Foreclosure Guidebook

https://avoidforeclosureny.org/

INTRODUCTION

Foreclosures are back in the news again. After conquering COVID 19, many homeowners are still behind in their mortgage payments. The banks/lenders did not stiop accruing interest during the foreclosure moratorium, which ended January 15, 2022. This guide is here to inform homeowners of the various processes that they have a right to implement to keep their home.

According to ATTOM's just released August 2022 U.S. Foreclosure Market Report, there were a total of 34,501 U.S. properties with foreclosure filings in August 2022. That number was up 14 percent from July 2022 and 118 percent from August 2021. ATTOM's latest foreclosure activity analysis noted that lenders started the foreclosure process on 23,952 U.S. properties in August 2022. That number was up 12 percent from July 2022 and 187 percent from August 2021.

It is nice for a borrower to know that they are not alone, but the real question they have is what can I do to keep my house?

The Foreclosure process can be a complicated, frustrating and stressful process. Having all the information available to help you understand what the best option for you and your family is.

MORTGAGE AND FORECLOSURE OVERVIEW

Here we are going to discuss some of the fundamentals of the foreclosure process and what makes it up:

THE NOTE AND THE MORTGAGE

A mortgage note—also known as a promissory note or even a mortgage promissory note—is a legal document that binds you to repay your mortgage within an agreed period. The note also outlines the terms of your lending agreement with your mortgage provider. This includes your monthly payment amount, how much interest you'll pay on the mortgage, and what happens if you're late on a payment or miss it entirely.

Since a mortgage note is legally binding, it's important that it is accurate. In this article, we'll explain the purpose of a mortgage note, and how to check that yours is correct.

A mortgage is a type of loan consumers use to purchase a house and agree to repay "mortgage note" in small, equal, fixed monthly amounts over a certain time span, or term. For many homebuyers, the mortgage process is an essential part of the homeownership experience, though it can be a lot to wrap your head around if you're going through it for the first time. Here's a look at everything you need to know about mortgages, how they work and what your monthly

LOAN SERVICING

Loan servicing refers to the administrative aspects of a loan from the time the proceeds are dispersed to the borrower until the loan is paid off. Loan servicing includes sending monthly payment statements, collecting monthly payments, maintaining records of payments and balances, collecting and paying taxes and insurance (and managing escrow funds), remitting funds to the note holder, and following up on any delinquencies.

MORTGAGE ASSIGNMENT

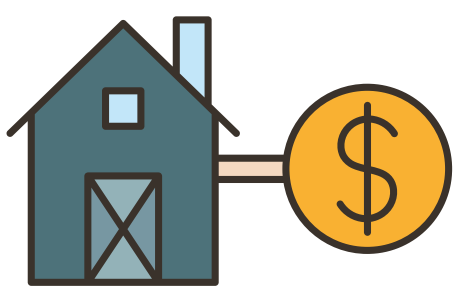
An assignment of mortgage may sound somewhat intimidating at first, especially if you receive a notice about one out of the blue from your current loan provider. But in actuality, an assignment of mortgage is a quite common and routine practice in real estate circles that's nothing to worry about. In essence, it simply means that your lender has sold your mortgage note to a government-sponsored enterprise (GSE) or a private investor. Having effectively transferred your debt to another servicer, it likewise means that going forward from a set date, you'll be making payments to the new loan holder.

BORROWERS' OPTIONS WHEN FACING IMPENDING FORECLOSURE

There are two sides to foreclosure defense – the procedural track before the Court discussed above , while at the same time dealing with the lender on workout options.
Prior to or during and within the foreclosure action, a borrower can workout a resolution with the lender.

First and foremost, a borrower should not panic and moveout with no plan. A borrower owns their home and is entitled to live there until the home is deeded to the successful bidder at the foreclosure auction. This can give a borrower breathing room to regain their financial footing . A prudent home owner in this situation will set a side some money each month, ideally equivalent to a housing payment, so that they will be able to afford their next housing situation when the time comes.

