

Your Court Street Lawyer's Quick Reference Guide

Killing the “Zombies”

By Richard A. Klass, Esq.

Recent Changes to New York State's Foreclosure Laws

- Eliminating vacant and abandoned properties
- Streamlining foreclosure settlement conference part
- PreForeclosure Notices
- Getting Foreclosed Houses to Market Quicker



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Mr. Klass has served as a Trustee of the Brooklyn Bar Association, Chair of the General Practice Section of the New York State Bar Association, Co-Chairman of the Continuing Legal Education Committee of the Brooklyn Bar Association, Co-Editor of the New York State Bar Association's General Practice Section *One on One* Publication, and an Arbitrator, Small Claims Part of the Civil Court of the City of New York, County of Kings. Mr. Klass also currently serves as a Fee Arbitrator in the Part 137 Attorney-Client Fee Dispute Program. He has also served as a representative to the Statewide Special Counsel for the Commercial Division of the New York State Unified Court System.

In 1989, Mr. Klass received his Bachelor of Arts at Hofstra University and in 1992, his Juris Doctorate at New York Law School. He was the Recipient of the American Jurisprudence Award in Conflict of Laws. Mr. Klass is admitted to the following jurisdictions: State of New York (1992); State of New Jersey (1993); U.S. District Court for the Eastern District of New York (1992); U.S. District Court for the Southern District of New York (1992); U.S. District Court for the District of New Jersey (1993); U.S. Court of Appeals for the Second Circuit (1999); and the U.S. Supreme Court (1997).

Richard Klass has been a formative voice within New York law circles both for the high standards of his work as well as his extensive writings, lectures and appearances in the media. He reaches audiences of both lawyers and non-lawyers, through publications which include his quarterly newsletter, *Law Currents*, his blogs



Law Currents and *The Legal Malpractice Blog, New York*, and his book *Successfully Defending Your Credit Card Lawsuit: What to do if you are sued for a credit card debt*.

The newsletter and blog *Law Currents*, with a combined readership of tens of thousands, is particularly popular. Written in plain English in a style that appeals to anyone who likes a good story, this two-page illustrated quarterly features case studies that both entertain and inform.

Areas of Practice

- Abandoned Property
- Appellate
- Attorney Fee Collections
- Bankruptcy Practice
- Business Formation and Commercial
- Commercial Litigation
- Debt Collection and Litigation
- Legal Malpractice
- Personal Injury
- Real Estate Transactions
- Real Estate Litigation
- Wills and Estates

Killing the "Zombies": Recent Changes to New York State's Foreclosure Laws

By Richard A. Klass, Esq.

With New York State still experiencing reverberations from the 2008 Great Recession, the State government passed legislation designed to ameliorate the recessive impacts through changes in mortgage foreclosure laws. On June 23, 2016, Governor Andrew Cuomo signed into law Chapter 73 of the Laws of New York 2016. This new legislation addresses several areas concerning housing retention and foreclosure, including (a) moving "zombie" properties through a quicker foreclosure process; (b) making foreclosure settlement conferences more meaningful to spur settlements; and (c) ensuring that homeowners in foreclosure receive better notice of their rights.

"Zombie" Properties

Across New York State, many homeowners who faced spiraling debts, foreclosures, and negative equity in their homes decided to walk away from their properties, leaving abandoned homes strewn around the state. While foreclosure cases take years to complete, these abandoned homes, known as "zombie" properties, sit vacant, becoming blights on their communities, bringing down the value of other homes, lowering the tax base, fostering criminal acts or unsafe conditions and removing housing stock from available inventory to potential buyers. Several changes to the foreclosure laws were enacted to specifically address this problem.

A. Real Property Actions and Proceedings Law Section 1308 ("RPAPL §1308")

Section 1308: "Inspecting, securing and maintaining vacant and abandoned residential real property" was added to impose new duties on mortgagees to address persistent problems with

vacant and abandoned properties early in the foreclosure process in order to prevent them from becoming "zombies" in their communities. RPAPL §1308 imposes new obligations on first lien mortgage holders on 1-4 family residential properties, including:

➤ Inspections of Property

The mortgagee or loan servicer must inspect the house within 90 days of a borrower's delinquency to determine whether it is occupied. So long as the loan remains delinquent, the mortgagee must repeat the inspection every 25 to 35 days, and at different times of the day.

➤ Posting Notice

Within seven days of determining the house is vacant or abandoned, the mortgagee must post a notice on an easily-accessible part of the property providing contact information and requesting that the homeowner contact the servicer.

➤ **Securing and Maintaining the Property**

If there is no response to the notice within seven days and the servicer has a reasonable basis to believe the house is vacant or abandoned, or if there is an emergent property condition that could damage or harm the property, the servicer must secure and maintain the property. Maintenance would include providing basic utilities, winterizing the plumbing and heating systems and repairs to broken doors and windows. These duties continue until one of several conditions occurs.

➤ **Protection of Mortgagor's Personal Property**

The mortgagee may not remove personal property from the house unless it poses a significant risk to health and safety, or if a government entity has ordered removal and such order has not been contested.

➤ **Good Faith Immunity**

A mortgagee who peacefully enters a vacant and abandoned property in order to comply with RPAPL § 1308 will be immune from liability if it made reasonable efforts to comply.

➤ **Enforcement**

The Department of Financial Services (DFS) has authority to issue rules and regulations, as well as the right to enforce violations of RPAPL 1308. If it appears by a preponderance of the evidence that a mortgagee has violated RPAPL 1308, a judicial hearing officer or court may issue a civil penalty of up to five hundred dollars (\$500.00) per day per property for each day that the violation persisted.

➤ **Preemptions by law**

RPAPL § 1308(10) provides that "The provisions of this section are subject to federal laws, court orders and investor and insurer guidelines."

B. Expedited Application for Judgment of Foreclosure of Sale

New RPAPL §1309 allows a mortgagee to move for an immediate judgment of foreclosure and sale

on the ground that the property is vacant and abandoned. Section 1309 is to be utilized for a quick foreclosure of "vacant and abandoned residential property." Section 1309(5)(a) sets forth some exceptions to this relief, where the defendant answers the complaint or otherwise demonstrates "an intention to contest the foreclosure action."

Summary of Procedural and Evidentiary Requirements

- The motion cannot be made until the defendant's time to answer the complaint has expired. The motion must be served on the defendant, regardless of whether she/he has defaulted in appearing in the action.
- The application for an expedited judgment of foreclosure and sale must be supported by an affidavit and other proof, including but not limited to:
 - proof of ownership of the mortgage and the note;
 - bold notice on the motion papers regarding the request for expedited relief;
 - photographs evidencing that the subject property is vacant and abandoned;
 - if available, utility company records or other documentation evidencing the vacant and abandoned status of the premises;
 - the sums alleged to be due and owing upon the subject mortgage and note, including the current principal balance and a detailed and itemized account of each fee, each cost, and a calculation of interest accrued, supported by documentary evidence.
- The court will send its own notice to the defendant to advise her/him that the plaintiff has filed an application to expedite the foreclosure and sale on the grounds that the property is vacant and abandoned.
- The court may require the plaintiff to appear in court and provide testimony.

- The court must make written findings of fact as soon as practicable as to whether the property to be foreclosed is vacant and abandoned, including setting forth:
 - the evidence relied upon by the court in finding that the property is vacant and abandoned;
 - the evidence showing that the plaintiff is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner of same.
 - the sums due and owing upon the subject mortgage and note after a review of the detailed and itemized account of each fee, each cost, and a calculation of interest accrued.

C. Statewide Vacant and Abandoned Property Electronic Registry

New RPAPL §1310 requires Department of Financial Services (DFS) to maintain a statewide vacant and abandoned property registry. The information provided to DFS will be treated as confidential, except that certain information may be released to public officials if it is in the best interest of the public. DFS is authorized to adopt regulations regarding the manner and frequency of registration, as well as access to the information to be provided by the servicer or mortgagee. DFS must also establish a toll-free hotline for community residents to report vacant and abandoned properties.

Help Getting to "Yes"

In 2009, New York began to require court conferences concerning all mortgage foreclosure cases (as opposed to merely those concerning "high cost or high interest" loans) early in the mortgage foreclosure process, where mortgage lenders and homeowners could meet and confer in an effort to resolve the delinquency and get the homeowners back on track through loan

modifications or reinstatements. Many times, these conferences have been unproductive, either due to lenders sending attorneys or representatives with no knowledge of the case, lenders losing documentation from borrowers necessary to complete the loan modification request (with constant requests for "fresh" documents to replace "stale" ones), borrowers showing up to court with no understanding of what needed to be brought for review, and court personnel being unable to bring the parties to a reasonable settlement because of the limited parameters of the settlement conference and available settlement options.

Changes to Mandatory Foreclosure Settlement Conferences

Section 3408 of the CPLR was extensively amended to provide certain clarifications and to impose certain additional duties on both foreclosing plaintiffs and defendant/homeowners.

Summary of Changes

- **Scope of Negotiations**
Expands the scope of negotiations at foreclosure settlement conferences to include several workout options including loan modification, short sale, deed in lieu of foreclosure, any other loss mitigation option, or "whatever other purpose the court deems appropriate."
- **Appearances by parties**
Requires that both the plaintiff and defendant or their respective representatives must appear at the conference.
- **Plaintiff's Duty to Submit Documents**
It is now mandatory that the plaintiff provide (i) payment history; (ii) itemization of amounts needed to cure or pay off the loan; (iii) copies of the note and mortgage; (iv) standard application forms for loss mitigation options; and (v) any other documents required by the presiding judge.

➤ **Additional documentation**

If the plaintiff has evaluated or is evaluating the defendant's eligibility for a home loss mitigation program or other options, the plaintiff shall also provide a summary of status of the evaluation and a list of outstanding items. If loss mitigation is denied, the plaintiff must provide either the denial letter or a written document providing the reasons for the denial, the values used in the net present value evaluation, and documentary evidence of any investor restrictions under any pooling or servicing agreement.

➤ **Defendant's Duty to Submit Documents**

The defendant must also provide documents, including information on current income tax returns, expenses, property taxes, previously submitted loan mitigation applications, proof of rental income and any other document required by the presiding judge.

➤ **Determination of Good Faith**

Compliance with the obligation to negotiate in good faith will be measured by the "totality of the circumstances," including compliance with court rules, statute requirements and other loss mitigation and servicing rules. Also, the court will look at whether either side created unreasonable delay, failed to have proper authority or information at conferences or failed to provide accurate information to the court and parties.

➤ **Sanctions for Plaintiff**

If the court finds that the plaintiff failed to negotiate in good faith, the court can: (1) toll the accumulation of interests, costs and fees during any undue delay; (2) compel production of documents; (3) award actual damages, including attorneys' fees and expenses; (4) assess a civil penalty sufficient to deter repetition of the conduct in an amount not to exceed twenty-five thousand dollars (\$25,000.00); and (5) any other relief the court deems proper.

➤ **Sanctions for Defendant**

If the court finds that the defendant failed to negotiate in good faith, the court "*shall, at a minimum, remove the case from the conference calendar.*"

➤ **Defendant's Automatic Extension to Answer**

A defendant who does not serve an answer, but appears at the foreclosure settlement conference, is to be informed by the court that she/he is to answer the complaint. The defendant is presumed to have a reasonable excuse for the default and will have an automatic 30-day extension in which time the defendant shall file an answer to the complaint.

➤ **Abeyance of motions**

Any motions submitted while the settlement process is ongoing will be held in abeyance pending the outcome of the conference.

Getting out the Word: PreForeclosure Notices

Sections 1303 and 1304 of the RPAPL were amended to update the written disclosures to homeowners in foreclosure and impose certain additional duties on foreclosing plaintiffs.

Summary of Changes

➤ **Right to Remain in Mortgaged Premises**

The disclosures required by 1303 and 1304 were amended to include notice that the defendant has the right to remain in the mortgaged premises until the property is sold at auction or a court order directs the defendant to leave.

➤ **Duty To Mail to All Addresses of Record**

In addition to mortgaged premises, notices are to be sent to the homeowner's last known address of record, if different.

