



HOW TO REPRESENT YOURSELF IN FORECLOSURE

The homeowner's guide to represent themselves in the foreclosure settlement conference process

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1 INTRODUCTION USING THIS GUIDE

Introduction

You have probably picked up this guide because you are in a foreclosure, or may be facing a foreclosure shortly. The possibility of losing your home is a very scary thought. Fighting a foreclosure through the court system can seem overwhelming to many people. This guide is not a substitute for legal assistance, and we would recommend hiring an attorney if possible. But we also understand that fewer non-profits have the resources to help people in need, the reality that attorneys can be expensive, and that finding an attorney may not be an option for you. Therefore, what we hope to do in this guide is give you a better understanding of the foreclosure process in New York State, so that you have the tools to represent yourself in the New York State Settlement Conference Process.

We strongly advise you to obtain the FREE assistance of a local housing counselor. A housing counselor can assist you in communicating with your mortgage lender. Taking the first step of contacting a housing counseling agency and making an appointment will help you immensely in this foreclosure process. You will find a list of local housing counseling agencies in the folder at the front of this guidebook.

Who is this guide for?

This guide is designed for homeowners who live in a one-to-four family home, are behind on their mortgage payments, and are in or could soon face being in foreclosure. These homeowners are entitled to a "Settlement Conference" as part of the foreclosure process.

What is this guide?

This guide is designed to address the needs of homeowners facing foreclosure. This guide contains general legal information about the foreclosure and settlement conference processes. It is NOT a substitute for legal representation, and if possible you should consult an attorney. However, we understand that attorneys can be expensive. If you are not able to hire an attorney to represent you, this guide should provide you with the knowledge to represent yourself in the foreclosure proceeding. This guide will give you basic information to help you understand the foreclosure timeline and will help you participate in the Foreclosure Settlement Conference, which may assist you in reaching an agreement with your lender.

What is a "Settlement Conference"?

Under New York State law, most homeowners in foreclosure are entitled to a "Settlement Conference". This will occur early in the foreclosure process, and will involve the homeowner and an attorney for the bank appearing before a judge, referee or law clerk. The goal of the Settlement Conference is to attempt to come to some alternative to foreclosure. These alternatives can range from entering a loan modification, which would allow you to keep your home and have a revised mortgage payment, to entering a "short sale" or "deed in lieu of foreclosure", which would limit the negative consequences to your credit. Once you have entered foreclosure, the Settlement Conference is the best chance you will have to save your home, so it is vital that you attend and have an understanding of what will happen. Much more about the Settlement Conference process will follow in this guide.

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IMPORTANT FORECLOSURE PREVENTION TERMS

You may see terms used throughout this booklet and throughout the legal documents you have received with which you are unfamiliar. What follows are definitions for several of these terms. If at any time in any of your Settlement Conferences you aren't sure what the Bank's attorney or court personnel are referencing, please speak up. They will be happy to explain to you what they are talking about, but unless you speak up and ask they will assume you understand everything they have said. Do not be embarrassed to ask! There are a lot of legal terms used in a foreclosure proceeding, and even attorneys that do this work every day often times get confused. No one expects that you will understand all of this without some help. You can also ask a housing counselor for help with these terms, as they should be familiar with them. (A list of local housing counseling agencies is included in the folder at the front of this guidebook.)

31% Payment: A growing trend within the mortgage industry is to have a goal of having your maximum monthly mortgage payment (including principal, interest, real estate taxes, and homeowner's insurance) be at most 31% of your Gross Income.

Acceleration Letter (a.k.a.: demand letter): A letter from your lender, sent after you have stopped paying, stating that the whole amount of your mortgage is due immediately.

Answer: A written response to the Complaint, in which a homeowner lists all of their defenses to the foreclosure, as well as raises any counterclaims they may have against the Bank.

Cancellation of Lis Pendens: A written notice that removes the previously filed Lis Pendens from the county clerk's records, which removes questions regarding the status of title to the property.

Capitalization: Capitalization occurs when items owed on a loan (past due interest,

taxes, late charges, legal costs or other fees) are added to the unpaid principal balance of the loan and are treated as part of a new principal balance.

Complaint: A written document that is filed with the Court and tells you and the Court the reasons the Bank is suing you and what they are asking the Court to do. Because this is a foreclosure, the Bank is claiming you have not made your monthly payments as required by your Mortgage and Note.

Deed in Lieu of Foreclosure: A process where the borrower gives the deed to the property back to the lender, and the lender discontinues any foreclosure action.

Default: Failing to meet the requirements of an agreement. Most defaults involve failing to make required mortgage payments on time.

Deficiency: The amount a borrower owes to the lender after the sale of the property at a foreclosure sale in the event the property is sold for less than the amount of the debt owed.

Discovery: A tool used in lawsuits to obtain information and documents from other parties.

Forbearance: A plan to cure a default that may involve a temporary suspension or reduction of payments.

Interest Rate: The amount charged by a lender for the right to borrow money, as expressed as a percentage of the principal amount borrowed.

Judgment: The final part of a court case. A valid judgment resolves all the contested issues and terminates the lawsuit, since it is regarded as the court's official pronouncement of the law on the action that was pending before it. It states who wins the case and what remedies the winner is awarded.

Lis Pendens: A written notice that a lawsuit has been filed concerning real estate, involving either the title to the property or a claimed ownership interest in it. The notice is usually filed in the county clerk's office. Recording a Lis Pendens alerts a potential purchaser or lender that the property's title is in question, which makes the property less attractive to a buyer or lender.

Loan Modification: An agreement to permanently change one or more terms of the original mortgage (i.e.: interest rate, payment amount, term etc.)

Loss Mitigation: The process in which the Bank will work with homeowners in an effort to avoid foreclosure. This term often refers to the group within the Bank that you will be working with throughout the foreclosure process.

Mortgage: A written document that secures property as collateral for a loan. This is the document that allows the bank to foreclose, because you have agreed that if you default on the Note (i.e.: stop payments) they can sell your property to collect on the debt.

Note: A written document that is a promise to pay. Typically, when you borrow a large sum of money from a lender, you pay it back with interest, in monthly installments, over a period of years. All these loan terms are found in the loan's note.

Notice of Appearance: Formal notification by a party to a court (and to parties already involved in a case) that it wishes to participate in the litigation process.

Order of Reference: A document presented by the Bank to the Court, which allows the foreclosure proceeding to continue in the Court system if a Settlement Conference has been unsuccessful. An Order of Reference would appoint a Referee to determine how much you owe the Bank.

Principal Reduction: A reduction in the total amount owed on the loan.

Pro Se: Appearing in a court proceeding for oneself - without an attorney representing them.

Process Server: A person authorized by law to deliver papers, typically the Summons and Complaint, to the Defendant.

Refinancing: The process of paying off a loan by borrowing new money, either from the existing lender or a new lender.

Repayment Plan: A plan where the borrower pays their regular monthly mortgage payment PLUS an additional amount to pay off the amount they are behind on their mortgage.

Service: The delivery of a summons, complaint, or other legal document to a person.

Short Sale: The sale of a home for less than what is owed on the mortgage. Short sales must be approved by the lender, since the Bank will take a loss on what is owed to them.

Stipulation of Discontinuance: A document filed by the Bank with the Court to signify that an agreement has been reached and that the foreclosure proceeding will be terminated.

Summary Judgment: A motion in a court proceeding to end the case without a trial on all the facts. This is typically done in the foreclosure context before any Discovery has occurred.

Summons: A legal document that notifies a party that a legal proceeding has been started.

3 THE FORECLOSURE PROCESS IN GENERAL

What is a foreclosure?

In New York, a foreclosure is a legal action - a lawsuit - filed by a lender (who is called the Plaintiff, but we will call the "Bank" throughout this guide) against a borrower (who is called the Defendant). This usually happens when a borrower has stopped making payments on their mortgage (otherwise known as "defaulting" on the mortgage or becoming delinquent). The Bank is asking the Court to allow them to take full ownership of your house. Typically the Bank would then attempt to sell your home at a public auction to recover the money still owed under your Mortgage and Note. The Bank files a Summons and Complaint with the Supreme Court in the county where the home is located. (In New York State, the Supreme Court is actually the lowest level of the state court system.) The Bank then gives (or "serves") you with copies of the Summons and Complaint.

A foreclosure proceeding is a long process with many steps, and usually takes no less than six months from start to finish. What follows is a brief summary of the steps in a foreclosure. After the brief summary, we will then go into greater detail on each stage.

The stages of a foreclosure case

STAGE 1: HOMEOWNER FALLS BEHIND ON PAYMENTS - This can happen for any number of reasons, but the end result is the same: your financial situation is such that you have not been able to keep current on your Mortgage. Each Mortgage has specific language about when the Bank may begin a foreclosure proceeding. For instance, we often see mortgages that say if a homeowner falls more than 3 months behind on payments, the Bank can begin foreclosure proceedings.

STAGE 2: 90-DAY PRE-FORECLOSURE NOTICE

Under New York State law, the Bank is required to send you a notice at least 90 days before the start of a foreclosure proceeding. Typically, the Bank will send this out when you are somewhere between 30 and 60 days behind on your payments. Notices must be sent to the last known address of the borrower by registered or certified mail, in addition to first-class mail. The letter must state the number of days you are behind on your Mortgage, the amount of money owed and the telephone number of the Bank. It also must provide a list of at least five government approved housing counseling agencies in your area (as seen in the folder at the front of this guidebook). If you are reading this guide, you most likely have already received this notice.

STAGE 3: THE DEMAND LETTER (OR THE "ACCELERATION LETTER") - This is a letter sent by the Bank to the Borrower before a foreclosure proceeding is filed in Court, pointing out that the terms of the Mortgage have been violated due to nonpayment. You will typically be given 30 days to pay the delinquent amount and any associated late fees.

STAGE 4: THE SUMMONS AND COMPLAINT - These documents will be the first notice you will receive that a foreclosure case has been started with the court.

STAGE 5 (OPTIONAL): FILING AN ANSWER - This is a written statement you may choose to prepare in response to the Summons and Complaint. Typically, an Answer is only done when you feel you have legal claims against the Bank.

STAGE 6: SETTLEMENT CONFERENCE - This is an opportunity for you to sit down with the Bank at your local courthouse to try to work out an alternative to foreclosure so that you may keep your home. You will find out about the time and date of the Settlement Conference in a letter sent to you by the Court.

STAGE 7A: SUCCESSFUL SETTLEMENT

CONFERENCE - It is possible that you and the Bank will work out an arrangement allowing you to keep your home. If this happens, the Bank will file a document called a "Cancellation of Lis Pendens" that will end the foreclosure proceeding in the court system.