In order to evaluate their options a borrower should first decide whether they want to keep their house . This is a decision a borrower need s to make based on many factors, such as the value of the home as compared to the loan, whether the monthly
payments as modified will be affordable and / o r lower than the housing payment on an alternate situation, as well as personal considerations - maybe borrower wants their kids to stay in this school district, maybe borrower has a job offer out of the area , maybe the house needs repairs in which borrower does not want to invest.



FAQ

- **How do I know what relief I qualify for?**

The federal CARES Act provides forbearances (temporary payment suspension) for homeowners with federally-backed mortgages, whereas New York's Banking Law 9-x provides forbearances for privately-owned, non-federally-backed mortgages serviced by a New York State-regulated company.

You can look up whether you mortgage is federally-backed and covered by the CARES Act on the CFPB website, however you should ultimately contact your servicer to discuss your options, or contact a free housing counselor or attorney for assistance. See the "Wondering where you can get help?" section.

- **I am experiencing financial hardship due to Coronavirus and think I may not be able to make my mortgage payments. What are my options?**

Under both state and federal law, if you are experiencing financial hardship due to COVID-19, you have the right to request a 180-day forbearance. If eligible, you can then receive a forbearance, during which you do not need to make payments. At the end of the forbearance, if you are still experiencing financial hardship, you can request an additional 180-day forbearance.

- **How and when do I repay the "paused" payments during my forbearance?**

Your repayment options will depend on whether your loan is subject to the CARES Act or New York Banking Law 9-x. You can review the first section above for an explanation of which loans are covered by each law, but ultimately you must discuss repayment with your servicer.

You should contact your servicer well in advance of the end of your forbearance to discuss repayment options, which will vary but may include repayment plans and loan modifications.

If your loan is covered by New York Banking Law 9-x, your servicer must offer you three repayment options: (1) to extend the term of the loan for the length of the forbearance without additional interest or fees, (2) to establish a monthly repayment plan in addition to your regular monthly payments for the remaining term of the loan, or (3) to negotiate a loan modification. These options are provided in an effort to ensure that your mortgage payments are affordable after the forbearance period. Only if a loan modification cannot be agreed upon, the servicer will offer to convert the deferred amount to a non-interest-bearing balloon payment, payable when your loan term ends or upon refinancing or sale. Balloon payments are single lump-sum payments. Loans that are not covered by New York Banking Law 9-x, including those covered by the CARES Act, may offer several ways to repay your forbearance, including loan modifications and deferrals. You should contact your servicer to discuss what options are available to you..

- **What if I was already in default on my mortgage before COVID? Do I still have options?**

You can still receive forbearance relief under the CARES Act and New York Banking Law 9-x if you were already behind on your mortgage payments. However, if your loan has been accelerated (your servicer has told you the entire amount is now due) or you are in foreclosure, a forbearance may only be available if you have entered into a modification or other form of repayment plan. If you are unsure whether you are in foreclosure, review the next section and seek legal assistance, which you can find in the “Wondering where you can get help?” section.

- **What documents will be required to get approved for a forbearance?**

There is no specific set of documents that every servicer requires for a forbearance so the best course of action is always to speak directly to your servicer and ask for a detailed list of requirements. Documents like pay stubs, unemployment paperwork, employer letters and bank statements are the types of things you may be asked to provide. Such documents may help with the forbearance process, as well as any resulting loss mitigation.

- **I can still afford my mortgage—is there any benefit to me asking for relief?**

If you are not experiencing a hardship making your mortgage payments you should continue to do so, however everyone’s situation is slightly different, and it is important to speak to your servicer and a housing counselor or attorney before making any decisions regarding your loan. Once you have educated yourself on what specific options are available to you and the potential impact of such options, you can work with a housing counselor or attorney to determine the best option for your situation.

