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*~ Fair Housing Project: Foreclosure Defense Unit ~*



***FORECLOSURE INFORMATION***

***AND***

***RESOURCES***

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# **THE FORECLOSURE PROCESS**

## **IN A NUTSHELL**

\*\*\* The following is being provided for informational purposes only and should not be considered legal advice. \*\*\*

- 1) **Borrower Default** – Default occurs when the borrower (also called the mortgagor) fails to perform an obligation secured by the mortgage. Most commonly, this is the obligation to make the monthly mortgage payments, but default may also be caused by other breaches of the mortgage including failing to maintain property insurance or pay property taxes or homeowner/condo association assessments.
- 2) **Service of the Summons and Complaint** – The bank (or authorized loan servicer) files a Complaint for Foreclosure with the Court and has you served with a copy of it.
- 3) **Respond to the Complaint** – As the Summons that accompanies the Complaint explains, you are given 20 days (from the date that you are served) to file a response to the Complaint with the Court and serve (mail) a copy of the response on the attorney for the bank.
  - **Don't ignore the Summons and Complaint !!!** – If you fail to respond, a default will be entered against you. When a default is entered, you are deemed to have admitted all of the allegations in the Complaint. Unless that default is set aside because of “excusable neglect” (which is often very difficult to show), you will lose your right to defend against the foreclosure and the bank will be entitled to foreclose on the property.

*... if you timely file a response to the Complaint, the process continues as follows...*

- 4) **Be persistent with working with your lender** – Don't think it's over just because you have been sued and you have responded. You own the property until the property is sold at the foreclosure sale, as described below. So even after a foreclosure is filed, you can still sell the property, refinance your loan, modify your loan, etc. Communicating with your lender can often be frustrating, but persistence can pay off. There are many local agencies that will assist you—free of charge—in working with your bank to reach alternatives to a foreclosure judgment. You can also request mediation by filing a motion for mediation with the court.
- 5) **Defenses** – If you raise defenses in your response and/or request information/documents from the Plaintiff, they must respond before they are entitled to a judgment of foreclosure. That is, they may not ignore your requests and must fully prove their case, which necessarily requires that they overcome the defenses that you may raise.
- 6) **Summary Judgment** – Quite often, foreclosure is accomplished through “Summary Judgment.” The Plaintiff will file a “Motion for Summary Judgment” and a hearing on that Motion will be scheduled. This means the Plaintiff is saying that they have provided legally sufficient, undisputed proof entitling them to a judgment of foreclosure. They will provide the original note and mortgage to the court, along with affidavits (sworn, notarized statements) outlining the amount owed on the mortgage, for attorney's fees, and for court costs.

If you disagree with the facts set out in the bank's affidavits, then you must file your own affidavit or other supporting documents showing the facts as you know them to be. These affidavits and documents are the only evidence the judge will consider at this stage. If based upon them the judge finds that there exists a disputed issue as to a material (to the foreclosure case) fact, the judge will deny the summary judgment. If summary judgment is denied, the case will proceed to trial and further evidence will be considered.

*... if Summary Judgment is granted and the Plaintiff obtains a Judgment of Foreclosure ...*

- 7) After a Judgment is Entered** – The next step in the process is the sale of the foreclosed property. Florida law provides that the property must be sold no sooner than 20 days and no later than 35 days after the foreclosure judgment. If, however, you are still trying to modify your loan, re-finance, finalize a short sale, or arrange some other type of loan workout, the bank will likely agree to a sale date that is 60 to 90 days after the judgment, although they are not required to do this.
- 8) The Foreclosure Sale** – As of January, 2010, foreclosure sales in Palm Beach County take place online. Most often, the bank buys the property back, but that is not always the case.
  - More information about the online foreclosure sales and the procedures involved can be found at: [http://www.mypalmbeachclerk.com/online\\_foreclosure\\_sales.aspx](http://www.mypalmbeachclerk.com/online_foreclosure_sales.aspx).
- 9) After the Foreclosure Sale** - Be persistent. In instances, where the Plaintiff buys back the house at the foreclosure sale, they sometimes will still work with you even after the sale. It pays to be persistent even after the sale if you want to stay in the foreclosed property.

*... if all efforts to negotiate have been exhausted and you are unable to reach an agreement or loan modification ...*

- 10) Worst Case Scenario** – Ten days after the foreclosure sale, the Clerk of Courts will issue a "Certificate of Title" to the buyer, officially making them the new owner. Under Florida law, the clerk is then authorized to issue a "Writ of Possession" requiring all remaining occupants to leave the property. When the sheriff posts a Writ of Possession on the property, you will have 24 hours to leave before the sheriff comes back to remove you and your personal property.
  - Don't Be Caught Without a Plan – By the time of the foreclosure sale, you should know where you are going to relocate if necessary and how you are getting there. You may only have 10 to 12 days to leave voluntarily after the sale.

**IMPORTANT: BE AS PROACTIVE AS POSSIBLE AND STAY INVOLVED!!!**

**You should hire an attorney to represent you, if you can afford one. If you cannot afford to pay an attorney, contact one of the agencies listed in the Summons you were served with. These agencies provide assistance with a wide variety of things, such as legal advice/representation, credit counseling, and negotiating loan modifications or other alternatives to a judgment of foreclosure.**

## **RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION PROGRAM** **INSTRUCTIONS FOR PARTICIPATION**

### **WHAT IS THIS PROGRAM?**

The Residential Mortgage Foreclosure Mediation program (“RMFM”) was established by Order of the Supreme Court of Florida to help homeowners resolve foreclosure lawsuits early in the process. The Supreme Court’s Order requires all of our state’s judicial circuits to institute a managed mediation program in response to the record-breaking number of residential foreclosure lawsuits filed in the last few years. The Palm Beach County Bar Association serves as the RMFM Program Manager for Palm Beach County.

