

NEW YORK MORTGAGE TRUST INC
Form DEF 14A
April 28, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**SCHEDULE 14A INFORMATION
(Rule 14a-101)**

**Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934**

Filed by the Registrant x
Filed by a party other than the Registrant o
Check the appropriate box:

- o Preliminary Proxy Statement
- x **Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- o Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Under Rule 14a-12

NEW YORK MORTGAGE TRUST, INC.

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other than Registrant)

Payment of Filing Fee (Check the appropriate box):

- x No fee required.
 - o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
- (1) Title of each class of securities to which transaction applies:
- (2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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**52 Vanderbilt Avenue
New York, New York 10017**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON JUNE 9, 2009**

To Our Stockholders:

You are cordially invited to attend the Annual Meeting of Stockholders (the Annual Meeting) of New York Mortgage Trust, Inc. (the Company, we, our, or us) on June 9, 2009 at 9:00 a.m., local time, at the offices of Hunton & Williams LLP, 200 Park Avenue, 52nd Floor, New York, New York 10166 to consider and take action on the following:

- (1) To elect five members to the Board of Directors for a term of one year each;
- (2) To consider and act upon a proposal to ratify and approve, the appointment of Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2009;
- (3) To approve an amendment to our charter to lower each of the aggregate stock ownership limit and the common stock ownership limit from 9.9% to 5.0%, clarify the process for increasing or decreasing such stock ownership limits and remove certain references to Steven B. Schnall as an excepted holder; and
- (4) To transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

The Board of Directors has set the close of business on April 17, 2009 as the record date for determining the stockholders entitled to notice of and to vote at the Annual Meeting. Only stockholders of record on that date are entitled to notice of and to vote at the Annual Meeting and at any adjournment or postponement thereof. Pursuant to new Securities and Exchange Commission rules, we are now furnishing proxy materials to our stockholders over the Internet. Accordingly, we mailed, through intermediaries, on or about April 28, 2009, a Notice Regarding the Availability of Proxy Materials (the Notice) to beneficial owners of our common stock as of the close of business on April 17, 2009. In addition, on or about April 28, 2009, we began mailing a full set of proxy materials to certain stockholders of record as of April 17, 2009 in lieu of delivering the Notice. As a result, beginning on the date of the

mailing of the Notice, all stockholders and beneficial owners had the ability to access all of the proxy materials and the Company's Annual Report on Form 10-K on a website referred to in the Notice and the proxy materials and to complete and submit their proxy on the Internet, over the telephone or through the mail. These proxy materials are available free of charge. The Notice also provides instructions on how you can request a paper copy of the proxy materials if you desire and each of the Notice and proxy materials provide instructions on how you can vote your proxy. Please see the attached proxy statement or Notice for more details on how you can vote.

The Board of Directors appreciates and encourages your participation in the Company's Annual Meeting. Whether or not you plan to attend the Annual Meeting, it is important that your shares be represented. Accordingly, please vote your shares by proxy, on the Internet, by telephone or by mail. If you attend the Annual Meeting, you may revoke your proxy and vote in person. Your proxy is revocable in accordance with the procedures set forth in this proxy statement.

By order of the Board of Directors,

Steven R. Mumma
Chief Executive Officer

New York, New York
April 28, 2009

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**52 Vanderbilt Avenue
New York, New York 10017**

PROXY STATEMENT

GENERAL INFORMATION

**Important Notice Regarding the Availability of Proxy
Materials
for the 2009 Stockholder Meeting to Be Held on June
9, 2009.**

**This proxy statement, our 2008 Annual Report on
Form 10-K**

and our other proxy materials are available at:

<https://materials.proxyvote.com/649604>

(for record holders)

or

<http://www.proxyvote.com>

(for beneficial owners)

