# HOW TO ANSWER A FORECLOSURE COMPLAINT

"PRO SE"
(WITHOUT AN ATTORNEY)

New York City

## **OVERVIEW**

#### What is Foreclosure?

In New York State, a foreclosure is a lawsuit filed against a mortgage borrower (Defendant) by the owner of the mortgage or a company that represents the owner (Plaintiff).

The Plaintiff files a foreclosure lawsuit to ask the court to sell the home to repay the mortgage debt.

The defendant has the right to go to court in person and to file legal papers to try to resolve the foreclosure, either with or without a lawyer.

### What is a "pro se" litigant?

A pro se litigant is a person who starts or defends a lawsuit without the assistance of a lawyer.

## ...YOU COULD LOSE YOUR HOME!!!

### PREPARING TO RESPOND

#### What is the Deadline for you to Respond?

- o If you were served personally (the court papers were handed to you in person), you have 20 days from the date of service (the day you were handed the papers) to answer.
- o If you were served by mail (you didn't receive a copy personally, but instead received the foreclosure summons *only* by mail), you have 30 days to answer.

Do not wait until the last day – Filing an Answer takes time!

Where can you get the form you need? A blank Answer form is included at the end of these materials.

Where can you find the information you need to respond?

The information you need to respond comes from the Summons and Complaint you received, your mortgage papers, and your personal experience.

## TILLING OUT THE ANSWER

STEP 1:

As shown in the sample Answer below, fill in the top part of the Answer form by copying the necessary information from the Summons or Complaint.

STEP 2: Check "General Denial"

1 0	COURT COURT : State of New York
`	. State of New York
1	as alle Bank Nort 1 Assu
7	Oster Plaintiff Index No.: 17-302/08
	V.
	VERIFIED ANSWER TO
	Dane Doe, Et AL FORECLOSURE COMPLAINT
_ D	efendant Answers as follows:
7	General Denial
1	Ceneral Denial
1	plead the following Defenses and Affirmative Defenses:
	Lack of Standing to Sue: Plaintiff 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.
	Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) for the following reason:
	Partial or Full Payment: I have made payments in the amount of \$which
	have not been properly credited and are not reflected in the Summons and Complaint:
U	I did not receive the nonce "Help for Homeowners in Foreclosure" that was supposed to be served with Foreclosure Summons and Complaint (NY Real Property
	Actions and Proceedings Law Section 1303) (amended 2008).
	I have no knowledge that the plaintiff was assigned my debt and there was no
	Auchanie Auchauon of Standing (NY Real Property Actions and Property
	Section 1302, high-cost and subprime home loans) (amended 2008): Plaintiff failed to allege (swear) in the Foreclosure Complaint that it is the legal owner and holder of
	the Note and or Mortgage or has the authority to foreclose.
-	The 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings  Law Section 1304, high-cost, subprime and non-traditional home loans) (amended
	2000) Were inadequate because (circle one). Two contra and delications
	lawsuit filed within 90 days of Pre-Foreclosure Notices.
	An active servicemember is an owner of the property and is on the mortgage and
	Servicemembers Civil Relief Act, 50 App. U.S.C. 50) et sen ; and New York Fer-
	Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)
	Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules
	Section 1202)

STEP 3:

Check off and explain any of the defenses listed that you believe apply to your situation. See pages 16-29 for an explanation of common defenses to foreclosure.

STEP 4: Add any additional information or defenses to the "Other Facts Concerning Your Mortgage" section. See page 30 & 31 below for a discussion of this section.

STEP 5: Fill in the bottom of the second page with your current contact information.

