

Consumer Issues for New York Families

Presented by:
Empire Justice Center
Fiona Wolfe, Esq.
May 13, 2015

Topics we will cover

- Secured Debt vs. Unsecured Debt
- Mortgage Foreclosures
- Debt Collection
- Bankruptcy
- Student Loans

Secured VS. Unsecured

Secured debt:

A debt backed by collateral which a creditor can take if the borrower fails to pay

- Mortgage
- Car loan

Unsecured debt:

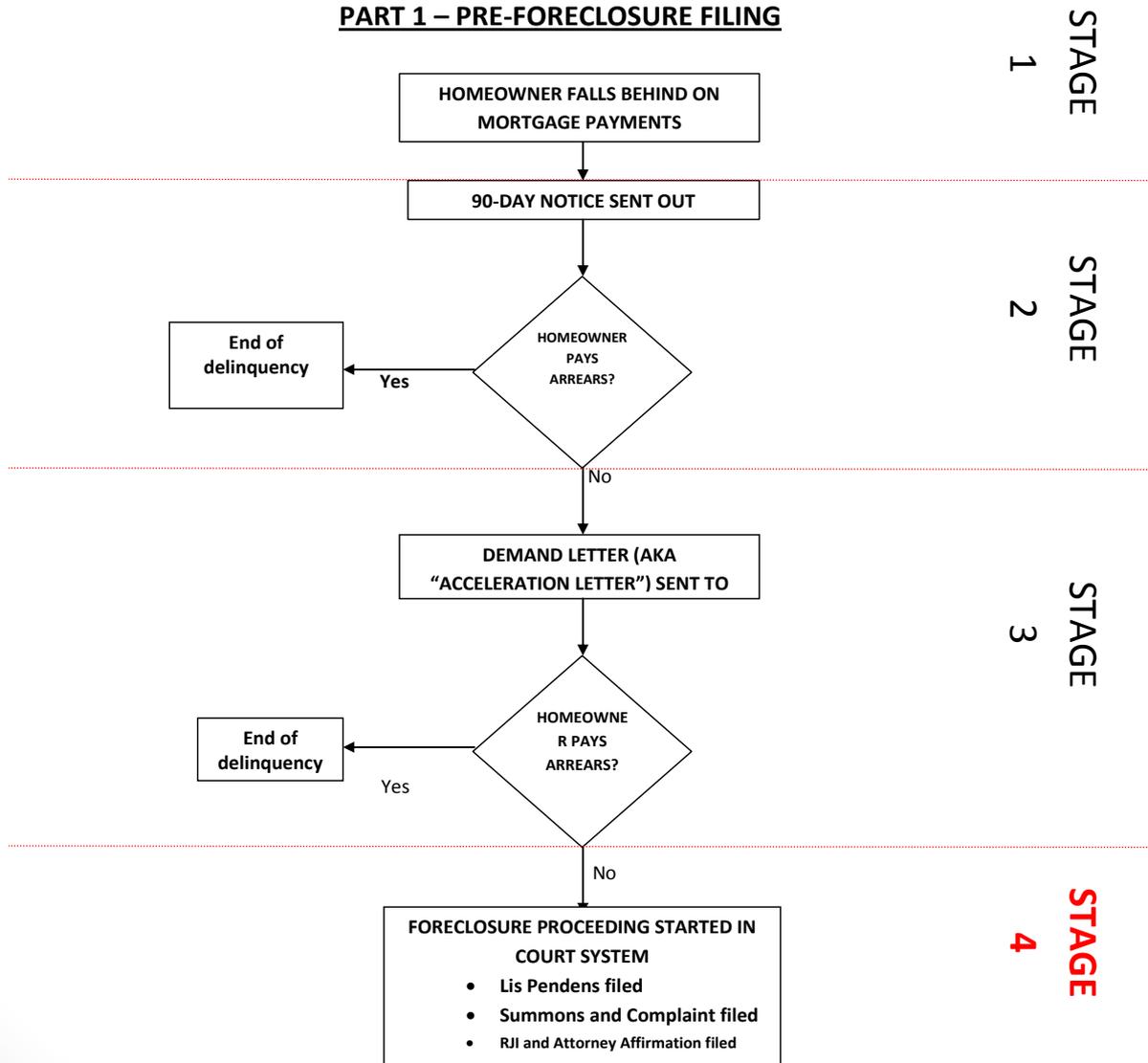
A debt NOT tied to any specific property as collateral –
If borrower fails to pay, options to collect are limited

