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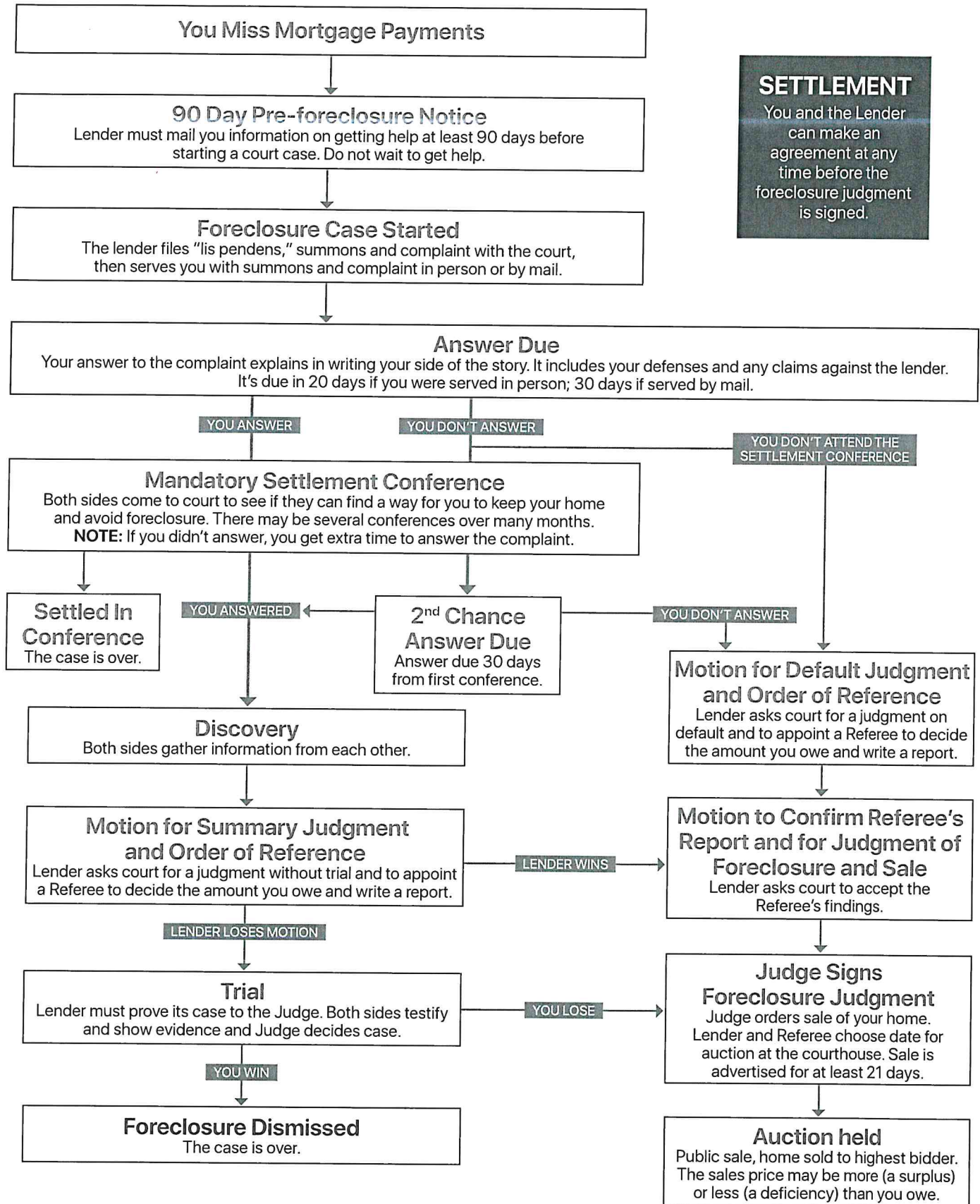
Residential Foreclosures During COVID-19. What You Need to Know

June 16, 2021
6:00 pm - 7:00 pm

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THE FORECLOSURE PROCESS IN NEW YORK STATE

For Residential Cases



For more information visit: www.nycourts.gov/courthelp/homes/foreclosures.shtml

08/2018

PATHS OF A FORECLOSURE IN NEW YORK STATE

Glossary of Terms:

Acceleration letter: A letter sent from the lender (or its representative) to the borrower, which "calls in" the loan – effectively stating that the borrower must pay the entire loan amount by a specified date, otherwise the lender will file a foreclosure lawsuit. Once the mortgage has been accelerated, the lender is no longer compelled to accept arrears, though may still do so.

Answer: A written response to the complaint, submitted by the borrower to the lender's attorney, and filed with the court. The answer is due 20 calendar days from the date of service if the borrower is served in person, or 30 calendar days if the borrower is not personally served. The answer can be submitted with the help of an attorney, or *pro se* (representing yourself without an attorney). The answer contains defenses to the foreclosure and may also include counterclaims.

Arrears: The amount of back payments - plus late fees and other charges - owed by the borrower to the lender.

Auction: A public sale of foreclosed properties. Anyone can place a bid to purchase a property. Properties are sold to the highest bidder. Once the property has been sold at auction, the original homeowner loses all "right of redemption," or opportunity to regain ownership of the property by paying the amount due.

Complaint: A written document served to the borrower by the lender's attorney, indicating that the lender has filed a foreclosure lawsuit, and explaining the grounds for that action against the borrower.

Counterclaims: As part of the answer to the complaint, the borrower may include counterclaims, or claims that the lender owes the borrower money due to violations of the law, thereby reducing the amount that the borrower may owe the lender.

Deed-in-lieu of foreclosure: To avoid going through a foreclosure, the borrower voluntarily turns over the deed to the property to the lender. In exchange, the lender agrees that the borrower does not owe any additional debt -- allowing him/her to walk away from the property without a deficiency judgment, and without a foreclosure sale on his/her credit report. This option, as well as other loss mitigation options, may have tax consequences.

Default: If the borrower fails to answer the complaint, the borrower has defaulted in the foreclosure case -- meaning that the lender automatically prevails. The lender is not required to serve the borrower with any further notices as the foreclosure case proceeds through the courts.

Defendant: The person or entity who is being sued in court. In the case of a foreclosure proceeding, the defendant is the homeowner who has defaulted on his/her mortgage.

Defenses: As part of the answer to the complaint, the borrower includes defenses, or claims that contest the foreclosure. These claims may be based on deficiencies in the



foreclosure process (e.g. improper service or lack of standing), or illegalities in the loan itself.

Deficiency: After a foreclosed property is sold at auction, the proceeds of the sale go to reimburse the lender and other lien-holders. If the sale price does not sufficiently cover the amount owed, the amount still owed to the lender is called a deficiency.

Delinquent: When the borrower initially falls behind on the mortgage (usually 2-3 months), but before the mortgage has defaulted, he/she is said to be "delinquent" on the mortgage.

Discovery: The process by which parties gather information through document requests, written questions (called interrogatories), and depositions. Discovery can take a long time.

Forbearance: An agreement between the lender and a delinquent borrower wherein the borrower typically pays a lump sum up front, and then enters into a payment plan for the remainder of the arrears. Borrowers need to be cautioned that when they enter into these agreements, they usually waive certain key rights, such as their ability to raise defenses to contest a foreclosure case.

