

Your Court Street Lawyer's New York Mortgage Foreclosure Process Flow Chart



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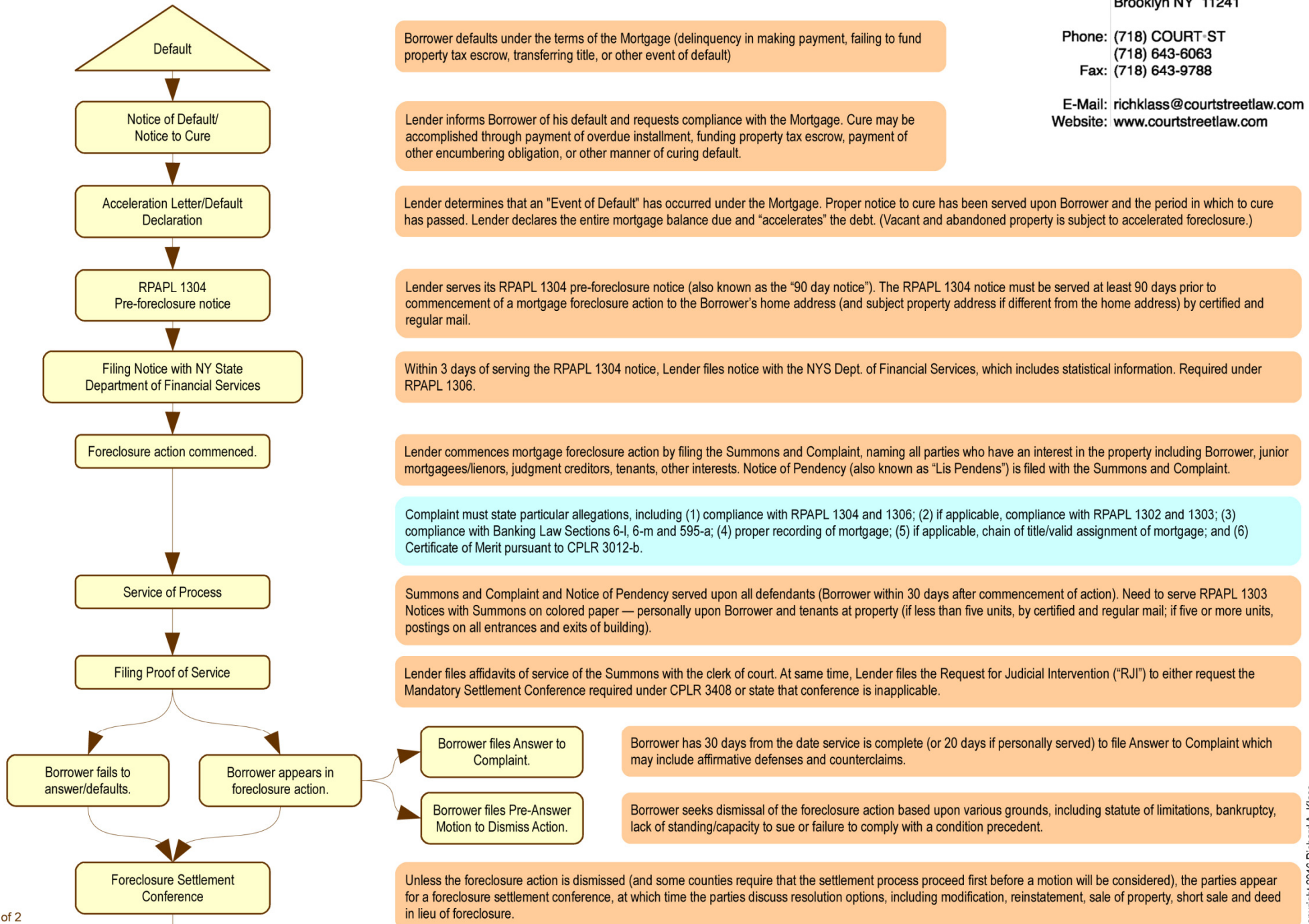
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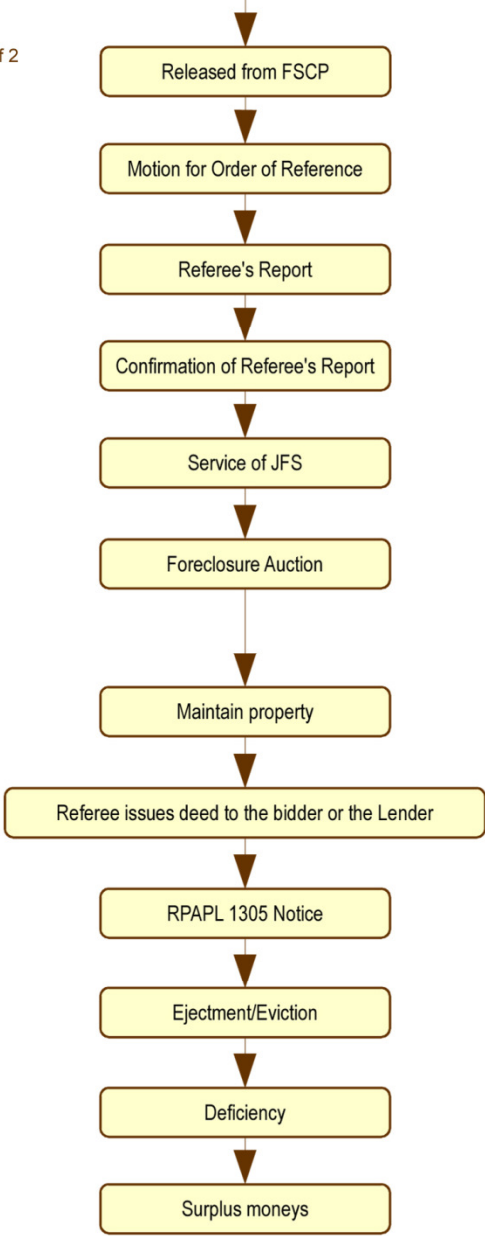
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In the event that the foreclosure action is not resolved in the Foreclosure Settlement Conference Part ("FSCP"), the Judge/Referee/judicial hearing officer remands the action back to the assigned judge for further litigation of the case.