- Credit card debt
- Personal loan
- Medical debt
- Utility debt

Path of A Foreclosure in New York

PATH OF A FORECLOSURE IN NEW YORK STATE

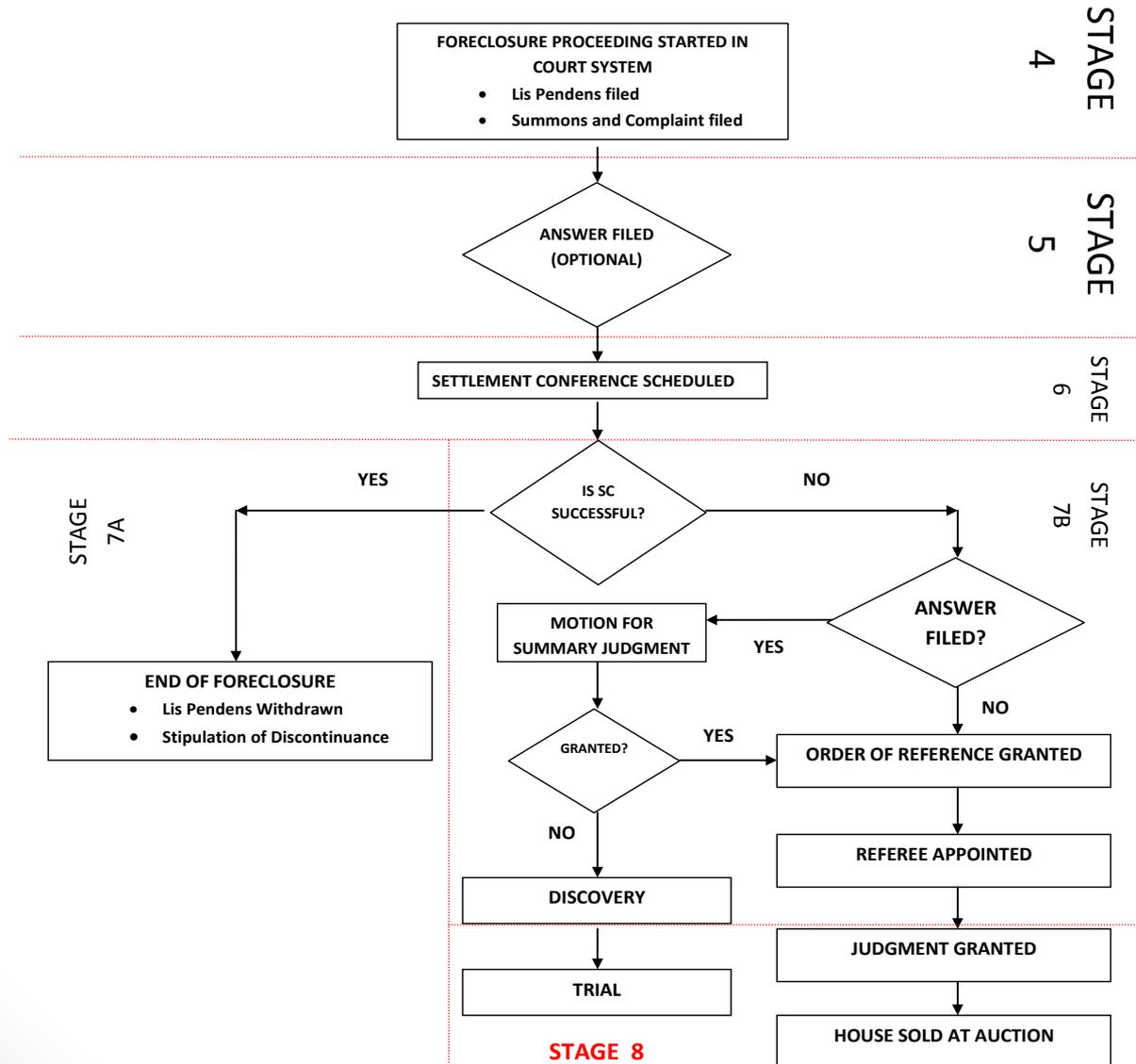
PART 1 – PRE-FORECLOSURE FILING



Path of A Foreclosure in New York

PATH OF A FORECLOSURE IN NEW YORK STATE

PART 2 – POST-FORECLOSURE FILING



Retention Options

- Refinance
- Reinstatement
- Repayment Plan
- Temporary Forbearance
- Loan Modifications
- Bankruptcy

Non-Retention Options

- Traditional Sale/Short Sale
- Deed In Lieu of Foreclosure
- Scheduled move-out date/ Cash for Keys
- Bankruptcy

How Debt Collection Agencies Work

- Debt collectors receive a percentage of the total debt repaid by the original creditor
- Motivated by cash, collectors manipulate, shame and threaten people into paying, without caring whether the bill is legitimate.
- Once a debtor is on the line, debt collectors generally demand payment of overdue balance immediately.

Protection for Debtors

- Debt collectors cannot:
 - Contact other people except to get debtors address and phone number
 - Contact debtor before 8:00am or after 9:00pm
 - Contact debtor at work if told that employer prohibits this kind of communication
 - Continue to try to collect the debt if debtor disputes the underlying debt
 - Be harassing or abusive.
 - If debtor tells collector in writing to stop further contact, collector may not communicate with debtor again except to notify that a specific legal action is being taken.

Dear Sir or Madam:

I am writing to request that you stop contacting me about account number _____ with [name of creditor] as required by the Fair Debt Collection Practices Act 15 U.S.C. section 1692c(c). (Note: Delete reference to the Act where the letter is to a creditor instead of to a collection agency.)

[Describe any harassing contact by the collection agency. If appropriate, provide information about why you cannot pay the bill or do not owe the money].

This letter is not meant in any way to be an acknowledgment that I owe this money. I will take care of this matter when I can.

