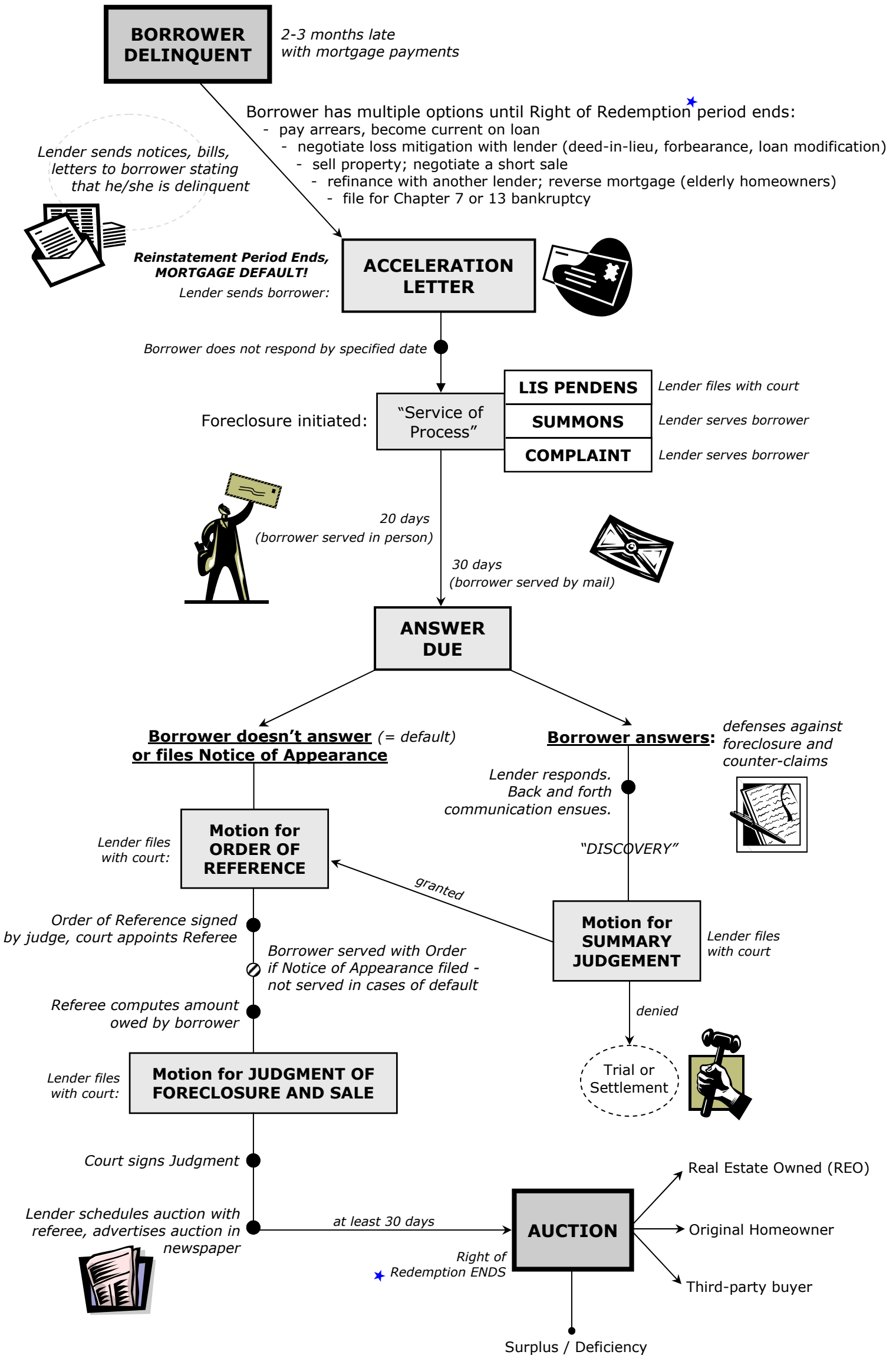


PATHS OF A FORECLOSURE IN NEW YORK STATE



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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 initiate foreclosure proceedings. Once the mortgage has been accelerated, the lender is no longer compelled to accept arrearages, though may still do so. Acceleration letters are also sometimes called a “Notice to Cure.” Acceleration letters are not required by New York State law, though most mortgage contracts include this step as a requirement.

Answer: A written response to the complaint and summons, 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, 30 calendar days if served by mail. 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 counter-claims.

Arrearages: 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, including the original homeowner. 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 initiated a civil action in court, and explains the grounds for that action against the borrower.

Counter-claims: As part of the answer to the summons and complaint, the borrower may include counter-claims, or legal assertions that the lender owes the borrower money. This money is a set-off against the amount that the lender alleges is due. Counter-claims typically allege fraud on the part of 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 borrower’s debt to the lender is cleared – 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 does not answer the summons and complaint, the case defaults - meaning that the court automatically decides in favor of the plaintiff (the owner of the loan). The plaintiff 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 borrower who has defaulted on his/her mortgage.



