

NEW YORK MORTGAGE TRUST INC  
Form DEL AM  
March 06, 2018

March 6, 2018

VIA EDGAR

United States Securities and Exchange Commission

Division of Corporation Finance

100 F. Street, N.E.

Washington, D.C. 20549

**Re: New York Mortgage Trust, Inc. Registration Statement on Form S-3 (File No. 333-223277)**

Ladies and Gentlemen:

Reference is made to the Registration Statement on Form S-3 (File No. 333-223277) filed with the Securities and Exchange Commission by New York Mortgage Trust, Inc. on February 28, 2018 (the "Registration Statement"). Pursuant to Rule 473(c) of the Securities Act of 1933, as amended (the "Act"), the following delaying amendment, prescribed by Rule 473(a) of the Act, is hereby incorporated into the facing page of the Registration Statement immediately following the calculation of the registration fee table:

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

Should you have any questions or comments in connection with this delaying amendment, please feel free to contact Christopher Green of Vinson & Elkins L.L.P. at (202) 639-6521.

Edgar Filing: NEW YORK MORTGAGE TRUST INC - Form DEL AM

Very truly yours,

New York Mortgage Trust, Inc.

By: /s/ Steven R. Mumma  
Name: Steven R. Mumma  
Title: Chief Executive Officer

---

ont-size:10pt;font-family:Times New Roman;font-weight:normal;font-style:normal;text-transform:none;font-variant:normal;">

15,000

—

\$

10.00

9/16/2017

1/27/2009

1,500

—

15.00

1/26/2019

Max Briggs

8/28/2013

15,000

—

\$

15.00

8/27/2022

Victoria Collins

9/17/2007

40,500

—

\$

10.00

9/16/2017

1/27/2009

5,000

—

15.00

1/26/2019

Warren D. Fix

9/17/2007

15,000

—

\$

10.00

9/16/2017

1/27/2009

1,500

—

15.00

1/26/2019

Gerald L. Larsen



7/22/2008

10,000

—

\$

15.00

7/21/2018

1/27/2009

1,000

—

15.00

1/26/2019

Mitchell M. Rosenberg

9/17/2007

15,000

—

\$

10.00

9/16/2017

1/27/2009

1,500

—

15.00

1/26/2019

Jacob Sonenshine

9/17/2007

15,000

—

\$

10.00

9/16/2017

1/27/2009

1,500

—

15.00

1/26/2019

- (1) Stock options granted to the non-employee directors generally incrementally vested over three years at the rate of one-third of the total number of shares subject to the option as of each of the first three anniversaries of the date of grant, provided that the director is still serving the Company on that anniversary date.
- (2) In accordance with the Company's equity compensation plans, the per share exercise price of these options were equal to or greater than 100% of the fair market value of a Company share as of the respective grant dates.
- (3) The expiration date of each option award is ten years from the date of its grant, subject to earlier termination on a cessation of service with the Company.

23

---

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In addition to the compensation arrangements with directors and executive officers described in “Executive Compensation” above, the following is a description of each transaction since January 1, 2014, and each proposed transaction in which:

we have been or are to be a participant;  
the amount involved exceeded or exceeds \$120,000; and  
any of our directors, executive officers or beneficial holders of more than 5% of our capital stock, or any immediate family member of or person sharing the household with any of these individuals (other than tenants or employees), had or will have a direct or indirect material interest.

### Ordinary Banking Relationships

FFB has had, and in the future may have, banking transactions in the ordinary course of its business with directors, principal stockholders and their associates, including the making of loans to directors and their associates. Such loans and other banking transactions were, and in the future will be, made on the same terms, including interest rates and collateral securing the loans, as those prevailing at the time for comparable transactions with persons of comparable creditworthiness who have no affiliation with the Company, FFB or any other subsidiaries of the Company and will be made only if they do not involve more than the normal risk of collectability and do not present any other unfavorable features at the times the loans are made.

