

Answering a Foreclosure Complaint

You are being given this packet because there is a foreclosure court case against you. The plaintiff (usually the bank) filed a Complaint asking the Court to let it sell your house at auction in order to pay off your mortgage debt. You must respond to the Complaint right away by filing an Answer.

Important! If you don't file an Answer, the plaintiff could get a default judgment against you and you could lose your home.

1. What is an Answer?

Your Answer explains in writing your side of the story. Your Answer tells the court your defenses or reasons the plaintiff should not win the case. If you are not sure that everything said in the Complaint is true, your Answer should have a "*general denial*" at the beginning. After the general denial, your Answer should list or check any defense or explanation that you might have. A sample Foreclosure Answer Form is attached.

Note: If you don't put a defense in your Answer you might not be able to bring it up later in the case.

2. Can I make a claim against the plaintiff or another defendant?

Yes, you may add "*counterclaims*" and "*cross-claims*" to your Answer. A counterclaim is a claim against the plaintiff. A cross-claim is a claim against another defendant.

3. What do I do with my completed Answer form?

You must:

- Sign the Answer. If the Complaint has a Verification at the end of it, this means that the plaintiff swore that the Complaint is true. You should "*verify*" your Answer by signing it in front of a Notary Public.
- Make copies of the Answer for the Plaintiff, yourself and any other parties.
- Deliver or "*serve*" a copy of the Answer by having someone, **not you**, mail it to the Plaintiff's attorney and fill out an Affidavit of Service (sample attached), and
- File the Answer and Affidavit of Service (or ask someone to file them for you) at the Clerk's office at the Courthouse. **Important!** Your Answer and Affidavit of Service must be filed at the Courthouse within 30 days of the date of your first foreclosure settlement conference.

4. Does it cost money to file the Answer?

No, filing the Answer is free. But if you file a Motion with the court there may be a fee. Ask if the Judge waived your motion fees in this case.

5. Where can I get more information about foreclosures?

In this packet, there is a list of free local organizations that can help you. You can find more information at www.nycourthelp.gov and www.lawhelpny.org. You can also find information about the New York State Attorney General's Homeowner Protection Program at www.aghomehelp.com or by calling 1-855-HOME-456. If you live in New York City, you can call the 311 Hotline which will direct you to free housing counseling and legal services.

Court staff can give you some information, like telling you what a motion is or telling you how to serve and file court forms. But Court staff can't give you legal advice, like telling you the best way to handle your case. If possible, it is always best to speak to an attorney.

- **Notice of Default:** Plaintiff failed to comply with the requirements for the notice of default in my mortgage loan agreement, a condition precedent to this foreclosure action.
- **Reverse Mortgage--Notice Requirements:** Plaintiff failed to comply with the notice requirements under New York and/or federal law or failed to comply with contractual requirements of the reverse mortgage, which are conditions precedent to this foreclosure action.
- **Reverse Mortgage—Failure to Specify Alleged Default:** The complaint is vague and does not specify the alleged default and/or the amount(s) plaintiff claims in this action.
- **Reverse Mortgage—Foreclosure on a Reverse Mortgage for Property Charge Defaults is Against Public Policy:** The purpose of reverse mortgage loans under the Home Equity Conversion Mortgage (“HECM”) program is to assist senior citizens to stay in their homes, and reverse mortgage lenders have other remedies in the event of alleged failure to pay property charges. Plaintiff, accordingly, as a matter of equity and public policy, should not be permitted to foreclose.
- **90-Day Notice Requirement (NY Real Property Actions and Proceedings Law § 1304):** Plaintiff failed to comply with the requirements of NY Real Property Actions and Proceedings Law § 1304, a condition precedent to this foreclosure action.
- **90-Day Notice Filing Requirement (NY Real Property and Proceedings Law § 1306):** Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1306, a condition precedent to this foreclosure action.
- **Help for Homeowners in Foreclosure Notice Requirement (NY Real Property Actions and Proceedings Law § 1303):** Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1303, a condition precedent to this foreclosure action.
- **Pending Foreclosure Action (NY Real Property Actions and Proceedings Law § 1301):** Plaintiff impermissibly commenced this action because there is a prior pending action to recover all or part of the mortgage debt.
- **Real Estate Settlement Procedures Act Early Intervention Requirement (12 C.F.R. § 1024.39):** Upon information and belief, Plaintiff violated the early intervention requirements of the Real Estate Settlement Procedures Act because (*check one or both if applicable*):
 - Within 36 days of my delinquency, the loan servicer did not attempt to establish live contact with me to inform me about the availability of loss mitigation options.
 - Within 45 days of my delinquency, the loan servicer did not send me a written notice that included contact information for the servicer, a description of loss mitigation options available from the servicer, information about applying for loss mitigation, and a website listing housing counselors.