#### VERIFICATION

true to the best of my knowledge, except	ng duly sworn, state that the within Answer is as to those matters alleged upon information and
belief, which I believe to be true.	Jane Doc
	Defendant (Print Name)
Sworn to and subscribed before me on Nov. 10, 2008	Jane Doc
*	Defendant (Signature)
Notary Public	

Notary Public State of New York
No. 0

Qualified in Kings County

Commission Expires September 16, 2006

#### AFFIDAVIT OF SERVICE

I, Robert Smith (name), served the within Verified Answer on Plaintiff's attorney, Lawyer Bob (attorney name), at 555 Main St. (address). Service was by means of First Class Mail/certified mail/overnight delivery service/fax/personal delivery). It was served on 10 <sup>th</sup> day of Nov., 20081 am 35(18 or over) years old and am not a Defendant in this lawsuit.
Signed: Robert Smith.  Print Name: Robert Smith.
Sworn to and subscribed before me on  \[ \sum_{\text{O}} \cdot \sum_{\text{O}} \cdot 2008 \]
Notary Public  Notary Public, State of New York No. Character of the State of New York Public State of New York No. Character of the State of New York Population of the State of New York Population of the State of New York No. Character of the State of New York Public State of New York No. Character of the State of New York No. Character of New York No. Character of New York No. Character of New York No.

#### Bronx:

Bronx County Supreme Court 851 Grand Concourse, Bronx County Clerk's Office, Room 118 (718) 618-1400

#### Brooklyn:

Kings County Supreme Court 360 Adams Street, Brooklyn County Clerk's Office, basement level, Room 189, Window #9 (347) 404-9772

#### Manhattan:

New York County Supreme Court 60 Centre Street, Manhattan Basement level, Room 141B, go to "Law and Equity" window (646) 386-5955

#### Oueens:

Queens County Supreme Court 88-11 Sutphin Blvd., Jamaica County Clerk's Office, Room 100 (718) 298-0602

#### Staten Island:

Richmond County Clerk's Office – across the street from the Richmond County Courthouse 130 Stuyvesant Place, 1<sup>st</sup> Floor (718) 390-5389 After "General Denial," Check off and explain any other defenses to foreclosure if you believe they apply to your case.

Consult with an attorney or non-profit housing counselor as soon as possible. Think carefully about whether the claims might apply to you. If you fail to include some legal defenses in your Answer, you may lose the right to raise them

Lack of Standing to Sue: Plaintiff 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.

A Foreclosure Plaintiff must prove that it has the right to foreclose, known as "standing," by showing that it is the owner of the Note and Mortgage when it starts the lawsuit. If you don't include this claim, you may not be able to raise it later. So, if you believe that the Plaintiff may not own your Note and Mortgage, raise this defense to be safe.

Properties located in New York City (except Staten Island), information concerning mortgage ownership and transfer ("assignment") is available online at the NYC Department of Finance website's "Automated City Register Information System" (ACRIS), http://www.nvc.gov/html/dof/html/jump/acris.siuml

Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) for the following reason:

You were not properly served with a copy of the Foreclosure Summons and Complaint as required by law.

Proper service requires that the Foreclosure Summons and Complaint be:

- handed to you in person; OR
- left at your home or business with a "person of suitable age and discretion" with another copy mailed within 20 days to your home or business;
   OR
- if other methods fail, attached to your home or business door, with another copy mailed within 20 days to your home or business.

Partial or Full Payment: I have made payments in the amount of <u>\$</u> which have not been properly credited and are not reflected in the Summons and Complaint:

You have paid the mortgage payments, or some portion of the mortgage payments, that the Plaintiff claims you owe.

You believe that the amount of debt is incorrect and that you do not owe what the mortgage company says you owe.

I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with the Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303) (amended 2008).

For foreclosure lawsuits filed after September 1, 2008 on one-to-four family owner-occupied homes, the Plaintiff is required to include a Notice of "Help for Homeowners in Foreclosure" with the Foreclosure Summons and Complaint. This notice must be printed in bold, large type and on colored paper.

You should raise this defense if you did not receive this notice.

Under a 2008 New York State law, mortgage lenders and foreclosure Plaintiffs are required to follow additional rules for certain types of mortgages called "high-cost," "subprime," and "non-traditional" mortgages. The simplest way to know whether you have a high-cost, subprime, or non-traditional mortgage is that you should have received written notice during the loan closing or foreclosure process. If you believe you have one of these types of mortgages, you should immediately seek assistance from an attorney. In addition, the following rules apply:

I have no knowledge that the plaintiff was assigned my debt and there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law Section 1302, high-cost and subprime home loans) (amended 2008): Plaintiff failed to allege (swear) in the Foreclosure Complaint that it is the legal owner and holder of the Note and/or Mortgage or has the authority to foreclose.