- **Housing Counseling Agencies**
The list of at least five housing counseling agencies serving the county in which the property is located is to be included with the RPAPL 1304 notice from the most-recent DFS listing available.
- **Effect of Bankruptcy Filing**
Clarifies that the 90-day waiting period of RPAPL 1304 shall not apply, or shall cease to apply, if the borrower has "filed for bankruptcy protection under federal law." Regardless of whether the 90-day waiting period applies, the RPAPL 1304 notice must still be served.
- **Cure and Re-Default Within 12 Months**
If, after the RPAPL 1304 90-day notice is served, the defendant cures the default and re-defaults again, the plaintiff must serve a new RPAPL 1304 notice, even if it is within the same twelve month period.
- **Non-English Speakers**
For any borrower known to have limited English proficiency, the RPAPL 1304 notice must be in the borrower's native language (or a language in which the borrower is proficient), provided that the language is one of the six most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on United States census data. Also, DFS shall post the notice on its website in the six most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on the United States census data.

Turning Over the Soil: Getting Foreclosed Houses to Market Quicker

In an effort to prevent mortgage lenders from warehousing properties and waiting to sell the foreclosed houses until whenever they deem the 'perfect time' (which could also generate "zombie" properties), the foreclosure laws were amended to push the lenders to move housing stock quicker once the foreclosure process has concluded.

A. Deadline to Conduct Foreclosure Sale Following Judgment

RPAPL 1351 was amended to provide that the foreclosure sale must occur "within ninety days of the date of the judgment." It does not specify whether this means the date the judgment is executed or the date the judgment is entered. This will inevitably result in additional motion practice due to court delays and late bankruptcy filings.

B. Deadlines for Marketing REO Properties

RPAPL 1353 was amended to provide that if a plaintiff (or its affiliate) is the purchaser at the foreclosure sale, it must place the property back on the market for sale or occupancy within 180 days of the execution of the deed or within 90 days of the reasonable completion date of renovations or repairs. The sanctions for violations are not specified.

If you would like the assistance of an attorney, please contact Richard A. Klass, Esq. with questions.
Email: richklass@courtstreetlaw.com

RMA Sample Forms

Request for Mortgage Assistance (RMA) forms from the Making Home Affordable Program follow. The sample forms provided here are only for reference and are *not* intended to be used. While these forms may have been current at the time this booklet was written, it is possible they have changed. To obtain the current forms, visit this website: <https://www.makinghomeaffordable.gov/pages/default.aspx>.

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**Making Home Affordable Program
Request For Mortgage Assistance (RMA)**



If you are experiencing a financial hardship and need help, you must complete and submit this form along with other required documentation to be considered for foreclosure prevention options under the Making Home Affordable (MHA) Program. You must provide information about yourself and your intentions to either keep or transition out of your property; a description of the hardship that prevents you from paying your mortgage(s); information about **all** of your income, expenses and financial assets; whether you have declared bankruptcy; and information about the mortgage(s) on your principal residence and other single family real estate that you own. **Finally, you will need to return to your loan servicer (1) this completed, signed and dated Request for Mortgage Assistance (RMA); and (2) completed and signed IRS Form 4506-T or 4506T-EZ; and (3) all required income documentation identified in Section 4.**

When you sign and date this form, you will make important certifications, representations and agreements, including certifying that all of the information in this RMA is accurate and truthful.

SECTION 1: BORROWER INFORMATION

BORROWER	CO-BORROWER
BORROWER'S NAME	CO-BORROWER'S NAME
SOCIAL SECURITY NUMBER DATE OF BIRTH (MM/DD/YY)	SOCIAL SECURITY NUMBER DATE OF BIRTH (MM/DD/YY)
HOME PHONE NUMBER WITH AREA CODE	HOME PHONE NUMBER WITH AREA CODE
CELL OR WORK NUMBER WITH AREA CODE	CELL OR WORK NUMBER WITH AREA CODE
MAILING ADDRESS	MAILING ADDRESS (IF SAME AS BORROWER, WRITE "SAME")
EMAIL ADDRESS	EMAIL ADDRESS

Has any borrower filed for bankruptcy? <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 13 Filing Date: _____ Bankruptcy case number: _____ Has your bankruptcy been discharged? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is any borrower a servicemember? <input type="checkbox"/> Yes <input type="checkbox"/> No Have you recently been deployed away from your principal residence or recently received a permanent change of station order? <input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

How many single family properties other than your principal residence do you and/or any co-borrower(s) own individually, jointly, or with others? _____

Has the mortgage on your principal residence ever had a Home Affordable Modification Program (HAMP) trial period plan or permanent modification? Yes No

Has the mortgage on any other property that you or any co-borrower own had a permanent HAMP modification? Yes No If "Yes", how many? _____

Are you or any co-borrower currently in or being considered for a HAMP trial period plan on a property other than your principal residence? Yes No

SECTION 2: HARDSHIP AFFIDAVIT

I (We) am/are requesting review under MHA.
 I am having difficulty making my monthly payment because of financial difficulties created by (check all that apply):

<input type="checkbox"/> My household income has been reduced. For example: reduced pay or hours, decline in business or self employment earnings, death, disability or divorce of a borrower or co-borrower.	<input type="checkbox"/> My monthly debt payments are excessive and I am overextended with my creditors. Debt includes credit cards, home equity or other debt.
<input type="checkbox"/> My expenses have increased. For example: monthly mortgage payment reset, high medical or health care costs, uninsured losses, increased utilities or property taxes.	<input type="checkbox"/> My cash reserves, including all liquid assets, are insufficient to maintain my current mortgage payment and cover basic living expenses at the same time.
<input type="checkbox"/> I am unemployed and (a) I am receiving/will receive unemployment benefits or (b) my unemployment benefits ended less than 6 months ago.	Other: _____

Explanation (continue on a separate sheet of paper if necessary):

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SECTION 3: PRINCIPAL RESIDENCE INFORMATION
 (This section is required even if you are not seeking mortgage assistance on your principal residence)

I am requesting mortgage assistance with my principal residence Yes No

If "yes", I want to: Keep the property Sell the property

Property Address: _____ Loan I.D. Number: _____

Other mortgages or liens on the property? Yes No Lien Holder / Servicer Name: _____ Loan I.D. Number: _____

Do you have condominium or homeowner association (HOA) fees? Yes No If "Yes", Monthly Fee \$ _____ Are fees paid current? Yes No

Name and address that fees are paid to: _____

Does your mortgage payment include taxes and Insurance? Yes No If "No", are the taxes and insurance paid current? Yes No

Annual Homeowner's Insurance \$ _____

Is the property listed for sale? Yes No If "Yes", Listing Agent's Name: _____ Phone Number: _____

List date? _____ Have you received a purchase offer? Yes No Amount of Offer \$ _____ Closing Date: _____

Complete this section ONLY if you are requesting mortgage assistance with a property that is not your principal residence.

Principal residence servicer name: _____ Principal residence servicer phone number: _____

Is the mortgage on your principal residence paid? Yes No if "No", number of months your payment is past due (if known): _____

SECTION 4: COMBINED INCOME AND EXPENSE OF BORROWER AND CO-BORROWER

Monthly Household Income		Monthly Household Expenses/Debt (*Principal Residence Expense Only)		Household Assets	
Monthly Gross wages	\$ _____	First Mortgage Principal & Interest Payment*	\$ _____	Checking Account(s)	\$ _____
Overtime	\$ _____	Second Mortgage Principal & Interest Payment*	\$ _____	Checking Account(s)	\$ _____
Self employment Income	\$ _____	Homeowner's Insurance*	\$ _____	Savings / Money Market	\$ _____
Unemployment Income	\$ _____	Property Taxes*	\$ _____	CDs	\$ _____
Untaxed Social Security / SSD	\$ _____	HOA/Condo Fees*	\$ _____	Stocks / Bonds	\$ _____
Food Stamps/Welfare	\$ _____	Credit Cards/Installment debt (total min. payment)	\$ _____	Other Cash on Hand	\$ _____
Taxable Social Security or retirement income	\$ _____	Child Support / Alimony	\$ _____		
Child Support / Alimony**	\$ _____	Car Payments	\$ _____		
Tips, commissions, bonus and overtime	\$ _____	Mortgage Payments other properties****	\$ _____		
Gross Rents Received ***	\$ _____	Other	\$ _____	Value of all Real Estate except principal residence	\$ _____
Other	\$ _____			Other	\$ _____
Total (Gross Income)	\$ _____	Total Debt/Expenses	\$ _____	Total Assets	\$ _____

** Alimony, child support or separate maintenance income need not be disclosed if you do not choose to have it considered for repaying your mortgage debt.
 *** Include rental income received from all properties you own EXCEPT a property for which you are seeking mortgage assistance in Section 6.
 **** Include mortgage payments on all properties you own EXCEPT your principal residence and the property for which you are seeking mortgage assistance in Section 6.

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Required Income Documentation (Your servicer may request additional documentation to complete your evaluation for MHA)	
All Borrowers	<input type="checkbox"/> Include a signed IRS Form 4506-T or 4506T-EZ
<input type="checkbox"/> Do you earn a wage? Borrower Hire Date (MM/DD/YY) _____ Co-borrower Hire Date (MM/DD/YY) _____	<input type="checkbox"/> For each borrower who is a salaried employee or hourly wage earner, provide the most recent pay stub(s) that reflects at least 30 days of year-to-date income.
<input type="checkbox"/> Are you self-employed?	<input type="checkbox"/> Provide your most recent signed and dated quarterly or year-to date profit and loss statement.
<input type="checkbox"/> Do you receive tips, commissions, bonuses, housing allowance or overtime?	<input type="checkbox"/> Describe the type of income, how frequently you receive the income and third party documentation describing the income (e.g., employment contracts or printouts documenting tip income).
<input type="checkbox"/> Do you receive social security, disability, death benefits, pension, public assistance or adoption assistance?	<input type="checkbox"/> Provide documentation showing the amount and frequency of the benefits, such as letters, exhibits, disability policy or benefits statement from the provider and receipt of payment (such as two most recent bank statements or deposit advices).
<input type="checkbox"/> Do you receive alimony, child support, or separation maintenance payments?	<input type="checkbox"/> Provide a copy of the divorce decree, separation agreement, or other written legal agreement filed with the court that states the amount of the payments and the period of time that you are entitled to receive them. AND <input type="checkbox"/> Copies of your two most recent bank statements or deposit advices showing you have received payment. Notice: Alimony, child support or separate maintenance income need not be disclosed if you do not choose to have it considered for repaying your mortgage debt.
<input type="checkbox"/> Do you have income from rental properties that are not your principal residence?	<input type="checkbox"/> Provide your most recent Federal Tax return with all schedules, including Schedule E. <input type="checkbox"/> If rental income is not reported on Schedule E, provide a copy of the current lease agreement with bank statements showing deposit of rent checks.

SECTION 5: OTHER PROPERTIES OWNED
(You must provide information about all properties that you or the co-borrower own, other than your principal residence and any property described in Section 6 below. Use additional sheets if necessary.)

Other Property #1	
Property Address: _____	Loan I.D. Number: _____
Servicer Name: _____	Mortgage Balance \$ _____ Current Value \$ _____
Property is: <input type="checkbox"/> Vacant <input type="checkbox"/> Second or seasonal home <input type="checkbox"/> Rented	Gross Monthly Rent \$ _____ Monthly mortgage payment* \$ _____
Other Property #2	
Property Address: _____	Loan I.D. Number: _____
Servicer Name: _____	Mortgage Balance \$ _____ Current Value \$ _____
Property is: <input type="checkbox"/> Vacant <input type="checkbox"/> Second or seasonal home <input type="checkbox"/> Rented	Gross Monthly Rent \$ _____ Monthly mortgage payment* \$ _____
Other Property #3	
Property Address: _____	Loan I.D. Number: _____
Servicer Name: _____	Mortgage Balance \$ _____ Current Value \$ _____
Property is: <input type="checkbox"/> Vacant <input type="checkbox"/> Second or seasonal home <input type="checkbox"/> Rented	Gross Monthly Rent \$ _____ Monthly mortgage payment* \$ _____

* The amount of the monthly payment made to your lender – including, if applicable, monthly principal, interest, real property taxes and insurance premiums..

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SECTION 6: OTHER PROPERTY FOR WHICH ASSISTANCE IS REQUESTED
 (Complete this section **ONLY** if you are requesting mortgage assistance with a property that is not your principal residence.)