Typically, the next step in the process is that the Lender moves for summary/default judgment against the defendants and requests that the court appoint a Referee to compute the amount due to Lender under the note (also known as a motion for an Order of Reference).

Once the Order of Reference is signed by a Judge, the Referee gives notice of the hearing to compute the amount due (sometimes, an actual hearing is not required but rather notice of the computations). Borrower may present evidence concerning payment, credits or defenses solely as to the amount due.

Once the Referee has signed the Oath and Report of Amount Due, Lender moves for confirmation of the Report and entry of a Judgment of Foreclosure and Sale ("JFS"). The JFS is the court order that is the last step before notice of an auction sale.

The JFS will require that notice of its entry be served upon all parties to the case, and those claiming an ownership interest in the property, at least 30 days before a potential auction sale of the property.

Aside from service of JFS on all parties, notice of auction sale of property must be published in a newspaper (to be designated by judge). Public auction is held in the courthouse, where eligible bidders bid until either highest bid is accepted by Referee or Lender takes back property (since no bids exceeded Lender's "upset price"). If bidder defaults in closing, Lender will republish new auction sale and keep bid deposit. Upset price is typically amount of JFS with accrued interest but Lender may set it at a lower amount.

RPAPL 1307 imposes a duty on Lender to maintain the property if vacant or abandoned by the owner with tenants in occupancy.

Lender prepares the Deed and transfer documents for Referee to execute in favor of the successful bidder, transferring title to the property.

After title is transferred from the auction sale, RPAPL 1305 notice is served upon tenants of the property.

New buyer/Lender must eject the former owner of the property or evict tenants in the property, if so desired, to vacate premises.

Lender may apply to "confirm" the foreclosure sale and pursue a deficiency claim against Borrower for any balance due to Lender over and above the amount for which the property sold at auction. RPAPL 1371 requires motion be made within 90 days after delivery of Referee's Deed.

In the event property sells at auction for more than judgment balance, there is a "Surplus." In the event of a Surplus, Borrower or other parties in interest move for a Referee to be appointed to determine who is entitled to payment of the surplus moneys from the sale.

Ten options after default:

1. Pay mortgage arrears in order to become current on account
2. Satisfy/cure condition that constitutes an Event of Default
3. Loan modification process (may include: deferment of payment, reduction of interest rate, or discharge of principal or interest indebtedness)
4. Reinstatement of mortgage (including payment of foreclosure fees)
5. Negotiate a short-sale of the property to another person concomitant with waiver of deficiency
6. Refinance mortgage with another Lender
7. Sell property and satisfy mortgage balance
8. Forbearance agreement (in contemplation of dismissal)
9. Chapter 7 Bankruptcy (either to discharge other unsecured debt or to discharge any personal liability under the mortgage)
10. Chapter 13 Bankruptcy (reorganize and propose a payment plan)

