

# Emilie Cooper, Alexandra Larkin Author Lexis Practice Advisor Practice Note: Commercial Mortgage Foreclosure (NY)

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PRACTICES Real Estate, Litigation, Commercial Real Estate Leasing

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When a lender is faced with a defaulted loan secured by a mortgage on commercial real property in New York, it may pursue a foreclosure of the mortgage. In New York, all mortgage foreclosures are judicial foreclosures (meaning that the foreclosing lender must commence and prosecute a lawsuit). This practice note provides an outline for complying with the relevant statutes, regulations, state laws, and local rules governing commercial mortgage foreclosures in state court in New York. This note is intended to help counsel for the lender ensure that all pre-suit obligations are met to avoid any delays or defenses to the foreclosure. However, the information contained herein is relevant to the borrower and its counsel as well.

## Default Pursuant to the Loan Documents

A necessary prerequisite to the maintenance of a foreclosure action is the existence of a default pursuant to the underlying loan documents. The fact that a default is “insubstantial” or “de minimis” does not serve as a bar to foreclosure. See, e.g., *Stream v. CBK Agronomics*, 79 Misc.2d 607,609, 361 N.Y.S.2d 110, 113 (Sup. Ct. N.Y. Cty 1974) modified on other grounds, 368 N.Y.S.2d 20 (1st Dep’t 1975).

Excerpted from a *Lexis Practice Advisor Practice Note*. To read the full article, click on the PDF linked below.

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