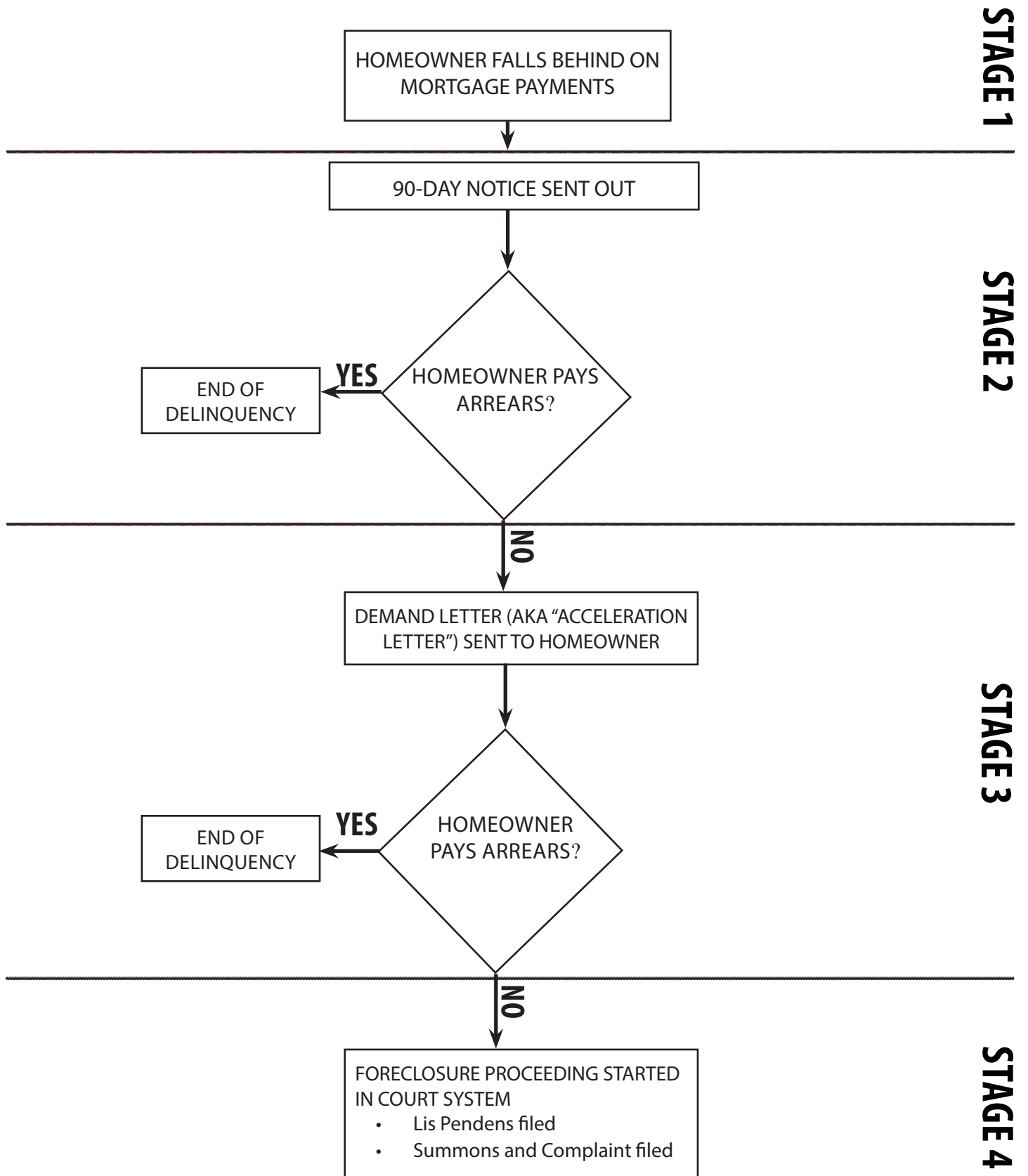
STAGE 7B: UNSUCCESSFUL SETTLEMENT

CONFERENCE – If you and the Bank cannot agree on an alternative to foreclosure, the foreclosure will be allowed to move forward in the court system. An "Order of Reference" will likely be granted to the Bank. This allows the Bank to obtain a "Judgment", which will then allow them to take ownership of the house after an auction.

STAGE 8: (IF SETTLEMENT CONFERENCE WAS UNSUCCESSFUL) POST-JUDGMENT - These are the events that occur after Judgment has been entered. Unless a last-minute deal with the Bank is reached, this stage will end with the house being sold at a public auction to the highest bidder and you will have to move out of your house.

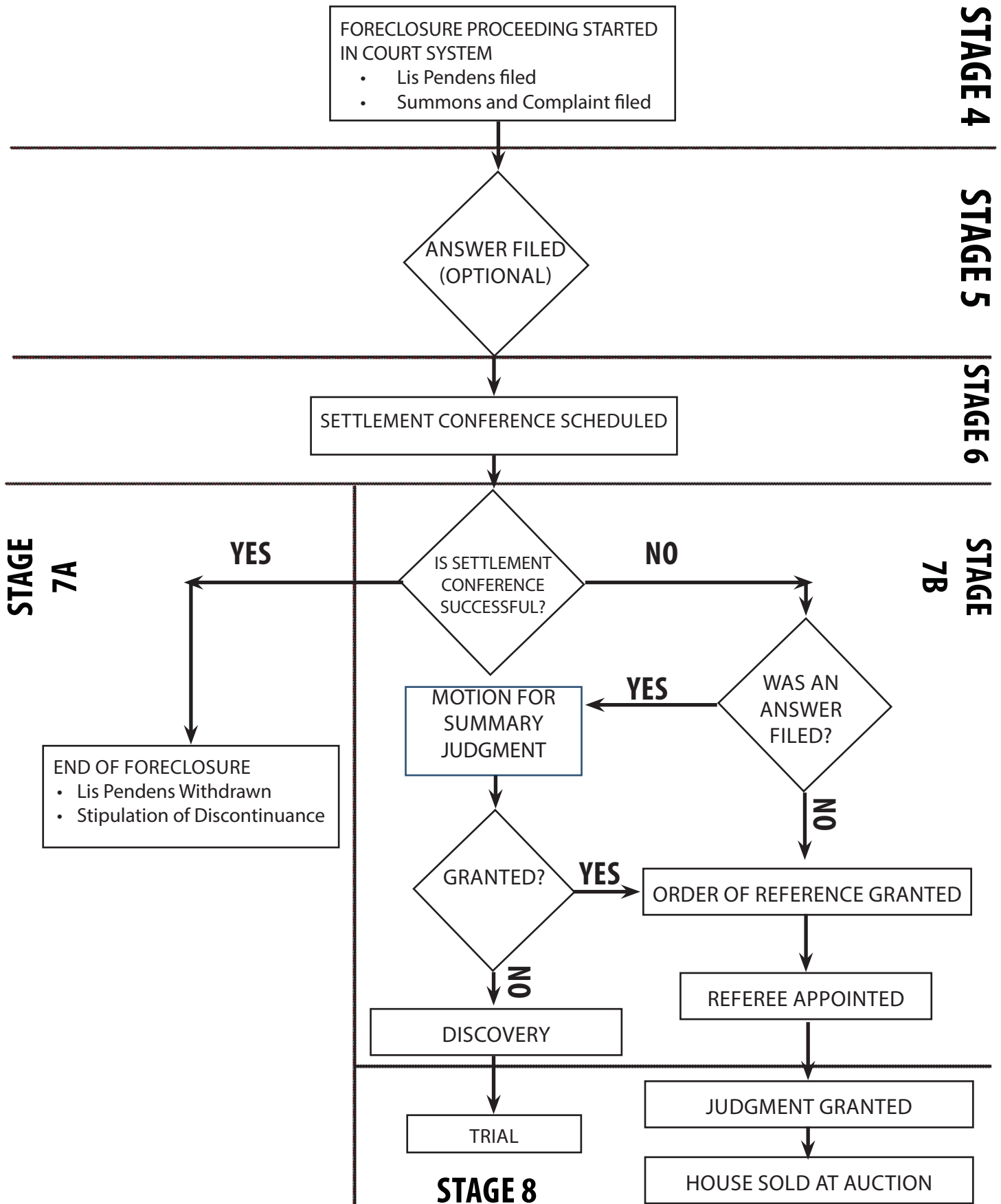
PATH OF A FORECLOSURE IN NEW YORK STATE

PART 1 – PRE-FORECLOSURE FILING



PATH OF A FORECLOSURE IN NEW YORK STATE

PART 2 – POST-FORECLOSURE FILING



4 THE STAGES OF A FORECLOSURE CASE - IN DETAIL

STAGE 1: HOMEOWNER FALLS BEHIND IN PAYMENTS - It may be a loss of a job, or a cut in your pay rate. Perhaps you have just gone through a divorce, or had a major medical concern. Whatever the reason is, you have fallen behind on your mortgage payments. When this happens, often times homeowners are put in the no-win situation of paying all their other bills, or paying their mortgage. There is really no “right” answer to this question, because whichever bill doesn’t get paid has the possibility of leading to negative consequences. If it is the Mortgage that doesn’t get paid, the Bank will begin contacting you to find out when you will make your missed payments. Homeowners often will ignore these calls, because they know they cannot make the payment in the foreseeable future. Perhaps you are able to make some payments, so you are always a month or two behind. Eventually, you fall behind to the point that the Bank is ready to threaten you with foreclosure.

STAGE 2 : THE 90-DAY PRE-FORECLOSURE NOTICE - The timing of when you will receive a 90-Day Pre-Foreclosure Notice varies from case to case, but typically if you fall 30 or more days behind you will likely receive this letter. Under New York State law, this letter is **required** to be sent to you. The Bank must wait at least 90 days from sending this letter before they begin a foreclosure action against you. This 90-day window gives you the opportunity to try to work with the Bank to find an alternative to foreclosure. This notice must tell you how much you must pay to bring your loan current. It must also provide the names and telephone numbers of at least 5 not-for-profit housing counseling agencies serving your county. (You will find a list of local housing counseling agencies for your area in the folder in the front of this guidebook.)

If you are reading this guide, you most likely have already received this notice. If you have

recently received this letter, we **strongly** urge you to do one of two things: (1) Contact a local housing counseling agency and make an appointment to meet with them, as they can help you through the process of working with the Bank without any cost to you; or (2) If you choose not to utilize the services of a housing counseling agency, contact your Bank directly. The longer you wait to work with your Bank, the harder it will be for you to keep your home!

Page 8 shows an example of what a 90-Day Pre-Foreclosure Notice looks like.

STAGE 3: THE DEMAND LETTER

The timing of when you will receive a “Demand Letter” depends on the language in your Mortgage, but typically this will occur when you are 45 to 60 days behind on payments. Although the Bank is threatening to begin a foreclosure proceeding if you do not pay and may even say that you are in foreclosure when you contact them, at this point they have not actually filed any documents with the Court.

It is important to note that you may receive a Demand Letter, even if you have contacted the Bank and have begun to work with them in trying to work out a plan to get current. You may have sent lots of documents to the Bank, which they are actively reviewing. Regardless of these efforts, you still may receive a Demand Letter. With many large banks, the Demand Letter is automatically generated when you fall behind by a certain amount of time on payments. Therefore, even if you are being reviewed for workout solutions, you still will receive the Demand Letter. It does not mean that the Bank has stopped reviewing your documents. Therefore, if the Bank has asked you for more documents, send them in – do not assume that process has ended.

An example of a Demand Letter is on page 9.

SAMPLE 90-DAY PRE-FORECLOSURE NOTICE

*Notice to borrowers with home loans 90 days prior to initiation of legal action
(Pursuant to RPAPL§ 1304)*

**You Could Lose Your Home.
Please Read the Following Carefully**

As of _____, your home loan is _____ days in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of _____ dollars by _____.

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. If you wish, you may also contact us directly at _____ and ask to discuss possible options.

While we cannot assure you that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait the fewer options you may have.

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence).

If you need further information, please call the New York State Banking Department's toll free helpline at 1-877-Bank-NYS (1-877-226-5697) or visit the department's website at <http://www.banking.state.ny.us>.

SAMPLE DEMAND LETTER

Sent Via Certified Mail
7196 9001 9295 5783 0918

Hours of Operations (CST)
Monday: 8 am – 7 pm
Tuesday-Thursday: 8 am – 8 pm
Friday: 9 am – 5 pm
Saturday: 8 am – 12 pm

10/8/2011

Ms. Betsy Ross
123 Main Street
Anywhere, New York 12345

NOTICE OF DEFAULT AND INTENT TO ACCELERATE

Re: Deed of Trust/Mortgage Dated:	4/1/2006
VA/FHA/PMI:	N/A
Loan #:	7162042400
Property:	123 Main Street, Anywhere New York 12345

Dear Mortgagor(s):

American Dream Loan Servicing LP, on behalf of the owner and holder of your mortgage loan, and in accordance with the referenced Deed of Trust Mortgage and applicable state laws, provides you with formal notice of the following:

The mortgage loan associated with the referenced Deed of Trust/Mortgage is in default for failure to pay amounts due.

To cure this default, you must pay all amounts due under the terms of your Note and Deed of Trust/Mortgage. As of 10/8/2011, the total amount necessary to bring your loan current is \$3,955.30. Additional amounts may become due and payable under your Note and Deed of Trust/Mortgage after 10/8/2011. For the exact amount you may pay to bring your loan current, please contact at our office at (800)999-5678. Payment must be in the form of cashier's check, money order, or bank certified funds.