Foreclosure: The legal process by which a lender forces a property to be sold, in order to collect on a mortgage loan it claims is owed.

Judgment of Foreclosure and Sale: Once signed by a judge, this legal order gives the lender permission to sell the property through a referee, and confirms the total amount owed by the borrower to the lender.

Lien / Lien holder: A lien is a legal claim placed on a property as security to repay a debt. For example, if a homeowner does not pay his/her property taxes, the city can place a lien on the property for the amount owed. In New York City, these tax liens are typically sold to private entities, which can lead to foreclosure. The entity that owns the lien on the property is called the lien holder.

Lis pendens: Literally meaning, "suit pending" in Latin, *lis pendens* is a filing with the county clerk that indicates to the public that the property's ownership is being disputed. This notice formally begins the foreclosure process.

Loan Modification: An agreement between the lender and the borrower wherein one or more of the original terms of the mortgage is changed in order to make the mortgage more affordable to the borrower. As with forbearance agreements, borrowers who agree to loan modifications usually waive many key rights, such as their ability to raise defenses to contest a foreclosure case. This option, as well as other loss mitigation options, may have tax consequences.

Loss Mitigation: The process by which a lender and borrower who is behind on his/her mortgage attempt to negotiate a deal that is mutually agreeable to both parties. Some possible avenues of loss mitigation include: loan modification, forbearance, short sale, and deed-in-lieu of foreclosure. The earlier the borrower pursues loss mitigation the better, since negotiating a workable deal also becomes more and more difficult as time passes and arrears accumulate. Loss mitigation becomes more difficult when the borrower has multiple mortgages. For example, the borrower may be able to negotiate a loan modification for one loan that is sustainable and affordable. However, if the borrower is also in default on a



second mortgage, and the lender is not willing to negotiate, this second lender may still initiate a foreclosure case against the borrower.

Motion: A legal term for a formal request to the court to take action in a case.

Mortgage Default: After a delinquent borrower's loan is accelerated by the lender, he/she is said to be in default.

Notice of Appearance: If the borrower does not have any defenses or counter-claims to contest the foreclosure, but still wants to be served with all legal papers during the course of the foreclosure case, he/she can file a Notice of Appearance with the court. A copy of the Notice of Appearance must also be sent to the lender's attorney.

Order of Reference: An Order of Reference sends a foreclosure case to a referee, who will then determine the full amount owed by the borrower to the lender.

Plaintiff: A person or entity suing another in court. In the case of a foreclosure action, the plaintiff is the owner of the mortgage.

Pro se: When a defendant represents him/herself in a court case (as opposed to having an attorney represent him/her). *Pro se* is Latin for "for self."

Real Estate Owned (REO): When a foreclosed property does not sell at auction, the lender takes title to the property. The property is then said to be in REO status. The lender may then try to evict the former homeowner, which the lender usually does through the Housing Court.

Referee: Once an Order of Reference is signed, a foreclosure case is sent to a referee. The referee computes the total amount owed to the lender by the borrower. Once the lender has obtained a Judgment of Foreclosure and Sale, the referee oversees the auction of the property. This responsibility includes physically conducting the sale, as well as distributing the proceeds following the sale. Referees are typically attorneys.

Right of Redemption period: The period in which a borrower may avert a foreclosure through a number of means, including selling the property or refinancing the mortgage. The right of redemption period ends the moment the property is sold at auction. In other states, there is a redemption period even *after* auction, but not in New York State.

Service of Process: The delivery of the summons and complaint to the borrower is called service of process. The lender, through a process server, must attempt to serve the borrower in person. If the process server cannot serve the borrower at his/her home, he may deliver the summons and complaint to another adult residing at the borrower's address. The process server must then send another copy by mail. If no one is home, the process server may leave the notice at the door, as well as send it by mail. This is often called "nail and mail" service.

Settlement: The lender and borrower may decide to resolve a foreclosure case outside of court by negotiating a agreement, or settlement.

Short-sale: When the amount due on the loan is more than the value of the property, lenders will sometimes agree to accept a short sale. In a short sale, the homeowner sells the property to a third party at fair market value and the lender agrees to accept less than



the full balance in satisfaction of the loan. This option, as well as other loss mitigation options, may have tax consequences.

Summary Judgment: A decision granted by a judge based on a motion filed by one of the parties. In a foreclosure case, the judge can issue a summary judgment if he/she decides that the facts in the case are not in dispute, and therefore there is no need for the case to proceed to trial.

Summons: A plaintiff in a legal case must file and serve a summons along with a complaint. The summons advises the defendant that they must either appear in court on a specified date, or answer the complaint within a specified period of time.

Surplus: After a foreclosed property is sold at auction, the proceeds of the sale go to reimburse the lender and other lien-holders. If the sale price exceeds the amount owed, the extra amount is called a surplus. This money goes to the clerk of the court for keeping. The borrower must file a motion to claim this money.

Stay: A stay is a temporary stop to a foreclosure. Borrowers may file an emergency motion with the court to stay the foreclosure sale (called an Order to Show Cause), but must show that they have a meritorious defense and a compelling reason for the stay. Filing for a Chapter 13 bankruptcy can automatically stay a foreclosure sale.

Trial: If the facts of the case are in dispute - the borrower has presented defenses or counter-claims to the foreclosure - the case may go to trial, and ultimately be decided by a judge (where fraud is alleged, a jury may decide the case). If the judge decides in favor of the lender, then the lender proceeds with filing a motion for an Order of Reference, as a first step towards a foreclosure sale. If the judge decides in favor of the borrower, then the foreclosure may be averted.





Index Number (if known/applicable): _____

County and Court (if known/applicable): _____

NOTICE TO MORTGAGOR:

If you have lost income or had increased costs during the COVID-19 pandemic, and you sign and deliver this hardship declaration form to your mortgage lender or other foreclosing party, you cannot be foreclosed on until at least August 31, 2021. If your mortgage lender or other foreclosing party provided you with this form, the mortgage lender or other foreclosing party must also provide you with a mailing address and e-mail address to which you can return this form. If you are already in foreclosure proceedings, you may return this form to the court. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid mortgage payments and lawful fees to your lender. You should also keep careful track of what you have paid and any amount you still owe.

MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP

I am the mortgagor of the property at (address of dwelling unit):

Including my primary residence, I own, whether directly or indirectly, ten or fewer residential dwelling units. I am experiencing financial hardship, and I am unable to pay my mortgage in full because of one or more of the following:

1. Significant loss of household income during the COVID-19 pandemic.
2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.

3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.
5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.
6. One or more of my tenants has defaulted on a significant amount of their rent payments since March 1, 2020.

To the extent I have lost household income or had increased expenses, any public assistance, including unemployment insurance, pandemic unemployment assistance, disability insurance, or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of household income or increased expenses.

I understand that I must comply with all other lawful terms under my mortgage agreement. I further understand that lawful fees, penalties or interest for not having paid my mortgage in full as required by my mortgage agreement may still be charged or collected and may result in a monetary judgment against me. I also understand that my mortgage lender or other foreclosing party may pursue a foreclosure action against me on or after August 31, 2021, if I do not fully repay any missed or partial payments and lawful fees.

