

Foreclosure Information And Resources



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The information presented herein and at the accompanying seminar is not intended to be deemed legal advice or counsel and does not establish an attorney-client relationship.

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19TH JUDICIAL CIRCUIT (MARTIN/ST. LUCIE/OKEECHOBEE/ INDIAN RIVER COUNTIES) THE FORECLOSURE PROCESS

~The following is 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. If you need more than 20 days to file a response, file a motion requesting an enlargement of time. A form for this motion is included in these materials.
 - **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. Absent a showing 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. **Attend Mediation.** If your homestead residence is in foreclosure, you have the right to participate in mediation. Don't ignore this invaluable resource. More information about Martin County's mediation (RMFM) program is included in these materials.
5. **Be persistent with working with your lender** – Don't think it's over just because you have been sued and you have responded. Keep in mind that 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, with working with your bank to reach alternatives to a judgment of foreclosure. You can also request mediation by filing a request for mediation with the court.
6. **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 entails that they overcome the defenses that you may raise.

7. **Summary Judgment** – Quite often, foreclosure is accomplished by “Summary Judgment.” The plaintiff will file a “Motion for Summary Judgment” and a hearing on that Motion will be scheduled. In short, 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 stating the facts as you know them to be. The affidavits are the only evidence the judge will consider at this state. If based on the affidavits, 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 and further evidence will be considered.

...If Summary Judgment is granted and the plaintiff obtains a Judgment of Foreclosure...

8. **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 judgment of foreclosure. If, however, you are still trying to modify your loan, refinance, finalize a pending short sale, or some other type of loan workout, the bank will likely agree to a sale date from 60 to 90 days after the judgment, although they are not required to do this.
9. **The Foreclosure Sale** – As of December, 2010, foreclosure sales in Martin County take place online. Most often, the bank buys the property, but that is not always the case.
 - More information about the online foreclosure sales and the procedures involved can be found at: <http://www.martin.realforeclosure.com>
10. **Worst Case Scenario – You have to leave.** The Clerk of Court will issue a Certificate of Title to the buyer 10 days after the foreclosure sale, which is the legal document giving title to the buyer. Under Florida law, the clerk is authorized to issue a “Writ of Possession.” When the sheriff posts a Writ of Possession on the property you have 24 hours to leave before the sheriff will remove you and your personal property from the foreclosed property.
 - **Don’t be caught without a plan** – by the time of the foreclosure sale, you should know where you are going to relocate and how you are getting there. You may only have 10-12 days to leave voluntarily after a 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, housing, and negotiating loan modification or other alternatives to a judgment of foreclosure.

COMMUNITY RESOURCES

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

HOUSING COUNSELING AGENCIES

Credibility www.credibility.org	1-800-251-2227
Consumer Credit Management Services, Inc. www.debt-mtg.org	1-800-568-4545
Credit Card Management Services, Inc. www.debthelper.com	1-800-920-2262
HomeFree-USA www.freeusa.org	1-772-403-5849
Housing Partnership, Inc. www.wearehpi.org	1-502-585-5451
Real Estate, Education and Community Housing, Inc. (R.E.A.C.H.) www.reach4housing.org	1-561-491-1670
For free legal aid referrals and information in Florida	www.floridalawhelp.org

LEGAL AID AGENCY

Florida Rural Legal Services, Inc. www.frls.org	1-888-582-3410
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PROGRAMS

Making Homes Affordable Program – www.makinghomeaffordable.gov

If you can no longer afford to make your monthly loan payments, you may qualify for a loan modification to make your monthly mortgage payment more affordable. 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 (4673) www.hopenow.com

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. Homeowner will need to know name of lender, account number, and zip code for initial screening. Screening upon referral to housing counselors will require information on delinquency, current earnings, and monthly expenses to determine if homeowner can sustain mortgage. Housing counselor will complete a financial analysis and attempt to work with the lender on reinstatement and loan modification.