If you have not cured the default within forty-five (45) days of this notice we will accelerate the maturity date of the Note and declare all outstanding amounts under the Note immediately due and payable. Your property that is collateral for the Note may then be scheduled for foreclosure in accordance with the terms of the Deed of Trust/Mortgage and applicable state laws.

AMERICAN DREAM LOAN SERVICING LP IS A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT YOUR DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

If you are not obligated on the debt or if the debt has been discharged in a bankruptcy proceeding, this is for informational purposes only and is not an attempt to collect the debt from you personally.

STAGE 4: SUMMONS AND COMPLAINT -

The Summons and Complaint is what tells you that a lawsuit has been started. The Summons and Complaint are created by the Bank's attorneys, and throughout them you will be referred to as the Defendant. The Summons is usually one of the first pages, and tells you some basic information about the lawsuit that has been started. It will tell you the name of the entity that has filed the foreclosure against you. This may simply be the name of your Bank.

However, the name of the party suing you may be a long, confusing name that does not sound familiar to you. For example, you may see that the Plaintiff is "MORTGAGE SERVICING AMERICA, AS TRUSTEE FOR MORTGAGE INDEX 2005-RD4, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-RD4 UNDER THE POOLING AND SERVING AGREEMENT DATED DECEMBER 1, 2005." The example of a Summons that follows this section shows an example of one of these types of trusts.

The reason this sometimes happens is that your Bank may have taken your mortgage, bundled it with hundreds of others, and sold them on Wall Street. If that was the case, they created a "Trust" (which is a type of legal entity) that holds all the mortgages. Therefore, when a foreclosure is filed it has to be the Trust that actually is the Plaintiff.

REGARDLESS OF WHOM YOU SEE LISTED AS THE PLAINTIFF, THERE WILL NOT BE ANY REAL-WORLD DIFFERENCE IN HOW THE FORECLOSURE PROCEEDS.

The Complaint tells you and the Court the reasons the Bank is suing you and what they are asking the Court to do. Because this is a foreclosure, the Bank is claiming you have not made your monthly payments as you promised in your Mortgage and Note. When

you signed your Mortgage you put your house up as collateral, in case you could not pay the amount you borrowed. Now that you have fallen behind on your payments (also known as "defaulting"), the Bank is asking the Court to enforce the terms of the Mortgage. Terms of the Mortgage typically allow the Bank to sell your house if you default on your payments to them.

When you receive the Summons and Complaint, you should also receive a notice that again informs you that help is available through a housing counseling agency. This notice will be on a different colored paper, and in larger font. It should list all the HUD-approved housing counseling agencies listed in the folder of this guidebook. If you have not contacted a housing counseling agency at this point, we once again **STRONGLY** urge you to contact one of them and make an appointment to talk to a counselor.

It is important to note that you may receive a Summons and Complaint even if you have begun working with a housing counseling agency or with the Bank directly. You may be working with the Bank's "loss mitigation" department, which is the group that works with struggling homeowners to come up with a plan that allows you to keep your home. You may have sent in multiple rounds of documents to the Bank, and may be hopeful that a solution to your problem is just around the corner.

However, most large banks have a completely separate department that deals with filing foreclosures. Therefore, even if you are in the process of working with the Bank, the Bank still may start a foreclosure against you. If that is the case, do not despair. You can continue to work with the Bank throughout the foreclosure proceeding. So if they have asked for more documents, or have told you they are reviewing your file, you should continue this process!

Once you receive the Summons and Complaint, it is **EXTREMELY** important that you open **ALL** mail sent to you by your Bank's attorney, and by the Court. Important notices about the status of your case will be mailed to you, and it is critical that you be aware of these developments.

You will find an example of the first pages of a Summons and a Complaint on pages 12 and 13.

STAGE 5 (OPTIONAL): FILING AN ANSWER OR NOTICE OF APPEARANCE - Once you receive the Summons and Complaint you can file an "Answer" or a "Notice of Appearance". If you were personally served the Summons and Complaint (typically done by a "process server", who is a 3rd party that is hired by the Bank's attorneys to deliver legal documents), you have 20 days to file an Answer. If the Summons and Complaint were left on your door, you should also receive a copy in the mail. If this method of delivery is used, you have 30 days to file an Answer.

An Answer is a written response to the Complaint. It does not HAVE to be filed by you – it is optional. You typically would file an Answer only if you have legal claims against the Bank. If you simply fell behind on payments and were not able to catch up, filing an Answer is often not necessary. An Answer typically contains a paragraph-by-paragraph response to each paragraph in the Complaint.

In addition, the Answer is where you would raise any "counterclaims" against the Bank. Counterclaims are simply legal claims you have against the Bank. The Answer is where you can tell the Court any ways that you think the Bank may have violated your rights. If you have claims against the Bank and you do not file an Answer, you may be waiving your right to bring these issues up in the future.

If you wish to file an Answer, please refer to the separate section in this guidebook entitled "Filing a Pro Se Answer", located toward the back of this guidebook.

A "Notice of Appearance" is a document filed with the Court that alerts the Court that you are an active participant in the foreclosure proceeding. By filing a Notice of Appearance, you are telling the Court that you want copies of all future legal documents related to the foreclosure to be sent to you. (If you have chosen to file an Answer, you automatically have made this request and do not need to file a Notice of Appearance.) If you wish to file a Notice of Appearance instead of an Answer, please refer to the separate section in this guidebook entitled "Filing a Notice of Appearance", located toward the back of this guidebook.

IF YOU DO NOT FILE AN ANSWER OR A NOTICE OF APPEARANCE, THE BANK IS NOT REQUIRED TO SEND YOU COPIES OF LEGAL DOCUMENTS FILED WITH THE COURT LATER IN THE FORECLOSURE PROCESS. WE STRONGLY RECOMMEND THAT YOU FILE EITHER AN ANSWER OR A NOTICE OF APPEARANCE AT THIS POINT IN THE PROCEEDING.

Regardless of whether you file anything with the Court, you still have the opportunity to participate in the Settlement Conference process.

SAMPLE SUMMONS

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

NATIONAL TRUST COMPANY, AS TRUSTEE
OF THE AMERICAN INDEX MORTGAGE LOAN
TRUST 2005-AR14, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-AR14 UNDER THE
POOLING AND SERVICING AGREEMENT
DATED JUNE 1, 2005

Plaintiff,

v.

BETSY ROSS

“JOHN DOE #1” to “JOHN DOE #10,” the last 10
names being fictitious and unknown to plaintiff; the
persons or parties intended being the persons or parties,
if any, having or claiming an interest in or lien upon the
mortgage premises described in the verified complaint,

Defendants.

Index No. 2011-12345

Date Filed: 12/5/2011

SUMMONS

Plaintiff designated Monroe county
as the place of trial based on the
mortgaged premises in the action.

Plaintiff’s principal place of
business is 5000 Golden Parkway,
Suite 200, Topeka, Kansas 66601

To the above-named defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a
copy of your answer, or, if the complaint is not served with the summons, to serve a notice
of appearance, on the plaintiff’s attorneys within twenty (20) days after the service of this
summons, exclusive of the day of service (or within thirty (30) days after the service is complete
if this summons is not personally delivered to you within the State of New York); and in case
of your failure to appear or answer, judgment will be taken against you by default for the relief
demanded in the complaint.

SAMPLE COMPLAINT

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

NATIONAL TRUST COMPANY, AS TRUSTEE
OF THE AMERICAN INDEX MORTGAGE LOAN
TRUST 2005-AR14, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-AR14 UNDER THE
POOLING AND SERVICING AGREEMENT DATED
JUNE 1, 2005

Plaintiff,

v.

Index No. 2011-12345

Date Filed: 12/5/2011

BETSY ROSS

COMPLAINT

“JOHN DOE #1” to “JOHN DOE #10,” the last 10
names being fictitious and unknown to plaintiff; the
persons or parties intended being the persons or parties,
if any, having or claiming an interest in or lien upon the
mortgage premises described in the verified complaint,

Defendants.

Plaintiff, by its attorneys Steven J. Baum, P.C., complains and alleges, upon information and belief, as follows:

FIRST. Plaintiff is, and at all times relevant herein is a domestic National Trust organized under the laws of the United State of America with its principal place of business at 5000 Golden Parkway, Topeka, Kansas 66602.

SECOND. On or about the following date, the following named obligor, for the purpose of evidencing indebtedness in the following amount and interest, daily executed and computed.

STAGE 6 : THE SETTLEMENT CONFERENCE -

At this point in the process, you have now been made aware through the Summons and Complaint that the Bank has started a foreclosure in the Court system. You may have filed an Answer or Notice of Appearance, or you may have decided to skip that optional step. Either way, the next step in the process will be the scheduling of a "Settlement Conference".

Under New York State law, a Settlement Conference **must** be held if you are living in your 1-to-4 unit home. The idea behind the Settlement Conference is to protect the homeowner. By now, many homeowners will have already contacted the Bank to work out a solution. However, banks can be incredibly difficult to work with. Homeowners send the same documents to the Bank many times, only to have the Bank tell them they never received them, or that still more documents are needed. Sometimes, the Bank will take a long time to review your documents, and then tell you that the documents are out of date and therefore you need to send updated documents again.

The idea behind the Settlement Conference is to give the homeowner an opportunity to work with the Bank to come to some alternative to foreclosure, with the Court's help. The general idea is that until the Bank proves to the Court that they have attempted to find an alternative to foreclosure, the Court will not allow the foreclosure to move forward in the Court system. In this way, the Settlement Conference can be thought of as a "safety zone" for homeowners – while you are in the Settlement Conference phase of the foreclosure process, the foreclosure essentially is "frozen" in the Court system. Therefore, you do not have to worry about showing up at your house to find the locks changed, or a notice saying you must be out of your house in days, or any of the other horror stories you may have read about from other parts of the country.

You should receive a letter in the mail from the Court with the time, date and place of the Settlement Conference. The notice of your Settlement Conference typically comes a few weeks after the Summons and Complaint. The notice will also list the documents you should bring with you to the Settlement Conference.

If you do not show up at your first scheduled Settlement Conference without contacting the Court, the Court may declare this stage of the foreclosure to be over, and allow the foreclosure to move forward. This is your best opportunity to work with the Bank and attempt to save your home, but it only can work if you take an active part in the process.

**IT IS VITAL THAT YOU
ATTEND THE FIRST
SCHEDULED SETTLEMENT
CONFERENCE!**

If for some reason you cannot attend the scheduled Settlement Conference, you will need to contact the Court to reschedule. Contact information can be found in the front folder pocket of this guidebook. You should do this as soon as you realize there is a conflict. If you have received a Summons and Complaint, but have not received the notice for a Settlement Conference yet, you should call the Court and ask if one is scheduled. Page 15 shows an example of the letter you will receive from the Court regarding the scheduling of your Settlement Conference.

SAMPLE SETTLEMENT CONFERENCE LETTER**IMPORTANT NOTICE**

January 5, 2011

Ms. Betsy Ross
123 Main Street
Anywhere, New York 12345

RE: NATIONAL TRUST COMPANY, AS TRUSTEE OF THE AMERICAN INDEX MORTGAGE LOAN TRUST 2005-AR14, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR14 UNDER THE POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2005 v. BETSY ROSS

Dear Ms. Ross,

A mortgage foreclosure action has been commenced against you by your mortgage lender. It is important that you do not ignore this notice or any court papers or **YOU MAY LOSE YOUR HOME.**

A CONFERENCE WITH YOU AND YOUR LENDER IS SCHEDULED BEFORE JUDGE WABNER ON FEBRUARY 1, 2011 at 10:00 A.M. ON THE FOURTH FLOOR OF THE MONROE COUNTY HALL OF JUSTICE, 99 EXCHANGE BLVD., ROCHESTER, NY. THIS CONFERENCE IS AVAILABLE TO YOU IF YOU ARE STILL RESIDING AT THE PREMISES BEING FORECLOSED, 123 Main Street, Rochester, New York 14614.