Signed: _____

Printed name: _____

Date signed: _____

NOTICE: You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

v. Plaintiff,

Index No. _____

**VERIFIED ANSWER TO
FORECLOSURE COMPLAINT**

Defendant(s).

Defendant _____ **answers as follows:**

I generally deny each allegation of the Complaint, including that Plaintiff is the owner of the note and mortgage.

I plead the following Defenses and Counterclaims:

- ☐ **Lack of Standing:** Plaintiff, upon information and belief, does not own the note and mortgage. Plaintiff therefore 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.
- ☐ **Foreclosure Cause of Action:** Plaintiff, upon information and belief, does not own the note and mortgage. Because ownership of the note and mortgage is an element of a foreclosure cause of action, Plaintiff has no right to foreclose.
- ☐ **Statute of Limitations** (NY Civil Practice Law and Rules § 213(4)): Upon information and belief, Plaintiff may not sue on all or part of the mortgage debt because Plaintiff commenced this action more than six years after the debt became due.
 - ☐ Additionally, the entire foreclosure action is time-barred by the statute of limitations because Plaintiff commenced this action more than six years after it accelerated the mortgage debt. Defendant requests that the mortgage be cancelled and discharged pursuant to NY Real Property Actions and Proceedings Law § 1501(4).
- ☐ **Service of Process** (NY Civil Practice Law and Rules § 308): I was not properly served with process in this action for the following reason(s): _____

- ❑ **Notice of Default:** Plaintiff failed to comply with the requirements for the notice of default in my mortgage loan agreement, a condition precedent to this foreclosure action.
- ❑ **Reverse Mortgage--Notice Requirements:** Plaintiff failed to comply with the notice requirements under New York and/or federal law or failed to comply with contractual requirements of the reverse mortgage, which are conditions precedent to this foreclosure action.
- ❑ **Reverse Mortgage—Failure to Specify Alleged Default:** The complaint is vague and does not specify the alleged default and/or the amount(s) plaintiff claims in this action.
- ❑ **Reverse Mortgage—Foreclosure on a Reverse Mortgage for Property Charge Defaults is Against Public Policy:** The purpose of reverse mortgage loans under the Home Equity Conversion Mortgage (“HECM”) program is to assist senior citizens to stay in their homes, and reverse mortgage lenders have other remedies in the event of alleged failure to pay property charges. Plaintiff, accordingly, as a matter of equity and public policy, should not be permitted to foreclose.
- ❑ **90-Day Notice Requirement** (NY Real Property Actions and Proceedings Law § 1304): Plaintiff failed to comply with the requirements of NY Real Property Actions and Proceedings Law § 1304, a condition precedent to this foreclosure action.
- ❑ **90-Day Notice Filing Requirement** (NY Real Property and Proceedings Law § 1306): Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1306, a condition precedent to this foreclosure action.
- ❑ **Help for Homeowners in Foreclosure Notice Requirement** (NY Real Property Actions and Proceedings Law § 1303): Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1303, a condition precedent to this foreclosure action.
- ❑ **Pending Foreclosure Action** (NY Real Property Actions and Proceedings Law § 1301): Plaintiff impermissibly commenced this action because there is a prior pending action to recover all or part of the mortgage debt.
- ❑ **Real Estate Settlement Procedures Act Early Intervention Requirement** (12 C.F.R. § 1024.39): Upon information and belief, Plaintiff violated the early intervention requirements of the Real Estate Settlement Procedures Act because (*check one or both if applicable*):
 - ❑ Within 36 days of my delinquency, the loan servicer did not attempt to establish live contact with me to inform me about the availability of loss mitigation options.
 - ❑ Within 45 days of my delinquency, the loan servicer did not send me a written notice that included contact information for the servicer, a description of loss mitigation options available from the servicer, information about applying for loss mitigation, and a website listing housing counselors.

- ☐ **Real Estate Settlement Procedures Act Pre-Foreclosure Review Requirement** (12 C.F.R. § 1024.41): Plaintiff impermissibly filed this foreclosure during the pre-foreclosure review period because (*check one or both if applicable*):
 - ☐ Plaintiff commenced this action before my loan was more than 120 days delinquent.
 - ☐ I submitted a complete loss mitigation application to my loan servicer but Plaintiff commenced this action (1) before the loan servicer made a decision on that application, (2) before the time period to appeal the loan servicer's decision lapsed, or (3) before the loan servicer made a decision on an appeal I submitted in connection with the loss mitigation application.
- ☐ **FHA Pre-Foreclosure Requirements:** My loan is insured by the Federal Housing Administration. Upon information and belief, the loan servicer/mortgagee has not complied with regulations of the Department of Housing and Urban Development because the loan servicer/mortgagee did not do one or more of the following (*check all that are applicable*):
 - ☐ Send me a notice of default before the end of the second month of my delinquency (24 C.F.R. § 203.602).
 - ☐ Attempt to arrange a face-to-face interview with me before three full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.604).
 - ☐ Evaluate me for loss mitigation before four full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.605).
 - ☐ Wait until three full monthly installments due under the mortgage were unpaid before commencing this foreclosure action (24 C.F.R. § 203.606)
- ☐ **Certificate of Merit Requirement** (NY Civil Practice Law and Rules § 3012-b): Upon information and belief, Plaintiff failed to comply with the Certificate of Merit requirements of NY Civil Practice Law and Rules § 3012-b.
- ☐ **Request for Judicial Intervention** (NY Codes, Rules and Regulations Title 22, § 202.12-a(b)): Upon information and belief, Plaintiff did not file a Request for Judicial Intervention.
- ☐ **Attorney's Fees** (NY Real Property Law § 282): If I retain counsel, I am entitled to recover my attorney's fees in defending this action pursuant to New York Real Property Law § 282.
- ☐ **Excessive Interest and Fees** (NY Civil Practice Law and Rules § 3408(f)): In a prior foreclosure action, Plaintiff failed to negotiate in good faith pursuant to CPLR 3408(f). This failure to negotiate in good faith has caused excessive interest and fees to accrue which Plaintiff, as a matter of equity and by operation of the CPLR, is not entitled to recover.
- ☐ **Excessive Interest** (NY Civil Practice Law and Rules § 5001(a)): Plaintiff has unreasonably delayed filing this action, failed to file the Request for Judicial Intervention or engaged in

other dilatory conduct causing excessive interest to accrue which the Court may reduce or toll, as a matter of equity and by operation of the CPLR.

- ☐ **Action Commenced Against a Deceased Party:** This action is a nullity because it was commenced against Defendant _____ after that party was already deceased and before a personal representative was appointed and it should therefore be dismissed.
- ☐ **Payment or Partial Payment:** I have paid, in whole or in part, the amounts claimed by Plaintiff.
- ☐ **Other Defenses or Counterclaims** (*attach additional pages if needed*):

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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 deemed just and proper by this Court in the exercise of its equity jurisdiction in this foreclosure action.

