

NYS Real Property Actions and Proceedings Law (RPAPL)

§ 1304. Required prior notices. 1. Notwithstanding any other provision of law, with regard to a high-cost home loan, as such term is defined in section six-1 of the banking law, a subprime home loan or a non-traditional home loan, at least ninety days before a lender or a mortgage loan servicer commences legal action against the borrower, including mortgage foreclosure, the lender or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type which shall include the following:

"YOU COULD LOSE YOUR HOME. PLEASE READ THE FOLLOWING  
NOTICE CAREFULLY"

"As of \_\_\_\_, your home loan is \_\_\_\_ days in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of \_\_\_\_\_ dollars by \_\_\_\_.

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. If you wish, you may also contact us directly at \_\_\_\_\_ and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Banking Department's toll-free helpline at 1-877-BANK-NYS (1-877-226-5697) or visit the Department's website at <http://www.banking.state.ny.us>"

2. Such notice shall be sent by the lender or mortgage loan servicer to the borrower, by registered or certified mail and also by first-class mail to the last known address of the borrower, and if different, to the residence which is the subject of the mortgage. Notice is considered given as of the date it is mailed. The notice shall contain a list of at least five United States department of housing and urban development approved housing counseling agencies, or other housing counseling agencies as designated by the division of housing and community renewal, that serve the region where the borrower resides. The list shall include the counseling agencies' last known addresses and telephone numbers. The banking department and/or the division of housing and community renewal shall make available a listing, by region, of such agencies which the lender or mortgage loan servicer may use to meet the requirements of this section.

3. The ninety day period specified in the notice contained in subdivision one of this section shall not apply, or shall cease to apply, if the borrower has filed an application for the adjustment of debts of the borrower or an order for relief from the payment of debts, or if the borrower no longer occupies the residence as the borrower's principal dwelling.

4. The notice and the ninety day period required by subdivision one of this section need only be provided once in a twelve month period to the same borrower in connection with the same loan.

5. (a) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the Federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the federal reserve board (as said act and regulations are amended from time to time).

(b) "Home loan" means a home loan, including an open-end credit plan, other than a reverse mortgage transaction, in which:

(i) The principal amount of the loan at origination did not exceed the conforming loan size that was in existence at the time of origination for a comparable dwelling as established by the federal national mortgage association;

(ii) The borrower is a natural person;

(iii) The debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) The loan is secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

(v) The property is located in this state.

(c) "Subprime home loan" for the purposes of this section, means a home loan consummated between January first, two thousand three and September first, two thousand eight in which the terms of the loan exceed the threshold as defined in paragraph (d) of this subdivision. A subprime home loan excludes a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit.

(d) "Threshold" means, for a first lien mortgage loan, the annual percentage rate of the home loan at consummation of the transaction exceeds three percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month in which the loan was consummated; or for a subordinate mortgage lien, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds five percentage points over the yield on treasury securities having comparable periods of maturity on the fifteenth day of the month in which the loan was consummated; as determined by the following rules: if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this section shall be the rate which applies after the initial or introductory period.

(e) "Non-traditional home loan" shall mean a payment option adjustable rate mortgage or an interest only loan consummated between January first, two thousand three and September first, two thousand eight.

(f) For purposes of determining the threshold, the banking department shall publish on its website a listing of constant maturity yields for U.S. Treasury securities for each month between January first, two thousand three and September first, two thousand eight, as published in the Federal Reserve Statistical Release on selected interest rates, commonly referred to as the H.15 release, in the following maturities, to the extent available in such release: six month, one year, two year,

three year, five year, seven year, ten year, thirty year.

(g) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of the banking law or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of the banking law.