Sincerely,
Supreme Court County Clerk

Who attends a Settlement Conference?

The homeowner can appear at a Settlement Conference with or without an attorney. (Appearing without an attorney is referred to as appearing “pro se.”) The Bank must have a representative available at the Settlement Conference. Typically, this will be the Bank’s attorney.

What should you expect at a Settlement Conference?

The Settlement Conference is your opportunity to work with the Bank and try to find an alternative to foreclosure. You will describe your situation; the Court may ask questions about your finances, your income and your debts. The Court may also ask whether you have any savings set aside. The Bank should be able to describe how much you owe and how this amount was calculated. There will be no witnesses or testimony, it is simply an opportunity for both sides to ask questions and explore solutions.

The Bank will likely give the homeowner a packet of forms that must be filled out and returned to the Bank, so that the Bank can review your loan for a possible “loan modification.” The forms the Bank asks you to fill out are designed to give the Bank a snapshot of your current financial situation. Therefore, they will ask about both your income and your monthly expenses. Some of the forms will be specific to your Bank, while others will be forms used by all banks as required by federal law. In addition, most banks will ask for your most recent bank statements and a copy of your income taxes. Again, this is used to have a better understanding of your financial situation.

It is very rare that you will be able to come to an agreement with the Bank at the first Settlement Conference. What typically happens is that the Court will schedule another Settlement Conference for you.

Again, it is very important that you attend each and every Settlement Conference that is scheduled.

What are your rights at a Settlement Conference?

At the Settlement Conference, you have the right to:

- Have a friend, family member, attorney or advocate assist you;
- Have anything explained to you;
- Ask for an adjournment (a rescheduling) of the conference if you cannot attend for a valid reason
- Ask for copies of:
 - Your Note
 - Your Mortgage
 - A payment history (so you can review what payments have been applied and when)
 - An explanation of any fees or charges to your loan

What should you do to prepare for your settlement conference?

STEP 1: CONTACT A HUD-APPROVED HOUSING COUNSELING AGENCY - Located in the front folder of this guidebook is a list of your local HUD-approved housing counseling agencies. If other companies or individuals tell you that they can help save your home if you pay them money, you should be suspicious – often times these are scammers who are trying to make a quick dollar at your expense. High quality and expert services are available for free from the agencies listed in this guide, and we recommend you contact one of them if you are looking for help.

STEP 2: GATHER ALL YOUR DOCUMENTS -

You are required to bring some documents with you to the Settlement Conference. There are other documents the Bank will require to review your loan. If you have already submitted these documents (often called a "loss mitigation" or "workout" package), you should expect to submit them again.

You should also gather all the documents you received when you originally got the loan (referred to as the "loan documents" or "closing documents") if you can locate them. A list of documents to gather is included below.

✓	Documents to Gather
	The last two months of pay stubs for everyone who regularly helps pay the mortgage
	If you receive rental income: Copies of your current lease AND Schedule E in tax returns AND/OR Bank statements showing regular rental deposits AND/OR Copies of rent receipts you give to your tenants AND/OR Section 8 or other subsidy agreements
	Tax returns for the last two years
	If you receive money from the state (social security, disability payments, VA benefits etc) or a pension: Most recent award letter AND 3 months worth of bank statements showing deposits of this money OR 3 months worth of payment stubs
	If you are self-employed you should have a profit and loss statement available for the last two quarters
	If other people in your household are contributing to the household bills, copies of their paystubs/income documents
	Your most recent utility bill that is listed in your name
	Financial Form provided by the Bank
	Hardship letter (This is a letter you write that explains why you fell behind. You should indicate in the letter if this was a temporary setback, or if this is a permanent change in your household income.)

✓	Documents to Gather
	Your most recent mortgage statement
	Forbearance, loan modification, or workout offers you have received, regardless of whether you accepted or rejected them
	All papers and letters you have received from the Court, the Bank, and the Bank's attorney
	Copies of your loan application (or the Uniform Residential Loan Application)
	Your HUD-1 Settlement Statement
	The Note and any riders (Balloon Rider or Adjustable Rate Rider)
	Mortgage and riders
	Truth-in-Lending Disclosure Statement
	Good Faith Estimate
	Your Deed
	Most recent appraisal (if you have one)
	Any other papers related to fees you paid at closing, either to your lender or your broker or anyone else

If you cannot find all these documents, you should still **GO TO THE SETTLEMENT CONFERENCE**. If there are documents the Bank provided to you when you initially got your loan (like the Note or the Mortgage) and you don't have a copy, you can request a copy of them at the Settlement Conference.

STEP 3: COMPLETE YOUR BUDGET - Read through this entire section before filling out your budget

The budget in this guide is only for your use. No one else is going to see it unless you show it to them. It is designed to help you make an honest assessment if you can afford to keep your home. This is also good preparation for meeting with your housing counselor and filling out your Bank's financial forms.

MONTHLY INCOME

First, you need to compute your total monthly income. Listed below are the most common sources of income. You want to list all of your personal sources of income (Column A), as well as any other income from anyone else in your house if they are helping contribute to the mortgage (Column B).

Please remember that you **MUST** be able to verify all the sources of income you use in the budget. Your Bank will not consider sources of income without accompanying verification. If you are using another household member's income in your budget, count that person's expenses as well and make sure you have verification of their income.

Gross Household Income: Adding columns A and B gives you your "Total Gross Household Income." This amount is \$_____. Multiply this number by .31. This equals \$_____, and we will refer to this as your "31% Payment". Most of the large banks in the country have recently settled on 31% as being one of the main standards they use in determining if a payment is affordable – anything above 31% is often looked at as being too high. Therefore, your 31% Payment is an approximate amount you should

	Gross Household Income		Net Household Income	
	Your Income BEFORE Taxes (A)	Other Income in Your Home BEFORE Taxes (B)	Your Income AFTER taxes (Net Income) (C)	Other Income in your home AFTER taxes (D)
Regular Wages				
Part Time Work				
Rental Income				
Public Assistance				
Unemployment				
Disability				
Social Security				
Pension				
Alimony				
Other				
Sub-Total				
TOTAL INCOME	TOTAL GROSS INCOME (Add columns A and B) \$ _____		TOTAL NET INCOME (Add columns C and D) \$ _____	

expect to pay in total for your first mortgage, homeowners insurance, property taxes and condo fees/homeowners association fees.

Remember, there is no law that says you cannot pay more than 31% -- this is merely meant as a guide to give you a better idea of what many of the national banks have recently done. In addition, if you were paying less than this before you defaulted, be prepared for your mortgage payment to increase to this amount each month.

Net Household Income: Adding columns C and D gives you your "Total Household Net Income." This amount is \$_____. This is how much you actually receive each month, and the amount available to pay your bills.

MONTHLY EXPENSES

Now that we have looked at your income, we need to compute your total monthly expenses. Included on the next page (page 20) is a list of typical household expenses you may have each month. Fill in each category as best you can. We realize that it often can be difficult to estimate certain categories, such as how much you spend on food each month. However, it is vital for you to fill this out as accurately as possible. The only way to make an accurate determination if you can afford your home is to look at what else you are spending your money on. You will likely have to fill out a very similar form for your Bank, so working on your budget now will help you.

Expenses	Amt.	Expenses	Amt.
Monthly Housing Expenses:		Monthly Food and Groceries:	
First Mortgage (Last known payment amount, even if you are not currently paying it)		Groceries	
Second Mortgage		Lunch (work or school)	
Cond Fees/Maintenance		Dinner Out	
Homeowner's Insurance (if it is not paid by your bank, also known as "escrowed")		Pet Food	
Property Taxes (if it is not escrowed)		Other	
Cable		TOTAL	\$
Internet		Monthly Transportation Expenses:	
Telephone		Car Payments	
Cell Phone		Insurance	
Gas		Gas	
Water		Maintenance - oil changes, etc.	
Electricity		Tolls	
Other		Parking	
TOTAL	\$	Bus	
Monthly Child-Related Expenses:		Other	
Alimony/Child Support		TOTAL	\$
Day Care		Monthly Education Expenses:	
Other		Tuition/Fees	
TOTAL	\$	Student Loans	
Monthly Clothing Expenses:		Books/Supplies	
Clothing		Other	
Laundry- including Dry Cleaning		TOTAL	\$
Other		Other Monthly Expenses:	
TOTAL	\$	Religious Contributions	
Monthly Medical Expenses:		Credit Card Payment	
Insurance		Credit Card Payment	
Premiums/Co-Pays		Credit Card Payment	
Doctor/Dentist		Personal Loans Other	
Medication		Other	
Other			
TOTAL	\$	TOTAL	\$

Now take each of the subtotals from your expense list and copy them in below.

My Total Monthly Expenses	
Type of Expense	Amount
Housing	
Child Related	
Clothing	
Medical	
Food & Grocery	
Transportation	
Education	
Other	
TOTAL MONTHLY EXPENSES	\$

Next you need to calculate how much money you have after you pay all your bills, or how much more you are spending each month than you are earning. Take your Total Net Income, which you calculated earlier, and subtract your Total Monthly Expenses, which you just calculated.

Total Net Income	\$ _____
Total Monthly Expenses	- \$ _____
MONTHLY SURPLUS/DEFICIT = \$ _____	

If this amount is negative, it is referred to as your “monthly deficit”. If this amount is positive, it is referred to as your “monthly surplus”. If you have a monthly deficit, do you see any sources of income that you can increase, or any expenses you may be able to cut back on? In addition, look at the 31% Payment we calculated earlier. If we plugged the 31% Payment amount into your budget in place of the current Monthly Mortgage Payment, would that be enough to turn your monthly deficit into a monthly surplus? If not, you may not be able to afford your home and

you should seriously consider other options (such as a “short sale” or a “deed-in-lieu of foreclosure”).

STEP 4: TELL YOUR STORY - The reasons you ended up in foreclosure are probably long and complicated, and each borrower’s situation is slightly different. The Settlement Conference is a chance for you to share your story with the Court and the Bank. By preparing to tell your story before the Settlement Conference, it is more likely you will tell your story in a way that everyone can understand. They need to know why you are in foreclosure, and what you have done to resolve your situation. The clearer you are to the Court and the Bank, the easier it will be to resolve the foreclosure. You should write out answers to the following questions:

What are the reasons for falling behind on your mortgage? _____

What have you done to try to keep your home? _____

Were there any terms of your loan that were different than what you were promised? _____

You should also be able to talk about basic information about your loan, such as the following:

The current monthly payments are \$ _____.
The current interest rate is: _____% and my interest rate (circle one) changes/does not change. I last made a payment on my loan in _____ (list month and year).

Have you attempted to work with your Bank to find a solution already? If so, make a list below of all the people you have contacted, and the times you have sent in documents before the Settlement Conference.

**STEP 5: ATTEND THE SETTLEMENT
CONFERENCE AND WORK TOWARDS A LOAN
MODIFICATION**

NOTE TAKING PAGES: Bring this with you to all the Settlement Conferences you go to, and take notes during the conference.

Date of Settlement Conference:				
Who attended?				
	Name	Phone Number	Email	Did you receive a business card?
Referee/Judge				
Attorney for the Bank (Plaintiff)				
Other				
Date of Next Settlement Conference:				
Summary of What Happened at this Settlement Conference:				
What you need to do before the next Settlement Conference:				
What the Bank needs to do before the next Settlement Conference:				

Before you leave, try to summarize your understanding of what happened at the Settlement Conference, and what will happen next. Ask the Court to confirm you are correct.

Date of Settlement Conference:				
Who attended?				
	Name	Phone Number	Email	Did you receive a business card?
Referee/Judge				
Attorney for the Bank (Plaintiff)				
Other				
Date of Next Settlement Conference:				
Summary of What Happened at this Settlement Conference:				
What you need to do before the next Settlement Conference:				
What the Bank needs to do before the next Settlement Conference:				

Before you leave, try to summarize your understanding of what happened at the Settlement Conference, and what will happen next. Ask the Court to confirm you are correct.