Dated: _____, 20_____
_____, New York

_____, Defendant *Pro Se*
(Defendant's Signature)

(Defendant's Name)

(Defendant's Address)

(Defendant's Address)

(Defendant's Telephone Number)

VERIFICATION

I, _____, 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

(Defendant's Name)

(Defendant's Signature)

Sworn to and subscribed before me this
_____ day of _____, 20_____

Notary Public

AFFIDAVIT OF SERVICE

I, _____, served the within _____
_____ on Plaintiff's attorney as follows (*attorney's name and address*):

I served the _____
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 _____ day of _____, 20____.

I am eighteen years or older and I am not a Defendant in this lawsuit.

Signature: _____

Print Name: _____

Sworn to and subscribed before me this
_____ day of _____, 20____

Notary Public

[PREV](#)

[SECTION 3407](#)

[Preliminary Conference In Personal Injury Actions Involving Certain Terminally Ill Parties \(/Legislation/Laws/CVP/3407/\)](#)

[NEXT](#)

[SECTION 3409](#)

[Settlement Conference In Dental, Podiatric And Medical Malpractice Actions \(/Legislation/Laws/CVP/3409/\)](#)

Section 3408

SHARE

Mandatory settlement conference in residential foreclosure actions

Civil Practice Law & Rules (CVP)



Rule 3408. Mandatory settlement conference in residential foreclosure actions. (a) 1. Except as provided in paragraph two of this subdivision, in any residential foreclosure action involving a home loan as such term is defined in section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property subject to foreclosure, plaintiff shall file proof of service within twenty days of such service, however service is made, and the court shall hold a mandatory conference within sixty days after the date when proof of service upon such defendant is filed with the county clerk, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited to: (i) determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, including, but not limited to, a loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation option; or (ii) whatever other purposes the court deems appropriate.

2. (i) Paragraph one of this subdivision shall not apply to a home loan secured by a reverse mortgage where the default was triggered by the death of the last surviving borrower unless:

(A) the last surviving borrower's spouse, if any, is a resident of the property subject to foreclosure; or

(B) the last surviving borrower's successor in interest, who, by bequest or through intestacy, owns, or has a claim to the ownership of the property subject to foreclosure, and who was a resident of such property at the time of the death of such last surviving borrower.

(ii) The superintendent of financial services may promulgate such rules and regulations as he or she shall deem necessary to implement the provisions of this paragraph.

(b) At the initial conference held pursuant to this section, any defendant currently appearing pro se, shall be deemed to have made a motion to proceed as a poor person under section eleven hundred one of this chapter. The court shall determine whether such permission shall be granted pursuant to standards set forth in section eleven hundred one of this chapter. If the court appoints defendant counsel pursuant to subdivision (a) of section eleven hundred two of this chapter, it shall adjourn the conference to a date certain for appearance of counsel and settlement discussions pursuant to subdivision (a) of this section, and otherwise shall proceed with the conference.

(c) At any conference held pursuant to this section, the plaintiff and the defendant shall appear in person or by counsel, and each party's representative at the conference shall be fully authorized to dispose of the case. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant. Where appropriate, the court may permit a

representative of the plaintiff or the defendant to attend the settlement conference telephonically or by video-conference.

(d) Upon the filing of a request for judicial intervention in any action pursuant to this section, the court shall send either a copy of such request or the defendant's name, address and telephone number (if available) to a housing counseling agency or agencies on a list designated by the division of housing and community renewal for the judicial district in which the defendant resides. Such information shall be used by the designated housing counseling agency or agencies exclusively for the purpose of making the homeowner aware of housing counseling and foreclosure prevention services and options available to them.

(e) The court shall promptly send a notice to parties advising them of the time and place of the settlement conference, the purpose of the conference and the requirements of this section. The notice shall be in a form prescribed by the office of court administration, or, at the discretion of the office of court administration, the administrative judge of the judicial district in which the action is pending, and shall advise the parties of the documents that they shall bring to the conference.

1. For the plaintiff, such documents shall include, but are not limited to, (i) the payment history; (ii) an itemization of the amounts needed to cure and pay off the loan; (iii) the mortgage and note or copies of the same; (iv) standard application forms and a description of loss mitigation options, if any, which may be available to the defendant; and (v) any other documentation required by the presiding judge. If the plaintiff is not the owner of the mortgage and note, the plaintiff shall provide the name, address and telephone number of the legal owner of the mortgage and note. For cases in which the lender or its servicing agent has evaluated or is evaluating eligibility for home loan modification programs or other loss mitigation options, in addition to the documents listed above, the plaintiff shall bring a summary of the status of the lender's or servicing agent's evaluation for such modifications or other loss mitigation options,

including, where applicable, a list of outstanding items required for the borrower to complete any modification application, an expected date of completion of the lender's or servicer agent's evaluation, and, if the modification(s) was denied, a denial letter or any other document explaining the reason(s) for denial and the data input fields and values used in the net present value evaluation. If the modification was denied on the basis of an investor restriction, the plaintiff shall bring the documentary evidence which provides the basis for the denial, such as a pooling and servicing agreement.

2. For the defendant, such documents shall include, but are not limited to, if applicable, information on current income tax returns, expenses, property taxes and previously submitted applications for loss mitigation; benefits information; rental agreements or proof of rental income; and any other documentation relevant to the proceeding required by the presiding judge.

(f) Both the plaintiff and defendant shall negotiate in good faith to reach a mutually agreeable resolution, including but not limited to a loan modification, short sale, deed in lieu of foreclosure, or any other loss mitigation, if possible. Compliance with the obligation to negotiate in good faith pursuant to this section shall be measured by the totality of the circumstances, including but not limited to the following factors:

1. Compliance with the requirements of this rule and applicable court rules, court orders, and directives by the court or its designee pertaining to the settlement conference process;

2. Compliance with applicable mortgage servicing laws, rules, regulations, investor directives, and loss mitigation standards or options concerning loan modifications, short sales, and deeds in lieu of foreclosure; and

3. Conduct consistent with efforts to reach a mutually agreeable resolution, including but not limited to, avoiding unreasonable delay, appearing at the settlement conference with authority to fully dispose of

the case, avoiding prosecution of foreclosure proceedings while loss mitigation applications are pending, and providing accurate information to the court and parties.

Neither of the parties' failure to make the offer or accept the offer made by the other party is sufficient to establish a failure to negotiate in good faith.

(g) The plaintiff must file a notice of discontinuance and vacatur of the lis pendens within ninety days after any settlement agreement or loan modification is fully executed.

(h) A party to a foreclosure action may not charge, impose, or otherwise require payment from the other party for any cost, including but not limited to attorneys' fees, for appearance at or participation in the settlement conference.

(i) The court may determine whether either party fails to comply with the duty to negotiate in good faith pursuant to subdivision (f) of this section, and order remedies pursuant to subdivisions (j) and (k) of this section, either on motion of any party or sua sponte on notice to the parties, in accordance with such procedures as may be established by the court or the office of court administration. A referee, judicial hearing officer, or other staff designated by the court to oversee the settlement conference process may hear and report findings of fact and conclusions of law, and may make reports and recommendations for relief to the court concerning any party's failure to negotiate in good faith pursuant to subdivision (f) of this section.

