

NEW YORK MORTGAGE TRUST INC

Form S-8

October 13, 2006

As filed with the Securities and Exchange Commission on October 12, 2006
Registration Statement No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

New York Mortgage Trust, Inc.

(Exact name of Registrant as specified in its Charter)

Maryland
(State or Other Jurisdiction of
Incorporation or Organization)

47-0934168
(I.R.S. Employer Identification Number)

1301 Avenue of the Americas
New York, New York 10019
(212) 634-9400

(Address of principal executive office, including zip code)

New York Mortgage Trust, Inc.
2005 Stock Incentive Plan
(Full title of the Plan)

Steven B. Schnall
David A. Akre
Co-Chief Executive Officers
New York Mortgage Trust, Inc.
New York, New York 10019
(212) 634-9400

(Name, address, including zip code, and telephone number including area code, of agent for service)

With copies to:

Daniel M. LeBey, Esq.
Hunton & Williams LLP
Riverfront Plaza, East Tower
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Richmond, Virginia 23219-4074

(804) 788-8200

 CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered ⁽¹⁾⁽²⁾	Proposed maximum offering price per share ⁽³⁾	Proposed maximum aggregate offering price	Amount of registration fee ⁽⁴⁾
Common Stock, \$0.01 par value per share	1,031,111 shares	\$3.75	\$3,866,666.25	\$414

- (1) Pursuant to Rule 416(a) of the Securities Exchange Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of New York Mortgage Trust, Inc.'s (the "Registrant") common stock that become issuable under the plan by reason of any stock splits, stock dividends or similar transactions.
- (2) Includes 189,216 shares deregistered pursuant to a Post-Effective Amendment to the Registrant's Registration Statement on Form S-8 (Registration No. 333-117228) filed on October 12, 2006 (the "Post-Effective Amendment").
- (3) Calculated pursuant to Rule 457(c) of the Securities Act on the basis of \$3.75 per share, which was the average of the high and low prices of the Registrant's common stock as quoted on the New York Stock Exchange on October 11, 2006.
- (4) Pursuant to Rule 457(p) of the Securities Act, the \$414 registration fee for the Registrant's Form S-8, dated October 12, 2006, shall be deducted from that portion of the filing fee previously paid (\$212) against the filing of the Registrant's Registration Statement on Form S-8 (Registration No. 333-117228) representing the 189,216 shares that were deregistered by the Post-Effective Amendment, and the \$7,920 previously paid against the filing of the Registrant's Registration Statement on Form S-11 (Registration No. 333-125650) on June 8, 2005, which was withdrawn on August 10, 2005 prior to effectiveness.
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EXPLANATORY NOTE

New York Mortgage Trust, Inc. has prepared this registration statement in accordance with the requirements of Form S-8 under the Securities Act of 1933, as amended, or Securities Act, to register up to an aggregate of 1,031,111 shares of common stock, \$0.01 par value per share, under its 2005 Stock Incentive Plan. This registration statement also includes a reoffer prospectus. The reoffer prospectus may be utilized for reofferings and resales on a continuous or delayed basis in the future of shares of common stock that constitute “control securities” and shares of common stock that constitute “restricted securities” which have been issued pursuant to the 2005 Stock Incentive Plan prior to the filing of this registration statement.

The reoffer prospectus does not contain all of the information included in the registration statement, certain items of which are contained in schedules and exhibits to the registration statement, as permitted by the rules and regulations of the Securities and Exchange Commission, or SEC. Statements contained in this reoffer prospectus as to the contents of any agreement, instrument or other document referred to are not necessarily complete. With respect to each such agreement, instrument or other document filed as an exhibit to the registration statement, we refer you to the exhibit for a more complete description of the matter involved, and each such statement shall be deemed qualified in its entirety by this reference.

REOFFER PROSPECTUS

169,155 SHARES OF COMMON STOCK

This reoffer prospectus relates to 169,155 shares of our common stock that may be offered and resold from time to time by the selling stockholders identified in this reoffer prospectus for their own accounts. The shares described in this reoffer prospectus were issued pursuant to our 2005 Stock Incentive Plan. All of the selling stockholders are current directors or employees of our company. We will receive no part of the proceeds from sales made under this reoffer prospectus.

The shares of common stock covered by this reoffer prospectus are “restricted securities” and, in some cases, “control securities” under the Securities Act. This reoffer prospectus has been prepared for the purpose of registering the shares under the Securities Act to allow for future sales by the selling stockholders, on a continuous or delayed basis, to the public without restriction. Each stockholder that sells shares of common stock pursuant to this reoffer prospectus may be deemed to be an “underwriter” within the meaning of the Securities Act. Any commissions received by a broker or dealer in connection with resales of our common stock may be deemed to be underwriting commissions or discounts under the Securities Act.