- **Are there any fees associated with getting a forbearance?**

No. A servicer may not charge any fees to a consumer for entering into a forbearance agreement, but keep in mind that any repayment plan or other type of modification of your loan may result in added costs. Make sure to ask your servicer what foreseeable costs may be associated with getting your loan back on track after the forbearance period.

- **I have a reverse mortgage—what are my options?**

A reverse mortgage is eligible for the same relief as a more traditional, forward mortgage loan. Consult with your servicer to learn what specific options may be available to you.

- **I have a mortgage for my condo or co-op—what are my options?**

A mortgage for a condo or co-op is eligible for the same relief as a more traditional mortgage loan. Consult with your servicer to learn what specific options may be available to you.

SHORT SALE

- The homeowner owes more than the home is worth.
- All fees, including the closing costs, are paid out of the proceeds of the sale.
- Obtain permission of the servicer to do a short sale.
- Provide a letter of authorization to permit the servicer to discuss the sale with a real estate broker and/or attorney.
- Provide a hardship letter detailing the circumstances leading to the short sale.
- Provide the listing agreement and MLS listing.
- Provide a fully-executed contract of sale.

DEED IN LIEU

In a Deed-in-Lieu of Foreclosure, the borrower voluntarily transfers ownership of property to the servicer in full satisfaction of the amount due, provided that the title is free and clear of mortgages, liens and encumbrances (though this can sometimes be negotiated). Like a short sale, a deed-in-lieu can decrease the cost and emotional trauma of foreclosure and provide the homeowner with possible cash relocation assistance.
Generally, the servicer will require that the borrower make a good faith effort to sell the property to a third party before accepting a deed-in-lieu. The servicer has to give the borrower permission to conduct a deed-in-lieu.
The borrower should have a written document stating that the loan is fully satisfied when the transfer of property occurs.
For income tax consequences from a deed-in-lieu,contact your tax advisor.

MORTGAGE FOREBEARANCE

Forbearance is when your mortgage servicer or lender allows you to pause or reduce your mortgage payments for a limited time while you build back your finances.
For most loans, there will be no additional fees, penalties, or additional interest (beyond scheduled amounts) added to your account, and you do not need to submit additional documentation to qualify. You can simply tell your servicer that you have a pandemic-related financial hardship.
Forbearance doesn't mean your payments are forgiven or erased. You are still obligated to repay any missed payments, which, in most cases, may be repaid over time or when you refinance or sell your home. Before the end of the forbearance, your servicer will contact you about how to repay the missed payments.

LOAN MODIFICATION

The modification can reduce your monthly payment to an amount you can afford.
Modifications may involve extending the number of years you have to repay the loan, reducing your interest rate, and/or forbearing or reducing your principal balance.
If you are offered a loan modification, be sure you know how it will change your monthly payments and the total amount that you will owe in the short-term and the long-term.

BANKRUPTCY

Bankruptcy is a method to eliminate or at least reduce your debt when bills pile up beyond your ability to repay them. It should be viewed as a last resort to be considered only when all other potential courses of action to get back on track have been exhausted.
Individuals filing for bankruptcy mostly use either Chapter 7 or Chapter 13. The biggest difference between the two is what happens to your property:

- Chapter 7, which is known as liquidation bankruptcy, involves selling some or all of your property to pay off your debts. This is often the choice if you don't own a home and have a limited income.
- Chapter 13, also known as a reorganization bankruptcy, gives you the chance to keep your property (including secured assets like your home and car) if you successfully complete a court-mandated repayment plan that lasts between three and five years.

Depending on where you live and your marital status, some of your property may be exempt from being sold when you file Chapter 7 because of state-specific and federal exemptions. With exemptions, whether they be your home equity, retirement accounts or even personal possessions such as jewelry, you receive the allowed exemption amounts, and the rest of the proceeds will be used to pay off debts.

