

NEW YORK MORTGAGE TRUST INC

Form SC 13D/A

February 15, 2006

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

SCHEDULE 13D

**Under the Securities Exchange Act of 1934
(Amendment No. 1)***

NEW YORK MORTGAGE TRUST, INC.

(Name of Issuer)

common stock, par value \$0.01 per share

(Title of Class of Securities)

649604 10 5

(CUSIP Number)

Steven B. Schnall

David A. Akre

New York Mortgage Trust, Inc.

1301 Avenue of the Americas

New York, New York 10019

(212) 634-9400

(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications)

February 22, 2005

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. ☐

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

CUSIP No. 649604 10 5

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NAMES OF REPORTING PERSONS:

1 Mr. Joseph V. Fierro

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2
(a) ☐ p
(b) ☐ o

SEC USE ONLY:

3

SOURCE OF FUNDS (SEE INSTRUCTIONS):

4
OO

CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e):

5
☐ o

CITIZENSHIP OR PLACE OF ORGANIZATION:

6
United States

SOLE VOTING POWER:

7

NUMBER OF 823,534

SHARED VOTING POWER:

SHARES
BENEFICIALLY OWNED BY 8 130,792

EACH REPORTING PERSON	9	SOLE DISPOSITIVE POWER: 823,534
WITH	10	SHARED DISPOSITIVE POWER: 130,792

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON:

954,326

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS):

o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11):

5.2%

14 TYPE OF REPORTING PERSON (SEE INSTRUCTIONS):

HC

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NAMES OF REPORTING PERSONS:

1 2004 Joseph V. Fierro Grantor Retained Annuity Trust

I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY):
516-55-6176

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS):

2 (a) ☐
(b) ☐

3 SEC USE ONLY:

4 SOURCE OF FUNDS (SEE INSTRUCTIONS):
OO

5 CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS
2(d) OR 2(e):
☐

6 CITIZENSHIP OR PLACE OF ORGANIZATION:
Delaware

7 SOLE VOTING POWER:

NUMBER OF 0

8 SHARES SHARED VOTING POWER:
BENEFICIALLY OWNED BY 130,792

EACH REPORTING PERSON	9	SOLE DISPOSITIVE POWER: 0
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WITH	10	SHARED DISPOSITIVE POWER: 130,792
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11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 130,792
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12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): o
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13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.72%
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14	TYPE OF REPORTING PERSON (SEE INSTRUCTIONS): OO
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ITEM 1. SECURITY AND ISSUER

This statement related to shares of common stock, par value \$0.01 per share (the **Shares**), of New York Mortgage Trust, Inc., a Maryland corporation (the **Issuer**). The principal executive office of the Issuer is located at 1301 Avenue of the Americas, New York, New York 10019.

ITEM 2. IDENTITY AND BACKGROUND

(a) This form is being filed by Joseph V. Fierro (**Fierro**) and the 2004 Joseph V. Fierro Grantor Retained Annuity Trust (the **Fierro Trust**) (Fierro and the Fierro Trust collectively, the **Reporting Persons**).

(b) (c), (f) Fierro's present principal occupation is Chief Operating Officer of The New York Mortgage Company, LLC, a wholly-owned subsidiary of the Issuer, and the principal business where such employment is conducted is 1301 Avenue of the Americas, New York, New York 10019. Fierro is a citizen of the United States. The Fierro Trust is a Delaware trust whose business address is 1301 Avenue of the Americas, New York, New York 10019.

(d) During the last five years, no Reporting Person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) During the last five years, no Reporting Person has been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction in which the Reporting person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to federal or state securities laws or finding any violation with respect to such laws.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

On June 29, 2004, Fierro acquired 691,900 shares directly and 133,100 shares indirectly through the Fierro Trust as consideration for the contribution of Fierro's and the Fierro Trust's ownership interests in The New York Mortgage Company, LLC to the Issuer. On June 29, 2004, the Issuer issued 30,580 shares of restricted stock to Fierro pursuant to the Issuer's 2004 Stock Incentive Plan. No consideration was paid for these shares. On June 29, 2004, the Issuer awarded 52,950 stock options to Fierro pursuant to the Issuer's 2004 Stock Incentive Plan. No consideration was paid for these options. The options have an exercise price of \$9.00 per share. On June 29, 2004, Fierro purchased and acquired 60,000 shares for cash through the Issuer's directed share program at \$8.37 per share. On June 29, 2004, Fierro purchased and acquired 100 shares for cash at \$8.75 per share through an open market purchase.

Pursuant to a contribution agreement, Fierro forfeited 11,996 Shares owned directly and 2,308 Shares owned indirectly through the Fierro Trust for estimated minimum losses Issuer incurred as a result of defaults on residential mortgage loans originated by NYMC and closed prior to June 29, 2004.

ITEM 4. PURPOSE OF TRANSACTION

On June 29, 2004, Fierro acquired 691,900 shares directly and 133,100 shares indirectly through the Fierro Trust as consideration for the contribution of Fierro's and the Fierro Trust's ownership interests in The New York Mortgage Company, LLC to the Issuer. On June 29, 2004, the Issuer issued 30,580 shares of restricted stock to Fierro pursuant to the Issuer's 2004 Stock Incentive Plan. On June 29, 2004, the Issuer awarded 52,950 stock options to Fierro pursuant to the Issuer's 2004 Stock Incentive Plan. On June 29, 2004, Fierro purchased and acquired 60,000 shares through the Issuer's directed share program. On June 29, 2004, Fierro purchased and acquired 100 shares through an open market purchase. Both Fierro and the Fierro Trust acquired the shares set forth above for investment purposes and not with a view to, or for resale in connection with, any distribution thereof, and the Reporting Persons do not have a present intention of selling, granting any participation in, or otherwise distributing the acquired shares set forth above. Both Fierro and the Fierro Trust presently have no plan or proposal which relate to or would result in any of the events described in subparagraphs (a) through (j) of Item 4 of Schedule 13D.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

(a) As of February 22, 2005, Fierro was the record and beneficial owner of 954,326 Shares representing 5.2% of the issued and outstanding Shares of the Issuer. As of June 29, 2004, the Fierro Trust was the record and beneficial owner of 130,792 Shares representing 0.72% of the issued and outstanding Shares of the Issuer.

(b) Fierro has the sole power to vote and to dispose of 823,524 Shares. Fierro has shared voting power and shared dispositive power over 130,792 Shares. The Fierro Trust has the sole power to vote and to dispose of 0 Shares. The Fierro Trust has shared voting power and shared dispositive power over 130,792 Shares.

(c) (e) Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER

Pursuant to a contribution agreement, Fierro owns 13,164 Shares directly and 2,532 Shares indirectly through the Fierro Trust that are presently held in escrow to satisfy any indemnification claims the Issuer may have against the contributors of the NYMC membership interests under the contribution agreement during the escrow period for losses incurred by the issuer as a result of defaults on residential mortgage loans originated by NYMC and closed prior to June 29, 2004. The escrow period for these shares will run through December 31, 2006 or the date upon which all indemnification claims have been satisfied, whichever occurs first.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS

Exhibit 99.1 Joint Filing Agreement

SIGNATURE

After reasonable inquiry and to the best of each of the undersigned's knowledge and belief, each certifies that the information set forth in this statement is true, complete and correct.

DATED: February 14, 2006

REPORTING PERSONS:

/s/ JOSEPH V. FIERRO

JOSEPH V. FIERRO

2004 JOSEPH V. FIERRO GRANTOR
RETAINED ANNUITY TRUST

By: /s/ JOSEPH V. FIERRO
Name: Joseph V. Fierro
Its: Trustee