I am requesting mortgage assistance with a rental property. Yes No
 I am requesting mortgage assistance with a second or seasonal home. Yes No
 If "Yes" to either, I want to: Keep the property Sell the property

Property Address: _____ Loan I.D. Number: _____

Do you have a second mortgage on the property Yes No If "Yes", Servicer Name: _____ Loan I.D. Number: _____

Do you have condominium or homeowner association (HOA) fees? Yes No If "Yes", Monthly Fee \$ _____ Are HOA fees paid current? Yes No

Name and address that fees are paid to: _____

Does your mortgage payment include taxes and insurance? Yes No If "No", are the taxes and insurance paid current? Yes No

Annual Homeowner's Insurance \$ _____ Annual Property Taxes \$ _____

If requesting assistance with a rental property, property is currently: Vacant and available for rent.
 Occupied without rent by your legal dependent, parent or grandparent as their principal residence.
 Occupied by a tenant as their principal residence.
 Other _____

If rental property is occupied by a tenant: Term of lease / occupancy _____ / _____ / _____ -- _____ / _____ / _____ Gross Monthly Rent \$ _____
MM / DD / YYYY MM / DD / YYYY

If rental property is vacant, describe efforts to rent property: _____

If applicable, describe relationship of and duration of non-rent paying occupant of rental property: _____

Is the property for sale? Yes No If "Yes", Listing Agent's Name: _____ Phone Number: _____

List date? _____ Have you received a purchase offer? Yes No Amount of Offer \$ _____ Closing Date: _____

RENTAL PROPERTY CERTIFICATION
 (You must complete this certification if you are requesting a mortgage modification with respect to a rental property.)

By checking this box and initialing below, I am requesting a mortgage modification under MHA with respect to the rental property described in this Section 6 and I hereby certify under penalty of perjury that each of the following statements is true and correct with respect to that property:

- I intend to rent the property to a tenant or tenants for at least five years following the effective date of my mortgage modification. I understand that the servicer, the U.S. Department of the Treasury, or their respective agents may ask me to provide evidence of my intention to rent the property during such time. I further understand that such evidence must show that I used reasonable efforts to rent the property to a tenant or tenants on a year-round basis, if the property is or becomes vacant during such five-year period.
Note: The term "reasonable efforts" includes, without limitation, advertising the property for rent in local newspapers, websites or other commonly used forms of written or electronic media, and/or engaging a real estate or other professional to assist in renting the property, in either case, at or below market rent.
- The property is not my secondary residence and I do not intend to use the property as a secondary residence for at least five years following the effective date of my mortgage modification. I understand that if I do use the property as a secondary residence during such five-year period, my use of the property may be considered to be inconsistent with the certifications I have made herein.
Note: The term "secondary residence" includes, without limitation, a second home, vacation home or other type of residence that I personally use or occupy on a part-time, seasonal or other basis.
- I do not own more than five (5) single-family homes (i.e., one-to-four unit properties) (exclusive of my principal residence).

Notwithstanding the foregoing certifications, I may at any time sell the property, occupy it as my principal residence, or permit my legal dependent, parent or grandparent to occupy it as their principal residence with no rent charged or collected, none of which will be considered to be inconsistent with the certifications made herein.

This certification is effective on the earlier of the date listed below or the date the RMA is received by your servicer.

Initials: Borrower _____ Co-borrower _____

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SECTION 7: DODD -FRANK CERTIFICATION

The following information is requested by the federal government in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203). **You are required to furnish this information.** The law provides that no person shall be eligible to begin receiving assistance from the Making Home Affordable Program, authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), or any other mortgage assistance program authorized or funded by that Act, if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years, of any one of the following: (A) felony larceny, theft, fraud, or forgery, (B) money laundering or (C) tax evasion.

I/we certify under penalty of perjury that I/we have not been convicted within the last 10 years of any one of the following in connection with a mortgage or real estate transaction:

- (a) felony larceny, theft, fraud, or forgery,
- (b) money laundering or
- (c) tax evasion.

I/we understand that the servicer, the U.S. Department of the Treasury, or their respective agents may investigate the accuracy of my statements by performing routine background checks, including automated searches of federal, state and county databases, to confirm that I/we have not been convicted of such crimes. I/we also understand that knowingly submitting false information may violate Federal law. This certification is effective on the earlier of the date listed below or the date this RMA is received by your servicer.

SECTION 8: INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. **You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it.** If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. **If you do not wish to furnish the information, please check the box below.**

BORROWER <input type="checkbox"/> I do not wish to furnish this information Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male	CO-BORROWER <input type="checkbox"/> I do not wish to furnish this information Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White Sex: <input type="checkbox"/> Female <input type="checkbox"/> Male							
To be completed by interviewer								
This request was taken by: <input type="checkbox"/> Face-to-face Interview <input type="checkbox"/> Mail <input type="checkbox"/> Telephone <input type="checkbox"/> Internet	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="padding: 2px;"><i>Interviewer's Name (print or type) & ID Number</i></td> </tr> <tr> <td style="width: 70%; padding: 2px;"><i>Interviewer's Signature</i></td> <td style="width: 30%; padding: 2px;"><i>Date</i></td> </tr> <tr> <td colspan="2" style="padding: 2px;"><i>Interviewer's Phone Number (include area code)</i></td> </tr> </table>	<i>Interviewer's Name (print or type) & ID Number</i>		<i>Interviewer's Signature</i>	<i>Date</i>	<i>Interviewer's Phone Number (include area code)</i>		<i>Name/Address of Interviewer's Employer</i>
<i>Interviewer's Name (print or type) & ID Number</i>								
<i>Interviewer's Signature</i>	<i>Date</i>							
<i>Interviewer's Phone Number (include area code)</i>								

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SECTION 9: BORROWER AND CO-BORROWER ACKNOWLEDGEMENT AND AGREEMENT

1. I certify that all of the Information in this RMA is truthful and the hardship(s) identified above has contributed to submission of this request for mortgage relief.
2. I understand and acknowledge that the Servicer, the U.S. Department of the Treasury, the owner or guarantor of my mortgage loan, or their respective agents may investigate the accuracy of my statements, may require me to provide additional supporting documentation and that knowingly submitting false information may violate Federal and other applicable law.
3. I authorize and give permission to the Servicer, the U.S. Department of the Treasury, and their respective agents, to assemble and use a current consumer report on all borrowers obligated on the loan, to investigate each borrower's eligibility for MHA and the accuracy of my statements and any documentation that I provide in connection with my request for assistance. I understand that these consumer reports may include, without limitation, a credit report, and be assembled and used at any point during the application process to assess each borrower's eligibility thereafter.
4. I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or if it is determined that any of my statements or any information contained in the documentation that I provide are materially false and that I was ineligible for assistance under MHA, the Servicer, the U.S. Department of the Treasury, or their respective agents may terminate my participation in MHA, including any right to future benefits and incentives that otherwise would have been available under the program, and also may seek other remedies available at law and in equity, such as recouping any benefits or incentives previously received.
5. I certify that any property for which I am requesting assistance is a habitable residential property that is not subject to a condemnation notice.
6. I certify that I am willing to provide all requested documents and to respond to all Servicer communications in a timely manner. I understand that time is of the essence.
7. I understand that the Servicer will use the information I provide to evaluate my eligibility for available relief options and foreclosure alternatives, but the Servicer is not obligated to offer me assistance based solely on the representations in this document or other documentation submitted in connection with my request.
8. I am willing to commit to credit counseling if it is determined that my financial hardship is related to excessive debt.
9. If I am eligible for assistance under MHA, and I accept and agree to all terms of an MHA notice, plan, or agreement, I also agree that the terms of this Acknowledgment and Agreement are incorporated into such notice, plan, or agreement by reference as if set forth therein in full. My first timely payment, if required, following my servicer's determination and notification of my eligibility or prequalification for MHA assistance will serve as my acceptance of the terms set forth in the notice, plan, or agreement sent to me.
10. I understand that my Servicer will collect and record personal information that I submit in this RMA and during the evaluation process, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about my account balances and activity. I understand and consent to the Servicer's disclosure of my personal information and the terms of any MHA notice, plan or agreement to the U.S. Department of the Treasury and its agents, Fannie Mae and Freddie Mac in connection with their responsibilities under MHA, companies that perform support services in conjunction with MHA, any investor, insurer, guarantor, or servicer that owns, insures, guarantees, or services my first lien or subordinate lien (if applicable) mortgage loan(s) and to any HUD-certified housing counselor.
11. I consent to being contacted concerning this request for mortgage assistance at any e-mail address or cellular or mobile telephone number I have provided to the Servicer. This includes text messages and telephone calls to my cellular or mobile telephone.

The undersigned certifies under penalty of perjury that all statements in this document are true and correct.

 Borrower Signature

 Social Security Number

 Date of Birth

 Date

 Co-borrower Signature

 Social Security Number

 Date of Birth

 Date

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HOMEOWNER'S HOTLINE

If you have questions about this document or the Making Home Affordable Program, please call your servicer.
If you have questions about the program that your servicer cannot answer or need further counseling, you can call the Homeowner's HOPE™ Hotline at **1-888-995-HOPE (4673)**.

The Hotline can help with questions about the program and offers free HUD-certified counseling services in English and Spanish.



NOTICE TO BORROWERS

Return your completed, signed and dated form to your mortgage servicer/company. If you're unsure of where to send the form, visit the Making Home Affordable website, www.makinghomeaffordable.gov. Find your mortgage company information by clicking: Get Answers >> Contact My Mortgage Company.

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy of your property, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to my Servicer in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), or www.sig tarp.gov and provide them with your name, our name as your servicer, your property address, loan number and the reason for escalation.

Beware of Foreclosure Rescue Scams. Help Is FREE!

- There is never a fee to get assistance or information about the Making Home Affordable Program from your lender or a HUD-approved housing counselor.
- Beware of any person or organization that asks you to pay a fee in exchange for housing counseling services or modification of a delinquent loan.
- Beware of anyone who says they can "save" your home if you sign or transfer over the deed to your house. Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage company to forgive your debt.
- Never make your mortgage payments to anyone other than your mortgage company without their approval.
- If you think you've been scammed, visit www.makinghomeaffordable.gov. Click on Get Answers >> Avoid Scams/File a Complaint.



A10741 Summary

BILL NO A10741
SAME AS SAME AS S08159
SPONSOR Farrell
COSPNSR Weinstein, Robinson, Glick, Pretlow
MLTSPNSR

Amd §§606 & 42, Tax L; amd §§425, 520 & 1306-a; RPT L; amd §207, RWB L; amd §1, Chap 53 of 2016; amd §3614-c, Pub Health L; amd §11, Chap 710 of 1988; amd §1678-a, Pub Auth L; amd §3, Chap 549 of 1994; amd §1, Chap 55 of 2016; amd §34, Chap 91 of 2002; amd §17, Chap 345 of 2009; add §2590-r-1, amd §§355 & 2851, Ed L; add §§1308, 1309 & 1310, amd §§1303, 1304, 1351 & 1353, RPAP L; amd R3408, CPLR

A10741 Actions:

BILL NO A10741

06/17/2016 referred to ways and means
06/17/2016 reported referred to rules
06/17/2016 reported
06/17/2016 rules report cal.557
06/17/2016 substituted by s8159
S08159 AMEND= FLANAGAN
06/17/2016 REFERRED TO RULES
06/17/2016 ORDERED TO THIRD READING CAL.2010
06/17/2016 MESSAGE OF NECESSITY - 3 DAY MESSAGE
06/17/2016 PASSED SENATE
06/17/2016 DELIVERED TO ASSEMBLY
06/17/2016 referred to ways and means
06/17/2016 substituted for a10741
06/17/2016 ordered to third reading rules cal.557
06/17/2016 message of necessity - 3 day message
06/17/2016 passed assembly
06/17/2016 returned to senate
06/22/2016 DELIVERED TO GOVERNOR
06/23/2016 SIGNED CHAP.73

Source:

<http://assembly.state.ny.us/leg/?bn=A10741&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y>

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PART Q

7 Section 1. The real property actions and proceedings law is amended by
8 adding a new section 1308 to read as follows:

9 § 1308. Inspecting, securing and maintaining vacant and abandoned
10 residential real property. Notwithstanding any other provision of law to
11 the contrary, the following subdivisions of this section shall only
12 apply to vacant and abandoned one to four family residential real prop-
13 erty, and any duties and responsibilities so prescribed by this section
14 shall only apply to the first lien mortgage holder. Vacant and abandoned
15 residential real property shall be defined pursuant to section thirteen
16 hundred nine of this article. For each calendar year this section shall
17 not apply to state or federally chartered banks, savings banks, savings
18 and loan associations, or credit unions which: (1) originate, own,
19 service and maintain their mortgages or a portion thereof; and (2) have
20 less than three-tenths of one percent of the total loans in the state
21 which they either originate, own, service, or maintain for the calendar
22 year ending December thirty-first of the calendar year ending two years
23 prior to the current calendar year. For any state or federally chartered
24 banks, savings banks, savings and loan associations, or credit unions
25 which originate, own, service and maintain between three-tenths of one
26 percent and five-tenths of one percent of the total loans in the state
27 which they either originate, own, service, or maintain for the calendar
28 year ending December thirty-first of the calendar year ending two years
29 prior to the current calendar year, the application of this section
30 shall be prospective only.

