

Steps of a Foreclosure in NY



The average foreclosure in New York takes about 15-24 months from the date of the first missed payment. Below is a basic overview of the path of a foreclosure action.

Step 1: Missed Payment & Acceleration Letter

Once payments are missed, the lender will send an acceleration letter to the borrower, which states that the lender will accelerate the total amount of the mortgage if the arrears are not paid in full by a certain date. This letter is usually not sent until the borrower is at least 2-3 months in default. At this point, then lender is looking for the entire amount of arrears and will generally not accept partial payment.

Step 2: 90-Day Notice

New York law requires that the lender send a specific notice to the borrower at least 90 days before filing a Summons & Complaint.

Step 3: Lender Files Lis Pendens

Step 4: Lender Files and Serves a Summons & Complaint

The summons & complaint is filed with the court and initiates the lawsuit. The borrower is served and may or may not answer the complaint.

Step 5: Mandatory Settlement Conference is Scheduled

After the borrower has been served, the lender must file an affidavit with the court to show that they have served all parties and also file a Request for Judicial Intervention (RJI) which allows the court to schedule a settlement conference. The conference is usually scheduled within 60 days after the RJI is filed. There may be several settlement conferences held over many months. The foreclosure action is on hold during this time. If the borrower or their attorney does not appear at the first conference, no further conferences will be held and the case will proceed to the next step.

Step 6: Foreclosure is Discontinued or Case Proceeds to a Judge

If an agreement is reached within the settlement conference, the lender must discontinue the foreclosure within 150 days after settlement. If an agreement is not reached, or if the borrower failed to appear at the first conference, the case will be assigned to a judge and proceed.

Step 7: Motion for Order of Reference or Motion for Summary Judgment

If the borrower did not file an answer, the lender will file a Motion for Order of Reference. If the borrower filed an answer, the lender will file a Motion for Summary Judgment.

Step 8: Motion for Judgment of Foreclosure or Trial

If the judge grants the Motion for Order of a Reference, a referee is appointed to compute the amount due to the lender. Once the referee's report is done, the lender will make a motion for Judgment of Foreclosure and Sale, which asks the judge to give them an order allowing them to sell the property at auction.

If factual disputes remain from the borrower's answer, a trial will be held to determine whether the borrower will prevail and the foreclosure will be dismissed or whether the lender will be permitted to proceed with foreclosure.

Step 9: Auction

Once the lender has been granted a Judgment of Foreclosure and Sale by the court, the lender can hold a public auction (usually at the courthouse) and anyone, including the lender may bid. Once payment is made and the sale is complete, the winning bidder will take ownership of the property. If the borrower is still residing in the property, the new owner can begin the process to evict the borrower from the property.