(j) Upon a finding by the court that the plaintiff failed to negotiate in good faith pursuant to subdivision (f) of this section, and order remedies pursuant to this subdivision and subdivision (k) of this section the court shall, at a minimum, toll the accumulation and collection of interest, costs, and fees during any undue delay caused by the plaintiff, and where appropriate, the court may also impose one or more of the following:

1. Compel production of any documents requested by the court pursuant to subdivision (e) of this section or the court's designee during the settlement conference;

2. Impose a civil penalty payable to the state that is sufficient to deter repetition of the conduct and in an amount not to exceed twenty-five thousand dollars;

3. The court may award actual damages, fees, including attorney fees and expenses to the defendant as a result of plaintiff's failure to negotiate in good faith; or

4. Award any other relief that the court deems just and proper.

(k) Upon a finding by the court that the defendant failed to negotiate in good faith pursuant to subdivision (f) of this section, the court shall, at a minimum, remove the case from the conference calendar. In considering such a finding, the court shall take into account equitable factors including, but not limited to, whether the defendant was represented by counsel.

(l) At the first settlement conference held pursuant to this section, if the defendant has not filed an answer or made a pre-answer motion to dismiss, the court shall:

1. advise the defendant of the requirement to answer the complaint;

2. explain what is required to answer a complaint in court;

3. advise that if an answer is not interposed the ability to contest the foreclosure action and assert defenses may be lost; and

4. provide information about available resources for foreclosure prevention assistance.

At the first conference held pursuant to this section, the court shall also provide the defendant with a copy of the Consumer Bill of Rights provided for in section thirteen hundred three of the real property actions and proceedings law.

(m) A defendant who appears at the settlement conference but who failed to file a timely answer, pursuant to rule 320 of the civil practice law and rules, shall be presumed to have a reasonable excuse for the default and shall be permitted to serve and file an answer, without any substantive defenses deemed to have been waived within thirty days of initial appearance at the settlement conference. The default shall be deemed vacated upon service and filing of an answer.

(n) Any motions submitted by the plaintiff or defendant shall be held in abeyance while the settlement conference process is ongoing, except for motions concerning compliance with this rule and its implementing rules.

[PREV](#)

[SECTION 3407](#)

[Preliminary Conference In Personal Injury Actions Involving Certain Terminally Ill Parties \(/Legislation/Laws/CVP/3407/\)](#)

[NEXT](#)

[SECTION 3409](#)

[Settlement Conference In Dental, Podiatric And Medical Malpractice Actions \(/Legislation/Laws/CVP/3409/\)](#)

COVID-19 Updates

The COVID-19 vaccine is here. It is safe, effective and free. Walk in to get vaccinated at sites across the state. Continue to mask up and stay distant where directed.

GET THE FACTS >

Department of Financial Services

FAQs: Bill S. 8243-C and Bill S. 8428 New Banking Law Section 9-x ("Section 9-x")

General

Q: What regulated institutions must comply with Section 9-x?

-

A: New York regulated banking organizations and any New York regulated mortgage servicers must comply with Section 9-x.

A "banking organization" means any bank, trust company, private banker, savings bank, safe deposit company, savings and loan association, credit union, and investment company chartered by the Department. "Banking organization" does not include New York-regulated branches or agencies of foreign banks.

A "regulated mortgage servicer" means any entity that is registered with the Department to engage in mortgage servicing activities pursuant to Article 12-D of the Banking Law. Section 9-x also applies to mortgage

bankers, brokers, and New York-regulated branches and agencies of foreign banks that engage in mortgage servicing activities that are exempt from the New York's servicer registration requirement.

Section 9-x does not apply to banks and credit unions that are licensed by another state or a federal authority. However, the regulation does apply to a Credit Union Service Organization (CUSO) of a federal credit union where the mortgage servicing activities are under the responsibility of the CUSO.

Q: How does Section 9-x define "financial hardship as a result of COVID-19"?

A: Section 9-x does not establish specific criteria for demonstrating financial hardship as a result of the COVID-19 pandemic. It is up to each institution to establish such standards and apply them in light of its knowledge of the individual borrower. Standards may include, but are not limited to, the borrower's financial resources, payment history and current circumstances, subject to the safety and soundness of the institution. Institutions are encouraged to take a reasonable approach in establishing such standards and criteria to help those who are facing financial resource constraints as a result of the COVID-19 pandemic.

Q: Does a "financial hardship as a result of COVID-19" apply to a borrower who has suffered some loss of income but who otherwise has the capacity to pay their mortgage and other living expenses?

A: The purpose of Section 9-x is to help homeowners who, as a result of COVID-19, have suffered a "financial hardship" that may make it difficult for them to pay their mortgage and other living expenses. In assessing whether a borrower is facing a financial hardship, regulated institutions should establish reasonable standards, which takes into consideration a borrower's resources, income, expenses and the uncertain duration of the impact of the pandemic.

Q: How is Section 9-x affected by the CARES Act or by any relevant federal guidance? -

A: Section 9-x requires New York State regulated institutions to offer forbearance on privately serviced loans relating to residential mortgages on properties located in New York to any individual who resides in New York and who demonstrates financial hardship as a result of the COVID-19 pandemic, subject to the safety and soundness requirements of the regulated institution. Section 9-x does not apply to federally backed mortgages. The Coronavirus Aid, Relief, and Economic Security Act of 2020, among other things, covers federally backed mortgages and provides borrowers of such loans with the right to request forbearance up to 12 months from their mortgage servicers. Many New York State regulated mortgage servicers also service federally backed mortgages and are subject to compliance with the federal requirements and guidance applicable to such loans.

Mortgage Forbearance

Q: What does the requirement to make applications “widely available” mean? -

A: Regulated institutions must ensure that borrowers who, from March 7, 2020 to the end of the pandemic in their county of residence, are in arrears, or are in a trial period, or have applied for loss mitigation are informed of the available option to seek forbearance and are provided with a forbearance application. Institutions should establish recorded messages or maintain website pages instructing borrowers experiencing COVID-19 related hardship on how to obtain relief.

Q: To what types of mortgages does Section 9-x apply? Does it apply to vacation homes or investment properties?

A: Section 9-x only applies to residential mortgage loans (including home equity lines of credit) on 1-4 family properties, including cooperative units and condominiums, that is the primary residence of the borrower. Section 9-x does not apply to commercial or industrial loans. Regulated institutions are not prohibited from offering forbearance for vacation homes or investment properties if they chose to do so.

Q: Is forbearance relief under Section 9-x available to borrowers whose loans were accelerated or in foreclosure before March 7, 2020?

A: Forbearance relief under Section 9-x is available to loans that were accelerated or in foreclosure if the loan is in a trial or permanent modification or otherwise received a deceleration notice. Otherwise, forbearance relief is not available under Section 9-x for loans that were accelerated or in foreclosure as of that date. *(updated 9/10/2020)*

Q: Is forbearance relief limited to borrowers whose payments were current as of March 7, 2020?

A: No, relief under Section 9-x is not limited to those borrowers whose payments were current at the onset of the pandemic.