The selling stockholders may sell their shares of common stock from time to time in one or more transactions on the New York Stock Exchange, or NYSE, or on any stock exchange on which our common stock may be listed at the time of sale, in privately negotiated transactions, or through a combination of such methods, at market prices prevailing at the time of sale, at prices related to such prevailing market prices, at fixed prices (which may be changed) or at negotiated prices. We are paying the expenses incurred in registering these shares and the preparation of this reoffer prospectus, but all selling and other expenses incurred by each of the selling stockholders will be borne by that stockholder.

Our common stock is listed on the New York Stock Exchange, under the symbol “NTR.” On October 11, 2006, the last reported price of our common stock on such market, as reported by the NYSE, was \$3.83 per share.

See “Risk Factors” beginning on page 14 of our Annual Report on Form 10-K, as amended, for the year ended December 31, 2005 to read about certain risks you should consider before buying shares of our common stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is October 12, 2006.

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You should rely only on the information contained in this document or to which we have referred you. Neither we nor the selling stockholders have authorized anyone to provide you with different or additional information. This document may only be used where it is legal to sell these securities. The information in this document may only be accurate on the date of this document. You should not assume that the information in the prospectus, or incorporated herein by reference, or in any prospectus supplement is accurate as of any date other than the date on the front of those documents.

CERTAIN DEFINITIONS

In this reoffer prospectus, unless the context suggests otherwise, references to “our company,” “the company,” “we,” “us” and “our” mean New York Mortgage Trust, Inc. and its subsidiaries. “NYMC” refers to our wholly-owned taxable REIT subsidiary, or TRS, and predecessor, The New York Mortgage Company, LLC.

FORWARD LOOKING INFORMATION

This reoffer prospectus and the information incorporated by reference into it contains certain “forward-looking statements” within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended. Forward looking statements are those which are not historical in nature. They can often be identified by the inclusion of words such as “believes,” “anticipates,” “expects,” “estimates,” “intends,” “plans,” “projects,” “will continue” and words of similar import. Any projection of revenues, earnings or losses, capital expenditures, distributions, capital structure or other financial terms is a forward-looking statement. Certain statements regarding the following particularly are forward-looking in nature:

- our business strategy;
- future performance, developments, market forecasts or projected dividends;
- projected acquisitions or joint ventures; and
- projected capital expenditures.

It is important to note that the description of our business in general and our investment in mortgage loans and mortgage-backed securities holdings in particular, is a statement about our operations as of a specific point in time. It is not meant to be construed as an investment policy, and the types of assets we hold, the amount of leverage we use, the liabilities we incur and other characteristics of our assets and liabilities are subject to re-evaluation and change without notice.

Our forward-looking statements are based upon our management’s beliefs, assumptions and expectations of our future operations and economic performance, taking into account the information currently available to us. Forward-looking statements involve risks and uncertainties, some of which are not currently known to us that might cause our actual results, performance or financial condition to be materially different from the expectations of future results, performance or financial condition we express or imply in any forward-looking statements. Some of the important factors that could cause our actual results, performance or financial condition to differ materially from expectations are:

- our limited operating history with respect to our portfolio strategy;
- our proposed portfolio strategy may be changed or modified by our management without advance notice to stockholders, and that we may suffer losses as a result of such modifications or changes;
- impacts of a change in demand for mortgage loans on our net income and cash available for distribution;
- our ability to originate prime and high-quality adjustable-rate and hybrid mortgage loans for our portfolio or for sale to third parties;
- risks associated with the use of leverage;
- interest rate mismatches between our mortgage-backed securities and our borrowings used to fund such purchases;
- changes in interest rates and mortgage prepayment rates;

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- effects of interest rate caps on our adjustable-rate mortgage-backed securities;
- the degree to which our hedging strategies may or may not protect us from interest rate volatility;
- potential impacts of our leveraging policies on our net income and cash available for distribution;
- our board's ability to change our operating policies and strategies without notice to you or stockholder approval; and
- the factors identified under the caption "Risk Factors" beginning on page 14 of our Annual Report on Form 10-K, as amended, for the year ended December 31, 2005 and the various other factors identified in or incorporated by reference into this reoffer prospectus and any other documents filed by us with the SEC that could cause actual results to differ materially from our forward-looking statements.