Proxy Solicitation

This proxy statement is furnished in connection with the solicitation of proxies by the Board of Directors of New York Mortgage Trust, Inc. (the Company, we, our or us) for use at the Annual Meeting of Stockholders (the Annual Meeting) to be held at the offices of Hunton & Williams LLP, 200 Park Avenue, New York, New York on June 9, 2009 at 9:00 a.m., local time, and at any adjournment and postponement thereof. We mailed, through intermediaries, on or about April 28, 2009, a Notice Regarding the Availability of Proxy Materials (the Notice) to beneficial owners of our common stock as of the close of business on April 17, 2009. In addition, on or about April 28, 2009, we began mailing a full set of proxy materials to certain stockholders of record as of April 17, 2009, which we sometimes refer to as record holders. As a result, beginning on the date of the mailing of the Notice, all stockholders and beneficial owners had the ability to access all of the proxy materials and the Company's Annual Report on Form 10-K on a website referred to in the Notice and as set forth above. The Notice also provides instructions on how you can request a paper copy of the proxy materials if you desire and each of the Notice and proxy materials provide instructions on how you can vote your proxy.

The mailing address of our principal executive offices is 52 Vanderbilt Avenue, New York, New York 10017. We maintain an internet website at *www.nymtrust.com*. Information at or connected to our website is not and should not be considered part of this proxy statement.

The Company will bear the costs of this solicitation including the costs of preparing, assembling and mailing proxy materials and the handling and tabulation of proxies received. In addition to solicitation through the Internet or by mail, proxies may be solicited by our directors, officers and employees, at no additional compensation, by telephone, personal interviews or otherwise. Banks, brokers or other nominees and fiduciaries will be requested to forward the proxy materials to beneficial owners and to obtain authorization for the execution of proxies. We will, upon request, reimburse such parties for their reasonable expenses in forwarding proxy materials to beneficial owners.

No person is authorized to give any information or to make any representation not contained in this proxy statement and, if given or made, you should not rely on that information or representation as having been authorized by us. The delivery of this proxy statement shall not, under any circumstances, imply that there has been no change in the information set forth since the date of this proxy statement.

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Purposes of the Annual Meeting

The principal purposes of the Annual Meeting are to: (1) elect five members to the Board of Directors; (2) ratify and approve the appointment of Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2009; (3) approve an amendment to our charter to lower each of the aggregate stock ownership limit and the common stock ownership limit from 9.9% to 5.0%, clarify the process for increasing or decreasing such stock ownership limits and remove certain references to Steven B. Schnall as an excepted holder; and (4) transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof. Our Board of Directors knows of no other matters other than those stated above to be brought before the Annual Meeting. In this proxy statement, we sometimes refer to the proposed amendment to our charter to lower each of the aggregate stock ownership limit and the common stock ownership limit from 9.9% to 5.0%, clarify the process for increasing or decreasing such stock ownership limits and remove certain references to Steven B. Schnall as an excepted holder, as the Charter Amendment.

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VOTING

How to Vote Your Shares

You may vote your shares at our Annual Meeting in person. If you cannot attend our Annual Meeting in person, or you wish to have your shares voted by proxy even if you do attend our Annual Meeting, you may vote by duly authorized proxy on the Internet, by telephone or by mail. **We encourage you to follow the instructions on how to vote as set forth in the Notice (in the case of beneficial owners) or the proxy card (in the case of record holders).** Maryland law provides that a vote by Internet or telephone carries the same validity as your completion and delivery of a proxy card. In order to vote on the Internet, you must first go to *http://www.proxyvote.com* (for beneficial owners)

or <http://www.voteproxy.com> (for record holders), have your Notice or proxy card in hand and follow the instructions.

In order to vote by telephone, you must call 1-(800) 579-1639 (for beneficial owners) or 1-(800) PROXIES (for record holders), have your Notice or proxy card in hand and follow the instructions.

Both beneficial owners and record holders may vote by signing, dating and returning a proxy card in the postage-paid envelope provided. If you are a beneficial owner and receive a Notice, you may request a proxy card postage-paid envelope from us as instructed in the Notice. Properly signed and returned proxies will be voted in accordance with the instructions contained therein.

If the proxy card is signed, dated and returned, but voting directions are not made, the proxy will be voted for each of the director nominees, for ratification and approval of the appointment of Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2009, for the approval of the Charter Amendment, and in such manner as the proxy holders named on the enclosed proxy card, in their discretion, determine upon such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof. To vote in person, you must attend our Annual Meeting and obtain and submit a ballot, which will be provided at the meeting.

