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Pre-foreclosure Information Form FAQs

The following questions apply to the requirement under Section 1306 of the Real Property Actions and Proceedings Law (RPAPL) that lenders, assignees or mortgage loan servicers file certain information with the Superintendent of Financial Services (the Superintendent) on a form to be determined by the Superintendent (the Pre-foreclosure Information Form).

THE FILING REQUIREMENT AND ITS EFFECTIVE DATE: general questions

Is there a preferred program for bulk filings, or is an Excel sheet sufficient? If so, is there a preferred look (columns, rows, etc.) so as to reduce errors?

Bulk filings must be submitted as a tilde-delimited ASCII text file. Full directions for submitting bulk filings for each step of the process are available in the 'Instructions' for filing.

How do we cancel a foreclosure action after it has been submitted either under step 1, or both step 1 and 2?

The filing does not need to be cancelled, since it was true when made. If you have submitted a filing in Step 1 and the borrower becomes current, no further action is needed.

Is the e-mail used to send tracking numbers for bulk filings secure?

Yes. The Banking Department is committed to the confidentiality of the information submitted and ensures that all e-mails are sent using a secure e-mail system.

If one or more loans in a bulk filing fail, do all of the filings in that bulk filing fail to upload?

No, only filings that are rejected will not load into the system. Filers will receive a tracking number with respect to each successful filing in the bulk filing.

Filers are encouraged to check the e-mail being used for tracking numbers to ensure all notices in a bulk filing were assigned a tracking number.

Additionally, filers are reminded that if the e-mail address provided for receipt of tracking numbers is incorrect in the file, no tracking numbers can be e-mailed.

What is this information being used for?

By law, the information collected by the Superintendent is to be used for the following purposes: to direct available public and private foreclosure prevention services to borrowers at risk of foreclosure;

to monitor on a statewide basis the extent of foreclosure filings within the state; and to perform an analysis of loan types which were the subject of a pre-foreclosure notice.

Will the tracking number continue to change if you are re-filing, or correcting, an error.

No. Once a filing is submitted successfully and a tracking number is assigned, it will not change for the purpose of updating information in Step 2.

The new online system will only assign a tracking number once the Step 1 filing is successfully filed. Therefore, it does not permit re-filing of Step 1 or corrections to information provided in Step 1 once a tracking number has been assigned.

If there is an error in an individual submission, while completing Step 1, the filer is immediately prompted on the screen to fix the error and the tracking number is only assigned when all required fields have been completed successfully.

If there is an error in a bulk filing, the filer will receive a message describing the error for the relevant property filing and will be asked to re-file only that individual filing.

If the borrower has a 1st and 2nd lien, do you need two separate 90-day pre-foreclosure letters or can you combine them?

For the purpose of filing with the Department, the information for each lien must be submitted separately.

If the borrower has a loan in default but the HELOC is current, do I file the step 1 on both?

No. Filings should not be submitted on loans that are not in default. However, if the HELOC is considered in cross-default once the primary loan is in default, then an individual filing for each loan should be submitted.

STEP 1

When identifying days delinquent, is it as of date that we are filling out the forms or days delinquent as of the date the letter was sent?

The number of 'Days Delinquent' should reflect the number of days the borrower was delinquent at the time the 90-day pre-foreclosure notice was mailed.

What if the borrower has two different mailing addresses?

Please provide the primary address available for the borrower and the address where a mortgage counselor is most likely to reach the borrower.

If the borrower uses a foreign mailing address and/or a foreign phone number, how does the registration handle these issues?

Sufficient space for a foreign address will be provided in a future enhancement to the system. In the meantime, please attempt to fit the address into the available fields as much as possible.

The Superintendent's system for bulk filings under RPAPL § 1306 only allows for listing two borrowers. How should a lender or servicer effect a RPAPL § 1306 filing when there are more than two borrowers?

Under RPAPL § 1306, an information filing must be made with the Superintendent within three business days of the mailing of the 90-day pre-foreclosure notice under RPAPL § 1304. The information filing is designed to provide the superintendent with information regarding "home loans" to allow him better to direct available foreclosure prevention resources.

The Department's information form requests information about a particular home loan. Consequently, if there are multiple borrowers on a single loan, the lender or servicer should not report them on multiple forms.

We recognize that RPAPL § 1306 requires the reporting of the name of "the Borrower". It does not specifically anticipate multiple borrowers. The purpose of the borrower information on the Disclosure Form is to assist mortgage counselors working with the Department to contact the Borrower.