Except to the extent required by applicable law, we undertake no obligation to, and do not intend to, update any forward-looking statement or the “Risk Factors” or to publicly announce the result of any revisions to any of the forward-looking statements contained herein to reflect future events or developments. There are a number of risk factors associated with the conduct of our business, and the risks discussed under the caption “Risk Factors” in our Annual Report on Form 10-K, as amended, for the year ended December 31, 2005 may not be exhaustive. New risks and uncertainties arise from time to time, and we cannot predict these events or how they may affect us. All forward-looking statements should be read with caution.

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OUR COMPANY

We are, together with our subsidiaries, a self-advised residential mortgage finance company, engaged in the origination of and investment in residential mortgage loans throughout the United States with a focus on high credit quality, or prime loans. We have elected to be taxed as a real estate investment trust, or REIT, under the Internal Revenue Code commencing with our taxable year ended December 31, 2004, and we operate so as to qualify as a REIT for federal income tax purposes.

We earn net interest income from purchased residential mortgage-backed securities and adjustable-rate mortgage loans and securities originated through our wholly owned taxable REIT subsidiary, The New York Mortgage Company, LLC, or NYMC. NYMC also originates and sells loans to third parties for gain on sale revenue rather than aggregating lower cost assets, depending on market conditions. We also, depending on market conditions, retain in our portfolio selected adjustable-rate and hybrid mortgage loans that we originate and that meet our investment criteria or portfolio requirements. NYMC also originates residential mortgage loans as a broker for other mortgage bankers for the purpose of obtaining broker fee income. As of June 30, 2006, NYMC originated residential mortgage loans through a network of 28 full-service loan origination locations and 23 satellite loan origination locations and was licensed or authorized to do business in 45 states and the District of Columbia.

Our residential mortgage investments are comprised of ARM loans, ARM securities and floating rate collateralized mortgage obligations, or CMO Floaters. The ARM loans and securities have interest rates that reset in a year or less and “hybrid” ARM loans and securities have a fixed interest rate for an initial period of two to seven years before converting to ARM loans and securities whose rates will reset each year or such shorter period for their remaining terms to maturity. ARM securities represent interests in pools of whole ARM loans. The ARM securities are rated by at least one of two nationally recognized rating agencies, Standard & Poor’s, Inc. or Moody’s Investors Service, Inc., or issued by government sponsored entities such as Freddie Mac, Fannie Mae or Ginnie Mae. The securitizations result in a series of rated mortgage securities backed by the ARM loans. The CMO Floaters are mortgage securities backed by a pool of Freddie Mac, Fannie Mae or Ginnie Mae fixed rate mortgage loans which have interest rates that adjust monthly. As an investor in residential mortgage assets, our net income is generated primarily from the difference between the interest income we earn on our mortgage assets and the cost of our borrowings (net of hedging expenses), which we commonly refer to as the “net spread.”

Our principal offices are located at 1301 Avenue of the Americas, New York, New York 10019. Our telephone number is (212) 634-9400. Our web site addresses are <http://www.nymtrust.com> and <http://www.nymc.com>. The information at or connected to our web sites does not constitute a part of this prospectus.

RISK FACTORS

Investing in our common stock involves risks that could affect us and our business, as well as the industry in which we operate. Please see the risk factors in our Annual Report on Form 10-K, as amended, for the year ended December 31, 2005, which is incorporated by reference into this reoffer prospectus as well as additional periodic reports we file with the SEC. Although we have tried to discuss key factors, please be aware that other risks may prove to be important in the future. New risks may emerge at any time and we cannot predict such risks or estimate the extent to which they may affect our financial performance. Before purchasing our common stock, you should carefully consider the risks discussed in the documents incorporated by reference herein and the other information in this reoffer prospectus, the registration statement accompanying this reoffer prospectus and any applicable prospectus supplement. Each of the risks discussed could result in a decrease in the value of our common stock and your investment in our common stock.

USE OF PROCEEDS

We will not receive any proceeds from the sale of shares of our common stock offered pursuant to this reoffer prospectus.

SELLING STOCKHOLDERS

This prospectus relates to the reoffer or resale of 169,155 shares of our common stock that have been acquired by the selling stockholders pursuant to our 2005 Stock Incentive Plan. All of the selling stockholders are current directors or employees of our company. Each selling stockholder will receive all of the net proceeds from the sale of his or her shares covered by this reoffer prospectus.

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The following table identifies the selling stockholders and sets forth (i) the number of shares of common stock outstanding that, to our knowledge, are beneficially owned by such selling stockholder prior to the date of this offering and as of the date of this reoffer prospectus, (ii) the number of shares of common stock that may be offered by such selling stockholder under this reoffer prospectus and (iii) the number of shares of common stock that will be owned by such selling stockholder and the percentage of common stock outstanding that such shares will represent assuming the sale of all of the shares of common stock upon completion of this offering.

