

DHCR Regional Meetings: Foreclosure Prevention Services Program

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Subprime Lending Reform Act

- Chapter 472, Laws of New York, 2008 (a/k/a Foreclosure Prevention and Responsible Lending Act of 2008)
- Passed by the New York State Legislation in 2008 and signed into law by Governor Paterson on August 5, 2008.
- Effective dates vary, starting August 5, 2008; most provisions became effective September 1, 2008

Foreclosure Prevention Provisions

90 Day Pre-Foreclosure Notice

- Starting **9/1/08**, lenders or mortgage loan servicers must send homeowners with “**high-cost,**” “**subprime,**” and “**non-traditional**” home loans a notice at least 90 days prior to the commencement of a legal action
- Must attach a list of at least **5 government approved housing counseling agencies** in the homeowner’s geographic region
- Failure to send is a **defense** to foreclosure

Settlement Conferences

- **As of 9/1/08**, for residential foreclosure actions involving a “high-cost” home loan created between January 1, 2003 and September 1, 2008, a “subprime,” or a “nontraditional” loan there must be a mandatory conference held by the court within 60 days.
- For foreclosure actions on high-cost or subprime home loans which **began prior to 9/1/08**, but where there is no final order of judgment, defendants had a right to request a settlement conference.

Purpose of Conferences

- “ . . . 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 . . .
- . . . 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, and for whatever other purposes the court deems appropriate.**”

-CPLR, Rule 3408; Chapter 472 of Laws of NY, 2008, Sec. 3

Who Shall Appear

“ . . . the plaintiff shall appear in person or by counsel, and if appearing by counsel, **such counsel shall be fully authorized to dispose of the case.**”

“ . . . Where appropriate, the court may permit a representative of the plaintiff to attend the settlement conference telephonically or by video-conference.”

-CPLR, Rule 3408; Chapter 472 of Laws of NY, 2008, Sec. 3 .

Affirmative Allegation of Standing

- As of **9/1/08**, foreclosure complaints filed involving “high-cost” and “subprime” home loans must include an affirmative allegation that at the time the proceeding commenced, the **plaintiff was the owner and holder of the subject mortgage and note**, or has been delegated authority to institute a foreclosure lawsuit on behalf of the owner and holder.

Prospective Regulations to Prevent Abusive Practices

High-Cost Home Loans

- Adds prohibitions to New York's current anti-predatory lending law, **Banking Law § 6-I** that went into effect in 2003 to regulate "high-cost" home loans.
- **New prohibitions** include . . .
 - ❑ Payment option loans
 - ❑ Pre-payment penalties
 - ❑ Yield spread premiums unless disclosed and used to offset costs
 - ❑ Teaser rates with duration of 6 months or less

Subprime Home Loans

- Creates a new category of “subprime” home loans. (Note: Definition of “subprime” differs from previous definition.)
- Prescribes prohibitions and limitations, including:
 - ❑ Lenders must verify that the borrower has the **ability to repay the loan**
 - ❑ Prohibits **negative amortization**
 - ❑ No **prepayment penalties**
 - ❑ Must include a **legend** at the top in 12 point font that the mortgage is a subprime loan

Mortgage Brokers

As of 9/1/08, mortgage brokers are. . .

- Required to **act in the borrower's interest**, with **reasonable skill, care and diligence**, and to **act in good faith and with fair dealing**
- Must present the borrower with a range of potential appropriate loan products.
- Mortgage brokers and lenders are prohibited from improperly influencing or attempting to influence the **appraisal process** relating to a home loan.

Mortgage Loan Servicers

- Starting 7/1/09, mortgage loan servicers **must be registered with the Superintendent of the Banking Department.**
- Superintendent must **set up registration procedures**, and is authorized to **promulgate regulations** for servicers.

Distressed Property Consultants

- **“Distressed property consultants”** - anyone who agrees to assist a homeowner for profit in default with a work-out, responding to a complaint, or a number of other activities related to assisting the homeowner.
- Effective 9/1/08, consultants are **prohibited** from...
 - **Receiving payment** for services before the full completion of such services,
 - Taking **power of attorney** from the homeowner,
 - **Retaining original loan documents** of the homeowner, among other things.

Written Contracts

- **Contract** must set forth...
 - Nature of the service
 - Compensation expected
 - Contact information for the consultant
- Must be given to the homeowner along with..
 - A notice of the homeowner's right to cancel the contract within 5 days,
 - Referral to non-profit and government agencies,
 - Two copies of a "Notice of Cancellation" form

“Residential Mortgage Fraud”

- A new criminal action, effective for loan originations made on or after **November 1, 2008**.
- The crime is committed by any person who **prepares or provides materially false information for purposes of getting a loan, or in filing documents containing false information with a county clerk.**
- Borrowers applying for a residential mortgage loan who intend to live in the property are exempted from the definition, unless they act as an accessory.