### Indemnification Agreements with our Directors and Officers

As permitted by the Delaware corporate law and as provided for by the Company’s bylaws, effective October 30, 2015, the Company entered into indemnification agreements with its directors and executive officers. Those indemnification agreements require the Company, among other things, (i) to indemnify its directors and officers against certain liabilities that may arise by reason of their status or service as directors or officers (other than liabilities arising from actions not taken in good faith or in a manner the indemnitee believed to be opposed to the best interests of the Company), (ii) to advance the expenses such directors or executive officers may incur as a result of or in connection with the defense of any proceeding brought against them as to which they could be indemnified, subject to an undertaking by the indemnified party to repay such advances if it is ultimately determined that he or she is not entitled to indemnification, and (iii) to obtain officers’ & directors’ liability insurance if available on reasonable terms.

### Procedures for Approval of Related Party Transactions

Transactions by FFI or FFB with related parties are subject to regulatory requirements and restrictions. These requirements and restrictions include Sections 23A and 23B of the Federal Reserve Act (which govern certain transactions by a bank with its affiliates) and the Federal Reserve’s Regulation O (which governs certain loans by FFB to its executive officers, directors, and principal stockholders). We have adopted policies to comply with these regulatory requirements and restrictions.

In addition our Board has adopted a written policy governing the approval of related party transactions that complies with all applicable SEC requirements. FFI’s related parties include directors (including any nominee for election as a director), executive officers, 5% stockholders and the immediate family members of these persons. Our Chief Financial Officer, in consultation with other members of management and outside counsel, as appropriate, will review potential related party transactions to determine if they are subject to the policy. If so, the transaction will be referred to the Board of Directors for approval. In determining whether to approve a related party transaction, the Board of Directors will consider, among other factors, the fairness of the proposed transaction to the Company, the direct or indirect nature of the related party’s interest in the transaction, the appearance of any improper conflict of interests for

any director or executive officer, taking into account the size of the transaction and the financial position of the related party, whether the transaction would impair an outside director's independence, the acceptability of the transaction to our regulators and any possible violations of other of our corporate policies.



## REPORT OF THE AUDIT COMMITTEE

### Role and Responsibilities of Audit Committee

Management is responsible for the preparation, presentation and integrity of the Company's financial statements, internal controls and financial reporting process and the procedures designed to assure compliance with accounting standards and applicable laws and regulations. The Company's independent registered public accounting firm, Vavrinek, Trine, Day & Co., LLP, Certified Public Accountants ("Vavrinek"), is responsible for auditing the Company's consolidated financial statements and for expressing an opinion as to whether those financial statements present fairly the consolidated financial position, results of operations, and cash flows of the Company in conformity with generally accepted accounting principles in the United States.

By contrast the Audit Committee's duty is one of oversight. It is not the duty of the Audit Committee to prepare the financial statements, to plan or conduct audits, or to determine that the financial statements are complete and accurate and were prepared in accordance with generally accepted accounting principles. The members of the Audit Committee are not professionally engaged in the practice of accounting and none of the Audit Committee members is, and none of them represents himself to be, performing the functions of auditors or accountants for the Company. Accordingly, the members of the Audit Committee may rely, and have relied, without independent verification, on the information provided to them and on the representations made by management and Vavrinek. Additionally, the Audit Committee's oversight does not provide an independent basis to determine that management has maintained appropriate accounting and financial reporting principles or appropriate internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. Furthermore, the Audit Committee's considerations and discussions referred to above do not assure that the audit of the Company's 2015 consolidated financial statements was carried out in accordance with generally accepted auditing standards, that such financial statements are presented in accordance with generally accepted accounting principles or that the Company's auditors are in fact "independent."

### Report of the Audit Committee

The Audit Committee has reviewed and discussed the Company's 2015 audited consolidated financial statements with management and Vavrinek. The Audit Committee also has discussed with Vavrinek the matters required to be discussed pursuant to Statement on Auditing Standards No. 61 (Communications with Audit Committees). The Audit Committee also has reviewed and discussed with Vavrinek its written disclosures and letter provided to the Audit Committee pursuant to the applicable requirements of the Public Company Accounting Oversight Board regarding communications by Vavrinek with the Audit Committee concerning independence and has considered the compatibility of any non-audit services performed for the Company by Vavrinek on its independence.