Because the selling stockholders may sell all, some or none of the shares of common stock that they hold and because the number of shares of common stock outstanding may increase or decrease, we have estimated the amounts and percentages of shares of common stock that the selling stockholders will hold after completion of this offering by assuming that (i) the beneficial stockholders will not acquire the beneficial ownership of any additional shares of common stock, (ii) the selling stockholders will dispose of only shares offered under this reoffer prospectus prior to completion of this offering, (iii) all options to acquire common stock that the selling stockholders beneficially own have become fully vested and have been exercised, and (iv) the selling stockholders will sell all of the shares offered by this reoffer prospectus.

Selling Stockholder	Number of Shares Beneficially Owned Prior to Offering¹	Number of Shares Being Registered	Number of Shares Beneficially Owned Following Offering¹	Percentage of Shares Beneficially Owned Following Offering²
David Dessner ³	132,391	114,155	18,236	*
Elyse Sullivan ³	25,000	25,000	0	*
David R. Bock ⁴	7,500	5,000	2,500	*
Alan L. Hainey ⁴	9,500	5,000	4,500	*
Steven G. Norcutt ⁴	10,000	5,000	5,000	*
Mary Dwyer Pembroke ^{4,5}	9,900	5,000	4,900	*
Jerome F. Sherman ⁴	17,500	5,000	12,500	*
Thomas W. White ⁴	8,000	5,000	3,000	*
Total	219,791	169,155	50,636	

* Less than 1%

(1) All shares outstanding but which may be acquired by the stockholder within 60 days by the exercise of any stock option or any other right are deemed to be outstanding for the purposes of calculating beneficial ownership and computing the percentage of the class beneficially owned by the stockholder, but not by any other stockholder.

(2) The percentage of beneficial ownership shown in the table is based on 18,024,840. shares of common stock issued and outstanding as of August 1, 2006.

(3) Employee of NYMC.

(4) Member of our board of directors.

(5) Includes an aggregate of 1,500 shares held by Ms. Pembroke's spouse and child.

PLAN OF DISTRIBUTION

The selling stockholders and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their shares of common stock covered by this reoffer prospectus and any supplement thereto on any stock

exchange, market or trading facility on which the shares are traded or in private transactions. These sales may be at market prices prevailing at the time of sale or at prices otherwise negotiated. The selling stockholders may use any one or more of the following methods when selling shares:

- ordinary brokerage transactions and transactions in which the broker dealer solicits purchasers;
- block trades in which the broker dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;

- purchases by a broker dealer as principal and resale by the broker dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- broker dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholders may also sell shares under Rule 144 of the Securities Act of 1933, as amended, if available, rather than under this reoffer prospectus. Broker dealers engaged by the selling stockholders may arrange for other broker dealers to participate in sales. Broker dealers may receive commissions or discounts from the selling stockholders (or, if any broker dealer acts as agent for the purchaser of shares, from the purchaser) in amounts to be negotiated. The selling stockholders do not expect these commissions and discounts to exceed what is customary in the types of transactions involved. Broker dealers may agree to sell a specified number of such shares at a stipulated price per share, and, to the extent such broker dealer is unable to do so acting as agent for us or a selling stockholder, to purchase as principal any unsold shares at the price required to fulfill the broker-dealer commitment. Broker dealers who acquire shares as principal may thereafter resell such shares from time to time in transactions, which may involve block transactions and sales to and through other broker dealers, including transactions of the nature described above, in the over the counter markets or otherwise at prices and on terms then prevailing at the time of sale, at prices other than related to the then-current market price or in negotiated transactions. In connection with such resales, broker-dealers may pay to or receive from the purchasers such shares commissions as described above.

The selling stockholders may from time to time pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock from time to time under this reoffer prospectus, or under an amendment to this reoffer prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this reoffer prospectus.

The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this reoffer prospectus.

The selling stockholders and any broker dealers or agents that are involved in selling the shares may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker dealers or agents and any profit on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act.

LEGAL MATTERS

Certain matters with respect to the validity of the shares of common stock offered by this reoffer prospectus will be passed upon for us by our counsel, Hunton & Williams LLP.

EXPERTS

The consolidated financial statements and management's report on the effectiveness of internal control over financial reporting incorporated in this reoffer prospectus by reference from our Annual Report on Form 10-K for the year ended December 31, 2005 have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

INCORPORATION OF INFORMATION FILED WITH THE