For foreclosure complaints filed on or after September 1, 2008 the Plaintiff is required to allege (swear) in the papers they filed with the court and prove that at the time it files the lawsuit, it is the legal owner and holder of the Note and Mortgage, or has been given the legal authority to foreclose.

You should raise this defense if the foreclosure Complaint does not contain a statement similar to EITHER: "Plaintiff owns and holds the subject Mortgage and Note," OR: "The owner and holder of the subject Mortgage and Note has given Plaintiff the legal right to foreclose". You can also raise this defense if you believe that the statement is false. For properties located in New York City (except Staten Island), current information concerning mortgage ownership and transfer ("assignment") is available online at the NYC Department of Finance website's "Automated City Register Information System" (ACRIS),

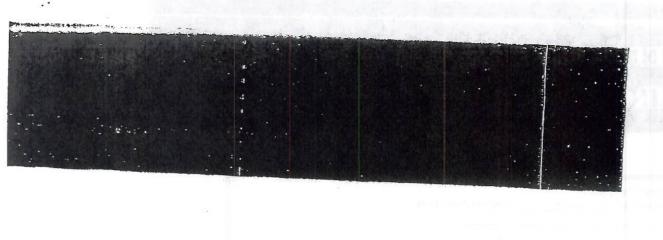
http://www.nyc.gov/html/dof/html/jump/acris.s/html/

Under a 2008 New York State law, mortgage lenders and foreclosure Plaintiffs are required to follow additional rules for certain types of mortgages called "high-cost," "subprime," and "non-traditional" mortgages. The simplest way to know whether you have a high-cost, subprime, or non-traditional mortgage is that you should have received written notice during the loan closing or foreclosure process. If you believe you have one of these types of mortgages, you should immediately seek assistance from an attorney. In addition, the following rules apply:

90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304, high-cost, subprime and non-traditional home loans) (amended 2008) were inadequate because (circle one): Two copies not delivered; OR foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.

For foreclosure lawsuits filed in New York State after September 1, 2008 on one-to-four-family owner-occupied homes, your mortgage lender or servicer is required to send you a Pre-Foreclosure Notice by first-class mail and by registered or certified mail that states: "YOU COULD LOSE YOUR HOME" and lists the number of days the mortgage payments are late and the amount of money required to catch up. These Pre-Foreclosure Notices must be given at least 90 days before the foreclosure complaint is filed.

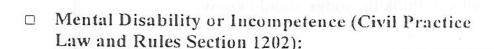
You should raise this defense if you did not receive both copies of this Pre-Foreclosure Notice, or if the foreclosure lawsuit was filed within 90 days after you received the Pre-Foreclosure Notices.



An active servicemember is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Servicemembers Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)

Active-duty members of the armed forces, national guard and reservists, and their dependents and codebtors have special rights under federal and New York State laws to interest rate reductions on mortgage and other debts, to request a stay of foreclosure, and to avoid a tax foreclosure sale.

Homeowners who are serving active military duty and are facing foreclosure should advise their mortgage lender, servicer, and the court in writing, and immediately seek assistance from a Judge Advocate General (JAG) Corps or other attorney.



If you are working with a homeowner whom you believe cannot defend himself or herself due to limited mental competence, you should ask the court to appoint a "Guardian Ad Litem" to represent the homeowner's interests during the lawsuit.

In addition, if you believe that the homeowner was not mentally competent at the time he or she signed the mortgage loan, you should describe in detail the timing and evidence of the homeowner's incompetence, and immediately seek assistance from an attorney.

## TELL YOUR STORY

- You believe that a mortgage broker, lender, or other person involved with your mortgage intentionally made false statements to you that led you to believe that you would get a better deal on your mortgage or home purchase than you actually received.
- Your loan application was falsified (e.g., your income was misstated).
- You were misled about what your total mortgage amount, monthly payments, or interest rate would be.
- You were told that your interest rate would be fixed but it is an adjustable-rate mortgage (ARM).
- You were misled about how high the monthly payments on your adjustable-rate mortgage (ARM) would become.