Q: Is forbearance relief under Section 9-x available to borrowers who had a forbearance agreement in place before Executive Order 202.9 of 2020 or Section 9-x went into effect?

A: Yes, if a borrower entered into a forbearance agreement before Executive Order 202.9 of 2020, or Section 9-x, went into effect and the borrower requests relief under Section 9-x due to a demonstrable hardship caused by COVID-19, such borrower would be entitled to relief under Section 9-x.

Q: If a borrower and regulated institution entered into a forbearance agreement before Executive Order 202.9 of 2020, or Section 9-x, went into effect, and the borrower subsequently requests a forbearance under Section 9-x, can an institution count the time that the pre-COVID-19 forbearance agreement was in place towards the 180-day forbearance period required by Section 9-x?

-

A: Yes, if the pre-COVID-19 forbearance agreement ended at any point during the covered period regulated institutions can only count the time during the covered period the loan was in forbearance. Regulated institutions may not count forbearance agreements that ended prior to the covered period as part of the relief required by Section 9-x.

Q: Can regulated institutions approve forbearance for an individual over the phone and then request the confirming paperwork to be sent to them?

-

A: Yes. New York regulated institutions are not required to request documents from borrowers in advance of granting the forbearance.

Q: Does Section 9-x apply to mortgages sold on the secondary market to Freddie, Fannie, SONYMA, etc.?

-

A: Section 9-x does not apply to any mortgages made, insured or securitized by U.S. government agencies, Government Sponsored Enterprises or a Federal Home Loan Bank, or the rights and obligations of

any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association and for the State of New York Mortgage Agency. Forbearance for such mortgages are covered by guidelines issued by such programs.

Q: Are institutions required to forbear the escrow portion of the mortgage payment, or just the principal and interest?

A. Section 9-x requires the forbearance of “all monthly payments due with respect to the mortgage,” which includes all components of a mortgage payment that the borrower is obligated to pay to the lending institution. Therefore, if a borrower’s monthly payment includes escrow for the purposes of paying taxes and insurance, a regulated institution cannot require a borrower to remit such funds to the regulated institution or to make such payments to third parties.

Q: Is the forbearance required to last 180 days?

A: Section 9-x requires that a forbearance up to 180 days be granted by the institution to qualified borrowers, subject to the safety and soundness requirements of the regulated institution. If a qualified borrower prefers a shorter forbearance period, the institution may grant such shorter forbearance period.

Q: When does the 180-day forbearance period commence?

A The forbearance period commences when the forbearance is granted to the borrower. If a borrower previously received a forbearance under Executive Order 202.9 of 2020 and wants to extend the period of the forbearance under Section 9-x, the forbearance period shall be deemed to have commenced on the date that the forbearance was granted pursuant to the requirements of the Executive Order.

Q: Can forbearance under Section 9-x be granted for up to 360 days in 90 day increments, subject to the borrower demonstrating their continued hardship? -

A: Section 9-x(2)(b) provides that forbearance shall be granted for up to 180-days with an option to extend for up to an additional 180-days if the borrower demonstrates continued hardship. The language of Section 9-x allows regulated institutions and borrowers to agree to a forbearance that lasts less than 180-days to fit the circumstances of the specific borrower. It's plain reading, however, does not contemplate that regulated institutions provide forbearance relief in several 90-day increments up to 360 days.

Q: If the borrower previously received a forbearance pursuant to the requirements of Executive Order 202.9 of 2020, do regulated institutions automatically need to extend the initial forbearance to the full 180-days required by Section 9-x? -

A: No, Section 9-x does not require that a previously granted forbearance automatically be extended to 180-days. If the borrower previously received a COVID-19-related forbearance pursuant to the Executive Order 202.9, the borrower may request to extend the forbearance period pursuant to Section 9-x. Also, when discussing the repayment options on the initial forbearance, the regulated institution should discuss with the borrower the option to extend the forbearance pursuant to Section 9-x. A regulated institution may require that, in connection with a request to extend a previously granted forbearance, the borrower demonstrate an ongoing COVID-19-related hardship to qualify for an extended forbearance.

Q: Does a borrower have to demonstrate an ongoing hardship to extend a forbearance agreement for an additional 180-days pursuant? -

A: Yes, borrowers must demonstrate an ongoing COVID-19-related hardship to qualify for an extended forbearance.

Q: Are regulated institutions obligated to amend existing forbearance agreements provided pursuant to the requirements of Executive Order 202.9 of 2020 to comply with Section 9-x?

A: While Section 9-x does not require the amendment of existing COVID-19-related forbearance agreements, it does provide that any qualified mortgagor who received a forbearance agreement pursuant to that Section, or Executive Order 202.9 of 2020, are entitled to select one of the repayment options specified in Section 9-x(3). To the extent that a qualified mortgagor who previously received a COVID-19-related forbearance asks to repay a forbearance using one of the options listed in Section 9-x(3), regulated institutions are required to conform the forbearance agreement.

Q: May a regulated institution leave an existing 90-day forbearance agreement in place and add a second 90-day forbearance agreement to comply with the 180-day requirement of Section 9-x?

A: Yes, the requirements of Section 9-x may be satisfied by extending an existing forbearance agreement pursuant to Executive Order 202.9, or entering into a second forbearance agreement that complies with the requirements of Section 9-x. However such forbearance agreements cannot be treated differently for the purpose of section 9-x(3).

Q: If a regulated institution denies a forbearance application for any reason other than that specified in Section 9-x(6), does it need to advise the Department of the denial?

A: Yes. Also, if a regulated institution denies a borrower's request for relief pursuant to Section 9-x for any reason, it should advise the borrower that they have a right to file a complaint with the Department and may do so by visiting the Department's website at www.dfs.ny.gov.

Repayment Options

Q: What happens at the end of the forbearance period?

A: Section 9-x(3) allows a borrower to select one of three repayment options for a COVID-19 related forbearance. Below are the specific options detailed in Section 9-x(3)(a-d):

- Extend the term of the loan for the number of months the loan was in forbearance;
- Repay the arrears accumulated during the forbearance period on a monthly basis;
- Negotiate a loan modification or any other options that addresses the borrowers changed circumstances
- Only if the borrower and the lender cannot reasonably agree on a loan modification, the regulated institution must offer to defer the amount of the forbearance into a non-interest bearing balloon loan due at the maturity of the loan or at any time when the loan is satisfied through a refinance or sale.

Q. What does Section 9-x(3)(a) mean when it says that no “additional interest” may be charged on the forborne amount?

A. Section 9-x(3)(a) prohibits capitalizing the interest due as part of each monthly forborne payment and charging interest on such capitalized amount.

Q: How are borrowers who elect to extend the term of their loan for the length of the forbearance pursuant to Section 9-x(3)(a) supposed to repay the amount of the forbearance? -

A: Section 9-x(3)(a) contemplates that the term of the loan will be extended for the length of the forbearance and the forborne payments repaid during the extension. Borrowers that select this option would resume payments under their existing amortization schedule once the forbearance period is over with the forborne payments to be paid in equal monthly installments during the extended term of the loan.