31 1. Subject to bankruptcy filings, cease and desist orders, threats of
32 violence, or active loss mitigation efforts, within ninety days of a
33 borrower's delinquency, the servicer authorized to accept payment of the
34 loan shall complete an exterior inspection of the subject property to
35 determine occupancy. Thereafter, throughout the delinquency of the loan,
36 the servicer shall conduct an exterior inspection of the property every
37 twenty-five to thirty-five days, at different times of the day.

38 2. If a borrower is delinquent and subject to property inspections
39 pursuant to subdivision one of this section, the servicer shall secure
40 and maintain the residential real property pursuant to subdivisions
41 three, four, five, six, and seven of this section where the servicer has
42 a reasonable basis to believe that the residential real property is
43 vacant and abandoned, as defined in section thirteen hundred nine of
44 this chapter, and is not otherwise restricted from accessing the proper-
45 ty.

46 3. Within seven business days of determining that the property is
47 vacant and abandoned based on the criteria set forth in subdivision two
48 of this section, the servicer shall post a notice on an easily accessi-
49 ble part of the property that would be reasonably visible to the borrow-
50 er, property owner or occupant, and monitor the property for any change
51 in occupancy or contact with the borrower, property owner or occupant,
52 and monitor to ensure that the notice remains posted so long as the duty
53 to maintain applies. The posted notice shall provide the servicer's toll
54 free number or similar contact information.

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- 1 4. If the posted notice is not responded to or persists for seven
2 consecutive calendar days without contact with the borrower, property
3 owner or occupant indicating that the property is not vacant or aban-
4 doned, or if an emergent property condition that could reasonably
5 damage, destroy or harm the property arises, the servicer shall:
6 (a) in cases where the property contains two or more points of ingress
7 or egress, replace no more than one door lock to provide subsequent
8 access to the property;
9 (b) secure, replace or board up broken doors and windows;
10 (c) secure any part of the property that may be deemed an attractive
11 nuisance including, but not limited to, a water feature that could
12 create a drowning risk, refrigerator or freezer units, outbuildings,
13 wells or septic tanks;
14 (d) take reasonable measures to ensure that pipes, ducts, conductors,
15 fans and blowers do not discharge harmful gases, steam, vapor, hot air,
16 grease, smoke, odors or other gaseous or particulate waste directly upon
17 abutting or adjacent public or private property or that of another
18 tenant;
19 (e) where appropriate, winterize the applicable plumbing and heating
20 systems;
21 (f) provide basic utilities including, but not limited to, water,
22 electricity, natural gas, propane and sewer service, as appropriate and
23 when allowed by the local utility provider, that are needed for the
24 operation of a sump pump or dehumidifier, or when there are jointly
25 owned or shared utilities with adjoining properties or units, except for
26 turning off water service to prevent flooding or water leaks in the
27 property, or when other utility service could reasonably create a hazard
28 to the property or an unauthorized occupant or person entering the prop-
29 erty;
30 (g) remove and remediate any significant health and safety issues,
31 including outstanding code violations;
32 (h) take reasonable measures to prevent the growth of harmful mold;
33 (i) respond to government inquiries regarding property condition,
34 subject to restrictions regarding financial privacy; and
35 (j) ensure that the notice required to be posted in subdivision three
36 of this section remains posted on an easily accessible part of the prop-
37 erty that would be reasonably visible to the borrower, property owner or
38 occupant so long as the duty to maintain applies.
39 5. At no time shall a servicer remove personal property from the prop-
40 erty unless:
41 (a) the personal property poses a significant health and safety issue;
42 or
43 (b) there is an uncontested order to do so by a governmental entity.
44 6. A servicer who has determined a property to be vacant and abandoned
45 and who has secured the same shall take reasonable and necessary actions
46 to maintain the property until the earlier of the following events:
47 (a) an occupant of the property has asserted his or her right to occu-
48 py the property, or the servicer or its agents have received threats of
49 violence;
50 (b) the borrower has filed for bankruptcy;
51 (c) a court has ordered the servicer to stop any maintenance of the
52 property;
53 (d) a homeowners' association or cooperative has prevented the servi-
54 cer from gaining access to or maintaining the property;
55 (e) the property has been sold or transferred to a new owner;

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1 (f) the servicer or investor subject to the provisions of this section
2 has released the lien on the property; or

3 (g) the mortgage note has been assigned, transferred or sold to another
4 servicer.

5 7. Reasonable and necessary actions to maintain the property include,
6 but are not limited to:

7 (a) ensuring that the property remains secure pursuant to subdivisions
8 four, five and six of this section; and

9 (b) maintaining property in a manner consistent with the standards set
10 forth in sections 301, 302 (excluding 302.2, 302.6 and 302.8), 304.1,
11 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1
12 of the New York property maintenance code, to the extent that the mort-
13 gage servicer or its agents are able to obtain necessary or required
14 permits or approvals.

15 8. (a) Violations of this section may be heard before a hearing offi-
16 cer or a court of competent jurisdiction. If it shall appear to the
17 satisfaction of the hearing officer or the court, based on the prepon-
18 derance of the evidence, that the mortgagee or agent of a mortgagee has
19 violated this section, a civil penalty may be issued by the hearing
20 officer or the court in the amount of up to five hundred dollars per day
21 per property for each day the violation persisted.

22 (b) The superintendent of financial services may, as appropriate and
23 in his or her sole discretion, pursue any suspected violation of this
24 section. Before taking such action, the superintendent shall give the
25 lender, assignee or mortgage loan servicer at least seven days' notice
26 of the violation.

27 (c) In addition to the authority granted to the department of finan-
28 cial services, the municipality in which such residential real property
29 is located, shall have the right to enforce the obligations described in
30 this section in any court of competent jurisdiction after at least seven
31 days' notice to the lender, assignee or mortgage loan servicer, unless
32 the property requires emergency repairs to address a threat to public
33 health, safety or welfare, in which case the municipality may enter and
34 maintain the property to cure the emergency, provided however, notice
35 shall be provided to the lender, assignee or mortgage loan servicer as
36 soon as practicable. Any municipality acting pursuant to this subdivi-
37 sion shall have a cause of action in any court of competent jurisdiction
38 against the lender, assignee or mortgage loan servicer to recover costs
39 incurred as a result of maintaining the property. Such entity shall
40 provide the department of financial services with written notice at
41 least ten days prior to bringing an action pursuant to this subdivision;
42 provided, however, that failure to comply with this notice requirement
43 shall not be a defense to the entity proceeding pursuant to this subdivi-
44 sion. The authority provided by this subdivision shall be in addition
45 to, and shall not be deemed to diminish or reduce, any rights of the
46 parties described in this section under existing law against the mortga-
47 gor of such property for failure to maintain such property. Any civil
48 penalty imposed pursuant to paragraph (a) of this subdivision in an
49 action brought by a municipality pursuant to this paragraph shall be
50 retained by such municipality.

51 (d) The department of financial services is authorized and empowered
52 to adopt such rules and regulations as may, in the judgment of the
53 superintendent of financial services, be necessary for the effective
54 implementation, administration, operation and enforcement of this
55 section.

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1 9. A servicer who peacefully enters a vacant and abandoned property in
2 order to maintain pursuant to this section shall be immune from liabil-
3 ity when such servicer is making reasonable efforts to comply with the
4 statute.

5 10. The provisions of this section are subject to federal laws, court
6 orders and investor and insurer guidelines.

7 11. For all state or federally chartered banks, savings banks,
8 savings and loan associations, credit unions, or servicers for which the
9 provisions of this section do not apply, pursuant to the opening para-
10 graph of this section, any agreement between such state or federally
11 chartered banks, savings banks, savings and loan associations, credit
12 unions, or servicers and the department of financial services that is
13 associated with the maintenance and repair of vacant and abandoned prop-
14 erty shall remain in full force and effect between the aforementioned
15 parties for so long as the terms and conditions of such agreement remain
16 in effect.

17 12. The department of financial services shall issue such rules and
18 regulations necessary to implement the terms of this section, including
19 but not limited to rules and regulations pertaining to the reporting of
20 financial information that state or federally chartered banks, savings
21 banks, savings and loan associations, or credit unions must provide to
22 implement this section.

23 13. No local law, ordinance, or resolution shall impose a duty to
24 maintain vacant and abandoned property as defined in section thirteen
25 hundred nine of this article in a manner inconsistent with the
26 provisions of this section that are related to maintenance as provided
27 under subdivisions three, four, five, six and seven of this section, or
28 establish related penalties nor other monetary obligations, with respect
29 to a state or federally chartered bank, savings bank, savings and loan
30 association or credit union that originates, owns, services or maintains
31 a mortgage related to such property.

32 No local law, ordinance, or resolution shall impose a duty to maintain
33 vacant and abandoned property upon any state or federally chartered
34 bank, savings bank, savings and loan association or credit union that
35 originates, owns, services or maintains a mortgage related to such prop-
36 erty for which the provisions of this section, pursuant to the opening
37 paragraph of this section, do not apply.

38 § 2. Rule 3408 of the civil practice law and rules, as added by chap-
39 ter 472 of the laws of 2008, subdivision (a) as amended by chapter 306
40 of the laws of 2013, subdivisions (d), (e), (f), (g) and (h) as added by
41 chapter 507 of the laws of 2009, is amended to read as follows:

42 Rule 3408. Mandatory settlement conference in residential foreclosure
43 actions. (a) In any residential foreclosure action involving a home
44 loan as such term is defined in section thirteen hundred four of the
45 real property actions and proceedings law, in which the defendant is a
46 resident of the property subject to foreclosure, plaintiff shall file
47 proof of service within twenty days of such service, however service is
48 made, and the court shall hold a mandatory conference within sixty days
49 after the date when proof of service upon such defendant is filed with
50 the county clerk, or on such adjourned date as has been agreed to by the
51 parties, for the purpose of holding settlement discussions pertaining to
52 the relative rights and obligations of the parties under the mortgage
53 loan documents, including, but not limited to: **1.** determining whether
54 the parties can reach a mutually agreeable resolution to help the
55 defendant avoid losing his or her home, and evaluating the potential for
56 a resolution in which payment schedules or amounts may be modified or
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1 other workout options may be agreed to, [~~and for~~] including, but not
2 limited to, a loan modification, short sale, deed in lieu of foreclo-
3 sure, or any other loss mitigation option; or 2. whatever other purposes
4 the court deems appropriate.

5 (b) At the initial conference held pursuant to this section, any
6 defendant currently appearing pro se, shall be deemed to have made a
7 motion to proceed as a poor person under section eleven hundred one of
8 this chapter. The court shall determine whether such permission shall be
9 granted pursuant to standards set forth in section eleven hundred one of
10 this chapter. If the court appoints defendant counsel pursuant to subdivi-
11 sion (a) of section eleven hundred two of this chapter, it shall
12 adjourn the conference to a date certain for appearance of counsel and
13 settlement discussions pursuant to subdivision (a) of this section, and
14 otherwise shall proceed with the conference.