When we developed the electronic reporting form for bulk filings, we did not provide for reporting more than two Borrowers. The Department's assumption in preparing the disclosure form was that, if a single 1-to-4 family residence is the principal dwelling of multiple borrowers, (1) they have the same interest in seeking counseling to avoid foreclosure, and (2) even if their interests differ, it is difficult for New York to allocate resources to more than one borrower in a household.

Consequently, we do not believe RPAPL § 1306 should be interpreted as requiring the reporting of more than two Borrowers on the bulk reporting form.

STEP 2

What is the default interest rate?

If the interest rate increased because the loan went into default, then that higher penalty interest rate is the default interest rate. A default interest rate is a different interest rate from the current rate.

The default interest rate is not the penalty rate used to calculate a "late charge."

What is the definition of "securitized"?

"Securitized" means the mortgage loan has become an asset underlying an asset-backed security (whether such security was sold in a public or private transaction).

What is the definition of "investor owned"?

A loan is "investor owned" when it is transferred from the person or entity that made the original loan to a person or entity that is neither a banking organization (bank, thrift or credit union) nor a mortgage bank.

When updating the "other fees" section, should we include NSF fees, penalty fees, foreclosure fees, corporate advances, et al.?

If these are part of the fees included in the total amount that will bring the loan current, then they should be included in the "other fees" section. However, in accordance with Part 419, foreclosure fees and attorney fees cannot be included in the "other fees" section.

What is the definition of "additional lien holder"?

An additional lien holder is another lender with a lien on the mortgaged property.

A senior lien holder may or may not know whether there is another lien holder, but may have such knowledge if the first and second liens were created simultaneously.

A junior lien holder usually knows that its lien is subordinate to one or more other lien holders.

If the filer does not have the address of the Trustee, is the address of the servicer sufficient?

No. The address for the Trustee must be provided & since the servicer often has a servicing agreement with the Trustee, that information is available for the filer.

After receiving a 90-day pre-foreclosure notice, a borrower cured the default and foreclosure proceedings were halted. A few months later, the borrower defaulted again. Does the lender/servicer need to send a new 90-Day Pre-Foreclosure Notice and file information on that new notice with the Department?

RPAPL Section 1304(4) states that a 90-day pre-foreclosure notice must be given to the borrower only once in a 12-month period. Consequently, if the borrower re-defaults within 12 months of the mailing of the first 90-day pre-foreclosure notice, the lender or servicer may choose to, but is not required to, send another 90-day pre-foreclosure notice prior to filing a lis pendens and commencing a foreclosure action within that 12-month period.

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Where a new 90-day preforeclosure notice is not required, the lender/servicer would not be required to file new information under Step 1 of the filing process with the Superintendent under RPAPL Section 1306.

However, if, as a result of the borrower's re-default, the lender/servicer eventually files a notice of pendency, regardless of the length of time after the original Step 1 filing, a Step 2 filing should be made. And, if the lender obtains a judgment of foreclosure and sale, a Step 3 filing should also be made.

Does a copy of the lis pendens with the County Clerks' time/date stamp suffice as a proper filing submission to the Department?

No. RPAPL § 1306 requires the filing of information in the form required by the Superintendent, not the filing of original legal documents, such as a pre-foreclosure notice or a notice of pendency of an action with respect to real property.

If the property is not owner occupied, should we still file the Step 2?

Information should be filed for Step 1 and Step 2 if the property is a "principal dwelling" of the owner or one of the owners. The filing with the Superintendent is not required and should not be made for loans that have been financed as investment properties.

To determine whether a property is a principal dwelling, the filer should first determine whether the borrower represented at the time the loan was made that he or she would use the mortgaged property as a principal dwelling. If such a representation was made and the lender, assignee or servicer does not have knowledge to the contrary, then the property should be reported as a primary residence.

If the lender, assignee or servicer knows that the property has been abandoned by the borrower after the 90-day pre-foreclosure notice was sent, Step 1 and Step 2 information is still required to enable the Superintendent, as provided by RPAPL section 1306, to monitor on a statewide basis the extent of foreclosures in the state.

The fact that the owner is not currently present in the home is not dispositive. Some homeowners have second homes in where they spend several months during the year. The filer should consult counsel to determine when a dwelling is the owner's principal dwelling.

Can I use an Excel spreadsheet to upload my bulk filings?

No, please see Question 1 under General Questions We receive bulk filings from several dozen different servicers, so we need each servicer to submit their filings in a single, consistent format. For that purpose, we require a tilde-delimited, ASCII text file.

Excel spreadsheets are not an acceptable format because there can be multiple sheets in a single file, so we cannot know which sheet or sheets contain the data that you intend to submit. Excel spreadsheets may also contain non-ASCII characters and binary blobs which our database cannot read.