“Mediation” is an informal meeting where the parties try to negotiate a settlement outside of court. A neutral, third-party mediator helps with the negotiations. For homeowners who have been sued for foreclosure, RMFM offers them the opportunity to participate in mediation in the hopes of settling the case and avoiding the Plaintiff getting a foreclosure judgment.

### **HOW DOES THE PROGRAM WORK?**

#### **Step 1: How do I determine if I am eligible?**

- If (a.) the foreclosure action brought against you was filed on, or after, July 12, 2010, and (b.) the property is your primary residence, and (c.) you have filed a homestead exemption, then you are automatically eligible for RMFM.

#### **Step 2: I have determined that I am eligible. How do I enroll in the program?**

- To enroll in RMFM, you must contact the Palm Beach County Bar Association by calling (866) 900-4254 from 9 a.m. to 5 p.m. Monday through Friday and confirm that you want to participate.
- Forms and more detailed information about RMFM are available online at [www.palmbeachbar.org](http://www.palmbeachbar.org).

#### **Step 3: What is this meeting with a mortgage foreclosure counselor? Is it required?**

- Within 30 days of your first contact with the Program Manager, you must meet with a Mortgage Foreclosure Counselor either in person or by phone. This meeting is required, so it is very important that you keep your appointment or you will risk being removed from the program for non-compliance.
- At the meeting, the counselor will assist you with filling out the Foreclosure Mediation Financial Worksheet and will assist you in drafting a proposal to present at mediation. The program manager will mail you an introductory letter with the worksheet and other forms, which can also be downloaded at [www.palmbeachbar.org](http://www.palmbeachbar.org) (from the homepage, click on the blue RMFM button and then “Forms for Homeowners/Defense Attorneys”).

#### **Step 4: I've met with the counselor and they completed the Worksheet. What happens next?**

- After meeting with the counselor, they will send you the completed Financial Worksheet to review. If it meets with your approval, you will send a signed Release (the last page of the Financial Worksheet) to the program manager, so they can provide your financial information to the plaintiff before the mediation.
- Mail the Release to: The Palm Beach County Bar Association, 1601 Belvedere Road, Suite 304 E, West Palm Beach, FL 33406.
- You may also fax the Release to: (561) 598-6265, or via email attachment to: [ekelly@palmbeachbar.org](mailto:ekelly@palmbeachbar.org).

***Note: If you do not meet with the foreclosure counselor and provide the Financial Worksheet, the Program Manager will file a Notice of Non-participation with the court and you will not be allowed to use the RMFM program for mediation.***

#### **Step 5: When will mediation be scheduled?**

- Once you have met with a foreclosure counselor and have submitted a Foreclosure Mediation Financial Worksheet and Release, you will get a date for the actual mediation. At the mediation you must bring your most current financial information so that the Worksheet can be updated, if necessary.

Whatever financial information you have listed on your Financial Worksheet must be backed up by documents. If you can't prove your income, the lender cannot consider it when deciding whether to modify your loan. The lender may send you a letter before mediation explaining what they want you to bring. Types of documents you often need to bring are as follows:

- A) Proof of income:
  1. 4 most recent pay stubs, or if self-employed, the year-to-date Profit and Loss statement
  2. If you have rental income, a copy of the lease and 2 most recent proofs of payment.
  3. Copy of benefits letter for any income from Social Security, disability, etc.
  4. Contribution letter from anyone else who is helping you pay your monthly expenses.
- B) Bank Statements
  1. 2 most recent statements from personal bank accounts.
  2. If self-employed, 2 most recent statements from your business accounts.
- C) Last 2 years Personal and Business Tax Returns. All returns must be signed, including W2's or extension letter if not filed yet.
- D) IRS form 4506-T - a signed form allowing the lender to get copies of your latest tax returns
- E) Hardship Letter – a short statement explaining any hardships that prevented you from paying your mortgage on time.
- F) Copy of one of your latest utility bills showing name and address (to prove you reside there)
- G) If you are currently trying to sell your home in a short sale, bring a copy of the listing agreement including property comparisons showing that the property is listed at fair market value.
- H) If the borrower is divorced, bring a copy of the divorce decree and a copy of the ex-spouse's deed showing the borrower now has sole title to the property.

### **The lender has all of my information. Can I get any information from them?**

Yes, you are allowed to get information from the lender before the mediation. Upon your request, they must supply you information concerning your promissory note, mortgage and payment history. To do this, you must fill out a form called Notice of Borrower's Request for Plaintiff's Disclosure for Mediation. You can get this form from at [www.palmbeachbar.org](http://www.palmbeachbar.org) or at the Legal Aid Society of Palm Beach County, Inc., whose contact information is on page 1 of this document in the header.

### **I know the lender has an attorney, but what about me?**

You do have the right to bring an attorney to mediation. The Palm Beach County Bar will not provide you with an attorney but can give you a list of attorneys through their Lawyer Referral Service. If you hire an attorney, be sure that you or your attorney notifies the Bar Association of the representation.

If the property is your primary residence and you meet certain financial guidelines, the Legal Aid Society of Palm Beach County's Pro Bono Department can assist you in obtaining a pro bono attorney to represent you at mediation. Please call 561-655-8944 Ext. 326 for more details.

If the property is your only home and you need assistance filing an Answer to the Complaint, you may contact the Legal Aid Society of Palm Beach County's Foreclosure Defense Unit at 561-655-8944 Ext. 325.

### **Step 6: What should I expect at mediation?**

At mediation the homeowner (Defendant) and the lender (Plaintiff) meet with an independent third party (the mediator) to try and work out an agreement that both the parties can agree to. Although the mediator is there to help with the negotiations, he or she cannot give legal advice or force either side to reach an agreement. If you agree to a loan modification, then the foreclosure is avoided, and ultimately the lawsuit will be dismissed as long as the agreed-upon payments have been made. Often, the lender will agree to a "trial payment period," in which you make a modified mortgage payment for a few months to establish your ability to pay. If you make those payments, the lender will then make the modification permanent.