15 (c) At any conference held pursuant to this section, the plaintiff and
16 the defendant shall appear in person or by counsel, and [~~if appearing by~~
17 ~~counsel, such counsel~~] each party's representative at the conference
18 shall be fully authorized to dispose of the case. [~~The defendant shall~~
19 ~~appear in person or by counsel.~~] If the defendant is appearing pro se,
20 the court shall advise the defendant of the nature of the action and his
21 or her rights and responsibilities as a defendant. Where appropriate,
22 the court may permit a representative of the plaintiff or the defendant
23 to attend the settlement conference telephonically or by video-confer-
24 ence.

25 (d) Upon the filing of a request for judicial intervention in any
26 action pursuant to this section, the court shall send either a copy of
27 such request or the defendant's name, address and telephone number (if
28 available) to a housing counseling agency or agencies on a list desig-
29 nated by the division of housing and community renewal for the judicial
30 district in which the defendant resides. Such information shall be used
31 by the designated housing counseling agency or agencies exclusively for
32 the purpose of making the homeowner aware of housing counseling and
33 foreclosure prevention services and options available to them.

34 (e) The court shall promptly send a notice to parties advising them of
35 the time and place of the settlement conference, the purpose of the
36 conference and the requirements of this section. The notice shall be in
37 a form prescribed by the office of court administration, or, at the
38 discretion of the office of court administration, the administrative
39 judge of the judicial district in which the action is pending, and shall
40 advise the parties of the documents that they [~~should~~] shall bring to
41 the conference.

42 1. For the plaintiff, such documents [~~should~~] shall include, but are
43 not limited to, (i) the payment history[~~7~~]; (ii) an itemization of the
44 amounts needed to cure and pay off the loan[~~7~~, ~~and~~]; (iii) the mortgage
45 and note or copies of the same; (iv) standard application forms and a
46 description of loss mitigation options, if any, which may be available
47 to the defendant; and (v) any other documentation required by the
48 presiding judge. If the plaintiff is not the owner of the mortgage and
49 note, the plaintiff shall provide the name, address and telephone number
50 of the legal owner of the mortgage and note. For cases in which the
51 lender or its servicing agent has evaluated or is evaluating eligibility
52 for home loan modification programs or other loss mitigation options, in
53 addition to the documents listed above, the plaintiff shall bring a
54 summary of the status of the lender's or servicing agent's evaluation
55 for such modifications or other loss mitigation options, including,
56 where applicable, a list of outstanding items required for the borrower

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1 to complete any modification application, an expected date of completion
2 of the lender's or servicer agent's evaluation, and, if the
3 modification(s) was denied, a denial letter or any other document
4 explaining the reason(s) for denial and the data input fields and values
5 used in the net present value evaluation. If the modification was denied
6 on the basis of an investor restriction, the plaintiff shall bring the
7 documentary evidence which provides the basis for the denial, such as a
8 pooling and servicing agreement.

9 2. For the defendant, such documents [~~should~~] shall include, but are
10 not limited to, [~~proof of current income such as the two most recent pay~~
11 ~~stubs, most recent tax return and most recent property tax statements]~~
12 if applicable, information on current income tax returns, expenses,
13 property taxes and previously submitted applications for loss miti-
14 gation; benefits information; rental agreements or proof of rental
15 income; and any other documentation relevant to the proceeding required
16 by the presiding judge.

17 (f) Both the plaintiff and defendant shall negotiate in good faith to
18 reach a mutually agreeable resolution, including but not limited to a
19 loan modification, short sale, deed in lieu of foreclosure, or any other
20 loss mitigation, if possible. Compliance with the obligation to negoti-
21 ate in good faith pursuant to this section shall be measured by the
22 totality of the circumstances, including but not limited to the follow-
23 ing factors:

24 1. Compliance with the requirements of this rule and applicable court
25 rules, court orders, and directives by the court or its designee
26 pertaining to the settlement conference process;

27 2. Compliance with applicable mortgage servicing laws, rules, regu-
28 lations, investor directives, and loss mitigation standards or options
29 concerning loan modifications, short sales, and deeds in lieu of fore-
30 closure; and

31 3. Conduct consistent with efforts to reach a mutually agreeable
32 resolution, including but not limited to, avoiding unreasonable delay,
33 appearing at the settlement conference with authority to fully dispose
34 of the case, avoiding prosecution of foreclosure proceedings while loss
35 mitigation applications are pending, and providing accurate information
36 to the court and parties.

37 Neither of the parties' failure to make the offer or accept the offer
38 made by the other party is sufficient to establish a failure to negoti-
39 ate in good faith.

40 (g) The plaintiff must file a notice of discontinuance and vacatur of
41 the lis pendens within [~~one hundred fifty days~~] ninety days after any
42 settlement agreement or loan modification is fully executed.

43 (h) A party to a foreclosure action may not charge, impose, or other-
44 wise require payment from the other party for any cost, including but
45 not limited to attorneys' fees, for appearance at or participation in
46 the settlement conference.

47 (i) The court may determine whether either party fails to comply with
48 the duty to negotiate in good faith pursuant to subdivision (f) of this
49 section, and order remedies pursuant to subdivisions (j) and (k) of this
50 section, either on motion of any party or sua sponte on notice to the
51 parties, in accordance with such procedures as may be established by the
52 court or the office of court administration. A referee, judicial hearing
53 officer, or other staff designated by the court to oversee the settle-
54 ment conference process may hear and report findings of fact and conclu-
55 sions of law, and may make reports and recommendations for relief to the

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1 court concerning any party's failure to negotiate in good faith pursuant
2 to subdivision (f) of this section.

3 (j) Upon a finding by the court that the plaintiff failed to negotiate
4 in good faith pursuant to subdivision (f) of this section, and order
5 remedies pursuant to this subdivision and subdivision (k) of this
6 section the court shall, at a minimum, toll the accumulation and
7 collection of interest, costs, and fees during any undue delay caused by
8 the plaintiff, and where appropriate, the court may also impose one or
9 more of the following:

10 1. Compel production of any documents requested by the court pursuant
11 to subdivision (e) of this section or the court's designee during the
12 settlement conference;

13 2. Impose a civil penalty payable to the state that is sufficient to
14 deter repetition of the conduct and in an amount not to exceed twenty-
15 five thousand dollars;

16 3. The court may award actual damages, fees, including attorney fees
17 and expenses to the defendant as a result of plaintiff's failure to
18 negotiate in good faith; or

19 4. Award any other relief that the court deems just and proper.

20 (k) Upon a finding by the court that the defendant failed to negotiate
21 in good faith pursuant to subdivision (f) of this section, the court
22 shall, at a minimum, remove the case from the conference calendar. In
23 considering such a finding, the court shall take into account equitable
24 factors including, but not limited to, whether the defendant was repres-
25 ented by counsel.

26 (l) At the first settlement conference held pursuant to this section,
27 if the defendant has not filed an answer or made a pre-answer motion to
28 dismiss, the court shall:

29 1. advise the defendant of the requirement to answer the complaint;

30 2. explain what is required to answer a complaint in court;

31 3. advise that if an answer is not interposed the ability to contest
32 the foreclosure action and assert defenses may be lost; and

33 4. provide information about available resources for foreclosure
34 prevention assistance.

35 At the first conference held pursuant to this section, the court shall
36 also provide the defendant with a copy of the Consumer Bill of Rights
37 provided for in section thirteen hundred three of the real property
38 actions and proceedings law.

39 (m) A defendant who appears at the settlement conference but who
40 failed to file a timely answer, pursuant to rule 320 of the civil prac-
41 tice law and rules, shall be presumed to have a reasonable excuse for
42 the default and shall be permitted to serve and file an answer, without
43 any substantive defenses deemed to have been waived within thirty days
44 of initial appearance at the settlement conference. The default shall
45 be deemed vacated upon service and filing of an answer.

46 (n) Any motions submitted by the plaintiff or defendant shall be held
47 in abeyance while the settlement conference process is ongoing, except
48 for motions concerning compliance with this rule and its implementing
49 rules.

50 § 3. Subdivision (a) of rule 3408 of the civil practice law and rules,
51 as added by chapter 472 of the laws of 2008, is amended to read as
52 follows:

53 (a) In any residential foreclosure action involving a high-cost home
54 loan consummated between January first, two thousand three and September
55 first, two thousand eight, or a subprime or nontraditional home loan, as
56 those terms are defined under section thirteen hundred four of the real
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1 property actions and proceedings law, in which the defendant is a resi-
2 dent of the property subject to foreclosure, the court shall hold a
3 mandatory conference within sixty days after the date when proof of
4 service is filed with the county clerk, or on such adjourned date as has
5 been agreed to by the parties, for the purpose of holding settlement
6 discussions pertaining to the relative rights and obligations of the
7 parties under the mortgage loan documents, including, but not limited
8 to: 1. determining whether the parties can reach a mutually agreeable
9 resolution to help the defendant avoid losing his or her home, and eval-
10 uating the potential for a resolution in which payment schedules or
11 amounts may be modified or other workout options may be agreed to[~~—~~and
12 ~~for~~] including, but not limited to, a loan modification, short sale,
13 deed in lieu of foreclosure, or any other loss mitigation option; or 2.
14 whatever other purposes the court deems appropriate.

15 § 4. The real property actions and proceedings law is amended by
16 adding two new sections 1309 and 1310 to read as follows:

17 § 1309. Expedited application for judgment of foreclosure and sale for
18 vacant and abandoned property. 1. The plaintiff in any foreclosure
19 proceeding may make an application by notice of motion or order to show
20 cause for a judgment of foreclosure and sale on the grounds that the
21 subject property is vacant and abandoned. The motion or order to show
22 cause shall include the last known address of the borrower and the prop-
23 erty address. Notwithstanding subdivision (m) of rule thirty-four
24 hundred eight of the civil practice law and rules no such application
25 may be made until the defendant's time to answer the complaint in the
26 foreclosure proceeding shall have expired. Such application shall be
27 served on defendant, regardless of whether a defendant has filed an
28 answer or appeared in the case. Such application shall: (a) state in
29 bold letters, on the first page of the notice of motion or order to show
30 cause: (i) "The plaintiff in this lawsuit has applied for an expedited
31 judgment of foreclosure and sale of your property on the ground that it
32 is vacant and abandoned"; (ii) "Your property may be foreclosed upon and
33 sold without any further proceedings if you do not respond to this
34 motion by or on the return date, which is "; (iii) "You have the
35 right to stay in your property until a court orders you to leave"; and
36 (iv) "You may respond to this motion by either submitting a written
37 document or by appearing in court on the return date."; (b) be supported
38 by affidavit and other proof, including but not limited to: (i) proof of
39 ownership of the mortgage and the note, (ii) photographs evidencing that
40 the subject property is vacant and abandoned as provided for under
41 subdivision two of this section, and (iii) if available, utility company
42 records or other documentation evidencing the vacant and abandoned
43 status of the premises; (c) set forth, supported by documentary
44 evidence, the sums alleged to be due and owing upon the subject mortgage
45 and note, including the current principal balance and a detailed and
46 itemized account of each fee, each cost, and a calculation of interest
47 accrued; and (d) request that the court confirm the sums due and owing
48 upon the subject mortgage and note without appointment of a referee. The
49 court shall promptly send a notice to the defendant of the plaintiff's
50 notice of motion or order to show cause for a judgement of foreclosure
51 and sale on the grounds that the subject property is vacant and aban-
52 doned. The notice shall advise the defendant that the lender is asking
53 the court to expedite a judgement of foreclosure and sale of his or her
54 property on the ground that it is vacant and abandoned and about the
55 time and place of the court date. The notice shall be in a form
56 prescribed by the courts, or, at the discretion of the courts.

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1 2. (a) As used in this section, "vacant and abandoned residential
2 property" means residential real property, as defined in section thir-
3 teen hundred five of this article, with respect to which the plaintiff
4 has proven, by preponderance of the evidence, that it has conducted at
5 least three consecutive inspections of such property, with each
6 inspection conducted twenty-five to thirty-five days apart and at
7 different times of the day, and at each inspection (i) no occupant was
8 present and there was no evidence of occupancy on the property to indi-
9 cate that any persons are residing there; and (ii) the residential real
10 property was not being maintained in a manner consistent with the stand-
11 ards set forth in New York property maintenance code chapter 3 sections
12 301, 302 (excluding 302.2, 302.6, 302.8), 304.1, 304.3, 304.7, 304.10,
13 304.12, 304.13, 304.15, 304.16, 307.1 and 308.1.