- Real Estate Settlement Procedures Act Pre-Foreclosure Review Requirement (12 C.F.R. § 1024.41):** Plaintiff impermissibly filed this foreclosure during the pre-foreclosure review period because (*check one or both if applicable*):
 - Plaintiff commenced this action before my loan was more than 120 days delinquent.
 - I submitted a complete loss mitigation application to my loan servicer but Plaintiff commenced this action (1) before the loan servicer made a decision on that application, (2) before the time period to appeal the loan servicer's decision lapsed, or (3) before the loan servicer made a decision on an appeal I submitted in connection with the loss mitigation application.

- FHA Pre-Foreclosure Requirements:** My loan is insured by the Federal Housing Administration. Upon information and belief, the loan servicer/mortgagee has not complied with regulations of the Department of Housing and Urban Development because the loan servicer/mortgagee did not do one or more of the following (*check all that are applicable*):
 - Send me a notice of default before the end of the second month of my delinquency (24 C.F.R. § 203.602).
 - Attempt to arrange a face-to-face interview with me before three full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.604).
 - Evaluate me for loss mitigation before four full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.605).
 - Wait until three full monthly installments due under the mortgage were unpaid before commencing this foreclosure action (24 C.F.R. § 203.606)

- Certificate of Merit Requirement (NY Civil Practice Law and Rules § 3012-b):** Upon information and belief, Plaintiff failed to comply with the Certificate of Merit requirements of NY Civil Practice Law and Rules § 3012-b.

- Request for Judicial Intervention (NY Codes, Rules and Regulations Title 22, § 202.12-a(b)):** Upon information and belief, Plaintiff did not file a Request for Judicial Intervention.

- Attorney's Fees (NY Real Property Law § 282):** If I retain counsel, I am entitled to recover my attorney's fees in defending this action pursuant to New York Real Property Law § 282.

- Excessive Interest and Fees (NY Civil Practice Law and Rules § 3408(f)):** In a prior foreclosure action, Plaintiff failed to negotiate in good faith pursuant to CPLR 3408(f). This failure to negotiate in good faith has caused excessive interest and fees to accrue which Plaintiff, as a matter of equity and by operation of the CPLR, is not entitled to recover.

- Excessive Interest (NY Civil Practice Law and Rules § 5001(a)):** Plaintiff has unreasonably delayed filing this action, failed to file the Request for Judicial Intervention or engaged in

or she retains counsel; and any other relief allowed by law deemed just and proper by this Court in the exercise of its equity jurisdiction in this foreclosure action.

Dated: _____, 20____
_____, New York

_____, Defendant *Pro Se*
(Defendant's Signature)

(Defendant's Name)

(Defendant's Address)

(Defendant's Address)

(Defendant's Telephone Number)

Prepared with the assistance of counsel admitted in New York.

VERIFICATION

I, _____, being duly sworn, state that the within Answer is true to the best of my knowledge, except as to those matters alleged upon information and belief, which I believe to be true

(Defendant's Name)

(Defendant's Signature)

Sworn to and subscribed before me this
____ day of _____, 20____

Notary Public

AFFIDAVIT OF SERVICE

I, _____, served the within _____
_____ on Plaintiff's attorney as follows (*attorney's name and address*):

I served the _____
by the following method (*check all that apply*):

- first class mail
- certified mail
- certified mail, return receipt requested
- overnight delivery service
- facsimile
- personal delivery.

on the _____ day of _____, 20____.

I am eighteen years or older and I am not a Defendant in this lawsuit.

Signature: _____

Print Name: _____

Sworn to and subscribed before me this
_____ day of _____, 20____

Notary Public