If you are unable to modify your loan or no longer want to save the home, other options include agreeing to a short-sale of the property (a sale for less than the mortgage amount), or a deed in lieu of foreclosure (borrower gives the lender a deed to the property, avoiding a final judgment).

If the parties cannot come to any agreement during mediation, then the foreclosure lawsuit continues.

***The mediation process must be completed (even where no agreement is reached) before the lender can continue with the foreclosure litigation, UNLESS a Notice of Non-participation is filed.***

## **COMMUNITY RESOURCES**

The following programs and agencies are available to qualifying residents of Palm Beach County and may provide assistance to homeowners with loan modifications, credit counseling and other home retention alternatives. Please note that this is not an exhaustive list and there may be other such resources available to assist you.

### **HOUSING COUNSELING AGENCIES**

Consolidated Credit Counseling Services, Inc.....	866-435-1876
Consumer Credit Management Services, Inc.....	866-213-8522
Credability.....	800-251-2227
Housing Partnership, Inc.....	561-841-3500
Northwest Riviera Beach Community Redevelopment Corporation.....	561-845-1147
Urban League of Palm Beach County, Inc.....	561-833-1461
We Help Community Development Corporation.....	561-992-5854

### **PROGRAMS**

#### **Making Homes Affordable Program ([www.makinghomesaffordable.gov](http://www.makinghomesaffordable.gov))**

This is a federal program to modify mortgages a borrower can no longer afford. To qualify for a Home Affordable Modification, eligible homeowners must meet the following five criteria:

1. The home must be the borrower's primary residence;
2. The amount owed on the first mortgage must be equal to or less than \$729,750;
3. Must be in default or in imminent risk of default;
4. Mortgage must have been executed before January 1, 2009; and
5. The monthly payment on your first mortgage (including principal, interest, taxes, insurance and homeowner's association dues, if applicable) is more than 31% of your current gross monthly income.

#### **Hope Now (888.995.HOPE)**

Hope Now is a cooperative effort between counselors, investors and lenders. Homeowners are referred to a housing counselor from a HUD-certified housing counseling agency. Homeowners will need to know their lender, account number and zip code for an initial screening. Screening upon referral to a housing counselor will require information on delinquency, current earnings, and monthly expenses to determine if the homeowner can pay their mortgage. The housing counselor will complete a financial analysis and attempt to work with the lender on reinstatement and modification of the loan.

## **How to Protect Yourself: Tips for Avoiding Mortgage Foreclosures**

*Source: The Florida Attorney General.*

Additional information may be found at: <http://myfloridalegal.com/pages.nsf/Main/55BC21CB13128F728525741800481491>.

**Contact your lender** or loan servicer as soon as you realize you may have a problem and may have missed a payment. Studies show that at least 50 percent of all consumers that have defaulted on a mortgage or missed payments never contact their lender. This is a mistake. Lenders can discuss options with you to help you work through payments during difficult financial times. Lenders prefer to have you keep your home and most will work with you. Be honest with your lender about your financial circumstances. For more information about contacting your lender and what documents you should gather before speaking with your lender, refer to <http://www.fha.gov> or use this link:

[http://portal.hud.gov/portal/page?\\_pageid=33,717348&\\_dad=portal&\\_schema=PORTAL](http://portal.hud.gov/portal/page?_pageid=33,717348&_dad=portal&_schema=PORTAL).

**Gather information.** Learn all that you can about your mortgage rights and foreclosure laws in Florida. Review your loan documents to determine what your lender may do if you can't make your payments. Review Florida laws, particularly Florida Statutes Chapter 702 and Section 45.031 to learn about foreclosure proceedings. Attend a foreclosure prevention workshop. Information on local workshops may be available on <http://www.fha.gov> under "hot topics, foreclosure prevention events for homeowners."

**Contact a nonprofit housing counselor.** Help and information is available to you free of cost. The HOPE NOW alliance provides a 24-hour hotline to provide mortgage counseling assistance in multiple languages: 1-888-995-HOPE. You may also obtain a list of HUD-approved counseling services in Florida at <http://www.hud.gov> or at:

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=FL>.

**Understand the relevant terms:** If you are working with your lender or an approved housing counselor to keep your home, there are several options:

- **Reinstatement:** Your lender may agree to let you pay the total amount you are behind, in a lump sum payment and by a specific date. This is often combined with forbearance when you can show that funds from a bonus, tax refund, or other source will become available at a specific time in the future. Be aware that there may be late fees and other costs associated with a reinstatement plan.
- **Forbearance:** Your lender may offer a temporary reduction or suspension of your mortgage payments while you get back on your feet. Forbearance is often combined with a reinstatement or a repayment plan to pay off the missed or reduced mortgage payments.
- **Repayment Plan:** This is an agreement that gives you a fixed amount of time to repay the amount you are behind by combining a portion of what is past due with your regular monthly payment. At the end of the repayment period you have gradually paid back the amount of your mortgage that was delinquent.
- **Loan modification:** This is a written agreement between you and your mortgage company that permanently changes one or more of the original terms of your note to make the payments more affordable.

***Even if you and your lender agree that you cannot keep your home, there may still be options to avoid foreclosure:***

- **Short Sale:** If you can sell your house but the sale proceeds are less than the total amount you owe on your mortgage, your mortgage company may agree to a short sale and write off the portion of your mortgage that exceeds the net proceeds from the sale.
- **Deed-in-lieu of foreclosure:** A deed-in-lieu of foreclosure is a cancellation of your mortgage if you voluntarily transfer title of your property to your mortgage company. Usually you must try to sell your home for its fair market value for at least 90 days before a mortgage company will consider this option. A deed-in-lieu of foreclosure may not be an option if there are other liens on the property, such as second mortgages, judgments from creditors, or tax liens.
- **Assumption:** An assumption permits a qualified buyer to take over your mortgage debt and make the mortgage payments, even if the mortgage is non-assumable. As a result, you may be able to sell your property and avoid foreclosure.
- **Refinancing:** While refinancing is not necessarily a good option when facing foreclosure and can sometimes even be a predatory practice, there are instances where it may help. Talk to your lender to see if refinancing is an option for you.

