

Frequently Asked Questions About Foreclosure in New York State

1. Will I lose my home?

There are many options available to help borrowers in trouble save their homes. The sooner you start to work with your lender, the better your chance to save your home. Be sure to attend the mandatory settlement conference to explore other options.

2. Do I need to move immediately?

You do not need to move out of the home until the property is sold at auction, which is the final step in the foreclosure process.

3. How long does foreclosure take?

It takes at least 6 to 8 months for a foreclosure lawsuit to go from summons and complaint to auction — even if you ignore the court case. In reality, however, the process is taking much longer. If you file an Answer and appear at the mandatory settlement conference, it is taking lenders 1 to 3 years to foreclose. **DON'T PANIC** at the beginning of a foreclosure case. There is time to make a good decision.

You continue to own the property all the way up until the auction — so up until the day the property is sold, you can sell, file bankruptcy, refinance, etc. If someone is still living in the home after the auction, the buyer may have to file an eviction to remove that person from the home.

4. Who are the Plaintiff and Defendant?

The Plaintiff is the party filing the lawsuit — the lender. The Defendant is the party being sued for breach of contract for failure to make payments

under the Note or some other condition under the Note — the borrower.

5. I don't recognize the name of the Plaintiff — why?

Most mortgage loans are sold by the originating lender into a trust (a pool of loans). The Plaintiff must be the party who owns and holds the mortgage and note. The Trustee of the trust into which the loan was sold will be the Plaintiff in most foreclosure lawsuits, since it is considered the owner. The Trustee hires a mortgage servicer to manage the loan. You probably know the name of your mortgage servicer because you send payments to it. It is common for borrowers to think of the mortgage servicer as their lender. However, the servicer does not own the mortgage and note. Most borrowers do not know the name of the Trustee who owns their mortgage and note until a lawsuit is filed.

6. Other people or entities are listed as Defendants — who are they?

Each borrower on the mortgage and loan is a defendant. If there are other mortgages or liens on the property, such as second mortgages, home equity lines of credit, or judgment liens (such as for medical costs or credit card debt), they will be listed as defendants in the lawsuit. They must be served with the summons and complaint because the lender is foreclosing on their rights in the property as well.

7. How do other people and companies know if I am in foreclosure?

Once homeowners go into foreclosure, it becomes public record. Companies can go to the courthouse to get this information or may be able to get it online. You may start to get offers from companies and lawyers offering to “save” your home. Most of these companies will not go to court to stop a foreclosure — but they will try to take thousands of dollars (and sometimes the entire home) from desperate homeowners. BE VERY SUSPICIOUS and do not to sign ANYTHING without consulting with a nonprofit loan counselor or a lawyer *first*.

For more information

- ▶ Find a foreclosure housing counseling agency near you by searching by state or zip: www.findaforeclosurecounselor.org
- ▶ Free telephone foreclosure counseling is available 24 hours a day, seven days a week: www.995hope.org or call 1-888-995-HOPE
- ▶ The federal government is providing mortgage relief and foreclosure assistance. Learn more at: www.makinghomeaffordable.gov

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