



NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

TO: Lenders, Assignees, and Mortgage Loan Servicers Subject to New York State
Pre-foreclosure Filing Requirements

FROM: Benjamin M. Lawsky, Superintendent

DATE: September 26, 2013

RE: Industry Letter: Changes and Clarifications to Pre-Foreclosure Filings with the
Department of Financial Services

Section 1304 of the New York Real Property Actions and Proceedings Law (“RPAPL”) requires lenders, assignees, or mortgage loan servicers to give borrowers at least ninety days’ prior notice before commencing legal action, including a foreclosure proceeding (the “Pre-Foreclosure Notice”). RPAPL Section 1306 in turn requires that within three business days of the mailing of each Pre-Foreclosure Notice, lenders, assignees, or servicers file with the Department of Financial Services certain information regarding borrowers and their loans. Section 1306 further empowers the Superintendent of Financial Services to request “such readily available information as may be reasonably necessary to facilitate a review of whether the borrower might benefit from counseling or other foreclosure prevention services.”

This letter outlines certain changes and clarifications in the pre-foreclosure filing requirements, effective January 1, 2014.

The Department’s current three-step filing process will continue to be in effect. Consistent with RPAPL Section 1306, Step 1 requires a filing within three business days after mailing a Pre-Foreclosure Notice. The purpose of this step is to enable the Department to: (1) monitor on a statewide basis the extent of foreclosure filings within the state, (2) perform necessary analyses of loan types that are the subject of Pre-Foreclosure Notices, and (3) direct available public and private foreclosure prevention and counseling services to borrowers at risk of foreclosure. Step 2 requires a filing within five business days after filing a *lis pendens* and will capture more detailed information on the original loan. Step 2 filings notify the Department that the filer (plaintiff) has proceeded to file a foreclosure action in court and are valuable in the Department’s analysis of the mortgage crisis and in targeting outreach efforts. Step 3 filings, which notify the Department of the date of foreclosure and sale and whether the property was owner-occupied, are made at the conclusion of the foreclosure action, within thirty days of entry of the Judgment of Foreclosure and Sale. This information allows the Department to monitor the extent of actual foreclosures across the state and to target future outreach efforts.

Although the three-step filing process will continue to be in effect, the Department will be implementing new processes relating to: (1) providing entity-related information, (2) correcting information filed in Step 1, and (3) reporting resolutions short of foreclosure.

(1) Providing Entity-Related Information

Currently, entity-related information is collected in the Step 2 filing. Effective January 1, 2014, all entity-related information will be required in the earlier Step 1 filing. This includes: (a) lien holder information for loans that are not investor owned, (b) investor information for investor-owned loans that are not securitized, and (c) trustee or manager information for investor-owned loans that are securitized. Additionally, for investor-owned loans that are securitized, the filer will be required in Step 1 to identify whether the related trust documents permit loan modifications. If loan modifications are not permitted, the filer will be required to identify the specific section or paragraph of the pooling and servicing agreement or other trust document that contains the prohibition.

(2) Correcting Information Provided in Each Step

Currently, to correct erroneous information provided in Step 1, the filer must re-file the Step and receive a new tracking number, which leads to multiple filings and tracking numbers for the same mortgage loan. To solve this problem, effective January 1, 2014, filers will be required to correct erroneous information in a new version of the same filing.

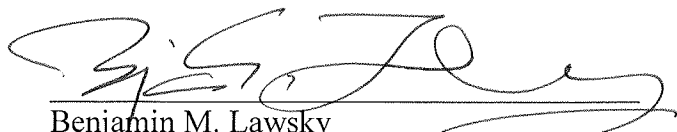
(3) Reporting Resolutions Short of Foreclosure

To assist the Department in monitoring the extent of foreclosure filings within the state and performing related analyses, effective January 1, 2014, the Department will require lenders, assignees, or mortgage loan servicers to report each resolution on or after January 1, 2014 that is short of a Judgment of Foreclosure and Sale, including a mortgage loan modification, deed in lieu of foreclosure, short sale, involuntary dismissal, and any other resolution. Reporting of such resolutions will be required regardless of whether the dispute has already proceeded to a foreclosure filing.

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Additionally, the Department has become aware of some confusion as to whether Step 2 filings and Step 3 filings are mandatory filings. In accordance with the Superintendent's authority under RPAPL Section 1306, Step 2 filings and Step 3 filings are mandatory filings as to any applicable loan for which the Step 1 filing was required.

The Department will provide further specifications for each of these changes in the coming weeks at <http://www.dfs.ny.gov/pff>.


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Superintendent of Financial Services