WORKING TOWARD A LOAN MODIFICATION

If your loan can be modified there are several ways your Bank will likely go about it. The Bank may do any of the following:

- Lower your interest rate
- Convert an Adjustable Rate Mortgage to a Fixed Rate Mortgage
- Extend the term of the loan
- Forgive a portion of your principal balance

Regardless of which way the Bank considers, they typically will modify a loan by doing a “capitalization”. Capitalization occurs when items owed on a loan (e.g. past due interest, taxes, late charges, legal costs, etc.) are added to the unpaid principal balance of the loan and are treated as part of a new principal balance. In adding them to the unpaid principal balance, the Bank will cause the overall amount that is owed to the Bank on that loan to increase. The upside to a capitalization is that because all current outstanding charges have been rolled into the unpaid principal balance, the Borrower is now seen as current on their mortgage payments. By doing a capitalization, the homeowner does not have to make up all missed payments at one time.

Any agreement you reach should clearly state how much you owe, what your interest rate will be going forward, what each charge is for, what your monthly payment will be, how long you will be making that payment, and what will happen if either side violates the agreement. Ask for a written explanation of any and all charges that are part of this loan modification, and ask that attorney’s fees and late fees be reduced or waived.

STAGE 7A: SUCCESSFUL SETTLEMENT

CONFERENCE - If you have successfully worked out a deal with the Bank in the Settlement Conference, the foreclosure proceeding will be discontinued. The Bank should file a “Stipulation of Discontinuance”, which is a document that tells the Court that

the Bank is no longer pursuing a foreclosure. In addition, the Bank will file a “Cancellation of the Lis Pendens”, which ensures that the land records with the local County Clerk accurately reflect that the foreclosure proceeding is over.

STAGE 7B: UNSUCCESSFUL SETTLEMENT

CONFERENCE - If you are unable to work out a deal with the Bank at the Settlement Conference, the Bank will ask for an “Order of Reference”, which is the next step in the foreclosure proceeding. The Bank will file either a “Summary Judgment Motion” (if you filed an Answer) or a “Default Motion” (if you did not file an Answer). Both these motions allow the foreclosure to go forward against you, and a Referee will be appointed to compute the amount due and owing under the note and mortgage. Once the Referee is done computing the amount owed, the Bank will move for a Judgment of Foreclosure and Sale, which allows them to sell the property.

STAGE 8: POST JUDGMENT - Once a Judgment of Foreclosure and Sale has been signed, a sale date is set and the property is sold at public auction. After the auction to sell the property, you will not have too much time to find a new place to live. If you do not move out on your own, you will be served with eviction papers.

5 CONCLUSION

It bears repeating that there is help available. You may speak with a HUD-approved housing counselor by contacting any of the agencies listed in the front folder pocket of this guidebook. If you are going to represent yourself in the Settlement Conference process, by preparing ahead of time, gathering all your documents and attending all the Settlement Conferences, you are in a much better place to successfully keep your home. Although the Settlement Conference can be long and challenging, it has allowed many New Yorkers to keep their homes.

6 APPENDICES

INSTRUCTIONS ON HOW TO SUBMIT A NOTICE OF APPEARANCE

“PRO SE” (Without an attorney)

What is a Notice of Appearance?

A Notice of Appearance is a document filed with the Court that alerts the Court that you would like to be an active participant in the foreclosure proceeding. By filing a Notice of Appearance, you are telling the Court that you want copies of all future relevant legal documents related to the foreclosure to be sent to you. (If you have chosen to file an Answer, you automatically have made this request and do not need to file a Notice of Appearance.)

Why is it important to file a Notice of Appearance?

If you decide to NOT file an Answer, you should file a Notice of Appearance which will guarantee that you will receive all future pleadings and documents in your court case, including notice of sale. If you do not file an Answer or a Notice of Appearance, the Bank is NOT required to send you copies of legal documents filed with the Court later in the foreclosure process. Therefore, we HIGHLY recommend that you file either an Answer or a Notice of Appearance at this point in the foreclosure proceeding.

If you received a Summons and Complaint, you have the right to serve and file an Answer to the Complaint. Sometimes, however, it may not be a good idea to file an Answer. You

have to make that choice if you are unable to find an attorney to help you. There are two possible reasons why you may NOT want to file an Answer.

1. You may not have any legal defenses or claims to the foreclosure and you simply fell behind on your mortgage because of a loss of income.
2. If you file an Answer and are unsuccessful in convincing the Court that you are correct, you will be responsible for the legal fees that the Bank must pay to defend the foreclosure. This will increase the amount of money you owe the Bank, which could increase the amount of money you will have to pay back. This ultimately can make it even harder for you to obtain a loan modification or some other type of workout.

Where can you get the form to fill out?

A blank Notice of Appearance and Affirmation of Service are included in the front folder pocket of this guidebook.

**YOU SHOULD
KEEP COPIES
OF ALL COURT
DOCUMENTS FOR
YOUR RECORDS.**

FILLING OUT THE NOTICE OF APPEARANCE

STATE OF NEW YORK SUPREME COURT NATIONAL TRUST COMPANY, AS TRUSTEE OF THE AMERICAN INDEX MORTGAGE LOAN TRUST 2005-AR14, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR14 UNDER THE POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2005 Plaintiff, v. BETSY ROSS "JOHN DOE #1" to "JOHN DOE #10," the last 10 names being fictitious and unknown to plaintiff; the persons or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgage premises described in the verified complaint, Defendants.	COUNTY OF MONROE Index No. 2011-12345 Date Filed: 12/5/2011 SUMMONS Plaintiff designated Monroe county as the place of trial based on the mortgaged premises in the action. Plaintiff's principal place of business is 5000 Golden Parkway, Suite 200, Topeka, Kansas 66601
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To the above-named defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

STEP 1: FILL OUT THE "CAPTION" OF THE NOTICE OF APPEARANCE - As shown in the sample Notice of Appearance above, fill in the top part of the Notice of Appearance form (known as the "Caption") by copying the necessary information from the Summons or Complaint.

STEP 2: FILL OUT THE FIRST PAGE OF THE NOTICE OF APPEARANCE - Fill out the first page of the form as indicated below, including signature, current address, and your current and most reliable telephone number. Don't forget to date the document!

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF <u>Monroe</u>	
National Trust Company As Trustee, et al	Plaintiff
-against-	
Betsy Ross, et al	Defendant
INDEX NO: <u>2012-12345</u>	
NOTICE OF APPEARANCE	
1. My name is <u>Betsy Ross</u> and I am the defendant in this case.	
2. I enter my pro se appearance in this matter and demand receipt of all documents filed in this case, as well as notice of all further proceedings.	
3. I will represent myself, unless I or an attorney notify you otherwise. No attorney will represent me in this case.	
4. All court papers may be mailed to me by first class mail at the address listed below.	
5. My mailing address where I will accept legal documents is as follows:	
Service address:	
<u>123 Main Street</u> <small>(Street address)</small>	
<u>Angiers, NY, 12045</u> <small>(Town/City, State, Zip Code)</small>	
<u>(516) 456-7890</u> <small>(Telephone Number(s))</small>	
<u>Betsy Ross</u> <small>(Sign your name)</small>	
<u>Betsy Ross</u> <small>(Print your name)</small>	
Dated: <u>January 3, 2013</u>	

STEP 3: MAKE 3 COPIES OF THE NOTICE OF APPEARANCE

STEP 4: "SERVE" THE PLAINTIFF'S ATTORNEY

Ask someone **other than yourself** who is at least 18 years old and **not a Defendant** in the lawsuit to "serve" the first copy of the Notice of Appearance on Plaintiff's attorney at the address listed on the Summons and Complaint. The easiest way to "serve" the Notice of Appearance is to arrange for the person to send it by certified mail, return receipt requested, or by overnight delivery service. **Be sure to keep the proof of mailing and delivery.**

STEP 5: FILL OUT THE AFFIDAVIT OF SERVICE

The person who "served" the copy of the Notice of Appearance on the Plaintiff's attorney from step 4, must fill out the Affidavit of Service in front of a Notary Public and have it notarized. You can often find a Notary Public at a branch of your local bank. Please be aware they may charge a small fee for this service.

STEP 6: DATE STAMP AND FILE THE NOTICE OF APPEARANCE AT COUNTY CLERK

Bring the original Notice of Appearance, the remaining two copies of the Notice of Appearance, the original notarized Affidavit of Service and a copy of the notarized Affidavit of Service to your County Clerk's office. (See list of the local area court clerks included in the front folder pocket of this guide.) At the County Clerk's office, state that you wish to file a Notice of Appearance. Be sure to ask the clerk to "time-stamp" the original Notice of Appearance, the original Affidavit of Service, the two copies of the Notice of Appearance, and the copy of the Affidavit of Service so that you have proof of the date and time you filed your documents. Keep for your records a time stamped copy of the Notice of Appearance and a stamped copy of the Affidavit of Service.

AFFIDAVIT OF SERVICE	
I, <u>Betsy Ross</u> , served the within Notice of Appearance on Plaintiff's attorney as follows (attorney's name and address):	
<u>Lawyer Bob</u>	
<u>555 South Street</u>	
<u>Anywhere, N.Y. 12345</u>	
I served the Verified Answer by the following method (check all that apply):	
<input type="checkbox"/>	first class mail
<input type="checkbox"/>	certified mail
<input checked="" type="checkbox"/>	certified mail, return receipt requested
<input type="checkbox"/>	overnight delivery service
<input type="checkbox"/>	facsimile
<input type="checkbox"/>	personal delivery.
on the <u>1st</u> day of <u>January</u> , 20 <u>13</u> .	
I am eighteen years or older and I am not a Defendant in this lawsuit.	
	<u>Betsy Ross</u> Signature:
	<u>Betsy Ross</u> Print Name:
Sworn to and subscribed before me on this <u>3rd</u> day of <u>January</u> , 20 <u>13</u>	
<u>Abraham Lincoln</u> Notary Public	

STEP 7: FILE THE NOTICE OF APPEARANCE AT THE SUPREME COURT CLERK

Go to the Supreme Court Clerk's office with your third copy of the Notice of Appearance. (See list of local area court clerks included in the front pocket of this guide.) Tell the clerk you would like to file a Notice of Appearance. Sometimes the court clerk will not accept a notice of appearance before your first settlement conference. Do not worry. Just bring your copies to your conference and hand it to the judge.

STEP 8: APPEAR AT YOUR SETTLEMENT CONFERENCE

INSTRUCTIONS ON HOW TO SUBMIT AN ANSWER

“PRO SE” (Without an attorney)

What is An Answer?

An Answer is a written response to the Complaint, where you list any and all of your defenses to the foreclosure, as well as any counterclaims you may have against the Bank. This section of the guidebook will explain step-by-step how to write and file an Answer if you can't find an attorney to help you.

Should I file an Answer?

If you have received a Summons and Complaint, you have the right to serve and file an Answer to the Complaint. This will help you preserve your legal rights and guarantee that you receive notice of all future actions in the court case, including the sale of your home. If you don't file an Answer, the judge may enter a “default” judgment against you (which means you did not submit an Answer and therefore are not contesting the Bank's legal right to foreclosure). In addition, if you don't file an Answer you will probably lose your right to raise any defenses to the foreclosure down the road.

Sometimes, however, it is not helpful to file an Answer. If you are unable to find an attorney to help, you will have to make that choice. There are two possible reasons why you may NOT want to file an Answer.

1. You may not have any legal defenses or claims to the foreclosure
2. If you file an Answer and are unsuccessful in convincing the judge that you are correct in your claims, you will be responsible for the legal fees that the Bank must pay to successfully pursue the foreclosure. This will increase the amount

of money you owe the Bank. This increase could ultimately make it harder for you to obtain a loan modification or some other type of workout.

