

General Guidance on Representing Yourself in a Foreclosure Case: What to Do if You Do Not Have an Attorney

This handout provides some basic information you should find useful if you are unable to get an attorney to represent you in your foreclosure case.

Once foreclosure case is filed against you in court, you are a defendant in the lawsuit and will receive a copy of the complaint. **You have 28 days to respond.** If you do not file an answer or a motion for an extension of time within 28 days, default judgment may be entered against you. **After a default judgment, it is very difficult to dispute the foreclosure.** The mortgage company will get an order of sale and then be able to order the sale of your property.

1. Read the Summons and Complaint

The Summons and Complaint will give you important information about the lawsuit, including the claims made by the mortgage company and directions for you to follow.

- The mortgage company will be called the “Plaintiff” (the party filing the lawsuit) and you will be called the “Defendant” (the party being sued).
- Once you have read the Summons and Complaint, you can begin to prepare your Answer.

2. Write an Answer to the Complaint

An “Answer” is your written response to the claims made against you by the bank or mortgage company in the Complaint. It is also your chance to explain why the lender should not be entitled to force the sale of your home. A Sample Answer is attached at the end of this document.

- You must file the Answer with the Clerk of Courts.
- Your Answer is due 28 calendar days after you got the Summons and Complaint by

mail or from a personal process server. If the deadline falls on a weekend or holiday, the Answer will be due on the next day the Court is open.

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Your Answer Should

- Point out anything in the Complaint that you believe is untrue or wrong.
- Explain any reason that would make it unfair for your house to be foreclosed. These are called “Affirmative Defenses.”
 - For example, if you believe the lender did not do what it was supposed to do concerning your mortgage or refused to work with you to avoid foreclosure, you should give the details in your Answer.
- If you think the amount demanded in the Complaint is incorrect, you should deny that it is correct.
- At the end of your Answer, sign your name and include your address and telephone number.
- You must also write that you have mailed a copy of your Answer to the mortgage company’s attorney and the date you mailed it. You can mail the Answer by regular U.S. Mail.

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3. File the Answer with the Clerk of Court

Once you have finished writing your Answer, make several copies. It does not cost any money to file your Answer.

- Mail or take the Answer to the Clerk of Courts at the address on the summons.
- Ask the Clerk to stamp your extra copies, so you can prove that you filed your Answer. Be sure to keep a copy of the Answer for your own records.
- Ask the Clerk for a “Notification Form” so you can register with the Court to receive future notices about your case.
- Mail a copy to the Plaintiff’s attorney within 3 days of filing it with the Court.

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4. After I file an Answer in the foreclosure, what is the next step?

While the foreclosure is pending, you should continue trying to negotiate with your mortgage company or the attorney for the mortgage company.

- You can also ask the court to schedule the case for Mediation.
- You do this by filing a “Motion” with the court that says you want to have the issues in the case negotiated with a court mediator.

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5. Summary Judgement

If you do not reach a settlement the mortgage company will probably file a Motion for Summary Judgment.

- The lender tells the Judge that there are no facts in dispute and asks to be declared the winner and given a judgment allowing it to take your house to sheriff's sale.
- If you receive a Motion for Summary Judgment and you disagree with any facts raised by the mortgage company, you should file an Affidavit opposing Summary Judgment.
- An Affidavit is your version of the facts. For example, if you do not owe what the mortgage company says you owe, you should write this in your affidavit. By signing the affidavit, you are swearing that everything you write is true and correct.
- The Affidavit must be signed in front of a notary. You should file the Affidavit with the Clerk of Courts and mail a copy to the attorney within 2 weeks after receiving the motion.
- Keep a copy of your Affidavit for your records.
- If you have filed a Notification Form, you will receive a notice of the Court hearing by mail.
- You must attend the hearing. Bring a copy of your Answer and any other documents you filed.
- If you filed an Affidavit, you should be prepared to explain what facts are in dispute.
- If you and the mortgage company disagree about the facts, the Judge might not enter Summary Judgment and the case will continue.
- If the Judge decides there are no facts in dispute, the Judge will enter Judgment against you and tell the Clerk to schedule the sale of your home.

If you have questions or need legal assistance, please call the
Legal Aid line at **(513) 241-9400**