**Avoid foreclosure prevention or loss mitigation companies.** If you fall behind in your mortgage payments, many for-profit companies will contact you promising to help you avoid foreclosure. Some may even appear to be affiliated with your lender. Many also list their services on the internet and ask that you fill out a referral form online. It is best to avoid dealing with these companies. Most will try to charge you a hefty fee up-front for information or loan-modification services. Florida Statutes § 501.1377 makes it illegal to charge an up-front fee for these services. You can obtain the same modification plan or a better plan for free by contacting your lender or a HUD approved counselor. Use your money to pay the mortgage instead.

**Do not fall victim to a foreclosure recovery scam.** If any business or individual offers to help you stop foreclosure immediately by signing a document authorizing them to act on your behalf or to set up financing for you, **do not sign** without consulting a professional (an attorney or HUD-approved counselor). This may be a trick to get you to sign over title to your home, turning you into a renter instead. You are then vulnerable to losing your home and all of your equity in your home to the so-called “rescuer.” *[see the following page for more information.]*

**Carefully examine your finances.** Can you cut spending on optional expenses, delay payments on credit cards or other unsecured debt until you have paid your mortgage? Do you have assets that you could sell to help reinstate your loan? Can anyone in the household get a second job to help with income? These efforts to manage your finances may help you find income to apply to your outstanding payments and will demonstrate to your lender that you are willing to work on your finances and make sacrifices in order to keep your home.

**For more information** contact the Attorney General’s consumer hotline at 1-866-966-7226 or visit <http://www.hud.gov> for these and other helpful tips.

## **BEWARE OF FORECLOSURE “RESCUE” SCAMS**

*Source: The Florida Attorney General*

*Additional information can be found at: <http://www.myfloridalegal.com/mortgagefraud>.)*

### **What Should Consumers Do (or NOT do)?**

- Homeowners should NEVER pay any up-front fees and should avoid any high-pressure sales tactics. Fees may only be collected AFTER services are completed.
- Homeowners should first try talking to their lenders or a lawyer before contracting with any third-party company for rescue or modification services.
- If a homeowner believes he or she has been taken advantage of by a disreputable company, he or she should call the Florida Attorney General's fraud hotline at 1-866-9-NO-SCAM or file a complaint online at [myfloridalegal.com](http://myfloridalegal.com). The complaint will be reviewed by the Attorney General's Mortgage Fraud Task Force.

### **What is a Foreclosure "Rescue" Scam?**

Simply put, foreclosure rescue fraud happens when a company or person promises to help save your home from foreclosure, but is actually intent on stealing your home, most of the equity you have accumulated in your home, or a substantial amount of money. There are several types of Foreclosure Rescue Scams you should be aware of:

- Foreclosure Prevention Specialist – these are phony foreclosure counselors who may try to collect large sums of money but rarely provide any services.
- Phantom Help – individuals who charge high fees for work the homeowner could do his or herself.
- “Lease/Buy-Back” – homeowners are deceived into signing over the deed to their homes and are converted into tenants, often with an option to buy their home back if they meet certain conditions.
- Bait and Switch – the homeowner thinks he or she is signing new mortgage documents, but is actually signing over the deed to their home.

### **How do I know whether a foreclosure modification company is legitimate?**

You should avoid any company that asks you to pay an up-front fee for its services, no matter what that fee is called. This is illegal under Florida Statutes § 501.1377 You should also avoid any company that promises you that it can save your home or get you a reduced mortgage interest rate. You can call the Attorney General Hotline at 1-866-966-7226 and check to see if there are any complaints.

### **Do I need to stop paying my mortgage in order to qualify for a loan modification?**

No. Avoid any company that instructs you to stop paying your mortgage.

**I paid money to a company several months ago and now they are no longer answering their phones or responding to my emails. What should I do?**

You should always attempt to negotiate with your original lender first, and you should re-contact them if you still need assistance. You should also file a complaint with the Attorney General's Office.

**I negotiated a loan modification with a company in California and paid an up-front fee for its service. I was reading about the companies in Florida which are being sued for charging these fees. Does the Florida law only apply to Florida companies?**

No. The law applies to ALL companies, regardless of where they are located, if they are assisting a consumer who owns real property in the State of Florida or if the companies are located in Florida.

**I am not a Florida resident and a Florida foreclosure rescue company is attempting to charge me an up-front fee. The company told me that the new law only applies to Florida residents, and they can charge out-of-state residents an upfront fee. Is this correct?**

No. The law applies to any company doing business in Florida.

**I received a flyer in the mail or a telephone call from a company that sounded like it was affiliated with the government. What should I do?**

Do not respond to any solicitation, either by mail or by telephone, which does not come from someone you already know and trust. These types of solicitations usually are from private, for-profit companies which are only looking to make money.

**I am attempting to do a loan modification with a licensed Florida mortgage broker. He says he can charge me an application fee under Florida law. Is this correct?**

No. The Office of Financial Regulation has stated that loan modifications are not governed under their regulatory statutes. Consequently, even Florida licensed mortgage brokers are governed by Florida Statutes § 501.1377 and may not charge an application fee or any other upfront fee directly or indirectly.

**I have been told by the loan modification company that the fee it is charging is for a forensic audit. Is this legal?**

No. Loan modification companies cannot charge any fee or secure payment for any service that has not been completed.

