

FORECLOSURE and LOAN MODIFICATION OVERVIEW

1. Homeownership Documents Generally

- a) Purchasers receive a DEED which grants ownership to the property: you should know who is on the deed.
- b) The MORTGAGE secures the lender's interest in the property.
- c) The NOTE is the borrower's promise to repay the lender. It is possible for parties to be on the deed and the mortgage, but not the note.

2. Homeownership Concepts Generally

- a) The SERVICER is the company that sends the mortgage statement and "manages" the payment process. Sometimes the servicer is the same as the lender, but often they are different.
- b) Homeowners' INSURANCE is generally required in order to insure the lender's investment, and protects the homeowner as well. Some mortgages provide that the lender provides the insurance, but if the homeowner fails to choose a plan or stops paying the insurance, the lender will also purchase a plan, usually at high cost. This is called FORCED-PLACE INSURANCE.
- c) When taxes and insurance are paid by the lender, this is referred to as ESCROW. This is part of the total debt and you should be sure that it is calculated correctly.
- d) EQUITY is the value of the homeowner's interest in the home. It is a function of the total value of the home as well as the amount of the total mortgage debt that has been paid. A homeowner making regular, on-time payments of a traditional mortgage will gain equity steadily over time.

3. The Foreclosure Overview - New York

- a) Lender/servicer sends pre-foreclosure notices required by state law to homeowner
- b) Lender/servicer serves Summons and Complaint on homeowner and files it with the court
- c) Respondent has 20 days from service of the Summons and Complaint to file an Answer if it is served in person, and 30 days from service date if it is served by mail. Homeowners in NY also have an additional 30 days from the date of the first Settlement Conference to file an Answer
- d) The Answer will specify defenses, which might include:
 - Defenses to Foreclosure*
 - service-related defenses
 - defenses related to the Plaintiff's failure to serve statutory notices
 - or to engage in required outreach to borrowers
 - action is time-barred (6 year statute of limitations from "acceleration")
 - action is commenced against a deceased party
 - borrower has applied for loss mitigation or is in a loss mitigation program
 - borrower is not yet 120 days delinquent

the Plaintiff does not have standing to bring the action: Plaintiff must be the holder of both the note and the mortgage (less common now)

Defenses to the Amount Claimed Due

payments uncredited

unnecessary delay in filing the action has resulted in excessive interest

- e) Settlement Conferences - intended to give the parties time to find a home-saving solution, or to sell the house on the market if desired. Goes on as long as referee believes there is a reasonable possibility of a home-saving result and Respondent complies with deadlines. Most modifications are offered in this period.
- f) Trial
- g) Motion for an Order of Reference
- h) Auction

4. Loss Mitigation - Modification and Other Options

- a) What type of loan do you have? This will impact the loss mitigation process.

Where to Find the Information

Residential Foreclosure Complaint – Index #'s beginning with “7” are e-filed and can be read online: <https://iapps.courts.state.ny.us/nyscef/HomePage>

ACRIS (NYC Register – mortgages and riders only)

Fannie/Freddie Lookup online lookup tool (need last 4 of client’s SSN)

Note: If you are over 62, make sure that the mortgage is a traditional mortgage as opposed to a reverse mortgage

Common Loan Types

Fannie Mae and Freddie Mac = Government Sponsored Entity (“GSE”) loans will propose a mod based on Fannie guidelines

Fannie Servicing Guide available at:

<https://www.fanniemae.com/singlefamily/servicing>

Flex Mod (replaced HAMP) as of 10/1/17

Streamline Flex

This is a unilateral offer from servicer and does not require an application

Flex

Offered in response to an application

Borrower ineligible if they received three or more mods in the past

FHA – Rules can be found in the FHA Single Family Housing Policy Handbook

4000.1

FHA-HAMP (did not expire): a combination of a modification with a partial claim in order to reach a targeted monthly payment
First payment must have been due at least 12 months in the past;
homeowner must have made at least 4 payments before defaulting

Securitized Loans

Governed by a Pooling and Servicing Agreement (PSA)

Ask about restrictions – often the trust does not permit an extension of maturity date and/or a lower interest rate

Whether the loan is eligible for modification is usually determined by the “Best interest of the investor” or “Net Present Value” test (NPV)

NPV test: the net present value of the money the investor would receive under the proposed modification is compared with what would be received if no modification were made. If the servicer can expect a greater return from modifying the mortgage, then the modification is in the best interests of the investors. In other words, a modification will be less costly to investors than foreclosing on the property.

b) Can this Loan Be Modified?

A modification is a change in one or more terms of the mortgage and results in a lower monthly payment which should be affordable to the homeowner. These terms include:

Principal

Interest (can be fixed or variable)

Amortization period (amount of years it will take to pay off the mortgage)

Potential bases for eligibility for most modifications:

- i. Is this the homeowner’s residence?
- ii. Is the homeowner on the note and/or mortgage?
- iii. Has debtor defaulted on a prior modification? How long ago?
- iv. Does homeowner have sufficient documented income which will allow them to make revised monthly payments?

income includes

rental income (usually counted at 75% of total)

employment income

documented contributions from family members

fixed income

self-employment income w/ profit/loss statement

- v. Will all borrowers cooperate with the modification process?
- vi. Will change in terms result in a payment that falls within the relevant debt-to-income guidelines?
(usually 31%-40% of gross monthly income)
- vii. Are there outstanding tax or water liens?

Other Loss Mitigation Options

Forbearance - the CARES act and New York State guidelines are outlining various forbearance plans in the wake of COVID-19 for those who have lost income due to the pandemic.

Partial claim - some portion of the arrears are moved to the back end of the loan and become due after the 1st mortgage is paid off.

A repayment plan under Chapter 13 bankruptcy

HRA One-Shot Application (must sign a document allowing HRA to place a lien on the property and must show ability to make future payments)

Sale (this is increasingly more appealing as home values rise again) - the homeowner is entitled to any value in excess of the mortgage, plus fees and costs and any additional liens that may be on the house

5. Some useful tools

- a) Property Tax Information:

<https://www1.nyc.gov/site/finance/taxes/property-tax-bills.page>

- d) New York State Unified Courts E-Court Lookup

<https://iapps.courts.state.ny.us/webcivil/ecourtsMain>

- e) ACRIS (for mortgage records and assignments)

<https://www1.nyc.gov/site/finance/taxes/acris.page>