

Residential Foreclosure Actions Consumer Bill of Rights

This Consumer Bill of Rights provides guidance to homeowners facing foreclosure in New York. A foreclosure is a lawsuit, and ***homeowners should seek assistance from an attorney or housing counselor in exploring potential legal defenses to the suit.*** Homeowners should also know their general rights and obligations highlighted below.

Throughout the Foreclosure Process

You have the right to stay in your home and the duty to maintain your property unless and until a court orders you to vacate. If you abandon your home, the plaintiff (bank or mortgage servicer) may be able to foreclose on your property through an expedited process in court. To prevent this outcome, stay in your home and carefully review and respond to documents you receive from the plaintiff or the court in your foreclosure case. A failure to respond or appear in court when required to do so could make it easier for the plaintiff to show that your property is vacant and abandoned, which could put you at risk of an expedited foreclosure.

You have a right to be represented by an attorney and may be eligible for free legal or housing counseling services. For free legal services available in your area, visit “Consumers, Mortgage and Foreclosure” on the New York State Department of Financial Services website at www.dfs.ny.gov.

You have a right to be free from harassment or foreclosure scams. Strongly consider consulting with an attorney or housing counselor, if available, before signing any papers. If you are the target of harassment or fraud, contact the New York State Department of Financial Services either online or by calling the Consumer Hotline at (800) 342-3736.

You have a right to avoid foreclosure if you repay your loan in full at any time prior to the sale of your home, or if you negotiate a settlement with the plaintiff.

Before a Foreclosure Action Begins in Court

You have a right *to be notified at least 90 days before a foreclosure suit* is filed informing you that you are in default and at risk of foreclosure.

You have the right to explore “loss mitigation” options that may allow you to keep your home and avoid litigation. The bank or mortgage servicer is required to help you understand your loss mitigation options.

If you have submitted a completed loss mitigation application, your bank or mortgage servicer must finish its review of your application before proceeding with the foreclosure suit.

Once a Foreclosure Action Begins

You have the right to receive a copy of the legal papers in the foreclosure lawsuit when it begins. This is known as “service” of the Summons and Complaint.

You must respond to the Summons and Complaint with an “Answer” within 20 days after you have been personally served, and within 30 days if served on you by other means. The Answer is your opportunity to state your defenses. You should consult with an attorney or housing counselor for help in this process.

You have a right to participate in all court proceedings related to your case, including the mandatory settlement conference, which is required by New York law. For information about the mandatory settlement conference, visit the “Mandatory Settlement Conference” section of the New York State Department of Financial Services website located at www.dfs.ny.gov.

You have an obligation to appear at all scheduled court appearances. If you fail to appear, you risk losing important rights, which could lead to the loss of the case and your home.

You have a right to request court permission to proceed without paying court costs.

At the Mandatory Settlement Conference

You have a right to an explanation of the nature of the foreclosure action against you.

Both parties have an obligation to bring all necessary documents to the settlement conference. For a general list of required documents, visit the “Mandatory Settlement Conference” section of the New York State Department of Financial Services website located at www.dfs.ny.gov.

Both parties must negotiate in “good faith”, which means honestly and fairly. If you fail to do so, you may lose the opportunity to pursue a court-supervised settlement. If the bank or mortgage servicer fails to do so, the court may impose similarly significant penalties. Negotiating in good faith does not require either party to settle.

If you previously failed to submit an Answer, you will be given an extra 30 days to do so at the settlement conference.

After Settlement Agreement or Fully Executed Loss Mitigation Agreement

Within 90 days of finalizing a settlement, the *lis pendens* designation on your property, which warns people that title to your property is in dispute, must be lifted.

You may be responsible for additional taxes if you reach a settlement that includes debt forgiveness.

Seek advice from a tax professional about any resulting tax consequences.

After Judgment of Foreclosure & Sale

Upon a judgment of foreclosure and sale, the new owner can seek to evict you from the property.

If the home is resold for more than what you owe, you have a right to file an application with the court for the surplus funds, subject to certain deadlines. It is important to seek help from a legal service provider if you believe you are owed a surplus.

If the home is sold for less than what you owe, the lender may file an application for a judgment against you for the difference, known as a deficiency judgment. You may have the right to contest the amount of any deficiency judgment, including interest and penalties.