Q. Can interest continue to accrue on the forborne amount if the borrower elects to spread the amount of the forbearance over the remaining term of the loan pursuant to Section 9-x(3)(b)? -

A. No. Although Section 9-x(3)(b) does not specifically prohibit charging additional interest, the clear intent of the legislation is to make repayment options available to borrowers that do not result in capitalizing interest into the existing principal balance or compounding interest.

Q: According to Section 9-x(3)(b), borrowers have the option of having the forborne amount payable on a monthly basis for the remaining term of the loan. For a loan with a remaining maturity of 29 years, is a servicer limited to calculating repayment of the arrears in a manner that result in 348 monthly payments? -

A: Yes, Section 9-x(3)(b) provides that the amount of the forbearance will be spread out in even increments for the remaining term of the loan.

Q. Are there any limits on the terms of a modification that may be negotiated under Section 9-x(3)(c)? -

A. Section 9-x(3)(c) is a catch-all section that enables regulated institutions and borrowers to negotiate a modification that is mutually acceptable to the regulated institution and borrower. Regulated institutions are reminded that Section 9-x(3)(c) is one of three repayment options that borrowers can select. Regulated institutions must inform borrowers who receive a COVID-19 related forbearance of such options. Furthermore, regulated institutions may not prioritize or encourage borrowers to select one repayment option over any other, or place borrowers into loan modifications that are not affordable or sustainable.

Q. What does the requirement in Section 9-x(3)(d) that the forbore amount be accumulated and paid as a non-interest bearing balloon loan at the maturity, refinance or sale of the real property mean?

A. Under Section 9-x(3)(d), the forbore principal and interest payments that were previously due and owing to the lender are lumped into a non-interest bearing loan. No additional interest beyond that which was forbore can be charged to the borrower.

Q: May a regulated institution satisfy the requirements of Section 9-x(3)(d) by, at the end of each month, deferring repayment of the monthly forbore payment resulting in individual monthly deferments?

A: No, deferring each monthly payment would not satisfy the requirements of 9-x(3)(d), unless the deferral does not result in any additional interest or fees being charged and the borrower is not required to make an additional showing of hardship to qualify for such monthly deferral. Regulated institutions must inform borrowers who receive a COVID-19 related forbearance of all of the repayment options available in Section 9-x(3).

Q: Are regulated institutions required to allow a borrower the option to repay the forbearance amount through a non-interest bearing balloon payment pursuant to Section 9-x(3)(d) even if the borrower can afford to pay the forbearance amount on a more accelerated schedule?

A: Section 9-x(3)(d) requires a regulated institution to offer to defer arrears in situations where the borrower and the regulated institution are unable to “reasonably agree on a mutually acceptable loan modification.” The regulated institution must ensure that modifications are affordable and sustainable given the borrower’s changed circumstances. Furthermore, the regulated institution must evaluate the borrower’s reason for declining to accept the loan modification offered to determine whether there are circumstances the regulated institution did not consider in its loan modification determination.

Any regulated institution that determines that the borrower’s rejection of an offered loan modification is unreasonable shall, at the time that it advises the borrower of its determination, inform the borrower that they may file a complaint with the Department at www.dfs.ny.gov.

Q: If a borrower who is offered a non-interest bearing balloon loan payable at maturity pursuant to Section 9-x(3)(d), subsequently defaults, resulting in an acceleration of the loan, may the regulated institution accelerate the amount of the balloon payment?

A: Yes, in the event of default and acceleration of such loan, the Department interprets Section 9-x(3)(d) as allowing a regulated institution to accelerate the full amount of the loan, including the forborne payment. This interpretation is consistent with the section’s recognition that the

Mortgage Companies

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Section 9-X

Mortgage forbearance

Banking (BNK)

SHARE



1. As used in this section, the following terms shall have the following meanings:

(a) "Covered period" means March 7, 2020 until the later of December 31, 2021 or the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive Orders 202.28 and 202.31 and as further extended by any future Executive Order, issued in response to the COVID-19 pandemic continue to apply in the county of the qualified mortgagor's residence;

(b) "qualified mortgagor" means an individual (i) whose primary residence is located in New York and is encumbered by a home loan pursuant to paragraph (a) of subdivision six of section thirteen hundred four of the real property actions and proceedings law or whose primary residence is located in New York and is a co-operative unit whose shares are encumbered by any loan otherwise meeting the requirements of a home loan under paragraph

(a) of subdivision six of section thirteen hundred four of the real property actions and proceedings law, from or serviced by a regulated institution; and (ii) who demonstrates financial hardship as a result of COVID-19 during the covered period;

(c) "regulated institution" means any New York regulated banking organization as defined in this chapter and any New York regulated mortgage servicer entity subject to supervision by the department; and

(d) "trial period plan" means an agreement whereby the mortgagor is required to make trial payments in full and on-time in order to be considered for a permanent loan modification.

2. Notwithstanding any other provision of law, New York regulated institutions shall:

(a) make applications for forbearance of any payment due on a residential mortgage of a property located in New York widely available to any qualified mortgagor who, during the covered period, is in arrears or on a trial period plan, or who has applied for loss mitigation; and

(b) grant such forbearance of all monthly payments due with respect to the mortgage secured by the qualified mortgagor's primary residence in New York for a period of up to one hundred eighty days to any such qualified mortgagor, with the option to extend the forbearance of such monthly payments for up to an additional one hundred eighty days provided that this extension is subject to the mortgagor demonstrating continued financial hardship. If any qualified mortgagor has already received a forbearance pursuant to executive order 202.9 of two thousand twenty, the time of such forbearance shall be considered as part of the requirement of this section to provide a forbearance of up to one hundred eighty days, and any extension thereof pursuant to this section.

(c) Such forbearance may be backdated to March seventh, two thousand

twenty, provided that the maximum length of the forbearance may be no longer than one hundred eighty days and any extension thereof pursuant to this section.

3. Notwithstanding any other provision of law, any mortgage forbearance granted by a regulated institution pursuant to executive order number 202.9 of two thousand twenty, this section, or 3 NYCRR Part 119 to a qualified mortgagor as a result of financial hardship shall be subject to the following provisions:

(a) the mortgagor shall have the option to extend the term of the loan for the length of the period of forbearance. The regulated institution shall not charge additional interest or any late fees or penalties on the forborne payment; or

(b) the mortgagor shall have the option to have the arrears accumulated during the forbearance period payable on a monthly basis for the remaining term of the loan without being subject to penalties or late fees incurred as a result of the forbearance; or

(c) the mortgagor shall have the option to negotiate a loan modification or any other option that meets the changed circumstances of the qualified mortgagor; or

(d) if the mortgagor and regulated institution cannot reasonably agree on a mutually acceptable loan modification, the regulated institution shall offer to defer arrears accumulated during the forbearance period as a non-interest bearing balloon loan payable at the maturity of the loan, or at the time the loan is satisfied through a refinance or sale of the property. Any late fees accumulated as a result of the forbearance shall be waived.

(e) The exercising of options provided for in paragraph (a), (b), (c) or (d) of this subdivision by a qualified mortgagor shall not be reported negatively to any credit bureau by any regulated institution.