Respectfully Submitted,

Warren Fix (Chairperson)

Max Briggs

Gerald Larsen

## STOCKHOLDER PROPOSALS

Under Rule 14a-8 promulgated by the SEC under the Exchange Act, any stockholder desiring to submit a proposal for inclusion in our proxy materials for our 2017 Annual Meeting of Stockholders must provide us with a written copy of that proposal, addressed to our Corporate Secretary at the principal executive offices of the Company at 18101 Von Karman Avenue, Suite 700, Irvine, California 92612, not less than 120 days prior to the first anniversary of the date of the Company's proxy statement for the prior year's annual meeting was first released to stockholders, provided however, that in the event that no annual meeting was held in that prior year or the date of the annual meeting has been changed by more than 30 days from the date contemplated at the time of the prior year's proxy statement, the deadline under Rule 14a-8 is a reasonable time before the Company begins to print and send its proxy materials. Any proposal received after the date or time within which such proposal is required to be submitted to us will not be considered or submitted to a vote of the shareholders. Matters pertaining to such proposals, including the number and length thereof, eligibility of persons entitled to have such proposals included and other aspects are governed by the Exchange Act, and the rules of the SEC thereunder and other laws and regulations to which interested shareholders should refer. Please also refer to the director nomination and other procedures for shareholder proposals set forth in our Bylaws.

Additionally, under Rule 14a-4, as promulgated under the Exchange Act, if a shareholder fails to notify the Company of a proposal which the shareholder plans to present for a vote at the next annual meeting of shareholders at least 45 days before the first anniversary of the mailing date of the prior year's proxy statement then the Board of Directors will be permitted to exercise its discretionary authority in voting proxies received from shareholders on that proposal at the meeting.

## SOLICITATION OF PROXIES

We will pay the costs of soliciting proxies from our stockholders, and plan on soliciting proxies by mail. In order to ensure adequate representation at the Annual Meeting, our directors, officers and employees and those of FFB may, without additional compensation therefor, communicate with stockholders, brokerage houses and others by telephone, email, facsimile or in person, to request that proxies be furnished. We will reimburse brokerage houses, banks, custodians, nominees and fiduciaries for their reasonable expenses in forwarding proxy materials to the beneficial owners of the Company's shares. We also may choose to retain the services of a proxy solicitation firm to assist us in soliciting proxies from stockholders for the 2016 Annual Meeting, the fees of which we expect will not exceed \$20,000.

## HOUSEHOLDING

The SEC has adopted rules that permit companies and intermediaries, such as brokers, to satisfy delivery requirements for proxy statements with respect to two or more stockholders sharing the same address by delivering a single proxy statement addressed to those stockholders. This process, which is commonly referred to as "householding," potentially provides extra convenience for stockholders and cost savings for companies. We and some brokers household proxy materials, delivering a single proxy statement to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders. Once you have received notice from your broker or us that they or we will be householding materials to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate proxy statement, or if you are receiving multiple copies of the proxy statement and wish to receive only one, please notify your broker or nominee if your shares are held in a brokerage account or other account or our agent, Broadridge Corporate Issuer Solutions, if you hold registered shares. You can notify Broadridge Corporate Issuer Solutions by sending a written request to: Broadridge Corporate Issuer Solutions, 1155 Long Island Ave, Edgewood, NY 11717, or by calling Broadridge Corporate Issuer Solutions at (855) 449-0975.

OTHER MATTERS

We are not aware of any other matters to come before the Annual Meeting. If any other matter not mentioned in this Proxy Statement is brought before the Annual Meeting, the proxy holders named in the enclosed proxy card will have discretionary authority to vote all proxies with respect thereto in accordance with their judgment.

ANNUAL REPORT

The Company's 2015 Annual Report to Stockholders is being mailed together with this Proxy Statement to each stockholder of record as of July 15, 2016. The Annual Report is not to be regarded as proxy solicitation material.

By Order of the Board of Directors:

Ulrich E. Keller, Jr.

Chairman of the Board  
July 27, 2016

BroadridgeCorporateIssuerSolutionsC/OFirstFoundation,Inc.POBox1342Brentwood,NY11717InvestorAddressLine1InvestorA

---

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting: The Proxy Statement and Annual Report are available at [www.ny-mortgage-trust.com](#).