Your cooperation will be appreciated.

Very truly yours,

Sam Consumer

Money Judgments

- What will a creditor do once they have a judgment?
 - Secure a lien against house
 - Find employer and garnish wages (Income Execution)
 - Place a levy on bank accounts

- Debtor protections?
 - Exempt Income Protection Act (2009)

Income Execution

- Amount garnished from wages depends on income, either gross income or disposable income.
- Disposable income = money made after deductions
- Generally, creditors can take up to 10% of gross wages
- If disposable income less than 30 times minimum wage, cannot garnish
- Employer cannot fire, refuse promotion or take any negative action solely because of an income execution

Freezing Bank Account

- Bank or credit union freezes all bank accounts
- Allows creditor to take money directly to satisfy judgment
- Cannot freeze if balance less than \$2100 (or \$2750 if account contains exempt benefits)
- 90% of income earned within the last 60 days is exempt from debt collection

Judgment Proof ?

- Enforcement options are limited when:
 - Do not own any assets
 - No money in bank account
 - No real estate
 - Not working or have low-paying job
 - If income is protected from collection efforts

Protected Income

- Sources of protected income:
 - Security benefits, including retirement, disability, and SSI
 - Unemployment benefits
 - Pension
 - Veterans benefits
 - Court ordered child support or spousal maintenance
 - Public assistance benefits [e.g. Low-Income Home Energy Assistance Program (LIHEAP) and New York State Supplemental Nutrition Assistance Program (SNAP)]

Tips for Debtors

- Cease and desist letter
 - Do not contact anymore
 - Explain income is exempt from debt collection
- Letter to bank
 - Account contains exempt funds - should not be restrained
- Exempt benefits – keep bank balance at or below \$2750
- Earned income – keep bank balance at or below \$2100
- Tax refunds not exempt from debt collection