## Be as specific as possible Explain the "who, what, where, when" of misrepresentations or fraud.

- You were told that utilities, medical expenses, or other bills would be paid off by your mortgage, but they weren't.
- You were told that your house was worth more than its actual value (fraudulently over-appraised).
- Your home was in poor condition when you purchased it and you were promised repairs that were never made.
- You were falsely told that you could earn rental income from your home to help pay the mortgage.
- You believe that you were targeted for an unfair or abusive mortgage loan based on your race, national

CO	PREME COU	RT OF THE STATE OF	NEW YORK
	v.	Plaintiff,	Index No
			VERIFIED ANSWER TO FORECLOSURE COMPLAINT
		Defendant(s).°	
Def	endant	,	answers as follows:
l ge note	nerally deny ea and mortgage.	ch allegation of the Compl	aint, including that Plaintiff is the owner of the
I pl	ead the follow	ing Defenses and Counter	claims:
11	iorigage. Plain	till therefore does not have	ion and belief, does not own the note and standing to sue because it was not the legal me it commenced this foreclosure lawsuit.
a	iu morigage. E	use of Action: Plaintiff, up Because ownership of the no Plaintiff has no right to force	on information and belief, does not own the note of and mortgage is an element of a foreclosure eclose.
U	chei, riaimuili i	tations (NY Civil Practice may not sue on all or part of than six years after the deb	Law and Rules § 213(4)): Upon information and f the mortgage debt because Plaintiff commenced t became due.
	mortgage	debt. Defendant requests t	action is time-barred by the statute of limitations ction more than six years after it accelerated the hat the mortgage be cancelled and discharged ns and Proceedings Law § 1501(4).

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- 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 Requirement (NY Codes, Rules and Regulations Title 3, § 79.9(a)(5)): Plaintiff failed to comply with the requirements of NY Codes, Rules and Regulations Title 3, § 79.9(a)(5), a condition precedent to this foreclosure action.
- 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.		
0	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.		
5	Action Commenced Against a Deceased Party: This action is a nullity because it was commenced against Defendant after that party was already deceased and it should, therefore, be dismissed.		
ם	Other	Defenses or Counterclaims (attach additional pages if needed):	

Wherefore, Defendant requests that the Complaint be dismissed; that the re-	elief requested
by Defendant be granted in its entirety; that Defendant be granted costs and attorn	
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's Signature) , Defendant Pro Se	
, and a significant of the signi	
(Defendant's Name)	
**************************************	
(Defendant's Address)	
(Defendant's Address)	
(Solvingant 5 Addiess)	
(Defendant's Telephone Number)	
( and the state of	

 $\hfill \square$  Prepared with the assistance of counsel admitted in New York.

#### **VERIFICATION**

Ι,	, being duly sworn, state that the within
Answer is true to the best of my knowledge and belief, which I believe to be true	ge, except as to those matters alleged upon information
	(Defendant's Name)
	(Defendant's Signature)
	*
Sworn to and subscribed before me this day of, 20	
*	
Notary Public	

#### AFFIDAVIT OF SERVICE

l,, ser	rved the within
	ff's attorney as follows (attorney's name and address):
	*
l served the by the following method (check all that a	pplv):
<ul> <li>first class mail</li> <li>certified mail</li> <li>certified mail, return receipt requested</li> <li>overnight delivery service</li> <li>facsimile</li> <li>personal delivery.</li> </ul>	
on the day of	
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	

#### SERVING AND FILING THE ANSWER

#### STEP 1: "SERVE" THE PLAINTIFF'S ATTORNEY.

Ask someone <u>other than yourself</u> who is at least 18 years old and not a Defendant in the lawsuit to "serve" a copy of the Verified Answer on Plaintiff's attorney at the address listed on the Summons and Complaint. The easiest way to "serve" the Verified Answer is to arrange for the person to send it by certified mail, return receipt requested, or by overnight delivery service. Be sure to keep the proof of mailing and delivery.