## **THE HOUSE I AM RENTING IS BEING FORECLOSED**

### **What Is A Foreclosure?**

If your landlord does not pay his mortgage, the mortgage company may file a foreclosure. A foreclosure is a lawsuit filed by the mortgage company when the owner does not pay the mortgage payment. In the foreclosure, the mortgage company asks the court to sell the property to pay off the mortgage.

### **I Am Only A Tenant - Why Am I Being Served?**

If a foreclosure is filed against your landlord, you as a tenant will usually be served with the lawsuit, as well. This is to ensure that any judgment the lender obtains will cover everyone who may be occupying the property or have any other interest in it. Either a Sheriff's deputy or a process server will hand you a copy of the lawsuit. Even though you are a party to the lawsuit, the foreclosure complaint will probably refer to you only as "unknown tenant" or "John/Jane Doe."

### **What Should I Do If I Am Served With Notice of A Foreclosure Against My Landlord?**

Even though you do not own the property, you should file an Answer to the foreclosure. In the Answer, state that:

- You currently are a tenant on the property;
- What the terms of your rental agreement are, including the beginning and end dates;
- If you have a written lease, attach a copy.

If you file an Answer, it will tell the judge and the lender that a tenant is living in the property. It will also insure that you receive copies of all further filings and hearings scheduled in the case. If you do not file an Answer, you may not receive any notices about the foreclosure lawsuit, and you will not know what is happening in the case.

***IMPORTANT:*** *Even if the property is now in foreclosure, you must continue paying rent to the landlord. As long as you are living on their property, a landlord can still evict you for non-payment of rent even if he or she has not been paying their mortgage.*

### **Do I Have Any Special Rights If I Once Owned the Property where I am living?**

If you are living in a home that you used to own **and** you have the option of repurchasing the property, though a "lease/buy-back" or otherwise, it is important that you write this in the Answer. You should also talk to your own attorney because the law in this situation is complicated.

### **What Should I Do If My Landlord Tells Me He or She Plans to Stop The Foreclosure?**

If you receive a foreclosure complaint, you should contact your landlord to find out what she intends to do about the foreclosure. Many times, after a foreclosure is filed the owner pays the mortgage or modifies the loan, stopping the foreclosure. However, no matter what the landlord says you should still file an Answer to the lawsuit.

### **What Should I Do If My Landlord Tells Me She Cannot Stop the Foreclosure?**

If your landlord tells you that she is not going to be able to stop the foreclosure, or if you cannot find your landlord, you should still file an Answer to the lawsuit. Although it may take several months for the lender to obtain a foreclosure judgment, you should prepare to look for a new place to live. If you plan on moving, you need to comply with any notice requirements in your lease. You must continue paying the rent as long as you are living on the landlord's property.

### **I Do Not Have a Written Lease. How Much Notice Must I Give My Landlord Before Moving Out?**

For oral (unwritten) leases, you must give written notice that you are terminating the tenancy a certain number of days before your next rent payment is due. The number of days is based on when you normally pay rent:

<b>You pay rent:</b>	<b>Number of Days Before Next Payment that Notice is Due</b>
Once a year	60 Days
Once a quarter (3 months)	30 Days
Once a month	15 Days
Once a week	7 Days

### **What Happens if the Mortgage is Foreclosed?**

If your landlord does not stop the foreclosure, the Court will enter judgment against the landlord and schedule a foreclosure sale. The sale will be scheduled no less than 20-35 days after the judgment, though it could be as many 90. Title is issued to the buyer another 10 days after the sale. Once title is issued to the new owner, you should stop paying rent to your old landlord. You should instead begin paying rent to the new owner. If a bank purchases the property, it may be difficult determining where to send your payments. Try contacting the bank, their attorney or their realtor to make payment arrangements.

### **I Heard There Were New Legal Protections for Tenants. Is That True?**

Yes. The federal “Protecting Tenants at Foreclosure Act” protects tenants in foreclosed residential properties. The law covers all foreclosures lawsuits that were still pending as of May 20, 2009, or were filed after that date. More specifically:

- If you are a **tenant with a written lease**: Anyone buying the property at a foreclosure sale must let you stay under the terms of your lease until it ends. However, if the new owner intends to make the property his or her primary residence, they can terminate the lease by giving at least 90 days’ written notice. (This will not apply to banks because they do not have primary residences.) After your written lease ends, the new owner still must give you at least 90 days’ written notice before you will have to leave (see below).
- If you are a **tenant without a written lease**: In the case of tenants without a current lease—such as month-to-month tenants or tenants with expired written leases—the new owner must provide the tenant with a minimum of 90 days’ written notice before terminating the tenancy.
- **But note**: For the federal law to apply, your tenancy must have begun while the landlord still had title to the property. The rent must also be fair market value. In other words, if you are renting a three-bedroom home for \$100 a month, it may not be considered a valid lease protected by this law.

### **What Happens if I Do Not Leave After Being Given a Proper 90-Day Notice of Termination?**

If the new owner has given you a proper, written 90-day notice of termination, you will have to vacate by the end of that period. If you do not, you may be subject to a Writ of Possession. This allows the Sheriff to remove you and your belongings from the property 24 hours after the Writ is posted on your door.

### **What About My Security Deposit?**

If your landlord keeps your security deposit without good cause, then you must file a claim in small claims court to recover it. Do not stop paying rent because you think the security deposit will be used to cover your rent, unless your landlord specifically tells you so, preferably in writing.

### **What Should I Do If the New Owner Asks Me If I Want To Stay?**

Sometimes, the new owner will ask you to remain as a tenant. Make sure that the person who contacts you is really the new owner. You should ask for proof of ownership before you pay any rent. If you cannot reach an agreement to continue your tenancy, the new owner cannot force you out by changing the locks or turning off the utilities.