If you decide to NOT file an Answer, you should file a Notice of Appearance which will guarantee that you will receive all future pleadings and documents in your court case, including notice of sale. (There are instructions in this guidebook if you choose to file a Notice of Appearance instead of an Answer.) If you do not file an Answer or a Notice of Appearance, the Bank is NOT required to send you copies of legal documents filed with the Court later in the foreclosure process.

We HIGHLY recommend that you file either an Answer or a Notice of Appearance early in the foreclosure proceeding.

This is a general guide through the foreclosure process. Each person's situation is unique, and therefore consultation with an attorney is recommended, if possible.

Where can you get the form to fill out?

A blank Answer and Affirmation of Service is included in the front folder pocket of this guidebook.

When should you file an Answer?

- If you were served personally (the court papers were handed to you in person), you have 20 days from the date of service (the date you were handed the papers) to file your Answer.
- If you were served by mail (you didn't receive a copy personally but instead received the foreclosure summons only by mail), you have 30 days to file your Answer.

If it has been more than 30 days since you were served, you may still be able to file an Answer but you will need to ask permission from the Court. One way to approach this situation is to draft the Answer, try to file it with the Court and serve it on the Bank's attorney. The Bank's attorney may try to claim that your Answer is too late to accept, but the Court also may decide to allow you to file your Answer, so it is worth trying.

Where can you find the information you need to respond?

The information you need to fill in your Answer, comes from the Summons and Complaint you received, your mortgage papers, and your personal experience.

SAMPLE SUMMONS

This sample foreclosure Summons shows the information you need to copy to your Answer.

STATE OF NEW YORK SUPREME COURT	COUNTY OF MONROE
<hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>NATIONAL TRUST COMPANY, AS TRUSTEE OF THE AMERICAN INDEX MORTGAGE LOAN TRUST 2005-AR14, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR14 UNDER THE POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2005</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BETSY ROSS "JOHN DOE #1" to "JOHN DOE #10," the last 10 names being fictitious and unknown to plaintiff; the persons or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgage premises described in the verified complaint,</p> <p style="text-align: center;">Defendants.</p> </div> <div style="width: 35%; font-size: small;"> <p>Index No. 2011-12345 Date Filed: 12/5/2011</p> <p>SUMMONS</p> <p>Plaintiff designated Monroe county as the place of trial based on the mortgaged premises in the action.</p> <p>Plaintiff's principal place of business is 5000 Golden Parkway, Suite 200, Topeka, Kansas 66601</p> </div> </div> <hr/> <p>To the above-named defendant:</p> <p style="text-align: center;">YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.</p> <p style="text-align: right;">1</p>	

**Do not wait until the last day
 to file an Answer –
 writing and filing an Answer
 takes time!**

FILLING OUT THE ANSWER

Below is the form Answer provided in this guidebook.

STEP 1: FILL OUT THE "CAPTION" OF THE ANSWER - As shown in the sample Answer below, fill in the top part of the Notice of Appearance form (known as the "Caption") by copying the necessary information from the Summons or Complaint.

STEP 2: CHECK "GENERAL DENIAL" BOX.

STEP 3: CHECK OFF AND EXPLAIN YOUR DEFENSES - Think carefully about whether any of the following legal defenses may apply to your situation. If you fail to include some legal defenses in your Answer, you may lose the right to raise them later. However, you should not check off a defense unless you truly believe it applies to your situation. If you check off defenses that do not apply to you, you will likely increase the Bank's legal fees, which may prohibit you from ultimately resolving your delinquency with the Bank.

SUPREME COURT OF THE STATE OF NEW YORK	
COUNTY OF <u>Monroe</u>	
<hr/>	
NATIONAL TRUST COMPANY, AS TRUSTEE et. al.	Plaintiff
-against-	INDEX NO: <u>2011-12345</u>
Betsy Ross, et.al.	Defendant.
<hr/>	
Defendant <u>Betsy Ross</u> answers as follows:	
<input checked="" type="checkbox"/>	General Denial.
I plead the following Defenses and Affirmative Defenses:	
<input type="checkbox"/>	Lack of Standing to Sue:
<input type="checkbox"/>	Plaintiff does not have standing to sue because it was not the legal owner of the Note and/or Mortgage at the time it commenced this foreclosure lawsuit.
<input type="checkbox"/>	I have no knowledge that the plaintiff was assigned my debt or there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law § 1302, high-cost and subprime home loans): Plaintiff failed to allege in the Foreclosure Complaint that it is the legal owner and holder of the Note and/or Mortgage or has the authority to foreclose.
<input type="checkbox"/>	Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) because I was not served in any of the following three methods.
	1. A copy of the Summons and Complaint were not handed to me in person; OR
	2. A copy of the Summons and Complaint were not left at my home or business with a "person of suitable age and discretion" with another copy mailed within 20 days to your home or business; OR
	3. A copy of the Summons and Complaint were not attached to my home or business door, with another copy mailed within 20 days to my home or business.
<input type="checkbox"/>	I did not receive the notice of default required by my mortgage agreement, and the mailing of this notice is a condition precedent to the foreclosure.

☐ **Lack of Standing to Sue:**

A Foreclosure Plaintiff (the Bank) must prove that it has the right to foreclose, known as “standing”, by showing that it is the owner of the Note and Mortgage when it starts the lawsuit. You should check this box if you check off EITHER of the two boxes below related to standing. *If you don't include this claim, you may not be able to raise it later. So, if you believe that the Plaintiff may not own your Note and Mortgage, raise this defense to be safe.*

☐ **Plaintiff does not have standing to sue because it was not the legal owner of the Note and/or Mortgage at the time it commenced this foreclosure lawsuit.**

Check this first box if you have checked at your county clerk's office and discovered that the Plaintiff listed on your Summons and Complaint do not match the party that is supposed to have ownership rights according to the publicly filed documents in the Clerk's office. (Some counties are available online, while some you must visit in person.)

☐ **I have no knowledge that the plaintiff was assigned my debt or there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law § 1302, high-cost and subprime home loans): Plaintiff failed to allege in the Foreclosure Complaint that it is the legal owner and holder of the Note and/or Mortgage or has the authority to foreclose.**

Check this second box if you believe that the Bank does not have standing because the Bank did not state they had standing in their Complaint.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Monroe

NATIONAL TRUST COMPANY,
AS TRUSTEE et. al. , Plaintiff INDEX NO: 2011-12345
-against- VERIFIED ANSWER TO
FORECLOSURE COMPLAINT

Betsy Ross, et.al. , Defendant.

Defendant Betsy Ross answers as follows:

☒ General Denial.

I plead the following Defenses and Affirmative Defenses:

☐ Lack of Standing to Sue:

☐ Plaintiff does not have standing to sue because it was not the legal owner of the Note and/or Mortgage at the time it commenced this foreclosure lawsuit.

☐ I have no knowledge that the plaintiff was assigned my debt or there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law § 1302, high-cost and subprime home loans): Plaintiff failed to allege in the Foreclosure Complaint that it is the legal owner and holder of the Note and/or Mortgage or has the authority to foreclose.

☐ Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) because I was not served in any of the following three methods.

1. A copy of the Summons and Complaint were not handed to me in person; OR
2. A copy of the Summons and Complaint were not left at my home or business with a “person of suitable age and discretion” with another copy mailed within 20 days to your home or business; OR
3. A copy of the Summons and Complaint were not attached to my home or business door, with another copy mailed within 20 days to my home or business.

☐ I did not receive the notice of default required by my mortgage agreement, and the mailing of this notice is a condition precedent to the foreclosure.

Under a 2008 New York State Law, foreclosure Plaintiffs are required to follow additional rules for certain types of mortgages called “high-cost,” “subprime,” and “non-traditional” mortgages. The simplest way to know whether you have a high-cost, subprime, or non-traditional mortgage is that you should have received written notice during the loan closing or foreclosure process.

☐ **Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) because I was not served in any of the following three methods.**

1. **Handed to me in person; OR**
2. **Left at my home or business with a "person of suitable age and discretion" with another copy mailed within 20 days to your home or business; OR**
3. **Attached to my home or business door, with another copy mailed within 20 days to my home or business.**

If you were not served with a copy of the Foreclosure Summons and Complaint in any of the three described ways, check off this box.

☐ **I did not receive the notice of default required by my mortgage agreement, and the mailing of this notice is a condition precedent to the foreclosure.**

For most foreclosures the Bank is required to send an Acceleration Letter (also known as a Demand Letter), which is to be sent after you have stopped paying and states that the whole amount of your mortgage is due immediately.

You should use this defense if you never received an Acceleration Letter from your Bank.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Monroe

NATIONAL TRUST COMPANY,
AS TRUSTEE et. al.

,
Plaintiff

INDEX NO: 2011-12345

-against-

VERIFIED ANSWER TO
FORECLOSURE COMPLAINT

Betsy Ross, et.al.

,
Defendant.

Defendant Betsy Ross answers as follows:

☒ General Denial.

I plead the following Defenses and Affirmative Defenses:

☐ Lack of Standing to Sue:

- ☐ Plaintiff does not have standing to sue because it was not the legal owner of the Note and/or Mortgage at the time it commenced this foreclosure lawsuit.
- ☐ I have no knowledge that the plaintiff was assigned my debt or there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law § 1302, high-cost and subprime home loans): Plaintiff failed to allege in the Foreclosure Complaint that it is the legal owner and holder of the Note and/or Mortgage or has the authority to foreclose.

☐ Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) because I was not served in any of the following three methods.

1. A copy of the Summons and Complaint were not handed to me in person; OR
2. A copy of the Summons and Complaint were not left at my home or business with a "person of suitable age and discretion" with another copy mailed within 20 days to your home or business; OR
3. A copy of the Summons and Complaint were not attached to my home or business door, with another copy mailed within 20 days to my home or business.

☐ I did not receive the notice of default required by my mortgage agreement, and the mailing of this notice is a condition precedent to the foreclosure.

☐ **90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law § 1304) were inadequate because (check one or both if applicable):**

- ☐ **Two copies not delivered; OR**
- ☐ **Foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.**

For foreclosure lawsuits filed in New York State after September 1, 2008 on one-to-four-family owner-occupied homes, the Bank is required to send you a Pre-Foreclosure Notice by first-class mail and by registered or certified mail that states: “YOU COULD LOSE YOUR HOME” and list the number of days the mortgage payments are late and the amount of money required to catch up. These Pre-Foreclosure Notices must be given at least 90 days before the foreclosure Complaint is filed.

You should raise this defense if you did not receive both copies of this Pre-Foreclosure Notice, or if the foreclosure lawsuit was filed before the end of 90 days after you received the Pre-Foreclosure Notices. Check off the box that applies to your situation.

A sample 90-Day Pre-Foreclosure Notice can be found on page 8 of this guidebook.

☐ **I did not receive the notice titled “Help for Homeowners in Foreclosure” that was supposed to be served with the Foreclosure Summons and Complaint on a colored sheet of paper (NY Real Property Actions and Proceedings Law Section 1303) (amended 2008).**

For foreclosure lawsuits filed after September 1, 2008 on one-to-four family owner-occupied homes, the Bank is required to include a Notice of “Help for Homeowners in Foreclosure” with the Foreclosure Summons and Complaint. This notice must be printed in bold, large type and on colored paper.

☐ 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304) were inadequate because (check one or both if applicable):

- ☐ Two copies not delivered.
- ☐ Foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.

☐ I did not receive the notice “Help for Homeowners in Foreclosure” that was supposed to be served with the Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303).

☐ An active service member is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Service Members Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers’ and Sailors’ Civil Relief Act, NY Military Law Section 300 et seq.)

☐ Homeowner’s Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)

☐ I am eligible for the Home Affordable Modification Program (“HAMP”) because it meets the following qualifiers: (1) My loan is secured by a one-to-four unit property, co-op, or condo; (2) This is my principal residence; (3) The loan was originated on or before January 1, 2009; and (4) I cannot afford my monthly mortgage payments. The loan servicer failed to comply with HAMP for the following reason(s) (check one or both if applicable):

- ☐ Chapter II, Section 3 of the MHA Handbook prohibits the servicer from referring my loan to foreclosure until I have been evaluated for HAMP or determined ineligible for the program. I did not fail a HAMP trial period plan, I have responded to all reasonable requests for information, and I have not refused help under the program.

