. That process can take months or even years, and you have the right to defend yourself in court against a foreclosure lawsuit. In the meanwhile, **you remain responsible for maintaining the house**, and if you have tenants you still remain the landlord and are still responsible for the property.
- After an auction is held, you would be considered a tenant and the new owner would be entitled to evict you through a lawsuit in housing court.

DOES MY BANK HAVE TO NOTIFY ME BEFORE STARTING A FORECLOSURE?

- **Yes**. At least 90 days before starting a foreclosure case, the bank or the company that services your mortgage for the bank must send you by regular and certified mail a letter called a **90-day notice**. The 90-day notice tells you that you are in default and tells you the amount of money you would have to pay to catch up. The notice must also provide you with a list of non-profit groups providing free help to homeowners seeking to resolve their mortgage problems. If you get a 90-day notice, **do not wait**—contact one of the providers on the list, or another provider in your area, for assistance. Beware of people who want to charge you for help with your mortgage—they may not have your best interests at heart.



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KNOW YOUR RIGHTS: FORECLOSURE FAQs



DO I HAVE TO ANSWER THE FORECLOSURE COMPLAINT?

- **Yes.** It is important to **answer the court papers in writing**, even if the plaintiff tells you not to bother. If you do not send your answer to the plaintiff's attorneys and to the court, you may lose some important protections. You may be eligible for free help in answering the complaint from lawyers with experience in defending against foreclosure actions.

HOW DO I ANSWER THE COMPLAINT?

- "Answering a complaint" means **putting in writing** your responses to the court papers that started the foreclosure case, mailing a copy of your response to the plaintiff's law firm, and filing your response in court. The court papers that start a foreclosure case include a "complaint," which has many numbered paragraphs stating the reasons the plaintiff claims it has the right to take your house. Answering the complaint may involve denying some or all of the factual statements, and stating defenses to the foreclosure action. "Defenses" are facts in your favor that—if you can prove them—could defeat the foreclosure. If you have claims *against* the plaintiff, called "counterclaims," you can add those to your answer as well.

HOW MUCH TIME DO I HAVE TO ANSWER THE COMPLAINT?

- If you got the foreclosure court papers handed to you, you have 20 days to answer. If the papers were delivered to someone else at your home with a follow-up mailing, or if they were left at your home with a follow-up mailing, you have 30 days to answer. To serve your answer, you must **mail a copy** of your signed answer to the plaintiff's law firm and **file the original** of your answer with the court.
- If you did not answer the complaint within these time frames, you will be given one more chance to answer **IF** you attend the first settlement conference in your case. At the first settlement conference, the court is required to give you information about answering the complaint and you will be given another 30 days in which you can submit a written answer.

CAN SOMEONE GIVE ME LEGAL ASSISTANCE IN ANSWERING THE COMPLAINT?

- The court must provide you with information about organizations that can help you, which may include helping you to answer the complaint (on your own, known as proceeding *pro se*) and/or possibly represent you in foreclosure conferences in court. A fill-in-the-blank answer form is available that can be used to answer the complaint (the "*pro se* answer form"), with instructions on how to complete the form. You should seek legal advice in completing the *pro se* answer form, because foreclosure cases can involve complex legal issues.

HOW DO I AVOID PEOPLE WHO WANT TO SCAM ME?

- Once a foreclosure is started against you, you may receive many letters, phone calls and even people knocking on your door with all kinds of "offers" and "promises" to save your home with loan modifications, refinancing schemes, cash-for-keys, short sales or other schemes. **Many homeowners have been victimized by such schemes**, paying thousands of dollars for modifications that never came, or have even been tricked into signing papers that transferred the home to another party. These practices violate various New York laws. **Do not sign any papers without FIRST consulting with a free legal service provider or housing counseling agency.**



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* The information in this factsheet does not constitute legal advice.

WHAT ARE FORECLOSURE SETTLEMENT CONFERENCES, AND HOW CAN THEY HELP ME?

- If your bank brought a foreclosure case against you, New York law gives you the right to a court-supervised settlement conference, which is meant to help you and the bank reach a solution such as a loan modification agreement or other settlement of your foreclosure case. Both you and the bank's attorneys are required to come to court with certain information that is needed for meaningful negotiations. Settlement conferences are held in Supreme Court, with a referee, a judge, or another court employee. Before the conference, the court will send you a notice with the date of the conference. **Do not ignore notices or letters from the court.** You are entitled to a settlement conference even if you did not file an answer to the foreclosure complaint.

WHAT IS REQUIRED OF THE BANK DURING THE SETTLEMENT CONFERENCES?