CSV files are similarly unacceptable because there is no standard convention for the formatting of CSV files. For example, there is no convention on when quotation marks should and should not be used as part of the field delimiter. Use of a comma as a delimiter is also problematic because commas frequently occur within a field.

For those reasons, we require a tilde-delimited, ASCII text file. Tildes are rarely used within a field of text, so they are well-suited to delimit the break between fields. ASCII encoding contains all of the letters in the English alphabet and has been a standard for data transmission since the 1960s.

What should I do if I can't find a previously filed 90-PreForeclosure filing in the system?

All Step 1 Pre-Foreclosure notices that were successfully filed with the Department are in the system.

If you are unable to find a filing, it may be due to one of three main reasons:

If you have a successful filing email response for the loan in question and you still cannot find it on the system, please forward the successful filing e-mail to the Department at preforeclosuresystem@dfs.ny.gov with a request for the Department to investigate.

The filing may be filed under a different account. Some banks have several servicing entities, each of which has its own account.

If the loan has been transferred from one servicing entity to the other, you will have to use the "Acquired a Loan?" feature on the "Step 2 Filing" page to transfer it to the new account before you can submit a Step Two filing on that loan. This is for individual filings only, and cannot be included in bulk filings.

If the "Acquired a Loan?" feature fails or if you are looking in the correct account and you still cannot find the loan, then the loan was either not filed or was not successfully filed.

If you are submitting a Step 2 or Step 3 filing on behalf of another servicer or lender, please make sure the User ID and Password you have is correct. Please confirm this information with them if you are unable to find a filing.

How do I access Step 1 filings that were filed by a different servicer, lender or assignee?

If you are trying to access a filing that you have acquired since Step 1 was originally filed, you must request the "tracking number" from the original filer.

Once you log onto the system to file Step 2, you will use the 'Acquired a Loan' feature to transfer to loan to your account before you can submit the filing. In addition to the tracking number, you will be required to provide additional loan-specific information including zip code and borrower's last name. This process is only possible when submitting individual filings, they cannot be included on bulk filings.

Why is the same tracking number listed twice? Is this a duplicate?

No. It is not a duplicate. If more than one borrower is listed on the 90-day pre-foreclosure filing, the system will provide one line for each borrower. This enables the online system to accept an unlimited number of borrowers on each loan and it prevents the listing of loans from over-running the width of your computer screen.

Pressing the "Edit" button next to one of the borrowers begins the process of submitting a Step Two filing for all of the borrowers listed under that unique tracking number.

I searched under the borrower's name and there are two (or more) different tracking numbers for him/her. Is this a duplicate?

It may be a duplicate or there may be more than one lien on the property (1st lien, 2nd lien, HELOC, etc.). If you are unsure, please contact the Banking Department by e-mailing preforeclosuresystem@dfs.ny.gov for clarity.

STEP 3

What loans do I file a Step 3 filing for?

Step 3 filings are required for loans that received a Judgment of Foreclosure and Sale that had previously received a 90-day pre-foreclosure notice on or after February 13, 2010 and have had a Step 1 and Step 2 filing processed through the Pre-Foreclosure filings system.

Who can file a Step 3 filing?

A servicer or lender can have a lawyer or legal firm file the Step 3 filing on their behalf. To locate the original filing to be updated with a Step 3 filing, the filer must have the Tracking Number and must log onto the system using the correct User ID and Password connected to the filing. The filer of Step 3 will be required to provide a contact name and contact information.

There are four dates involved in the filing of the Notice of Foreclosure and Sale; the date it is submitted to the courts; the date it is signed by the judge; the date it is entered into the County Clerk's register and the date the property is sold. Which date is to be filed with the NYDFS?

The date the judgment of Notice of Foreclosure and Sale is entered by the County Clerk is the one to be listed in the Step 3 filing.

If a loan has been transferred to a new servicer after the completion of Steps 1 and 2, how does the new servicer complete Step 3?

The new servicer should follow the procedure regarding "Acquiring a Loan" that is found under Step 2. The new servicer must retrieve the "tracking number" generated from the Step 1 from the original filer in order to begin the transfer process.

Once the new servicer logs onto the system to file Step 2, it will use the 'Acquired a Loan' feature to transfer the loan to its account before it can submit the filing. In addition to the tracking number, the new servicer will be required to provide additional loan-specific information including zip code and borrower's last name. This process is only possible when submitting individual filings, it cannot be included on bulk filings.

Are there any requirements for additional filings after Step 3?

No. Step 3 is the final filing requirement.