## Top Ten Things to Know About Reverse Mortgages

*Source: HUD*

*Additional information can be found at: <http://www.hud.gov/offices/hsg/sfh/hecm/rmtopten.cfm>*

Reverse Mortgages are becoming popular in America. The U.S. Department of Housing and Urban Development (HUD) created one of the first. HUD's Reverse Mortgage is a federally-insured private loan, and it's a safe plan that can give older Americans greater financial security. Many seniors use it to supplement social security, meet unexpected medical expenses, make home improvements, and more. You can receive free information about reverse mortgages by calling AARP at: 1-800-209-8085, toll-free. Since your home is probably your largest single investment, it's smart to know more about reverse mortgages, and decide if one is right for you!

### **1. What is a reverse mortgage?**

A reverse mortgage is a special type of home loan that lets a homeowner convert a portion of the equity in his or her home into cash. The equity built up over years of home mortgage payments can be paid to you. But unlike a traditional home-equity loan or second mortgage, no repayment is required until the borrower(s) no longer uses the home as their principal residence. HUD's reverse mortgage provides these benefits, and is federally-insured, as well.

### **2. Do I qualify for a HUD reverse mortgage?**

To be eligible for a HUD reverse mortgage, HUD's Federal Housing Administration (FHA) requires that the borrower is (a.) a homeowner 62 years of age or older; (b.) owns the home outright, or has a low mortgage balance that can be paid off at the closing with proceeds from the reverse loan; and (c.) must be living in the home.

You are also required to receive consumer information from HUD-approved counseling sources prior to obtaining the loan. You can contact the Housing Counseling Clearinghouse on 1-800-569-4287 to obtain the name and telephone number of a HUD-approved counseling agency and a list of FHA approved lenders within your area.

### **3. Can I apply if I didn't buy my present house with FHA mortgage insurance?**

Yes. It doesn't matter if you didn't buy it with an FHA-insured mortgage. Your new HUD reverse mortgage will be a new FHA-insured mortgage loan.

### **4. What types of homes are eligible?**

Your home must be a single-family dwelling or a two- to four-unit property that you own and occupy. Townhouses, detached homes, units in condominiums and some manufactured homes are eligible. Condominiums must be FHA-approved. It is possible for individual condominiums units to qualify under the Spot Loan program.

### **5. What's the difference between a reverse mortgage and a bank home-equity loan?**

With a traditional second mortgage, or a home-equity line of credit, you must have sufficient income-to-debt ratio to qualify for the loan, and you are required to make monthly mortgage payments. The reverse mortgage is different in that it pays you, and is available regardless of your current income. The amount you can borrow depends on your age, the current interest rate, and the appraised value of your home or FHA's mortgage limits for your area, whichever

is less. Generally, the more valuable your home is, the older you are, the lower the interest, the more you can borrow. You don't make payments, because the loan is not due as long as the house is your principal residence. Like all homeowners, you still are required to pay your real estate taxes and other conventional payments like utilities, but with an FHA-insured HUD Reverse Mortgage, you cannot be foreclosed or forced to vacate your house because you "missed your mortgage payment."

**6. Can the lender take my home away if I outlive the loan?**

No. You do not need to repay the loan as long as you or one of the borrowers continues to live in the house and keeps the taxes and insurance current. You can never owe more than your home's value.

**7. Will I still have an estate that I can leave to my heirs?**

When you sell your home or no longer use it for your primary residence, you or your estate will repay the cash you received from the reverse mortgage, plus interest and other fees, to the lender. The remaining equity in your home, if any, belongs to you or to your heirs. None of your other assets will be affected by HUD's reverse mortgage loan. This debt will never be passed along to the estate or heirs.

**8. How much money can I get from my home?**

The amount you can borrow depends on your age, the current interest rate, and the appraised value of your home or FHA's mortgage limits for your area, whichever is less. Generally, the more valuable your home is, the older you are, the lower the interest, the more you can borrow.

**9. Should I use an estate planning service to find a reverse mortgage?**

I've been contacted by a firm that will give me the name of a lender for a "small percentage" of the loan? HUD does NOT recommend using an estate planning service, or any service that charges a fee just for referring a borrower to a lender! HUD provides this information without cost, and HUD-approved housing counseling agencies are available for free, or at minimal cost, to provide information, counseling, and free referral to a list of HUD-approved lenders. Call 1-800-569-4287, toll-free, for the name and location of a HUD-approved housing counseling agency near you.

**10. How do I receive my payments?**

You have five options:

- (1) Tenure - equal monthly payments as long as at least one borrower lives and continues to occupy the property as a principal residence.
- (2) Term - equal monthly payments for a fixed period of months selected.
- (3) Line of Credit - unscheduled payments or in installments, at times and in amounts of borrower's choosing until the line of credit is exhausted.
- (4) Modified Tenure - combination of line of credit with monthly payments for as long as the borrower remains in the home.
- (5) Modified Term - combination of line of credit with monthly payments for a fixed period of months selected by the borrower.

## **I RECEIVED A NOTICE OF HEARING: NOW WHAT?**

The Legal Aid Society of Palm Beach County, Inc. receives dozens of phone calls every week from homeowners who have a court date and are not sure what will actually occur when they get to Court. The following is breakdown of the day to day mechanics of foreclosure hearings in Palm Beach County.