☐ Other reason: _____

Compliance with HAMP is a condition precedent to foreclosure and failure to comply with HAMP gives rise to equitable defenses to this action.

☐ My loan is insured by the Federal Housing Administration (“FHA”). The loan servicer has not complied with regulations of the Department of Housing and Urban Development requiring pre-foreclosure and loss mitigation evaluation for FHA-insured mortgage loans. Compliance with these regulations is a condition precedent to foreclosure. Further, failure to comply with these rules gives rise to equitable defenses to this action.

- ☐ **An active service member is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Service Members Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)**

Active-duty members of the armed forces, National Guard and reservists, and their dependents and co-debtors have special rights under federal and New York State laws to interest rate reductions on mortgages and other debts, to request a stay of foreclosure, and to avoid a tax foreclosure sale.

Homeowners who are serving active military duty and are facing foreclosure should advise their mortgage lender, servicer, and the court in writing, and immediately seek assistance from a Judge Advocate General (JAG) Corps or other attorney.

- ☐ **Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)**

If you are working with a homeowner whom you believe cannot defend himself or herself due to limited mental competence, you should ask the court to appoint a "Guardian Ad Litem" to represent the homeowner's interests during the lawsuit.

In addition, if you believe that the homeowner was not mentally competent at the time he or she signed the mortgage loan, you should describe in detail the timing and evidence of the homeowner's incompetence, and immediately seek assistance from an attorney.

- ☐ 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304) were inadequate because (check one or both if applicable):

- ☐ Two copies not delivered.
☐ Foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.

- ☐ I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with the Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303).

- ☐ An active service member is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Service Members Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)

- ☐ Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)

- ☐ I am eligible for the Home Affordable Modification Program ("HAMP") because it meets the following qualifiers: (1) My loan is secured by a one-to-four unit property, co-op, or condo; (2) This is my principal residence; (3) The loan was originated on or before January 1, 2009; and (4) I cannot afford my monthly mortgage payments. The loan servicer failed to comply with HAMP for the following reason(s) (check one or both if applicable):

- ☐ Chapter II, Section 3 of the MHA Handbook prohibits the servicer from referring my loan to foreclosure until I have been evaluated for HAMP or determined ineligible for the program. I did not fail a HAMP trial period plan, I have responded to all reasonable requests for information, and I have not refused help under the program.

- ☐ Other reason: _____

Compliance with HAMP is a condition precedent to foreclosure and failure to comply with HAMP gives rise to equitable defenses to this action.

- ☐ My loan is insured by the Federal Housing Administration ("FHA"). The loan servicer has not complied with regulations of the Department of Housing and Urban Development requiring pre-foreclosure and loss mitigation evaluation for FHA-insured mortgage loans. Compliance with these regulations is a condition precedent to foreclosure. Further, failure to comply with these rules gives rise to equitable defenses to this action.

- ☐ **I am eligible for the Home Affordable Modification Program ("HAMP") because it meets the following qualifiers: (1) My loan is secured by a one-to-four unit property, co-op, or condo; (2) This is my principal residence; (3) The loan was originated on or before January 1, 2009; and (4) I cannot afford my monthly mortgage payments. The loan servicer failed to comply with HAMP for the following reason(s) (check one or both if applicable):**

- ☐ **Chapter II, Section 3 of the MHA Handbook prohibits the servicer from referring my loan to foreclosure until I have been evaluated for HAMP or determined ineligible for the program. I did not fail a HAMP trial period plan, I have responded to all reasonable requests for information, and I have not refused help under the program.**

☐ **Other reason:** _____

The federal Home Affordable Modification Program ("HAMP") was designed to help homeowners that are facing trouble with their mortgages, and participating banks must follow Treasury guidelines in implementing the program. These guidelines ensure that homeowners are reviewed fairly to see if they qualify for the program.

You should use this defense if you feel that your Bank did not review you for the HAMP program at all or you were incorrectly rejected from the HAMP program. If there is another HAMP-related issue you are facing, check the "Other" box and explain the issue precisely.

- ☐ 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304) were inadequate because (check one or both if applicable):

- ☐ Two copies not delivered.
☐ Foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.

- ☐ I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with the Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303).

- ☐ An active service member is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Service Members Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)

- ☐ Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)

- ☐ I am eligible for the Home Affordable Modification Program ("HAMP") because it meets the following qualifiers: (1) My loan is secured by a one-to-four unit property, co-op, or condo; (2) This is my principal residence; (3) The loan was originated on or before January 1, 2009; and (4) I cannot afford my monthly mortgage payments. The loan servicer failed to comply with HAMP for the following reason(s) (check one or both if applicable):

- ☐ Chapter II, Section 3 of the MHA Handbook prohibits the servicer from referring my loan to foreclosure until I have been evaluated for HAMP or determined ineligible for the program. I did not fail a HAMP trial period plan, I have responded to all reasonable requests for information, and I have not refused help under the program.

☐ Other reason: _____

Compliance with HAMP is a condition precedent to foreclosure and failure to comply with HAMP gives rise to equitable defenses to this action.

- ☐ My loan is insured by the Federal Housing Administration ("FHA"). The loan servicer has not complied with regulations of the Department of Housing and Urban Development requiring pre-foreclosure and loss mitigation evaluation for FHA-insured mortgage loans. Compliance with these regulations is a condition precedent to foreclosure. Further, failure to comply with these rules gives rise to equitable defenses to this action.

- ☐ **My loan is insured by the Federal Housing Administration (“FHA”). The loan servicer has not complied with regulations of the Department of Housing and Urban Development requiring pre-foreclosure and loss mitigation evaluation for FHA-insured mortgage loans. Compliance with these regulations is a condition precedent to foreclosure. Further, failure to comply with these rules gives rise to equitable defenses to this action.**

Service requirements for mortgages holding FHA guarantees and insurance require that every reasonable effort has been made to arrive at some other solution before the filing of a foreclosure.

You should raise this defense if you have an FHA loan and feel your servicer did NOT make reasonable efforts to work with you before filing the foreclosure.

- ☐ 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304) were inadequate because (check one or both if applicable):

- ☐ Two copies not delivered.
☐ Foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.

- ☐ I did not receive the notice “Help for Homeowners in Foreclosure” that was supposed to be served with the Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303).

- ☐ An active service member is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Service Members Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers’ and Sailors’ Civil Relief Act, NY Military Law Section 300 et seq.)

- ☐ Homeowner’s Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)

- ☐ I am eligible for the Home Affordable Modification Program (“HAMP”) because it meets the following qualifiers: (1) My loan is secured by a one-to-four unit property, co-op, or condo; (2) This is my principal residence; (3) The loan was originated on or before January 1, 2009; and (4) I cannot afford my monthly mortgage payments. The loan servicer failed to comply with HAMP for the following reason(s) (check one or both if applicable):

- ☐ Chapter II, Section 3 of the MHA Handbook prohibits the servicer from referring my loan to foreclosure until I have been evaluated for HAMP or determined ineligible for the program. I did not fail a HAMP trial period plan, I have responded to all reasonable requests for information, and I have not refused help under the program.

- ☐ Other reason: _____

Compliance with HAMP is a condition precedent to foreclosure and failure to comply with HAMP gives rise to equitable defenses to this action.

- ☐ My loan is insured by the Federal Housing Administration (“FHA”). The loan servicer has not complied with regulations of the Department of Housing and Urban Development requiring pre-foreclosure and loss mitigation evaluation for FHA-insured mortgage loans. Compliance with these regulations is a condition precedent to foreclosure. Further, failure to comply with these rules gives rise to equitable defenses to this action.

☐ **My mortgage is guaranteed by the Veterans Administration ("VA") pursuant to Title 38 of the United States Code. The loan servicer has not complied with the regulations requiring that the servicer extend all reasonable forbearance options. Compliance with these regulations is a condition precedent to foreclose. Further, failure to comply with these rules gives rise to equitable defenses to this action.**

Service requirements for mortgages holding Veteran Administration guarantees and insurance require the mortgagee to demonstrate a proper ability to service loans adequately. The VA Lender's Handbook states that holders of VA guarantees or insurance are not expected to start a foreclosure action until every reasonable effort has been made to arrive at some other solution.

You should raise this defense if you have a VA loan and feel your servicer did NOT make reasonable efforts to work with you prior to filing the foreclosure.

☐ My mortgage is guaranteed by the VA pursuant to Title 38 of the United States Code. The loan servicer has not complied with the regulations requiring that the servicer extend all reasonable forbearance options. Compliance with these regulations is a condition precedent to foreclose. Further, failure to comply with these rules gives rise to equitable defenses to this action.

☐ I have tried to tender payments in the amount of \$_____ on _____ which would have paid the principal, interest, and fees I owed at the time in full, but the lender refused to accept the payment and proceeded to foreclosure against me wrongfully.

☐ Partial or Full Payment:

☐ I have made payments in the amount of \$_____ which have not been properly credited and are not reflected in the Complaint.

☐ Other explanation or additional information:

☐ On _____ (date of loan origination), Mr./Ms. _____, the _____ made statements to me to intentionally convince me to enter the mortgage and note at issue in this foreclosure action. I relied upon those statements and I was fraudulently induced to sign the mortgage and note. Mr./Ms. _____ told me that:

☐ I would receive a fixed rate loan, but instead I received an adjustable rate loan.

☐ My mortgage term would be no more _____ years, but instead I received a _____ year loan.

☐ My total monthly payment would include principal, interest, property taxes and hazard insurance, but instead my monthly payment did not include property taxes and hazard insurance.

☐ My monthly payment would not be higher than \$_____, but instead my monthly payment was \$_____.

☐ My loan amount would not exceed \$_____, but instead my loan amount was higher at \$_____.

☐ Other _____

I was injured by the above fraudulent statements because I paid more for my mortgage than I could afford and ultimately fell into foreclosure as a result of the higher cost of the mortgage.

- ☐ **I have tried to tender payments in the amount of \$ ____ on ____ which would have paid the principal, interest, and fees I owed at the time in full, but the lender refused to accept the payment and proceeded to foreclosure against me wrongfully.**

In a foreclosure proceeding, a valid tender of an amount that is sufficient to fully eliminate all defaults prior to the bank or servicer's option to accelerate is a total defense.

You should raise this defense if you feel that you paid all arrearages to your Bank prior to them sending you an Acceleration Letter, which is the letter you received prior to the foreclosure being filed that stated that the whole amount of your Mortgage is due immediately. Be sure to fill in the blanks with the amount you paid and the date you paid it.

- ☐ **Partial or Full Payment: I have made payments in the amount of \$ ____ which have not been properly credited and are not reflected in the Summons and Complaint:**

You have paid the mortgage payments, or some portion of the mortgage payments, that the Plaintiff claims you owe.

You believe that the amount of debt is incorrect and that you do not owe what the mortgage company says you owe.

- ☐ My mortgage is guaranteed by the VA pursuant to Title 38 of the United States Code. The loan servicer has not complied with the regulations requiring that the servicer extend all reasonable forbearance options. Compliance with these regulations is a condition precedent to foreclosure. Further, failure to comply with these rules gives rise to equitable defenses to this action.

- ☒ I have tried to tender payments in the amount of \$ ____ on ____ which would have paid the principal, interest, and fees I owed at the time in full, but the lender refused to accept the payment and proceeded to foreclosure against me wrongfully.

- ☒ Partial or Full Payment:

- ☐ I have made payments in the amount of \$ ____ which have not been properly credited and are not reflected in the Complaint.