Defenses: As part of the answer to the summons and 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 in 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. The borrower is still liable for this amount.

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. "Delinquent" and "default" are often used interchangeably.

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. Usually when borrowers enter into these agreements, they waive many of their future rights, such as their ability to bring defenses in the event of a foreclosure.

Foreclosure: The legal process by which a lender forces a property to be sold, in order to collect on the amount it claims is owed to them. The city can also initiate foreclosure proceedings for non-payment of taxes.

Judgment of Foreclosure and Sale: This legal order gives the lender permission to sell the property through a referee, and ratifies the total amount owed by the borrower to the lender.

Judicial Foreclosure: A foreclosure process that is officiated by the courts. Some states allow foreclosures to proceed without court involvement (non-judicial foreclosures); these foreclosures typically transpire much faster than judicial ones.

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, these tax liens can be sold, and subsequently can precipitate foreclosure proceedings. 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 title to a property is being contested. 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 in forbearance agreements, borrowers who agree to loan modifications usually waive many of their future rights, such as their ability to bring defenses in the event of a foreclosure. 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 of a second mortgage, and the lender is not willing to negotiate, this second lender may still initiate foreclosure proceedings against the borrower.

Motion: A legal term for an application. For example, when the lender files a "motion" for summary judgment, they are submitting an application with the court requesting a summary judgment.

Mortgage Default: After a delinquent borrower's loan is accelerated by the lender, he/she is said to be in default. "Delinquent" and "default" are often used interchangeably.

Note-holder: The entity that owns the mortgage. The note-holder may be a financial institution or a securitization trust. The lender that makes (or "originates") the mortgage will typically sell the mortgage to another entity, and therefore is rarely the note-holder at the time of foreclosure.

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 papers throughout the course of the foreclosure proceedings, he/she can file a Notice of Appearance with the court, and send a copy to the lender.

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). In foreclosures, if the borrower is unable to find legal representation, he/she may file a *pro se* Notice of Appearance or Answer. *Pro se* is Latin for "for self."

Real Estate Owned (REO): When a foreclosed property does not sell at auction, the note-holder of the mortgage takes possession of the property. The property is then said to be in REO status, and returns to the portfolio of the note-holder. The note-holder may then initiate eviction proceedings in Housing or Supreme Court against the former homeowner.

Referee: Once an Order of Reference is signed, the foreclosure case is referred to a referee. The referee computes the total amount owed to the lender by the borrower. This amount includes the principal and interest from the loan, as well as all accrued fees such as late and attorney fees. A borrower who has answered or filed a Notice of Appearance has the right to contest the amount owed. 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.



Reinstatement Period: Once the borrower has fallen behind on his/her mortgage payments, he/she has a certain amount of time to catch up with the arrears and “reinstate” the loan, or become current on payments. Once the lender sends an acceleration letter, however, the reinstatement period is over.

Reverse Mortgage: Reverse mortgages are a type of home equity loan for persons 62 years of age and older. The lender essentially makes monthly payments to the homeowner, with the amount based on the equity left in the home and the homeowner’s age. Payments are made for the rest of the homeowner’s lifetime. These payments are not taxable and do not affect the homeowner’s Social Security or Medicare benefits. Since reverse mortgages basically convert home equity into cash, they should be pursued with caution if the homeowner intends to will the property to children or other family members. In situations where the homeowner does not have much equity in the home, or wants to refinance, a reverse mortgage can also be used to pay off the original mortgage in one lump sum. In these situations, the homeowner would not receive monthly payments.

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: After the lender’s attorney files the summons, complaint, and lis pendens with the court, they also send a summons and complaint to the borrower through an entity called a Process Server. The delivery of the documents is called service of process, which may be delivered in person, or by mail. If the borrower is not home, the process server 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 mutually-agreed upon 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 in favor of one party over another. In the case of foreclosures, 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 to go to trial.

Summons: An order to appear in court on a specified date, or 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 (and any creditor of the borrower) must file a motion to claim this money.



Stay: A stay is a temporary stop to a foreclosure. Borrowers may file a motion with the court to stay the foreclosure sale, but must show meritorious defense and a compelling reason for the stay. Filing for Chapter 13 bankruptcy will automatically stay a foreclosure sale.

Suspense Account: When borrowers only make partial payments, the servicer often holds the money in a "suspense account," rather than crediting the payments to the mortgage balance. The payments will typically be held in the suspense account until the mortgage is brought current.

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. If the judge decides in favor of the lender, then the lender proceeds with filing a motion for Order of Reference, on through auction. If the judge decides in favor of the borrower, then the foreclosure is averted.