1. You will receive a Notice of Hearing, which will come via US Mail, from the Plaintiff's law firm. The only time you will be personally served is when you receive the Summons and Complaint.
2. The Notice of Hearing will have two key pieces of information. First, it will provide you the date, time and location of your hearing. Second it will provide you with what motion is being called up before the Judge.
3. You will always be directed to Courtroom 4A. However, foreclosure hearings are handled all over the Courthouse. If your hearing is scheduled for 8:45AM then your hearing is on the Court's Uniform Motion Calendar. You should arrive at the Courthouse by 8:30AM to begin checking in and finding out where your hearing will actually be held. In the mornings, two or three court personnel will be outside of Courtroom 4A checking in attorneys and pro se Defendants (homeowners). You should sign in with the Court Personnel (show them a copy of your Notice of Hearing) and they will tell you which Courtroom to proceed to.
4. If your hearing is scheduled for any time other than 8:45AM, there is a large board outside Courtroom 4A with the daily calendar of cases. Look up your case by either the case number or your name and you will find which Courtroom your hearing will be held in and which Judge will be handling your case that day. The Courtroom numbers correspond with the floor on which the Courtroom is located. For example, Courtroom 6J is located on the sixth floor.
5. Once you enter the Courtroom, you will find that the Plaintiff's attorney will usually approach you to discuss the upcoming hearing. The Court encourages this behavior as it can save the Court a great deal of time by the parties coming to an agreement prior to arguing before the Court. It is perfectly fine to speak with the attorneys and try to resolve your matter, but never forget that they represent the Plaintiff and not you.
6. The Judge will call up the cases by name, so you must wait until your case is called up. Plan on setting aside at least 2 hours for an 8:45AM hearing as motion calendar is very crowded with the number of foreclosures filed in Palm Beach County.
7. After your hearing, wait and the Court will provide you with a copy of the Court's Order, which puts in writing how the Court has ruled on the motion.
8. Finally, should you get lost or need assistance, just ask. Most attorneys will take the time to look at your Notice of Hearing and point you in the right direction.

*PRO SE* DEFENDANT  
PLEADING  
FORMS

**Disclaimer:** The following forms are being provided as a guide  
and should not be deemed legal advice/counsel.

## INSTRUCTIONS TO PREPARE, COMPLETE, AND FILE A PRO SE DEFENDANT’S ANSWER TO COMPLAINT FOR MORTGAGE FORECLOSURE

A lawsuit is started when a document referred to as a “Complaint” is filed with the Court and served on the person being sued (note: the “Complaint” may be found several pages into the packet you were served with, after the “Summons”). The lender that filed the Complaint is referred to as the “Plaintiff.” The borrower or other person being sued is referred to as the “Defendant.” Thus, you are the Defendant in the foreclosure lawsuit.

An “Answer” is a response to the lawsuit filed against you. Your Answer must state whether you agree with (admit) or disagree with (deny) each paragraph contained in the complaint.

It is important that you respond to each and every paragraph. If you fail to deny any information in the Plaintiff’s Complaint, you will be deemed to have admitted it as true.

Your original Answer must be filed with the Court within 20 (calendar) days of being served with the foreclosure complaint. You must also mail a copy to the Plaintiff’s attorney.

### **How to Complete the “Pro Se Defendant’s Answer To Complaint For Mortgage Foreclosure”:**

1. Fill in the form with the name of the mortgage company on the line for Plaintiff. Put your name and any other homeowners on the Defendant’s line. Copy the case number from the Mortgage Foreclosure Complaint.
2. Insert your name in the space following "The Defendant, \_\_\_\_\_[your name]\_\_\_\_\_, files this response....."
3. You must respond to each and every paragraph of the complaint by doing the following:
  - If you agree with (admit) what is stated in any of the paragraphs of the mortgage company's complaint, list the number of each paragraph that you agree with in the space following #1 of the answer.
  - If you disagree with (deny) what is stated in any of the paragraphs of the mortgage company's complaint, list the number of each paragraph that you do not agree with in the space following #2 of the answer.
  - If you are unable to answer the claims in any paragraph because you do not understand them or do not have enough information to agree or disagree with them, list the number for those paragraphs in the space following #3 of the Answer.

***NOTE: You do not have to admit that you have missed or failed to make payments or that your loan is in default. It is the Plaintiff’s responsibility to prove its own case.***

4. Section #4 (Affirmative Defenses) This section should be completed if there are reasons that may give a legal excuse or defense for your actions. For example, if you are no longer responsible for the debt, and the mortgage company has given you a written release from the mortgage obligation, you have an affirmative defense. You may have to prove the truth of anything that you write in this section—for example, by providing affidavits or other supporting documents. Please note that losing your job or otherwise not having the money to pay the mortgage is not an affirmative defense.

### **Examples of Affirmative Defenses:**

- a.) Lack of Standing – the Plaintiff that is suing you to foreclose your mortgage must have standing to bring the lawsuit, meaning it is the proper party and has the legal right to file the foreclosure. This can be shown through records such as an assignment of the mortgage or an endorsement of the promissory note. Without standing, the court lacks jurisdiction to hear the lawsuit. In today’s mortgage market, it is not uncommon that a mortgage may have been sold or transferred numerous times or pooled together with other mortgages and then re-sold as to investors.

Therefore, the Plaintiff in your case may not be the same company that actually has the right to enforce the mortgage and promissory note. If the mortgage and note attached to the Complaint show that they are payable to or owned by a different entity, the Plaintiff in your case may not have standing. This issue should be raised as an affirmative defense, although it may be necessary to obtain this information through the discovery process.