## STEP 2: THE PERSON WHO SERVED THE VERIFIED ANSWER MUST SIGN THE "AFFIDAVIT OF SERVICE" IN FRONT OF A NOTARY PUBLIC.

The person who served the Verified Answer (Step 3) must fill out the "Affidavit of Service" (NEXT PAGE) describing the papers served, the address, and the date of service. This form must be sworn to and signed in front of a Notary Public and notarized.

## STEP 3: FILE THE VERIFIED ANSWER AND AFFIDAVIT OF SERVICE IN COURT.

Bring the original and your copy of the Verified Answer and the Affidavit of Service to the Supreme Court in your borough. Go to the County Clerk's office and state that you wish to file an Answer to a Foreclosure Complaint. Be sure to ask the clerk to date-stamp both the original document that you are filing and your copy to keep for your records.

#### Bronx:

Bronx County Supreme Court 851 Grand Concourse, Bronx County Clerk's Office, Room 118 (718) 618-1400

#### Brooklyn:

Kings County Supreme Court 360 Adams Street, Brooklyn County Clerk's Office, basement level, Room 189, Window #9 (347) 404-9772

#### Manhattan:

New York County Supreme Court 60 Centre Street, Manhattan Basement level, Room 141B, go to "Law and Equity" window (646) 386-5955

#### Queens:

Queens County Supreme Court 88-11 Sutphin Blvd., Jamaica County Clerk's Office, Room 100 (718) 298-0602

#### Staten Island:

Richmond County Clerk's Office – across the street from the Richmond County Courthouse 130 Stuyvesant Place, 1<sup>st</sup> Floor (718) 390-5389

#### New York State Supreme Court, Bronx County, Civil Division 851 Grand Concourse, Bronx, NY 10451



#### RESIDENTIAL MORTGAGE FORECLOSURE CENTER ROOM 607-A



## \* \* \* \* \* FREE LEGAL ASSISTANCE AVAILABLE FOR HOMEOWNERS WHO ARE IN DANGER OF LOSING THEIR HOMES

FREE LEGAL ASSISTANCE AND DEBT RELIEF INFORMATION IS AVAILABLE AT THE Bronx Residential Foreclosure Center in the Bronx County Courthouse, 851 Grand Concourse, Room 607-A, Bronx, New York, 10451. The Foreclosure Center offers the following services at the following times:

<u>Legal Assistance through Legal Services NYC-Bronx, Legal Aid Society and New York Legal Assistance Group</u> - Tuesday, from 1 pm - 4 pm, Wednesday and Thursday from 10 am - 4 pm;

<u>Housing Counseling and related services through the Housing and Family Services of Greater N.Y.</u> - Every Tuesday thru Friday from 9:00 AM - 5:00 PM

The Bronx Residential Foreclosure Center is staffed by attorneys and paralegals from Legal Services NYC – Bronx, The Legal Aid Society, and New York Legal Assistance Group (NYLAG). Legal assistance may include: • counseling about legal options when faced with foreclosure

- answering the summons and complaint and assisting with legal motions
- reviewing legal agreements and loan modifications
  challenging wrongful denials of loan modifications
- assisting you to recover funds from loan modification scams
- legal advice about next steps
- help applying for property tax exemptions for seniors and disabled homeowners

The Center is also staffed by housing counselors from Housing and Family Services Fof Greater N.Y. who provide housing counseling and legal assistance.

You may also contact these Free service providers directly by calling:

- Legal services NYC Bronx, 349 East 149th Street, 10th Floor, Bronx, N.Y. 10451 Phone: 718 -8 41-7001
- The Legal Aid Society, 260 East 161<sup>st</sup> Street, 8<sup>th</sup> Floor, Bronx, N.Y. 10451 Phone: 718 - 991- 4600
- 3. New York Legal Assistance Group, 7 Hanover Square, 7th Floor, N.Y., N.Y. 10004 Phone: 212 - 946 - 0349
- Housing & Family Services of Greater N.Y., Inc., 415 Albemarle Rd., Brooklyn, N.Y. PHONE: 718 - 618 - 1468