14 (b) Residential real property will also be deemed vacant and abandoned
15 if:

16 (i) A court or other appropriate state or local governmental entity
17 has formally determined, following due notice to the borrower at the
18 property address and any other known addresses, that such residential
19 real property is vacant and abandoned; or

20 (ii) Each borrower and owner has separately issued a sworn written
21 statement, expressing his or her intent to vacate and abandon the prop-
22 erty and an inspection of the property shows no evidence of occupancy to
23 indicate that any persons are residing there.

24 (c) Evidence of lack of occupancy shall include but not be limited to
25 the following conditions: (i) overgrown or dead vegetation; (ii) accumu-
26 lation of newspapers, circulars, flyer or mail; (iii) past due utility
27 notices, disconnected utilities, or utilities not in use; (iv) accumu-
28 lation of trash, refuse or other debris; (v) absence of window coverings
29 such as curtains, blinds, or shutters; (vi) one or more boarded, missing
30 or broken windows; (vii) the property is open to casual entry or tres-
31 pass; or (viii) the property has a building or structure that is or
32 appears structurally unsound or has any other condition that presents a
33 potential hazard or danger to the safety of persons.

34 (d) Residential real property will not be deemed vacant and abandoned
35 if, on the property:

36 (i) There is an unoccupied building that is undergoing construction,
37 renovation, or rehabilitation that is proceeding diligently to
38 completion;

39 (ii) There is a building occupied on a seasonal basis, but otherwise
40 secure;

41 (iii) There is a building that is secure, but is the subject of a
42 probate action, action to quiet title, or other ownership dispute of
43 which the servicer has actual notice;

44 (iv) There is a building damaged by a natural disaster and one or more
45 owner intends to repair and reoccupy the property; or

46 (v) There is a building occupied by the mortgagor, a relative of the
47 mortgagor or a tenant lawfully in possession.

48 3. In connection with an application for a judgment of foreclosure and
49 sale on the ground that the subject property is vacant and abandoned,
50 the court may require the plaintiff or an agent to appear to provide
51 testimony in support of the application.

52 4. The court shall make a written finding as soon as practicable as to
53 whether the plaintiff has proved that the property to be foreclosed upon
54 pursuant to this section is vacant and abandoned pursuant to subdivision
55 two of this section and, if the court determines that the property is
56 vacant and abandoned, it shall set forth: (a) the evidence relied upon

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1 by the court in finding that the property is vacant and abandoned; (b)
2 the evidence showing that the plaintiff is the owner and holder of the
3 subject mortgage and note, or has been delegated the authority to insti-
4 tute a mortgage foreclosure action by the owner of same; and (c) the
5 sums due and owing upon the subject mortgage and note after a review of
6 the detailed and itemized account of each fee, each cost, and a calcu-
7 lation of interest accrued.

8 5. With respect to foreclosure actions brought pursuant to this
9 section:

10 (a) A judgment of foreclosure and sale shall not be entered pursuant
11 to this section if the mortgagor or any other defendant has filed an
12 answer, appearance, other written objection that is not withdrawn, or
13 has otherwise demonstrated an intention to contest the foreclosure
14 action.

15 (b) A denial of a judgment of foreclosure and sale pursuant to this
16 section where the court does not find that the mortgaged property is
17 vacant and abandoned shall not be deemed to be on the merits for
18 purposes of any other proceeding with respect to such real property.

19 6. It shall be unlawful for a lender, assignee, mortgage loan servi-
20 cer, or a third party agent or other person acting on behalf of a lend-
21 er, assignee or mortgage loan servicer to enter residential real proper-
22 ty that is not vacant and abandoned for the purpose of forcing,
23 intimidating, harassing or coercing a lawful occupant of such residen-
24 tial property to vacate that property in order to render the property
25 vacant and abandoned, or to otherwise force, intimidate, harass, or
26 coerce a lawful occupant of residential real property to vacate that
27 property so that it may be deemed vacant and abandoned, provided howev-
28 er, a lender, assignee, mortgage loan servicer, or a third party agent
29 or other person acting on behalf of a lender, assignee or mortgage loan
30 servicer who peacefully enters a vacant and abandoned property in order
31 to render the property vacant and abandoned shall be immune from liabil-
32 ity when such lender, assignee, mortgage loan servicer, third party
33 agent or other person acting on behalf of a lender, assignee or mortgage
34 loan servicer is making reasonable efforts to comply with this section.

35 7. The chief administrative judge of the courts shall adopt such rules
36 as he or she deems necessary to expeditiously implement the provisions
37 of this section.

38 § 1310. Vacant and abandoned property; statewide vacant and abandoned
39 property electronic registry. 1. The department of financial services
40 shall maintain a statewide vacant and abandoned property registry in the
41 form of an electronic database. The department of financial services
42 may, in accordance with the applicable provisions of the state finance
43 law, retain a private contractor to administer such database for the
44 purposes of satisfying this requirement. The information provided to
45 the department of financial services pursuant to this section shall be
46 deemed and treated confidential, provided however, the superintendent of
47 financial services, in her or his sole discretion, may release the
48 information if it is in the best interest of the public. Any such
49 released information shall continue to be treated confidentially by the
50 parties. The department of financial services shall, upon written
51 request, provide public officials of any state district, county, city,
52 town or village with access to information specific to such public offi-
53 cial's district, county, city, town or village maintained on such data-
54 base to further the purposes of this section, section thirteen hundred
55 seven of this article or article nineteen-A of this chapter, or any
56 other related law, code, rule, regulation or ordinance.

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1 2. A lender, assignee or mortgage loan servicer shall submit or cause
2 to be submitted to the department of financial services information
3 required by the superintendent of financial services about any vacant
4 and abandoned residential real property, as that term is defined in
5 subdivision two of section thirteen hundred nine of this article, or as
6 the superintendent of financial services may otherwise define that term,
7 within twenty-one business days of when the lender, assignee or mortgage
8 loan servicer learns, or should have learned, that such property is
9 vacant and abandoned. Such information shall, at a minimum, include:
10 (a) the current name, address and contact information for the lender,
11 assignee or mortgage loan servicer responsible for maintaining the
12 vacant property; (b) whether a foreclosure action has been filed for the
13 property in question, and, if so, the date on which the foreclosure
14 action was commenced; and (c) the last known address and contact infor-
15 mation for the mortgagor(s) of record.

16 3. Where any of the information contained in a lender's, assignee's or
17 mortgage loan servicer's initial submission to the registry has mate-
18 rially changed since such submission, such lender, assignee or mortgage
19 loan servicer shall make an amended submission to the registry not later
20 than thirty days after the lender, assignee or mortgage loan servicer
21 learns, or reasonably should have learned, of the new or changed infor-
22 mation.

23 4. The department of financial services is authorized and empowered to
24 adopt such rules and regulations as may in the judgment of the super-
25 intendent of financial services necessary for the effective adminis-
26 tration and operation of such registry, including but not limited to
27 rules and regulations governing access to the registry and specifying
28 the manner and frequency of registration and the information that must
29 be provided. The superintendent of financial services may amend such
30 regulations from time to time as necessary to effectuate the purpose of
31 this section and section thirteen hundred seven of this article.

32 5. The department of financial services shall establish and maintain a
33 toll-free hotline that neighbors of real property that is, or appears to
34 be, vacant and abandoned residential real property, as such term is
35 defined in subdivision two of section thirteen hundred nine of this
36 article, and other community residents can use to report to the super-
37 intendent of financial services any hazards, blight or other concerns
38 related to such property. The department of financial services shall
39 include on its official public website information about such toll-free
40 hotline.

41 No local law, ordinance, or resolution shall impose a duty to register
42 vacant and abandoned property as defined in section thirteen hundred
43 nine of the article in a manner inconsistent with the provisions of this
44 section that are related to registration as provided under section thir-
45 teen hundred ten of this article or establish related penalties or other
46 monetary obligation, with respect to a state or federally chartered
47 bank, savings bank, savings and loan association or credit union that
48 originates, owns, services or maintains a mortgage related to such prop-
49 erty.

50 No local law, ordinance, or resolution shall impose a duty to maintain
51 vacant and abandoned property upon any state or federally chartered
52 bank, savings bank, savings and loan association or credit union that
53 originates, owns, services or maintains a mortgage related to such prop-
54 erty for which the provisions of this section, pursuant to the opening
55 paragraph of section thirteen hundred eight of this article, do not
56 apply.

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1 § 5. Subdivision 3 of section 1303 of the real property actions and
2 proceedings law, as amended by chapter 507 of the laws of 2009 and as
3 further amended by section 104 of part A of chapter 62 of the laws of
4 2011, is amended and a new subdivision 3-a is added to read as follows:

5 3. The notice to any mortgagor required by paragraph (a) of subdivi-
6 sion one of this section shall appear as follows:

7 Help for Homeowners in Foreclosure

8 New York State Law requires that we send you this notice about the
9 foreclosure process. Please read it carefully.

10 Summons and Complaint

11 You are in danger of losing your home. If you fail to respond to the
12 summons and complaint in this foreclosure action, you may lose your
13 home. Please read the summons and complaint carefully. You should imme-
14 diately contact an attorney or your local legal aid office to obtain
15 advice on how to protect yourself.

16 Sources of Information and Assistance

17 The State encourages you to become informed about your options in
18 foreclosure. In addition to seeking assistance from an attorney or legal
19 aid office, there are government agencies and non-profit organizations
20 that you may contact for information about possible options, including
21 trying to work with your lender during this process.

22 To locate an entity near you, you may call the toll-free helpline
23 maintained by the New York State Department of Financial Services at
24 (enter number) or visit the Department's website at (enter web address).

25 **Rights and Obligations**

26 **YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. You have the right**
27 **to stay in your home during the foreclosure process. You are not**
28 **required to leave your home unless and until your property is sold at**
29 **auction pursuant to a judgment of foreclosure and sale.**

30 **Regardless of whether you choose to remain in your home, YOU ARE**
31 **REQUIRED TO TAKE CARE OF YOUR PROPERTY and pay property taxes in accord-**
32 **ance with state and local law.**

33 Foreclosure rescue scams

34 Be careful of people who approach you with offers to "save" your home.
35 There are individuals who watch for notices of foreclosure actions in
36 order to unfairly profit from a homeowner's distress. You should be
37 extremely careful about any such promises and any suggestions that you
38 pay them a fee or sign over your deed. State law requires anyone offer-
39 ing such services for profit to enter into a contract which fully
40 describes the services they will perform and fees they will charge, and
41 which prohibits them from taking any money from you until they have
42 completed all such promised services.

43 **3-a. No later than sixty days after the effective date of this subdivi-**
44 **vision, the department of financial services shall publish a Consumer**
45 **Bill Of Rights, in consultation with all stakeholders, which shall**
46 **detail the rights and responsibilities of the plaintiff and defendant in**
47 **a foreclosure proceeding. Such Bill of Rights shall be updated on an**
48 **annual basis and as appropriate.**

49 § 6. Section 1304 of the real property actions and proceedings law, as
50 added by chapter 472 of the laws of 2008, subdivision 1 as amended and
51 subdivision 6 as added by chapter 155 of the laws of 2012, and subdivi-
52 sions 2 and 5 as amended by chapter 507 of the laws of 2009, and subdivi-
53 sion 2 as further amended by section 104 of part A of chapter 62 of the
54 laws of 2011, is amended to read as follows:

55 § 1304. Required prior notices. 1. Notwithstanding any other
56 provision of law, with regard to a home loan, at least ninety days
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1 before a lender, an assignee or a mortgage loan servicer commences legal
2 action against the borrower, or borrowers at the property address and
3 any other address of record, including mortgage foreclosure, such lender,
4 assignee or mortgage loan servicer shall give notice to the borrower
5 in at least fourteen-point type which shall include the following:

6 "YOU [~~COULD LOSE YOUR HOME~~] **MAY BE AT RISK OF**
7 **FORECLOSURE**. PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

8 "As of ____, your home loan is ____ days and _____ dollars in default.
9 Under New York State Law, we are required to send you this notice to
10 inform you that you are at risk of losing your home. [~~You can cure this~~
11 ~~default by making the payment of _____ dollars by _____.~~]

12 [~~If you are experiencing financial difficulty, you should know that~~
13 ~~there are several options available to you that may help you keep your~~
14 ~~home.~~] Attached to this notice is a list of government approved housing
15 counseling agencies in your area which provide free [~~or very low cost~~]
16 counseling. [~~You should consider contacting one of these agencies imme-~~
17 ~~diately. These agencies specialize in helping homeowners who are facing~~
18 ~~financial difficulty. Housing counselors can help you assess your finan-~~
19 ~~cial condition and work with us to explore the possibility of modifying~~
20 ~~your loan, establishing an easier payment plan for you, or even working~~
21 ~~out a period of loan forbearance.] You can also call the NYS Office of
22 the Attorney General's Homeowner Protection Program (HOPP) toll-free
23 consumer hotline to be connected to free housing counseling services in
24 your area at 1-855-HOME-456 (1-855-466-3456), or visit their website at
25 <http://www.ahomehelp.com/>. A statewide listing by county is also avail-
26 able at [http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agen-](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm)
27 [cies.htm](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm). Qualified free help is available; watch out for companies or
28 people who charge a fee for these services.~~

29 Housing counselors from New York-based agencies listed on the website
30 above are trained to help homeowners who are having problems making
31 their mortgage payments and can help you find the best option for your
32 situation. If you wish, you may also contact us directly at _____
33 and ask to discuss possible options.