4. Notwithstanding any other provision of law, adherence with this section shall be a condition precedent to commencing a foreclosure action stemming from missed payments which would have otherwise been subject to this section. A defendant may raise the violation of this section as a defense to a foreclosure action commenced on the defendant's property when such action is based on missed payments that would have otherwise been subject to this section.

5. Notwithstanding anything to the contrary in this section, this section shall not apply to, and does not affect any mortgage loans made, insured, purchased or securitized by any agency or instrumentality of the United States, any government sponsored enterprise, or a federal home loan bank, or a corporate governmental agency of the state constituted as a political subdivision and public benefit corporation, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association.

6. Notwithstanding any other provision of law or of this section, the obligation to grant the forbearance relief required by this section shall be subject to the regulated institution having sufficient capital and liquidity to meet its obligations and to operate in a safe and sound manner. Any regulated institution that determines that it is not able to offer relief pursuant to this section to any qualified mortgagor must notify the department within five business days of making such determination. Any such notice filed with the department shall include information about the qualified mortgagor, the reason the regulated institution determined that it was unable to offer any relief pursuant to this section, information about the regulated institution's financial condition supporting the regulated institution's determination, and any other information required by the department. At the same time that the regulated institution provides notice to the department, it shall advise the qualified mortgagor that the application for relief was denied and provide a statement that the applicant may file a complaint with the New York state department of financial

services at 1-800-342-3736 or <http://www.dfs.ny.gov> if the applicant believes the application was wrongly denied.

* NB There are 2 § 9-x's

[PREV](#)

[SECTION 9-W](#)

[Standard Financial Aid Award Letter \(/Legislation/Laws/BNK/9-W/\)](#)

[NEXT](#)

[SECTION 9-X*2](#)

[Fees Based On Inactivity: Notification \(/Legislation/Laws/BNK/9-X*2/\)](#)



CARES Act Forbearance Fact Sheet for Borrowers with FHA, VA, or USDA Loans



A resource for borrowers with loans insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), or the Rural Housing Service (RHS)

Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Mortgage Payment Forbearance

The [CARES Act](#) provides a [mortgage payment forbearance option](#) for all borrowers who, either directly or indirectly, suffer a financial hardship due to the novel coronavirus (COVID-19) national emergency.

No documentation is required to prove your hardship beyond your assertion that you are suffering from such a hardship. However, if you can still make your mortgage payments, you should continue to do so.

A forbearance is a temporary postponement or reduction of mortgage payments. ***It is not payment forgiveness.*** Under the CARES Act, borrowers are entitled to an initial forbearance period of up to 180 days, upon a borrower's request. Also, upon a borrower's request, the forbearance must be extended for up to an additional 180 days. A borrower can, at any time the borrower chooses, shorten the forbearance and resume repayment of the loan.

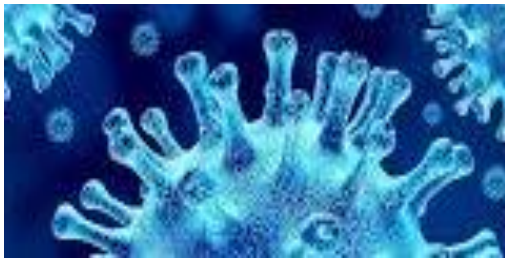
Mortgage Payment Forbearance Request

To request this forbearance, do the following:

- Contact your [mortgage servicer](#) to request forbearance. Contact information is found on your monthly mortgage statement.
- Utilize servicers' websites or email as a primary method of communication and be patient. Servicers are facing large volumes of requests.
- ***Remember, the missed payments must be repaid, although they may be paid back over time. Forbearance of payments doesn't mean forgiveness of payments.***

Mortgage Payment Forbearance

- Be sure to contact your servicer as soon as your hardship is over, or you can resume making your regular monthly mortgage payment to end the forbearance. Discuss what repayment options are available.
- If you were current on your mortgage when the CARES Act forbearance was granted, your mortgage servicer is required to report your account as current during the forbearance period to the Credit Reporting Agencies.
- If you were delinquent on your mortgage when the CARES Act forbearance was requested, your mortgage servicer is required to maintain the delinquent status reported to the Credit Reporting Agencies during the forbearance period. However, if you bring your mortgage current during the forbearance period, your mortgage servicer is required to report the status as current.



CARES Act Forbearance Fact Sheet for Borrowers with FHA, VA, or USDA Loans

Your repayment options will vary based on which type of loan you have:



Federal Housing Administration Mortgages

FHA does not require lump sum repayment at the end of the forbearance. FHA has developed the COVID-19 Standalone Partial Claim to assist with repayment. If you were current or less than 30 days delinquent as of March 1, 2020, you may be entitled to this option. A partial claim is a zero interest, no fee, junior lien on your property that will become payable when you sell your home, pay off your mortgage or your mortgage otherwise terminates. If you do not qualify for the COVID-19 Standalone Partial Claim, FHA offers other tools to help you repay the missed payments over time. For more information on Federal Housing Administration Mortgages: email

answers@hud.gov, call 1-800-CALL-FHA (1-800-225-5342), or visit www.hud.gov.



Veterans Affairs Mortgages

Servicers of VA loans cannot require borrowers to make a lump sum payment immediately after a borrower exits a CARES Act forbearance. VA has a suite of loss mitigation options that can assist Veteran borrowers who must repay amounts that were subject to a forbearance. In addition, VA is continuing to evaluate other options to further assist borrowers affected by the novel coronavirus (COVID-19) national emergency. For additional information, please visit our website at

<https://www.benefits.va.gov/homeloans/index.asp>, where you can find a list of [frequently asked CARES](#)

[Act questions](#). In addition, you may call (877) 827-3702 to contact a VA Regional Loan Center.



Rural Housing Service Guaranteed Loan Mortgages

RHS does not require a lump sum payment at the end of the forbearance. Lenders should work with the borrowers to determine if they can resume making regular payments and, if so, either offer an affordable repayment plan or term extension to defer any missed payments to the end of the loan. If the borrower is unable to resume making regular payments, the lender should evaluate the borrower for all available loss mitigation options outlined in Handbook-1-3555. For more information on servicing Rural Housing Guaranteed Loan Mortgages, email sfhglservicing@usda.gov. For all other general inquiries on policy, email SFHGLD.Program@usda.gov or visit our website at www.rd.usda.gov/programs-services/single-family-housing-guaranteed-loan-program. Visit USDA Rural Development's [coronavirus website](#) for more information on forbearance for USDA guaranteed loans.

Other Resources

- All homeowners (including those with FHA, VA and USDA loans) can use Consumer Financial Protection Bureau's (CFPB) "[Find a Counselor](#)" tool to find counseling agencies approved by the Department of Housing and Urban Development (HUD) in your area. Online counseling is available.
- You can also call the [HOPE™ Hotline](#), open 24 hours a day, seven days a week, at (888) 995-HOPE (4673).

For more finance-related information

Visit CFPB's [coronavirus](#) website for [mortgage relief options](#), [tips to keep up on your finances](#), and more.

What if I don't have a government-backed home loan?

- CFPB's website has information and links on [mortgage relief options](#) that can help you determine if other relief is available (for example, if your loan is owned by Fannie Mae or Freddie Mac).