You can read more about potential exemptions, and check out this chart for a quick rundown on the two types:

	CHAPTER 7	CHAPTER 13
Type of bankruptcy	Liquidation	Reorganization
Who can file?	Individuals and business entities	Individuals only (including sole proprietors)
Eligibility restrictions	Disposable income must be low enough to pass the Chapter 7 means test	Cannot have more than $419,275 of unsecured debt or $1,257,850 of secured debt (as of 2021)
How long does it take to receive a discharge?	Typically three to five months	Upon completion of all plan payments (usually three to five years)
What happens to property in bankruptcy?	Trustee can sell all nonexempt property to pay creditors	Debtors keep all property but must pay unsecured creditors an amount equal to value of nonexempt assets
Allows removing unsecured junior liens from real property through lien stripping?	No	Yes (if requirements are satisfied)
Allows reducing the principal loan balance on secured debts through a loan cramdown?	No	Yes (if requirements are satisfied)
Benefits	Allows debtors to quickly discharge most debts and get a fresh start	Allows debtors to keep their property and catch up on missed mortgage, car and nondischargeable priority debt payments
Drawbacks	Trustee can sell nonexempt property; does not provide a way to catch up on missed payments to avoid foreclosure or repossession	Must make monthly payments to the trustee for three to five years; may have to pay back a portion of general unsecured debts

THE FORECLOSURE PROCESS IN NEW YORK STATE

For Residential Cases

You Miss Mortgage Payments

90 Day Pre-foreclosure Notice

Lender must mail you information on getting help at least 90 days before starting a court case. Do not wait to get help.

SETTLEMENT

You and the Lender can make an agreement at any time before the foreclosure judgment is signed.

Foreclosure Case Started

The lender files "lis pendens," summons and complaint with the court, then serves you with summons and complaint in person or by mail.

Answer Due

Your answer to the complaint explains in writing your side of the story. It includes your defenses and any claims against the lender. It's due in 20 days if you were served in person; 30 days if served by mail.

YOU ANSWER

YOU DON'T ANSWER

YOU DON'T ATTEND THE SETTLEMENT CONFERENCE

Mandatory Settlement Conference

Both sides come to court to see if they can find a way for you to keep your home and avoid foreclosure. There may be several conferences over many months.
NOTE: If you didn't answer, you get extra time to answer the complaint.

Settled In Conference

The case is over.

YOU ANSWERED

2nd Chance Answer Due

Answer due 30 days from first conference.

YOU DON'T ANSWER

Motion for Default Judgment and Order of Reference

Lender asks court for a judgment on default and to appoint a Referee to decide the amount you owe and write a report.

Discovery

Both sides gather information from each other.

Motion for Summary Judgment and Order of Reference

Lender asks court for a judgment without trial and to appoint a Referee to decide the amount you owe and write a report.

LENDER WINS

Motion to Confirm Referee's Report and for Judgment of Foreclosure and Sale

Lender asks court to accept the Referee's findings.

LENDER LOSES MOTION

Trial

Lender must prove its case to the Judge. Both sides testify and show evidence and Judge decides case.

YOU LOSE

Judge Signs Foreclosure Judgment

Judge orders sale of your home. Lender and Referee choose date for auction at the courthouse. Sale is advertised for at least 21 days.

YOU WIN

Foreclosure Dismissed

The case is over.

Auction held

Public sale, home sold to highest bidder. The sales price may be more (a surplus) or less (a deficiency) than you owe.

FORECLOSURE RESOURCES

Following are New York State and local housing counseling agencies which provide free or very low-cost counseling :

- HUD – United States Department of Housing and Urban Development at www.hud.gov
- New York State Department of Financial Services Resource Center at https://www.dfs.ny.gov/consumer/home_resources.htm
- New York State Department o f Financial Services Foreclosure Relief Unit at https://www.dfs.ny.gov/consumer/fore_relief_unit.htm
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