34 While we cannot assure that a mutually agreeable resolution is possi-
35 ble, we encourage you to take immediate steps to try to achieve a resol-
36 ution. The longer you wait, the fewer options you may have.

37 If [~~this matter is not resolved~~] you have not taken any actions to
38 resolve this matter within 90 days from the date this notice was mailed,
39 we may commence legal action against you (or sooner if you cease to live
40 in the dwelling as your primary residence.)

41 If you need further information, please call the New York State
42 Department of Financial Services' toll-free helpline at (show number) or
43 visit the Department's website at (show web address) [▯].

44 IMPORTANT: You have the right to remain in your home until you receive
45 a court order telling you to leave the property. If a foreclosure action
46 is filed against you in court, you still have the right to remain in the
47 home until a court orders you to leave. You legally remain the owner of
48 and are responsible for the property until the property is sold by you
49 or by order of the court at the conclusion of any foreclosure
50 proceedings. This notice is not an eviction notice, and a foreclosure
51 action has not yet been commenced against you.

52 2. Such notice shall be sent by such lender, assignee (including
53 purchasing investor) or mortgage loan servicer to the borrower, by
54 registered or certified mail and also by first-class mail to the last
55 known address of the borrower, and [~~if different,~~] to the residence that
56 is the subject of the mortgage. Such notice shall be sent by the lender,
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1 assignee or mortgage loan servicer in a separate envelope from any other
2 mailing or notice. Notice is considered given as of the date it is
3 mailed. The notice shall contain a current list of at least five housing
4 counseling agencies [~~as designated by the division of housing and commu-~~
5 ~~nity renewal, that serve the region where the borrower resides]~~ servicing
6 the county where the property is located from the most recent listing
7 available from department of financial services. The list shall include
8 the counseling agencies' last known addresses and telephone numbers. The
9 department of financial services [~~and the division of housing and commu-~~
10 ~~nity renewal]~~ shall make available on [~~their respective]~~ its websites a
11 listing, by [~~region]~~ county, of such agencies. The lender, assignee or
12 mortgage loan servicer shall use [~~either of these]~~ such lists to meet
13 the requirements of this section.

14 3. The ninety day period specified in the notice contained in subdivi-
15 sion one of this section shall not apply, or shall cease to apply, if
16 the borrower has filed [~~an application for the adjustment of debts of~~
17 ~~the borrower or an order for relief from the payment of debts,]~~ for
18 bankruptcy protection under federal law, or if the borrower no longer
19 occupies the residence as the borrower's principal dwelling. Nothing
20 herein shall relieve the lender, assignee or mortgage loan servicer of
21 the obligation to send such notice, which notice shall be a condition
22 precedent to commencing a foreclosure proceeding.

23 4. The notice and the ninety day period required by subdivision one of
24 this section need only be provided once in a twelve month period to the
25 same borrower in connection with the same loan and same delinquency.
26 Should a borrower cure a delinquency but re-default in the same twelve
27 month period, the lender shall provide a new notice pursuant to this
28 section.

29 5. For any borrower known to have limited English proficiency, the
30 notice required by subdivision one of this section shall be in the
31 borrower's native language (or a language in which the borrower is
32 proficient), provided that the language is one of the six most common
33 non-English languages spoken by individuals with limited English profi-
34 ciency in the state of New York, based on United States census data. The
35 department of financial services shall post the notice required by
36 subdivision one of this section on its website in the six most common
37 non-English languages spoken by individuals with limited English profi-
38 ciency in the state of New York, based on the United States census data.

39 6. (a) "Home loan" means a loan, including an open-end credit plan,
40 other than a reverse mortgage transaction, in which:

41 (i) The borrower is a natural person;
42 (ii) The debt is incurred by the borrower primarily for personal,
43 family, or household purposes;

44 (iii) The loan is secured by a mortgage or deed of trust on real
45 estate improved by a one to four family dwelling, or a condominium unit,
46 in either case, used or occupied, or intended to be used or occupied
47 wholly or partly, as the home or residence of one or more persons and
48 which is or will be occupied by the borrower as the borrower's principal
49 dwelling; and

50 (iv) The property is located in this state.

51 (b) "Lender" means a mortgage banker as defined in paragraph (f) of
52 subdivision one of section five hundred ninety of the banking law or an
53 exempt organization as defined in paragraph (e) of subdivision one of
54 section five hundred ninety of the banking law.

55 [~~6.~~] 7. The department of financial services shall prescribe the tele-
56 phone number and web address to be included in the notice.

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1 § 7. Subdivisions 1, 2, 5 and 6 of section 1304 of the real property
2 actions and proceedings law, subdivision 1 as amended and subdivision 6
3 as added by chapter 155 of the laws of 2012, and subdivisions 2 and 5 as
4 added by chapter 472 of the laws of 2008, subdivision 2 and paragraph
5 (f) of subdivision 5 as further amended by section 104 of part A of
6 chapter 62 of the laws of 2011, are amended to read as follows:

7 1. Notwithstanding any other provision of law, with regard to a high-
8 cost home loan, as such term is defined in section six-1 of the banking
9 law, a subprime home loan or a non-traditional home loan, at least nine-
10 ty days before a lender or a mortgage loan servicer commences legal
11 action against the borrower, including mortgage foreclosure, the lender
12 or mortgage loan servicer shall give notice to the borrower(s) at the
13 property address and any other address of record in at least fourteen-
14 point type which shall include the following:

15 "YOU [~~COULD LOSE YOUR HOME~~] **MAY BE AT RISK OF**
16 **FORECLOSURE**. PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

17 "As of ____, your home loan is ____ days and dollars in default.
18 Under New York State Law, we are required to send you this notice to
19 inform you that you are at risk of losing your home. [~~You can cure this~~
20 ~~default by making the payment of _____ dollars by ____.~~] There may be
21 options available to you to keep your home. This may include applying
22 for a loan modification of your mortgage, or reinstating your loan by
23 making the payment.

24 [~~If you are experiencing financial difficulty, you should know that~~
25 ~~there are several options available to you that may help you keep your~~
26 ~~home.~~] Attached to this notice is a list of government approved housing
27 counseling agencies in your area which provide free or very low-cost
28 counseling. [~~You should consider contacting one of these agencies imme-~~
29 ~~diately. These agencies specialize in helping homeowners who are facing~~
30 ~~financial difficulty. Housing counselors can help you assess your finan-~~
31 ~~cial condition and work with us to explore the possibility of modifying~~
32 ~~your loan, establishing an easier payment plan for you, or even working~~
33 ~~out a period of loan forbearance.] You can also call the NYS Office of
34 the Attorney General's Homeowner Protection Program (HOPP) toll-free
35 consumer hotline to be connected to free housing counseling services in
36 your area at 1-855-HOME-456 (1-855-466-3456), or visit their website at
37 <http://www.aghomehelp.com/>. A statewide listing by county is also avail-
38 able at [http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agen-](http://www.dfs.ny.gov/consumer/mortg_nys_np_counseling_agencies.htm)
39 cies.htm. Qualified free help is available; watch out for companies or
40 people who charge a fee for these services.~~

41 Housing counselors from New York-based agencies listed on the website
42 above are trained to help homeowners who are having problems making
43 their mortgage payments and can help you find the best option for your
44 situation. If you wish, you may also contact us directly at _____
45 and ask to discuss possible options.

46 While we cannot assure that a mutually agreeable resolution is possi-
47 ble, we encourage you to take immediate steps to try to achieve a resol-
48 ution. The longer you wait, the fewer options you may have.

49 If [~~this matter is not resolved~~] you have not taken any actions to
50 resolve this matter within 90 days from the date this notice was mailed,
51 we may commence legal action against you (or sooner if you cease to live
52 in the dwelling as your primary residence.)

53 If you need further information, please call the New York State
54 Department of Financial Services' toll-free helpline at (show number) or
55 visit the Department's website at (show web address)".

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1 IMPORTANT: You have the right to remain in your home until you receive
2 a court order telling you to leave the property. If a foreclosure action
3 is filed against you in court, you still have the right to remain in the
4 home until a court orders you to leave. You legally remain the owner of
5 and are responsible for the property until the property is sold by you
6 or by order of the court at the conclusion of any foreclosure
7 proceedings. This notice is not an eviction notice, and a foreclosure
8 action has not yet been commenced against you.

9 2. Such notice shall be sent by the lender or mortgage loan servicer
10 to the borrower, by registered or certified mail and also by first-class
11 mail to the last known address of the borrower, and [~~if different,~~] to
12 the residence which is the subject of the mortgage. Notice is considered
13 given as of the date it is mailed. The notice shall contain a current
14 list of [~~at least five~~] United States department of housing and urban
15 development approved housing counseling agencies, or other housing coun-
16 seling agencies [~~as designated by the division of housing and community~~
17 ~~renewal, that serve the region where the borrower resides.~~] servicing the
18 county where the property is located from the most recent listing avail-
19 able from the department of financial services. The list shall include
20 the counseling agencies' last known addresses and telephone numbers. The
21 department of financial services [~~and/or the division of housing and~~
22 ~~community renewal~~] shall make available a listing, by [~~region~~] county,
23 of such agencies which the lender or mortgage loan servicer may use to
24 meet the requirements of this section.

25 [~~5-~~] 6. (a) "Annual percentage rate" means the annual percentage rate
26 for the loan calculated according to the provisions of the Federal
27 Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations
28 promulgated thereunder by the federal reserve board (as said act and
29 regulations are amended from time to time).

30 (b) "Home loan" means a home loan, including an open-end credit plan,
31 other than a reverse mortgage transaction, in which:

32 (i) The principal amount of the loan at origination did not exceed the
33 conforming loan size that was in existence at the time of origination
34 for a comparable dwelling as established by the federal national mort-
35 gage association;

36 (ii) The borrower is a natural person;

37 (iii) The debt is incurred by the borrower primarily for personal,
38 family, or household purposes;

39 (iv) The loan is secured by a mortgage or deed of trust on real estate
40 upon which there is located or there is to be located a structure or
41 structures intended principally for occupancy of from one to four fami-
42 lies which is or will be occupied by the borrower as the borrower's
43 principal dwelling; and

44 (v) The property is located in this state.

45 (c) "Subprime home loan" for the purposes of this section, means a
46 home loan consummated between January first, two thousand three and
47 September first, two thousand eight in which the terms of the loan
48 exceed the threshold as defined in paragraph (d) of this subdivision. A
49 subprime home loan excludes a transaction to finance the initial
50 construction of a dwelling, a temporary or "bridge" loan with a term of
51 twelve months or less, such as a loan to purchase a new dwelling where
52 the borrower plans to sell a current dwelling within twelve months, or a
53 home equity line of credit.