Record Holders and Beneficial Owners

Record Holders. If your shares are registered directly in your name with the Company's transfer agent, American Stock Transfer & Trust Company, or AmStock, you are considered the stockholder of record with respect to those shares, and the proxy materials are being sent directly to you by AmStock on behalf of the Company. As the stockholder of record, you have the right to grant your voting proxy directly to the Company through a proxy card, through the Internet or by telephone or to vote in person at the Annual Meeting.

Beneficial Owners. A significant number of our stockholders hold their shares through a broker, trustee, bank or other nominee rather than directly in their own name. If your shares are held in a stock brokerage account or by a bank, trustee or other nominee, you are considered the beneficial owner of shares, and a Notice is being forwarded to you by your broker, trustee, bank or nominee who is considered the shareholder of record with respect to those shares. As the beneficial owner, you have the right to direct your broker, trustee, bank or nominee on how to vote and are also invited to attend the annual meeting. Your broker, trustee, bank or nominee will enclose voting instructions for you to use in directing the broker, trustee, bank or nominee on how to vote your shares. Since you are not the stockholder of record, you may not vote these shares in person at the Annual Meeting unless you obtain a proxy from your broker, trustee, bank or nominee and bring such proxy to the Annual Meeting.

How to Revoke Your Proxy

If you have already voted your proxy on the Internet or by telephone or returned your proxy to us by mail, you may revoke your proxy at any time before it is exercised at our Annual Meeting by any of the following actions:

by notifying our Secretary in writing that you would like to revoke your proxy;
by completing, at or before our Annual Meeting, a proxy card on the Internet, by telephone or by mail with a later date; or

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by attending our Annual Meeting and voting in person. (Note, however, that your attendance at our Annual Meeting,

by itself, will not revoke a proxy you have already returned to us; you must also vote your shares in person at our Annual Meeting to revoke an earlier proxy.)

If your shares of common stock or our Series A Cumulative Convertible Redeemable preferred stock (Series A Preferred Stock) are held on your behalf by a broker, bank or other nominee, you must contact them to receive instructions as to how you may revoke your proxy instructions.

Record Date for Our Annual Meeting; Who Can Vote at Our Annual Meeting; Voting Procedures and Vote Required

Our Board of Directors has fixed the close of business on April 17, 2009 as the record date for the determination of stockholders entitled to receive notice of and to vote at the Annual Meeting and all adjournments or postponements thereof. Holders of our Series A Preferred Stock have voting rights that allow the holder to vote on the same matters as our common stockholders, voting together with the common stock as a single class on an as converted basis. Our Series A Preferred Stock has a conversion ratio of two and one-half (2½) shares of common stock for each share of Series A Preferred Stock. Therefore, on all matters to come before the Annual Meeting, each holder of (i) common stock will be entitled to vote at the Annual Meeting and will be entitled to one vote for each share of common stock owned and (ii) Series A Preferred Stock will be entitled to vote at the Annual Meeting and will be entitled to two and one-half (2½) votes for each share of Series A Preferred Stock owned. As of the close of business on April 17, 2009, the Company had outstanding 9,320,094 shares of common stock and 1,000,000 shares of Series A Preferred Stock, or, for purposes of determining a quorum, 11,820,094 shares outstanding on an as converted basis.

The representation in person or by proxy of a majority of all the votes entitled to be cast on the matters to be considered at the meeting is necessary to provide a quorum for the transaction of business at the Annual Meeting. If you have returned valid proxy instructions or if you hold your common stock or Series A Preferred Stock in your own name as a holder of record and attend the Annual Meeting in person, your shares will be counted for the purpose of determining whether there is a quorum. If a quorum is not present, the Annual Meeting may be adjourned by the vote of a majority of the shares represented at the Annual Meeting until a quorum has been obtained.

The vote of a plurality of all the votes cast at the Annual Meeting at which a quorum is present is necessary for the election of a director. There is no cumulative voting in the election of directors.

The affirmative vote of a majority of all the votes cast at the Annual Meeting at which a quorum is present is necessary for ratification of the appointment of Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2009.