- ☐ Other explanation or additional information:

- ☐ On ____ (date of loan origination), Mr./Ms. _____, the _____ made statements to me to intentionally convince me to enter the mortgage and note at issue in this foreclosure action. I relied upon those statements and I was fraudulently induced to sign the mortgage and note. Mr./Ms. _____ told me that:

- ☐ I would receive a fixed rate loan, but instead I received an adjustable rate loan.
☐ My mortgage term would be no more ____ years, but instead I received a ____ year loan.
☐ My total monthly payment would include principal, interest, property taxes and hazard insurance, but instead my monthly payment did not include property taxes and hazard insurance.
☐ My monthly payment would not be higher than \$ ____, but instead my monthly payment was \$ _____.
☐ My loan amount would not exceed \$ ____, but instead my loan amount was higher at \$ _____.
☐ Other _____

I was injured by the above fraudulent statements because I paid more for my mortgage than I could afford and ultimately fell into foreclosure as a result of the higher cost of the mortgage.

- ☐ On ____ (date of loan origination), Mr./Ms. ____, the ____ made statements to me to intentionally convince me to enter the mortgage and note at issue in this foreclosure action. I relied upon those statements and I was fraudulently induced to sign the mortgage and note. Mr./Ms. ____ told me that:
- ☐ I would receive a fixed rate loan, but instead I received an adjustable rate loan.
- ☐ My mortgage term would be no more ____ years, but instead I received a ____ year loan.
- ☐ My total monthly payment would include principal, interest, property taxes and hazard insurance, but instead my monthly payment did not include property taxes and hazard insurance.
- ☐ My monthly payment would not be higher than \$____, but instead my monthly payment was \$____.
- ☐ My loan amount would not exceed \$____, but instead my loan amount was higher at \$____.
- ☐ Other _____
- I was injured by the above fraudulent statements because I paid more for my mortgage than I believed I could afford and ultimately fell into foreclosure as a result of the higher cost of the mortgage.**

For a fraud to have occurred there MUST have been six things that happened:

1. There was a misrepresentation of fact by another party (frequently a mortgage broker or a representative from the bank) to you;
2. The statement was untrue;
3. The speaker knew the statement was untrue;
4. The speaker was trying to deceive you;
5. You relied on the untrue statement; AND
6. You were injured (injured can mean financially injured) by the untrue statement.

- ☐ My mortgage is guaranteed by the VA pursuant to Title 38 of the United States Code. The loan servicer has not complied with the regulations requiring that the servicer extend all reasonable forbearance options. Compliance with these regulations is a condition precedent to foreclosure. Further, failure to comply with these rules gives rise to equitable defenses to this action.
- ☐ I have tried to tender payments in the amount of \$____ on ____ which would have paid the principal, interest, and fees I owed at the time in full, but the lender refused to accept the payment and proceeded to foreclosure against me wrongfully.
- ☐ Partial or Full Payment:
- ☐ I have made payments in the amount of \$____ which have not been properly credited and are not reflected in the Complaint.
- ☐ Other explanation or additional information: _____
- ☐ On ____ (date of loan origination), Mr./Ms. ____, the ____ made statements to me to intentionally convince me to enter the mortgage and note at issue in this foreclosure action. I relied upon those statements and I was fraudulently induced to sign the mortgage and note. Mr./Ms. ____ told me that:
- ☐ I would receive a fixed rate loan, but instead I received an adjustable rate loan.
- ☐ My mortgage term would be no more ____ years, but instead I received a ____ year loan.
- ☐ My total monthly payment would include principal, interest, property taxes and hazard insurance, but instead my monthly payment did not include property taxes and hazard insurance.
- ☐ My monthly payment would not be higher than \$____, but instead my monthly payment was \$____.
- ☐ My loan amount would not exceed \$____, but instead my loan amount was higher at \$____.
- ☐ Other _____
- ☐ I was injured by the above fraudulent statements because I paid more for my mortgage than I could afford and ultimately fell into foreclosure as a result of the higher cost of the mortgage.

You should use this defense if all six of these events happened to you. If you feel that you were deceived prior to closing on your loan, you believed those deceptions, and as a result you were more likely to sign your loan documents, you should fill in this section.

Fraud is a defense that must be pleaded with particularity – that is to say that you must be VERY specific with your allegations. Therefore, if you are choosing fraud as a defense you must list exactly how the fraud occurred. You will need to check any and all of the above boxes that you feel accurately state the specific fraudulent behavior. If there are other fraudulent statements made to you other than the ones in the boxes below, check the “Other” box and list them out specifically in the lines provided.

☐ My mortgage is guaranteed by the VA pursuant to Title 38 of the United States Code. The loan servicer has not complied with the regulations requiring that the servicer extend all reasonable forbearance options. Compliance with these regulations is a condition precedent to foreclose. Further, failure to comply with these rules gives rise to equitable defenses to this action.

☐ I have tried to tender payments in the amount of \$_____ on _____ which would have paid the principal, interest, and fees I owed at the time in full, but the lender refused to accept the payment and proceeded to foreclosure against me wrongfully.

☐ Partial or Full Payment:

☐ I have made payments in the amount of \$_____ which have not been properly credited and are not reflected in the Complaint.

☐ Other explanation or additional information:

☒ On _____ (date of loan origination), Mr./Ms. _____, the _____ made statements to me to intentionally convince me to enter the mortgage and note at issue in this foreclosure action. I relied upon those statements and I was fraudulently induced to sign the mortgage and note. Mr./Ms. _____ told me that:

☐ I would receive a fixed rate loan, but instead I received an adjustable rate loan.

☐ My mortgage term would be no more _____ years, but instead I received a _____ year loan.

☐ My total monthly payment would include principal, interest, property taxes and hazard insurance, but instead my monthly payment did not include property taxes and hazard insurance.

☐ My monthly payment would not be higher than \$_____, but instead my monthly payment was \$_____.

☐ My loan amount would not exceed \$_____, but instead my loan amount was higher at \$_____.

☐ Other _____

☒ I was injured by the above fraudulent statements because I paid more for my mortgage than I could afford and ultimately fell into foreclosure as a result of the higher cost of the mortgage.

☐ **Other Defenses or Counterclaims** _____

If you have any other claims you would like to tell the court about, list them all here. Be as specific as possible and add sheets of paper if necessary.

STEP 4: ADD ANY ADDITIONAL INFORMATION TO THE "OTHER FACTS CONCERNING YOUR MORTGAGE" SECTION

This can include facts surrounding any of the defenses you have already checked off or any other facts that you think the Court should know about. This is where you should tell your story. Below are some possible ideas that could apply to you. **Always be as specific as possible and attach additional pages if needed!**

- ✓ You were pressured to sign the mortgage or home purchase documents.
- ✓ You were discouraged from using your own attorney or appraiser or other independent advisor.
- ✓ You did not receive a financial benefit from your mortgage.
- ✓ The interest rate is extremely high, or higher than you qualified for given your credit history at the time you obtained your mortgage.
- ✓ You were charged high closing costs or fees.
- ✓ Your loan application was falsified (e.g. your income was misstated on your application).
- ✓ You were told that utilities, medical expenses, or other bills would be paid off by your mortgage, but they weren't.
- ✓ You were told that your house was worth more than its actual value.
- ✓ Your home was in poor condition when you purchased it and you were promised repairs that were never made.
- ✓ You were falsely told that you could earn rental income from your home to help pay the mortgage.

☐ Other defenses or counterclaims. _____

☒ Other important facts concerning my mortgage or home:

Wherefore, Defendant requests that the Complaint be dismissed; that the relief requested by Defendant be granted in its entirety; that Defendant be granted costs and attorneys' fees if he or she retains counsel; and any other relief allowed by law and considered just by this Court.

DATE: January 1, 2012
 DEFENDANT'S NAME: Bessy Ross
 DEFENDANT'S ADDRESS: 123 Main Street Anywhere, NY 12345
 DEFENDANT'S PHONE NO. 555-555-1234

Appearing Pro Se

VERIFICATION

I, Bessy Ross, being duly sworn, state that the within Answer is true to the best of my knowledge, except as to those matters alleged upon information and belief, which I believe to be true.

Bessy Ross
 Defendant (Print Name)

Bessy Ross
 Defendant (Signature)

Sworn to and subscribed before me this
1st day of January, 2012
Abraham Lincoln
 Notary Public

- ✓ You believe that you were targeted for an unfair or abusive mortgage loan based on your race, national origin, sex, mental or physical disability, age, alienage/ citizenship status, or other legally protected characteristic.

STEP 5: FILL IN THE BOTTOM OF THE 4TH PAGE WITH YOUR CURRENT CONTACT INFORMATION.

STEP 6: IN FRONT OF A NOTARY PUBLIC, FILL OUT AND SIGN THE VERIFICATION SECTION - A Verification is a statement under oath that the Answer is truthful. After you complete the Answer, you **MUST** sign this verification in front of a Notary Public and have them notarize it. You can often find a Notary Public at a branch of your local bank. Please be aware they may charge you a small fee for this service.

STEP 7: MAKE 2 COPIES OF THE VERIFIED ANSWER You will arrange for one copy to be "served" to the Plaintiff's attorney. (See Step 8). You will keep the second copy for your records.

STEP 8: "SERVE" THE PLAINTIFF'S ATTORNEY

Ask someone other than yourself who is at least 18 years old and not a Defendant in the lawsuit to "serve" a copy of the Verified Answer on Plaintiff's attorney at the address listed on the Summons and Complaint. The easiest way to "serve" the Verified Answer is to arrange for the person to send it by certified mail, return receipt requested, or by overnight delivery service. Be sure to keep the proof of mailing and delivery.

☐ Other defenses or counterclaims. _____

☐ Other important facts concerning my mortgage or home: _____

Wherefore, Defendant requests that the Complaint be dismissed; that the relief requested by Defendant be granted in its entirety; that Defendant be granted costs and attorneys' fees if he or she retains counsel; and any other relief allowed by law and considered just by this Court.

DATE: January 1, 2012
 DEFENDANT'S NAME: Bessy Ross
 DEFENDANT'S ADDRESS: 123 Main Street Anywhere, NY 12345
 DEFENDANT'S PHONE NO. 555-555-1234

Appearing Pro Se

VERIFICATION

I, Bessy Ross, being duly sworn, state that the within Answer is true to the best of my knowledge, except as to those matters alleged upon information and belief, which I believe to be true.

Bessy Ross
 Defendant (Print Name)

Bessy Ross
 Defendant (Signature)

Sworn to and subscribed before me this
1st day of January, 2012
Abraham Lincoln
 Notary Public

STEP 9: FILL OUT THE AFFIDAVIT OF SERVICE

The person who “served” the copy of the Verified Answer on the Plaintiff’s attorney must fill out the Affidavit of Service in front a Notary Public and have it notarized. You can often find a Notary Public at a branch of your local bank. Please be aware they may charge a small fee for this service.

STEP 10: FILE THE VERIFIED ANSWER AND AFFIDAVIT OF SERVICE AT THE COUNTY CLERK.

Bring the original Verified Answer, the extra copy of the Verified Answer, the notarized Affidavit of Service, and a copy of the notarized Affidavit of Service to your County Clerk’s office. (See list of the local area court clerks included in the front folder pocket of this guide.) At the County Clerk’s office, state that you wish to file an Answer. Be sure to ask the clerk to “time-stamp” the original Verified Answer, the Affidavit of Service and the copy of the Verified Answer, so that you have proof of the date and time you filed your Answer. Keep for your records a time stamped copy of the Verified Answer and a copy of the Affidavit of Service.

STEP 11: APPEAR AT YOUR SETTLEMENT CONFERENCE

AFFIDAVIT OF SERVICE

I, Betsy Ross, hereby certify that I delivered a copy of the Verified Answer to Plaintiff’s Attorney (attorney’s name and address):

Lawyer Bob

555 South Avenue

Anywhere, NY 12345

I delivered the Notice of Appearance by the following method (check all that apply):

- ☐ first class mail
- ☐ certified mail
- ☐ certified mail, return receipt requested
- ☒ overnight delivery service
- ☐ facsimile
- ☐ personal delivery

on the 1st day of January, 2012.

Signature: Betsy Ross

Print Name: Betsy Ross

Subscribed to and sworn this 1st day of January, 2012.

Abraham Lincoln

Notary Public

My commission expires: December 31st, 2012

This is a general guide through the foreclosure process. Each person's situation is unique, and therefore consultation with an attorney is recommended, if possible.

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