

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

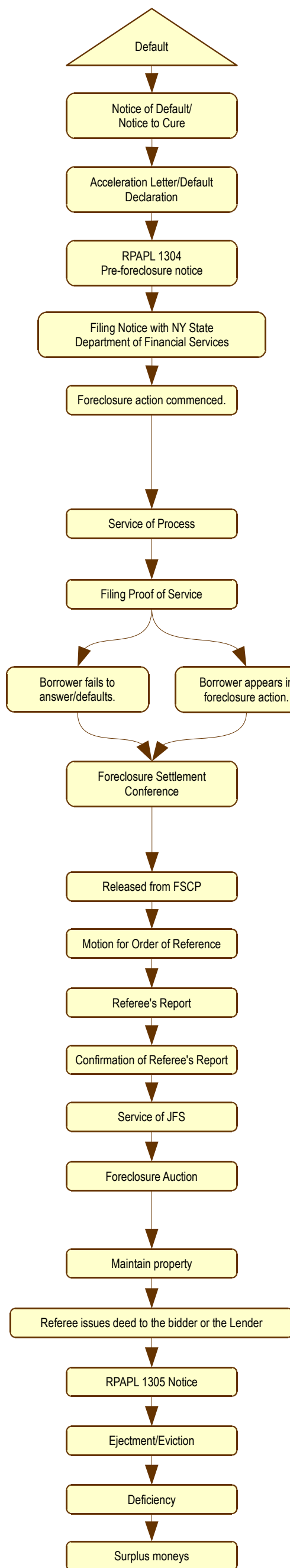


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Borrower defaults under the terms of the Mortgage (delinquency in making payment, failing to fund property tax escrow, transferring title, or other event of default)

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 mortgagees/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-l, 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.

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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