The affirmative vote of two-thirds of all the votes entitled to be cast on the proposal to approve the Charter Amendment is necessary for approval of the proposed Charter Amendment.

For purposes of the election of directors and ratification of the appointment of our independent registered public accounting firm, abstentions will not be counted as votes cast and will have no effect on the result of the vote, although they will be considered present for the purpose of determining the presence of a quorum. For purposes of the vote on the proposed Charter Amendment, abstentions will have the same effect as votes against the proposal.

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Brokers, banks or other nominees (collectively referred to as brokers) holding shares of our common stock or Series A Preferred Stock for beneficial owners in nominee or street name must vote those shares according to the specific

instructions they receive from the beneficial owners. However, brokers or nominees holding shares for a beneficial owner may not receive voting instructions from the beneficial owner and may not have discretionary voting power on non-routine matters. In these cases, if no specific voting instructions are provided by the beneficial owner, the broker may not vote on non-routine proposals. This results in what is known as a broker non-vote. Since the election of directors and the proposal to ratify the appointment of Deloitte & Touche LLP as our independent registered public accounting firm are routine matters for which specific instructions from beneficial owners are not required, no broker non-votes will arise in the context of voting for the five director nominees or the ratification of the appointment of Deloitte & Touche LLP as our independent registered public accounting firm for fiscal 2009. Conversely, the proposal to approve the Charter Amendment is a non-routine matter for which specific instructions from beneficial owners are required and thus, broker non-votes may arise. Because approval of the Charter Amendment requires the affirmative vote of two-thirds of all the votes entitled to be cast on the proposal, a broker non-vote will have the same effect as a vote against the proposal.

If you do not provide voting instructions to your broker for our common stock or Series A Preferred Stock held in nominee or street name, your brokerage firm may either (1) vote your shares on routine matters, including this year's election of directors and the proposal to ratify the appointment of Deloitte & Touche LLP as our independent registered public accounting firm, or (2) leave your shares unvoted. As discussed above, if you do not provide specific voting instructions to your broker and your broker returns the signed proxy card, but leaves your shares unvoted, the named proxy holders will vote your shares in their discretion. To be certain that your shares are voted at our Annual Meeting, we encourage you to provide instructions to your brokerage firm or return your proxy.

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PROPOSAL ONE: ELECTION OF DIRECTORS

Our Board of Directors has fixed the number of directors at six. Following the resignation of David A. Akre from his positions as Co-Chief Executive Officer and as a member of our Board of Directors in February 2009, the size of our Board of Directors was reduced from seven to six members. In addition, David R. Bock, one of our current directors, has elected to not stand for re-election as a director nominee at the Annual Meeting. Mr. Bock's retirement from our Board of Directors will become effective as of the end of his term, which will occur at the Annual Meeting. Until such time, Mr. Bock will continue to serve as a director of our Company, a member of the Nominating & Corporate Governance Committee and as the chairman of the Audit Committee.

The five persons named below are nominated to serve on our Board of Directors until the 2010 Annual Meeting of Stockholders or until such time as their respective successors are elected and qualified. Each nominee is currently a director of our company. The Board of Directors has no reason to believe that the persons named below as nominees for directors will be unable, or will decline to serve, if elected. If all five nominees named below are elected by our stockholders at the Annual Meeting, there will be one vacancy on our Board of Directors.

Nominees for Election as Directors

The following table sets forth the names and biographical information concerning each of the directors nominated for election at the Annual Meeting:

Name	Principal Occupation	Director Since	Age
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James J. Fowler	Managing Director of Harvest Capital Strategies LLC (formerly known as JMP Asset Management LLC)	2008	47
Steven R. Mumma	Chief Executive Officer, President and Chief Financial Officer of the Company	2007	50
Alan L. Hainey*	Owner and Manager of Carolina Dominion LLC	2004	63
Steven M. Abreu*	Private Investor	2008	44
Steven G. Norcutt*	Senior Vice President Regional Manager of Guaranteed Rate Mortgage	2004	49

Our Board of Directors has affirmatively determined that these director nominees are independent under the criteria *described below in Information on Our Board of Directors and Its Committees Independence of Our Board of Directors.

