

## MORTGAGE FORECLOSURE

A mortgage foreclosure proceeding is a legal proceeding that bars or extinguishes a mortgagor's equity of redemption in mortgaged real property. The mortgagor is the owner of the property, not the one who provided the funds. The equity of redemption is the right of a defaulting mortgagor to redeem the mortgaged property before an absolute foreclosure. To redeem is to provide payment in full of a mortgage debt after default but prior to a foreclosure becoming effective. In Florida, the foreclosure becomes effective on the date of the foreclosure sale. Therefore, to stop a foreclosure sale one must pay the foreclosure judgment in full, or file a bankruptcy proceeding and file a Suggestion of Bankruptcy in the state court foreclosure file prior to the date of sale.

The foreclosure proceeding is started by the mortgagee (i.e. the Plaintiff), the one who provided the funds, by filing a legal pleading called a Complaint. The mortgagor (i.e. the Defendant) is served with a copy of the Complaint with another document called a Summons that requires a written response within 20 days; otherwise a default judgment of foreclosure may be entered against the mortgagor. The defendant's written response is called an Answer. The Answer may also contain Affirmative Defenses, Counter-claims, and Cross Claims. Another possible written response would be to file a pleading called a Motion. It is important to seek the assistance of an attorney since a defense or claim not asserted either by motion or by answer might be deemed waived. If a written response is filed, the case may eventually be set for a hearing on a Motion for Summary Judgment, mediation, and/or trial.

A written response could be something as simple as a letter from the Defendant explaining any defenses and filed with the court. However, most such letters are usually considered to be legally insufficient and are eventually dismissed. An Answer should confine the responses to simple admissions or denials of each numbered paragraph of a Complaint. It is also permissible to say that you are "without knowledge and therefore deny." When a defendant in good faith intends to deny all of the statements in a complaint, this may be done by a general denial. If a person is unsure of whether they may be entitled to raise an affirmative defense or claim, and has been unable to obtain the assistance of legal counsel, it is a good practice to include in the response a statement reserving affirmative defenses and claims for separate statement. **HOWEVER, THIS DOES NOT GUARANTY THAT THE DEFENSE OR CLAIM WILL NOT BE DEEMED WAIVED BY THE COURT.** You should also raise any dispute you may have under the Fair Debt Collection Practices Act. (See attached example)

After the court has entered a default judgment, summary judgment, or final judgment of foreclosure setting forth the foreclosure sale date, the notice of sale must be properly published in the newspaper, otherwise the sale will need to be rescheduled. The foreclosure process usually takes between two to twelve months, depending primarily upon whether there are any viable defenses raised. Once the foreclosure sale takes place and title is issued to the highest bidder (usually the mortgage company), they may obtain a writ of assistance from the court that allows them to remove the defendant from the property if the defendant still is in possession of the premises.

IN THE CIRCUIT COURT IN AND FOR  
\_\_\_\_\_ COUNTY, FLORIDA

CASE NUMBER: \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff(s),

vs.

\_\_\_\_\_,  
Defendant(s).

**ANSWER**

Defendant(s) answer(s) the complaint of Plaintiff(s), and allege(s):

1. Defendant(s) ADMIT(S) the allegations of the following numbered paragraphs: \_\_\_\_\_.

2. Defendant(s) DENY(IES) the allegations of the following numbered paragraphs: \_\_\_\_\_.

3. Defendant(s) is/are WITHOUT KNOWLEDGE and therefore deny(ies) the following numbered paragraphs: \_\_\_\_\_.

4. Defendant(s) GENERALLY DENY(IES) any allegations of the complaint on file herein not specifically set forth in the preceding paragraphs.

5. Defendant(s) reserve(s) AFFIRMATIVE DEFENSES and CLAIMS for separate statement not set forth in any attachment hereto.

6. Defendant(s) dispute(s) the validity of all or a portion of this debt, and requests identification of the original creditor if not Plaintiff, and in support thereof states: \_\_\_\_\_

\_\_\_\_\_

The undersigned certify(ies) that a copy hereof has been furnished by hand/mail delivery this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Co-Defendant