- The bank and/or its lawyers are required to come to court for settlement conferences with authority to make decisions. At the first conference, the bank's lawyer must come with an application form for you to use to apply for a loan modification or other workout, a payment history for the mortgage, detailed information on the amount needed to pay off the loan as well as the amount to bring it current, the mortgage loan documents, and information on the status of any pending loan modification application. If the bank denies your application, you must be given or sent a letter explaining the reason for the denial. In addition, the bank must meet certain deadlines for reviewing and deciding whether to approve your application.
- At the first conference, the court will give you information about answering the complaint and will explain that you have an additional 30 days in which to answer the complaint. If you do not attend your first conference you will not receive this second chance to answer the complaint.
- Usually, after the first conference, the court will "adjourn": schedule another date for you and the bank's attorney to come in. There are often several "adjournments," to give both sides time to try to work out a solution. It is important for you—or your attorney, if you are represented—to attend each of the settlement conferences scheduled in your case.

WHAT IS REQUIRED OF THE HOMEOWNER DURING THE SETTLEMENT CONFERENCES?

- In addition to going to each scheduled conference, you are required to bring information and documentation. A list of the information and documentation you must bring is included in the "summons"—the official letter the court sends, telling you to come to your first settlement conference. This includes information on household expenses, property taxes, information about income tax returns, proof of any benefits (such as Social Security) you receive, and rental agreements or proof of rental income. You are also required to bring information about any modification applications you have already sent to the bank.
- At the conference, you may be told to bring other documentation to the next conference. You will probably be given a deadline to submit specific documents in support of your modification application to the bank's law firm. It is important to submit the required documents on time.



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WHAT DOES IT MEAN TO “NEGOTIATE IN GOOD FAITH”?

- Banks must comply with many legal requirements when working with homeowners having difficulties paying their mortgage loans. Mortgage servicers in New York are required to make reasonable and good-faith efforts to work with homeowners on solutions such as loan modifications, if possible. It’s important to understand that the law only requires the bank to act reasonably and review your applications with care. This means the bank must send someone to the settlement conference who has authority to make decisions. That person must also bring required information, must follow instructions and meet deadlines from the court for reviewing your modification application and, if your application is denied, explain the reason for the denial.

WHAT HAPPENS IF MY CASE IS SETTLED AS RESULT OF THE CONFERENCES?

- Within 90 days after any written agreement to settle the case—though a mortgage modification, or otherwise—is signed by both you and the bank’s law firm, the bank’s law firm must file paperwork with the court discontinuing (ending) the foreclosure.

WHAT HAPPENS IF NO SETTLEMENT IS REACHED?

- If you and the bank are unable to reach a settlement in the settlement conferences, the case will be released from settlement conferences and will proceed in court as any other lawsuit would proceed. The process may take many months or even years. If your financial situation changes to make a modification or other workout possible, you can still reapply to the bank before the foreclosure case reaches its end.
- The path of the foreclosure after the conferences depends on whether or not you filed an answer to the complaint.
 - **If you did not answer the complaint**, the court may not give you the chance to oppose the plaintiff as it takes steps toward foreclosure. Those steps are called “motions”; a “motion” is just a formal written request to the court, asking the judge to do something. The plaintiff first generally must make a motion to the court for a default judgment, meaning that the case is decided against you because you did not challenge the complaint by answering it, and to appoint a referee to calculate what is due on your loan. After the referee does his or her calculations and puts them in a report, the plaintiff must then make a motion asking the court to enter a judgment of foreclosure and sale against you. Once the court grants the judgment of foreclosure and sale, the court will allow the sale of your home at auction to satisfy the mortgage debt.
 - **If you have answered the complaint** (and possibly put in defenses and made your own claims against the plaintiff), you have the right to get information and documents from the plaintiff that relate to and support your defenses and claims. This is known as “discovery.” You should consult an attorney about discovery.



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- The plaintiff will have to prove its case in order to get permission to take your house, either at trial or by motion to the court. Depending on the defenses or counterclaims you raised in your answer, you may submit opposition to the plaintiff's motion and try to show that the facts don't support plaintiff's argument that it can take your house without a trial.

BEFORE THE AUCTION IS HELD, CAN I STILL TAKE STEPS TO SAVE MY HOME?

- Up to the point of the scheduled sale you have the right to "redeem" your home. This may require you to submit additional legal papers (such as an "order to show cause") to stop or "stay" the auction and/or vacate the judgment. You should consult an attorney for assistance and to determine whether you can take this step.

WHAT HAPPENS AFTER THE AUCTION?

- Whoever obtains the title to your home at the auction—either the bank or a new owner—must still take certain steps to gain possession of your home. The new owner or bank may seek the assistance from Supreme Court (called a "writ of assistance") to have a sheriff conduct the eviction, or bring an eviction action in Housing Court. Although the bank or new owner may ultimately gain possession, you should seek assistance to determine whether you have any defenses to prevent eviction.



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