James J. Fowler is the Non-Executive Chairman of our Board of Directors and the non-compensated Chief Investment Officer of Hypotheca Capital, LLC and New York Mortgage Funding, LLC, two of our subsidiaries, which we refer to as the Managed Subsidiaries. Mr. Fowler also serves as a managing director of Harvest Capital Strategies LLC, formerly known as JMP Asset Management LLC (HCS), which serves as investment advisor to the Managed Subsidiaries pursuant to an advisory agreement between HCS and our Company. HCS is a wholly-owned subsidiary of JMP Group Inc. that manages a family of single-strategy and multi-manager hedge fund products. Mr. Fowler served as co-director of research and as a senior research analyst at JMP Securities LLC from 2001 until 2007, and served as a senior research analyst at Thomas Weisel Partners from 1999 until 2001 and at Montgomery Securities from 1995 until 1999. Mr. Fowler has prior mortgage-backed securities analysis and trading experience with Oppenheimer & Co. and Ocwen Financial Corporation.

Steven R. Mumma is our Chief Executive Officer, President, and Chief Financial Officer. Mr. Mumma was named Chief Executive Officer effective February 3, 2009. Mr. Mumma was appointed President and Co-Chief Executive Officer effective March 31, 2007 after the divestiture of the Company's mortgage lending business, and has served as Chief Financial Officer since November 2006. Prior to serving the Company in his current capacity, Mr. Mumma served as our Chief Investment Officer, a position to which he was named in July 2005, and Chief Operating Officer, commencing in November 2003. From September 2000 to September 2003, Mr. Mumma was a Vice President of Natexis ABM Corp., a wholly-owned subsidiary of Natexis Banques Populaires. From 1997 to 2000, Mr. Mumma served as a Vice President of Mortgage-Backed

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Securities trading for Credit Agricole. Prior to joining Credit Agricole, from 1988 to 1997, Mr. Mumma was a Vice President of Natexis ABM Corp. Prior to joining Natexis ABM Corp., from 1986 to 1988, Mr. Mumma was a Controller for PaineWebber Real Estate Securities Inc., the mortgage-backed trading subsidiary of PaineWebber Inc. Prior to joining PaineWebber, from 1984 to 1985, Mr. Mumma worked for Citibank in its Capital Markets Group, as well as for Ernst & Young LLP. Mr. Mumma is a certified public accountant, and received a B.B.A. cum laude from Texas A&M University.

Alan L. Hainey has served as a member of our Board of Directors since completion of our initial public offering (IPO) in June 2004. Mr. Hainey is the owner and manager of Carolina Dominion, LLC, a real estate brokerage development and investment firm that he founded in 2004. In 2001, Mr. Hainey incorporated and funded the Merrill L. Hainey Family Foundation, a not-for-profit charitable organization dedicated to academic achievement through scholarships, where he continues to serve as President. From 1996 to 2000, Mr. Hainey operated an independent consulting practice providing advisory and marketing services to clients engaged in insurance, mortgage finance and investment management. From 1990 to 1996, Mr. Hainey served as President and Chief Operating Officer of GE Capital's mortgage banking businesses and was a member of the GE Capital corporate executive council. From 1983 to

1990, Mr. Hainey served as President of GE Capital Mortgage Securities. Mr. Hainey received a B.A. with honors and a J.D. from the University of Missouri and a Master of Management with distinction from the Kellogg School of Northwestern University.

Steven M. Abreu has served as a member of our Board of Directors since January 2008. Mr. Abreu is currently a private investor and a member of the Board of Directors of Beyer Financial Corporation and several non-profit organizations. Mr. Abreu is the former Chief Executive Officer and President of GreenPoint Mortgage Funding, Inc., a position he held until October 2008. Prior to joining GreenPoint Mortgage Funding, Inc. in 1999, Mr. Abreu was Executive Vice President of Headlands Mortgage Company from 1995 to 1998 and a Vice President in Donaldson, Lufkin & Jenrette's mortgage-backed securities department from 1993 to 1994. Mr. Abreu has been a member of Fannie Mae's National Advisory Council and the Residential Board of Governors of the Mortgage Bankers Association and the Freddie Mac Advisory Council.