Types of Bankruptcy

- Chapter 7 – Liquidation
 - Debtor may be required to give up property, sold to pay creditors
 - Normally for those who are not trying to keep house
 - Means test
- Chapter 13 – Debt adjustment
 - Debtor sets up plan (3-5 years) to pay back arrears from current income
 - May enable debtor to keep valuable property

What Bankruptcy CAN Do

- Discharge most debts - eliminate legal obligation to pay
- Automatic stay
 - Stop foreclosure and allow opportunity to catch up on missed payments
 - Does not automatically eliminate mortgages or other liens on property without payment
- Prevent repossession of property, or force creditor to return repossessed property
- Stop wage garnishment, debt collection harassment, and similar creditor actions to collect debt
- Restore or prevent termination of utility service

What Bankruptcy CANNOT Do

- Will not cure every financial problem
- Usually not possible to eliminate certain rights of secured creditors
 - May allow for payments to secured creditors over time
 - May eliminate personal liability on underlying loan
 - Generally cannot keep collateral unless continuing to pay debt
- Discharge certain types of debt
 - Child support, alimony
 - Some student loans
 - Court restitution orders, criminal fines
 - Some taxes
- Debts arising after filing will not be discharged

Zombie Debts

- Bills that are still alive on credit reports although legally discharged in bankruptcy
- Desperate borrowers paying debts no longer owe
- Lawsuit in Federal Bankruptcy Court accused lenders of ignoring bankruptcy discharges
- Financial gain when selling pools of debt?
- 5/7/15 announcement
 - Bank of America and JPMorgan Chase agree to erase debts from credit reports after bankruptcies

Student Loans

- Know rights and options before you take out a student loan and after you complete your education – have a plan for repayment
- Student loans do not go away - UNLESS
 - You die
 - You become permanently disabled
- Student loan payments can be reduced but it is complicated and not common
- Corinthian Colleges Inc. - Everest Institute, Rochester

Community Resources

- ***Homeowners Protection Program (HOPP) HOTLINE***
 - 1-855-466-3456

- ***Local Housing Counseling Agencies***
 - Provide free budget and default counseling to homeowners
 - Arbor Housing and Development (Corning)
 - Catholic Charities of Chemung & Schuyler (Elmira)

- ***Legal Services Agencies***
 - Provide free legal representation for NY residents
 - Legal Assistance of Western New York AKA- LAWNY (Southern Tier)
 - Empire Justice Center (Monroe County)

- ***Student Loan Resource***
 - www.studentloanborrowerassistance.org

Homeowner Foreclosure Guide

foreclosureguide.empirejustice.org/index.html



Foreclosure Guide ▾

Documents ▾

Resources ▾

Learn About Your Options

Welcome to the Foreclosure Guide

This guide is designed to empower you with knowledge of the mortgage foreclosure process so you can do your best to prevent the loss of your home through foreclosure. This tool provides you with information about the process and guides you through the steps you must take to defend yourself. Although this guide can help you understand much of the process and the steps you need to take to defend yourself, we recommend finding a housing counselor or lawyer to personally help you and tell you more about your options. There is a link under the "Resources" menu to help you find such assistance. **You do not need to pay someone for these services, as free, high quality housing counseling services are available.** If you use the Resources tab, this will direct you to a credible counselor.

How to Use This Guide:

Click on the "At What Stage Am I in the Foreclosure Process?" menu to understand where you are in the process. You can typically identify how far along you have come in the process by identifying and reviewing the most recent document you have received or the most recent event that has occurred. Use this link to find where you are in the process, and then click on the "Step-by-Step Guidance in the Foreclosure Process" tab to help you understand what you should do next, what documents you can expect to receive, and what documents you might need to prepare.

What is Foreclosure?

At What Stage Am I in the Foreclosure Process?

Step-by-Step Guidance in the Foreclosure Process

Resources

Contact

- Fiona Wolfe, Staff Attorney
 - (585) 295-5804
 - fwolfe@empirejustice.org