ADDITIONAL RESOURCES:

Florida Department of Financial Services www.myfloridacfo.com	1-800-342-2762
Federal Trade Commission	1-877-382-4357
Office of the Attorney General	1-866-966-7266
(Veterans only) Veterans Service Organization www.floridavets.org	1-772-288-5448

How to Protect Yourself: Tips for Avoiding Mortgage Foreclosures

Source: The Florida Attorney General – note: 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% 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

Gather Information. Learn all 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. What to do if your lender won't work with you. For FHA-insured loan call 1-877-622-8525; for VA-insured loan call 1-800-729-5772; for conventional loans call 800-569-4287 or 888-995-HOPE.

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 Statute §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 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. You are then vulnerable to losing your home and all of your equity in your home to the so-called "rescuer."

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 866-966-7226 or visit <http://www.hud.gov> for these and other helpful tips.

What is the RMFM Program and Why is it Important to Me?

The Residential mortgage Foreclosure mediation (RMFM) Program was instituted in Martin County for cases filed after November 16, 2009 and offers qualified homeowners in foreclosure a chance to sit down and speak with the plaintiff/lender and the plaintiff's attorney to try and work out a solution. The RMFM program is administered by the Collins Center for Public Policy (www.collinscenter.org).

What is Mediation?

In mediation, a neutral third party (mediator) helps the homeowner and lender try to reach a fair, voluntary, negotiated agreement. The mediator does not decide who is right or wrong.

Who is eligible for mediation?

Only homeowners in foreclosure with their homestead residence are eligible. If you are eligible you should receive a notification in the mail or a phone call (or both) from the Collins Center. You should also see a notification in the paperwork provided with your Complaint about the program. Do not ignore this important and valuable resource.

When does mediation take place?

Mediation for homeowners who have already been sued for foreclosure must take place within 60-120 days after the lawsuit is filed. Some owners may also be eligible for pre-suit mediation. Currently, only those with Fannie Mae mortgages are required to complete pre-suit mediation.

Is there a fee to participate in the Mortgage Foreclosure Mediation Program?

The lender or loan servicing agent pays the required fee at the time the foreclosure action is filed. There is no fee required of the borrower to enter the program. However, if mediation does not settle the case, all or part of the managed mediation fee may be assessed against the borrower if the case proceeds to a final hearing before a judge.

Why should I bother to mediate my mortgage problem?

Many difficulties with mortgage, either before suit is filed (such as when an ARM reset is approaching or when a homeowner is slightly behind in payments) or while a foreclosure case is pending, can be resolved through reasonable discussions. An experienced mediator can help the parties find a creative solution. Because mortgage lenders don't want to own houses, they are generally willing to talk with a borrower about reasonable, practical solutions to bring the mortgage current. Mediation, with the chance to talk privately with the mediator, has a better opportunity to reach a solution than a possibly tense or difficult one-on-one negotiation.

Who are the mediators?

The independent foreclosure mediators are Supreme Court-certified, trained in mediation and foreclosure law.

Will the mediator issue a decision in my case?

No. All the mediator can do is help the parties look at the dispute more objectively, discuss options for a workout of the mortgage, listen to each side privately, and help the participants find a solution. A mediator makes no decision, judgment or recommendation on the outcome of the mortgage dispute.

Do I need a lawyer to participate in the Mortgage Foreclosure Mediation Program?

No, you do not have to be represented by an attorney but it is helpful and suggested.

Do all borrowers who signed the mortgage need to attend the mediation session?

Yes, all borrowers must be present at the mediation session. For example, if a husband and wife signed the mortgage then both will need to be present for the mediation. If one party cannot attend, the borrower that is attending should bring a completed Power of Attorney form.

Is the mediation confidential?

Yes, any discussions in the mediation session are confidential.

What do I bring to the mediation session?

