

New York (NY) Foreclosure Laws

When you develop a definite plan of action with well-timed, well-informed steps, you can stop the foreclosure process and save your home. We have outlined the foreclosure process for the state of New York.

Judicial Foreclosure Available:yes

Non-Judicial Foreclosure Available:yes

Preferred Method: Judicial Foreclosure

Judicial foreclosure (foreclosure by lawsuit) is the primary method of foreclosure in New York. Although non-judicial foreclosure is available, it is seldom used. Non-judicial foreclosure procedures are sufficiently intricate to lead to potential title disputes. Such problems might make it very difficult to evict a tenant. Junior lien holders might also dispute the title and tie the matter up in litigation. Thus most lenders will elect a judicial foreclosure.

Judicial foreclosure begins when the lender files a lawsuit. The lender will sue the borrower and any person who has a claim to the ownership or a possession interest. The lender, as plaintiff, has a summons and a complaint served on the borrower. The summons commands the borrower to come to court and answer the lender's complaint; the complaint is the lawsuit proper, which describes the lender's legal and factual basis for foreclosure. A notice of lis pendens must be filed. The lis pendens is a notice that a lawsuit is pending, the outcome of which affects title. Often, the borrower fails to answer. In that event, the court will appoint a referee to compute a figure for the foreclosure. The court may then sign a judgment of foreclosure and sale. If the borrower appears and defends against the lawsuit, then the court will determine the merits of the defense. The referee will need an oral hearing. If the lender wins, then a judgment of foreclosure and sale will be awarded.

Typically the foreclosure sale is advertised for 4 to 6 weeks. The sale is made by public auction to the highest bidder. The lender may bid, as well. The lender must distribute the proceeds according to the terms of the judgment signed by the judge. Surplus money will normally be held by a referee.

Deficiency

If the mortgage contains an express covenant to pay, then the lender may seek a deficiency judgment against the borrower if the court ordered sale does not produce sufficient funds. The lender can ask the court for a deficiency judgment for the amount left unpaid after the foreclosure sale. The motion for the deficiency judgment must be made within 90 days after

the foreclosure sale. The court must determine the market value and credit the greater of the market value or the foreclosure sales price against what remains unpaid on the loan.

Redemption

After the judicial foreclosure, there is no redemption period. This is true of non-judicial foreclosure, as well.