- b.) Fraud/Misrepresentation – this would occur if the lender makes a false statement or misrepresents the truth about an important detail of the mortgage and its terms (e.g., the true price of the loan, interest rates, waiver of consumer protections, etc.) which the lender knows is not true and which you relied upon in acting some way.
- c.) Failure of Condition Precedent – This means the lender has failed to take certain actions that are necessary before a foreclosure lawsuit can be filed. For example, mortgages usually require that a “Notice of Acceleration” be served first, or the mortgage and federal law may require the lender to advise you that housing counseling is available. Further consultation with an attorney or Legal Aid may be necessary.
- d.) Unclean Hands – Because foreclosure is an “equitable” remedy, Courts will not grant it if the lender has “unclean hands.” This means the lender has acted unethically or illegally in relation to the mortgage and should therefore not be considered an innocent party.
- e.) Unconscionability – when the mortgage terms are unreasonably unfair to the borrower, or other bad business practices, such as deceitful conduct, that result in oppressive terms or lack of bargaining power.
- f.) Usury – cases where lenders are penalized by giving loans which have interest rates that exceed the lawful rate (greater than 18 percent). However, this is a complex and limited defense. There are some exceptions to usury laws. Further consultation with an attorney or Legal Aid may be necessary.
- g.) Truth-in-Lending Act (TILA) violations – TILA requires lenders to give consumers full disclosure of important terms and costs, such as the finance charge or the annual percentage rate in a lending agreement, set forth in a credit transaction. As with usury, TILA is a limited defense and contains complex legal terms. Persons who believe a TILA violation has occurred should consult an attorney.
- h.) Real Estate Settlement Procedures Act (RESPA) violations – similar to TILA, RESPA is a federal act which requires certain disclosures to be given to borrowers. Consult an attorney or Legal Aid, or for more information about RESPA, visit the U.S. Department of Housing and Urban Development (HUD) website at: <http://www.hud.gov/offices/hsg/sfh/res/respamor.cfm>.
- i.) Florida Deceptive and Unfair Trade Practices Act (FDUTPA)– Florida law prohibits businesses from engaging in deceptive or unfair acts or practices. Some of the defenses listed above (may also be FDUTPA violations. An outline of FDUTPA can be found on the Florida Senate website at: [http://www.flsenate.gov/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch0501/PART02.HTM](http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0501/PART02.HTM).

**NOTE:** This list of Affirmative Defenses is not exhaustive and is merely a guide for assistance against a foreclosure lawsuit. There may be other defenses available, and some of the defenses listed may not be available in every case depending on the circumstances,

You should consult a lawyer or the Self-Service Center located at the Palm Beach County Courthouse to find out if you have any defenses. You may also contact the Legal Aid Society of Palm Beach County, Inc. at 561-655-8944. Additionally, you may also contact the Plaintiff’s attorney to try to work out a settlement, request a reinstatement quote or possible forbearance plan, or to ask for more time to file your Answer.

5. Print your name, address and telephone in the blank space following "Wherefore, the Defendant," and sign your name below the request for relief so that you will be notified of any future court hearings.
6. Certificate of Service – Insert the Plaintiff's attorney's name and address and date and then sign your name below the certificate of service paragraph. The Certificate of Service tells the Court that you have mailed the Plaintiff a copy of your Answer on the date you have written.
7. File your Answer (or Motion) as instructed below.

**FOUR EASY STEPS TO PROPER FILING:**

1. Once the Pro Se Answer (or Motion) has been completed (as instructed), make two photocopies of the original Pro Se Answer/Motion.
  - Now you will have three Pro Se Answers/Motions (*i.e.*, the original, and two photocopies).
2. File the original Pro Se Answer/Motion with the Court within twenty (20) days of being served with the Summons/Complaint.
  - Take all three of your Pro Se Answers/Motions to one of the Palm Beach County Courthouses, located at:
    - (a.) 205 North Dixie Highway, West Palm Beach, FL 33401.
    - (b.) 200 W. Atlantic Ave., Delray Beach, FL 33444
    - (c.) 3188 PGA Blvd, Palm Beach Gardens, FL 33410
  - Go to the Circuit Civil Clerk's Office.
  - Inform the Clerk that you need to file an Answer/Motion.
  - The Clerk will keep the original for the court file.
  - Ask the Clerk to date-stamp the two photocopies, which you will take with you. This way, you will have a record of your filing.
3. Mail one of the photocopies to the Plaintiff's Attorney.
  - It is not necessary to mail this via Certified Mail. Regular U.S. Mail is sufficient.
4. Keep the remaining photocopy for your records.

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

\_\_\_\_\_  
Plaintiff,

Case No.: \_\_\_\_\_  
Division: \_\_\_\_\_

v.

\_\_\_\_\_  
Defendants.  
\_\_\_\_\_ /

**PRO SE DEFENDANT'S MOTION FOR AN ENLARGEMENT OF TIME  
TO FILE AN ANSWER (OR OTHER RESPONSE) TO PLAINTIFF'S COMPLAINT  
FOR MORTGAGE FORECLOSURE**

The Defendant, \_\_\_\_\_, hereby requests an enlargement of time to file an Answer (or other Response) to the Plaintiffs' Complaint in the above-styled matter. Defendant is seeking legal assistance concerning this matter, but due to time limitations, Defendant has not had the opportunity to consult with an attorney, and for this reason requests an additional thirty (30) days to file an Answer (or other Response).

WHEREFORE, the Defendant respectfully requests that this Court grant the relief sought in this Motion.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: \_\_\_\_\_

\_\_\_\_\_  
(Plaintiff's Attorney and Address) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Printed Name of Defendant

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

\_\_\_\_\_  
Plaintiff,

Case No.: \_\_\_\_\_  
Division: \_\_\_\_\_

vs.

\_\_\_\_\_  
Defendants.

\_\_\_\_\_ /

**PRO SE DEFENDANT'S ANSWER  
TO PLAINTIFF'S COMPLAINT FOR MORTGAGE FORECLOSURE**

The Defendant, \_\_\_\_\_, hereby files this Answer to Plaintiff's Complaint for Mortgage Foreclosure and states as follows:

1. I admit (agree) Paragraph(s) # \_\_\_\_\_ of the Complaint for Mortgage Foreclosure.
2. I deny (disagree) Paragraph(s) # \_\_\_\_\_ of the Complaint for Mortgage Foreclosure.
3. I am without knowledge to admit (agree) or deny (disagree) Paragraph(s) # \_\_\_\_\_ of the Complaint for Mortgage Foreclosure.
4. Affirmative Defenses:

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
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WHEREFORE, the Defendant respectfully requests that this Court deny the relief sought by the Plaintiff.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: \_\_\_\_\_

\_\_\_\_\_  
(Plaintiff's Attorney and Address) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Printed Name of Defendant

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number