54 (d) "Threshold" means, for a first lien mortgage loan, the annual
55 percentage rate of the home loan at consummation of the transaction
56 exceeds three percentage points over the yield on treasury securities
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1 having comparable periods of maturity to the loan maturity measured as
2 of the fifteenth day of the month in which the loan was consummated; or
3 for a subordinate mortgage lien, the annual percentage rate of the home
4 loan at consummation of the transaction equals or exceeds five percent-
5 age points over the yield on treasury securities having comparable peri-
6 ods of maturity on the fifteenth day of the month in which the loan was
7 consummated; as determined by the following rules: if the terms of the
8 home loan offer any initial or introductory period, and the annual
9 percentage rate is less than that which will apply after the end of such
10 initial or introductory period, then the annual percentage rate that
11 shall be taken into account for purposes of this section shall be the
12 rate which applies after the initial or introductory period.

13 (e) "Non-traditional home loan" shall mean a payment option adjustable
14 rate mortgage or an interest only loan consummated between January
15 first, two thousand three and September first, two thousand eight.

16 (f) For purposes of determining the threshold, the department of
17 financial services shall publish on its website a listing of constant
18 maturity yields for U.S. Treasury securities for each month between
19 January first, two thousand three and September first, two thousand
20 eight, as published in the Federal Reserve Statistical Release on
21 selected interest rates, commonly referred to as the H.15 release, in
22 the following maturities, to the extent available in such release: six
23 month, one year, two year, three year, five year, seven year, ten year,
24 thirty year.

25 (g) "Lender" means a mortgage banker as defined in paragraph (f) of
26 subdivision one of section five hundred ninety of the banking law or an
27 exempt organization as defined in paragraph (e) of subdivision one of
28 section five hundred ninety of the banking law.

29 ~~6.~~ **7.** The department of financial services shall prescribe the tele-
30 phone number and web address to be included in the notice.

31 § 8. Subdivision 1 of section 1351 of the real property actions and
32 proceedings law, as added by chapter 312 of the laws of 1962, is amended
33 to read as follows:

34 1. The judgment shall direct that the mortgaged premises, or so much
35 thereof as may be sufficient to discharge the mortgage debt, the
36 expenses of the sale and the costs of the action, and which may be sold
37 separately without material injury to the parties interested, be sold by
38 or under the direction of the sheriff of the county, or a referee **within**
39 **ninety days of the date of the judgment.**

40 § 9. Subdivision 1 of section 1353 of the real property actions and
41 proceedings law, as added by chapter 312 of the laws of 1962, is amended
42 to read as follows:

43 1. After the property has been sold, the officer conducting the sale
44 shall execute a deed to the purchaser. The plaintiff, or any other
45 party, may become a purchaser. **If the plaintiff (or its affiliate, as**
46 **defined in paragraph (a) of subdivision one of section six-1 of the**
47 **banking law) is the purchaser, such party shall place the property back**
48 **on the market for sale or other occupancy: (a) within one hundred eighty**
49 **days of the execution of the deed of sale, or (b) within ninety days of**
50 **completion of construction, renovation, or rehabilitation of the proper-**
51 **ty, provided that such construction, renovation, or rehabilitation**
52 **proceeded diligently to completion, whichever comes first, provided**
53 **however, a court of competent jurisdiction may grant an extension for**
54 **good cause.**

55 § 10. No local law, ordinance, or resolution shall impose a duty to
56 maintain or register vacant and abandoned property as defined in section
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1 1309 of the real property actions and proceedings law in a manner incon-
2 sistent with the provisions of this act that are related to maintenance
3 as provided under subdivision 3, 4, 5, 6 and 7 of section 1308 of the
4 real property actions and proceedings law, or registration as provided
5 under section 1310 of the real property actions and proceedings law, or
6 establish related penalties or other monetary obligation, with respect
7 to a state or federally chartered bank, savings bank, savings and loan
8 association or credit union that originates, owns, services or maintains
9 mortgages related to such property.

10 No local law, ordinance, or resolution shall impose a duty to maintain
11 vacant and abandoned property upon any state or federally chartered
12 bank, savings bank, savings and loan association or credit union that
13 originates, owns, services or maintains mortgages related to such prop-
14 erty for which the provisions of this act, pursuant to the opening para-
15 graph of section 1308 of the real property actions and proceedings law
16 as added by section one of this act, do not apply.

New York Mortgage Foreclosure Process Flow Chart

The useful and valuable *Mortgage Foreclosure Process Flow Chart* on the following pages, created especially for attorneys, clearly and concisely lays out New York's mortgage foreclosure process. Additional copies of this flow chart may be downloaded at: <http://www.courtstreetlaw.com/publications/>.

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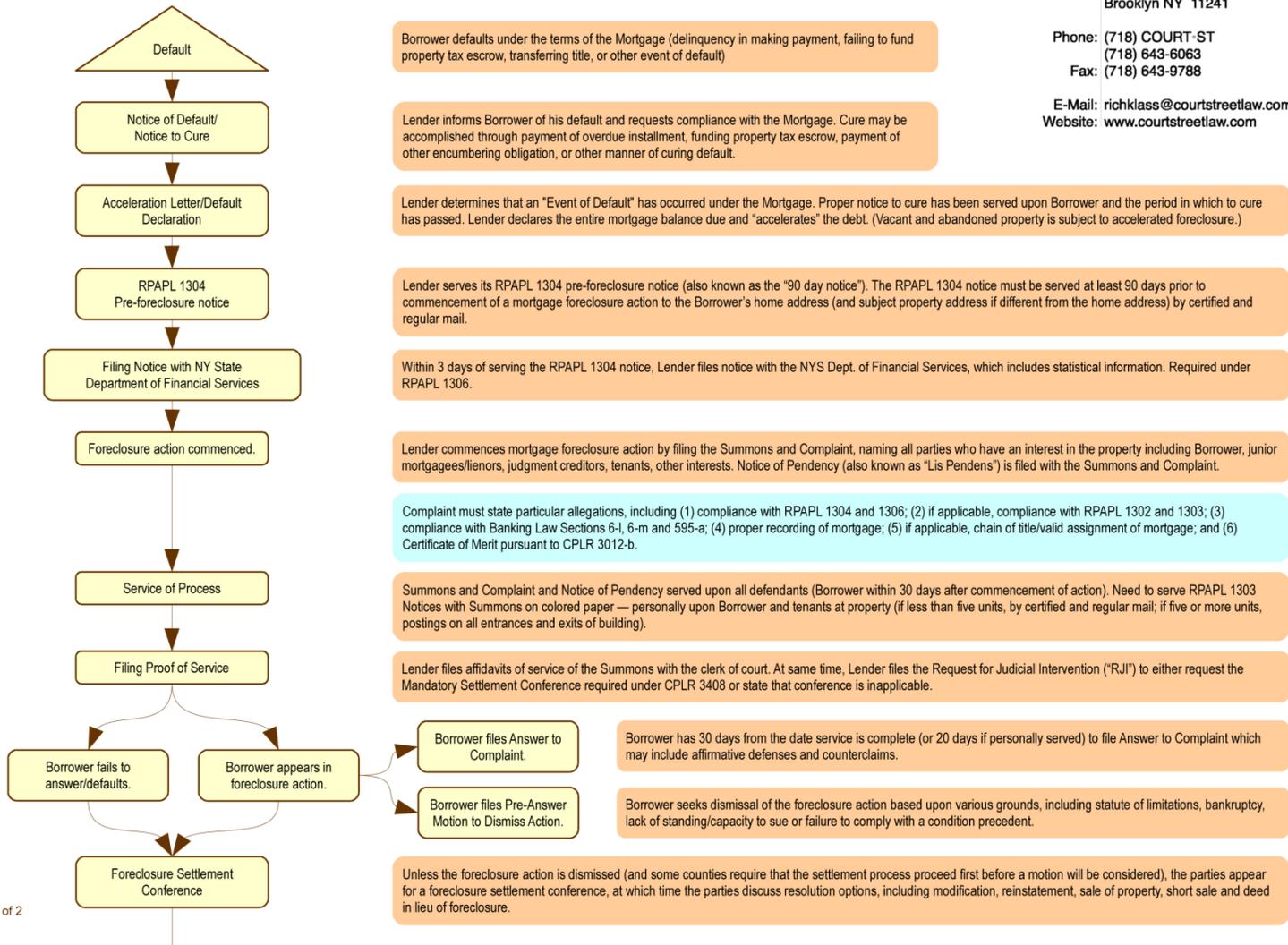
Your Court Street Lawyer's New York Mortgage Foreclosure Process Flow Chart



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Borrower defaults under the terms of the Mortgage (delinquency in making payment, failing to fund property tax escrow, transferring title, or other event of default)

Lender informs Borrower of his default and requests compliance with the Mortgage. Cure may be accomplished through payment of overdue installment, funding property tax escrow, payment of other encumbering obligation, or other manner of curing default.

Lender determines that an "Event of Default" has occurred under the Mortgage. Proper notice to cure has been served upon Borrower and the period in which to cure has passed. Lender declares the entire mortgage balance due and "accelerates" the debt. (Vacant and abandoned property is subject to accelerated foreclosure.)

Lender serves its RPAPL 1304 pre-foreclosure notice (also known as the "90 day notice"). The RPAPL 1304 notice must be served at least 90 days prior to commencement of a mortgage foreclosure action to the Borrower's home address (and subject property address if different from the home address) by certified and regular mail.

Within 3 days of serving the RPAPL 1304 notice, Lender files notice with the NYS Dept. of Financial Services, which includes statistical information. Required under RPAPL 1306.

Lender commences mortgage foreclosure action by filing the Summons and Complaint, naming all parties who have an interest in the property including Borrower, junior mortgages/lienors, judgment creditors, tenants, other interests. Notice of Pendency (also known as "Lis Pendens") is filed with the Summons and Complaint.

Complaint must state particular allegations, including (1) compliance with RPAPL 1304 and 1306; (2) if applicable, compliance with RPAPL 1302 and 1303; (3) compliance with Banking Law Sections 6-1, 6-m and 595-a; (4) proper recording of mortgage; (5) if applicable, chain of title/valid assignment of mortgage; and (6) Certificate of Merit pursuant to CPLR 3012-b.

Summons and Complaint and Notice of Pendency served upon all defendants (Borrower within 30 days after commencement of action). Need to serve RPAPL 1303 Notices with Summons on colored paper — personally upon Borrower and tenants at property (if less than five units, by certified and regular mail; if five or more units, postings on all entrances and exits of building).

Lender files affidavits of service of the Summons with the clerk of court. At same time, Lender files the Request for Judicial Intervention ("RJ") to either request the Mandatory Settlement Conference required under CPLR 3408 or state that conference is inapplicable.

Borrower files Answer to Complaint.

Borrower has 30 days from the date service is complete (or 20 days if personally served) to file Answer to Complaint which may include affirmative defenses and counterclaims.

Borrower files Pre-Answer Motion to Dismiss Action.

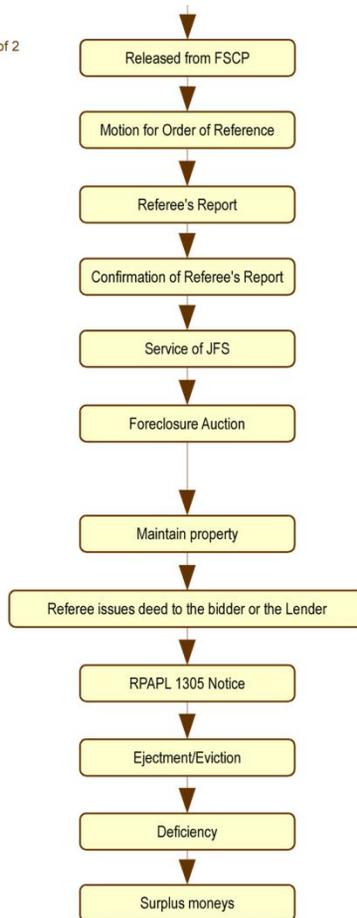
Borrower seeks dismissal of the foreclosure action based upon various grounds, including statute of limitations, bankruptcy, lack of standing/capacity to sue or failure to comply with a condition precedent.

Unless the foreclosure action is dismissed (and some counties require that the settlement process proceed first before a motion will be considered), the parties appear for a foreclosure settlement conference, at which time the parties discuss resolution options, including modification, reinstatement, sale of property, short sale and deed in lieu of foreclosure.

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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)



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