- Completed Financial Disclosure Form – Every borrower who agrees to participate in the Collins Center's Mortgage Foreclosure Mediation Program is required to complete a Financial Disclosure form. This form must be completed with a financial counselor to comply with program procedures.
- Credit Report
- Previous Year's Tax Returns
- Proof of Income
- Most Recent Bank Statement
- Current Utility Bill(s) for Property in Foreclosure
- Any other information that may be helpful

Does the plaintiff have to bring anything to the mediation session?

Yes. If the borrower asks, the plaintiff/lender must provide borrowers with several important documents prior to the mediation session. The form to request these documents is located at the end of this brochure along with instructions on how to complete and file the request.

Where will the mediation session be held?

The mediation will be held at a Collins Center mediation office location in Tradition, in Port St. Lucie.

What happens if we can't settle?

If the parties cannot settle at the mediation, the parties may agree to negotiate further or the case will be returned to court.

What happens if I do not attend the mediation appointment?

If the borrower does not appear at the scheduled mediation appointment, the case is returned to the circuit court and foreclosure proceedings can continue.

What if I'm not eligible for mediation – can I still request it?

Yes, but you may have to pay for it or share the cost of mediation with the plaintiff/lender.

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 foreclosure 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 the Sheriff 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 live in (i.e., are currently in lawful possession of) the property;
- You rent the property (i.e., you are a tenant; not the property owner);
- If you have a lease, state so in your Answer;
- If you have a lease, state the date your lease began and it is to end; and
- If you have a lease, attach a copy of the lease to your Answer.

If you file an Answer, it will tell the judge and the mortgage company that a tenant is living in the property. You will also be notified if any hearings are scheduled in the case. If you do not file an Answer, you will not receive any notices about the foreclosure lawsuit, and you will not know what is happening in the case.

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 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 company enough money to stop the foreclosure. If the landlord does this, the foreclosure should be dismissed. Even if your landlord tells you she will stop the foreclosure, you should still file an Answer in the foreclosure 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 in the foreclosure. Although it may take several months for the lender to obtain a final judgment of foreclosure, you should prepare to look for a new place to live. **Legally, you must continue to pay rent to your landlord during the foreclosure process.** If you plan on moving, you need to comply with any notice requirements in your lease.

I Did Not Sign A Lease. How Much Notice Must I Give My Landlord Before Moving Out?

According to Florida Statutes §83.57, the following notice times are required:

Length of Tenancy	Notice Before End Of Given Period
Year to Year	60 Days
Quarter to Quarter	30 Days
Month to Month	15 Days
Week to 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. The Court will schedule a foreclosure sale. Once the property is sold at the foreclosure sale, there will be a new owner of the property.

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 recoup 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.

Can The New Owner Force Me To Move?

The new owner must wait 10 days after the foreclosure sale before asking the Court to issue a Writ of Possession to remove you from the property. A Writ of Possession is a document where the Court orders the Sheriff to remove you and all of your belongings from the property.

Sometimes the new owner will schedule a hearing to ask the Judge for the Writ of Possession, but this is not required. If you are still living in the property and the new owner schedules a hearing asking for a Writ of Possession, it is very important that you attend the hearing so you can tell the Judge how much time you will need in order to relocate.

After The Property Is Sold To A New Owner, Must I Pay Rent To the Old Landlord?

After the property is sold at the foreclosure sale, you don't need to pay rent to the old landlord.

What Should I Do If The New Owner Asks Me If I Want to Stay?

Sometimes, the new owner will ask if you want to still live in the property. If this happens, you must make sure the person who contacts you is really the new owner. You should ask for proof that he is the new owner before you pay him any rent. If you cannot reach an agreement, the new owner cannot force you out by changing the locks or turning off the utilities.

I Heard There Were New Protections For Tenants. Is That True?

Yes. A new federal law gives special protections to most tenants in foreclosed properties. If your landlord's mortgage was "federally related" (like a HUD mortgage) or if the foreclosure occurred after May 20, 2009, you are entitled to at least ninety days' notice to vacate. More specifically:

- If you are a tenant with an unexpired lease term: The law requires a new owner acquiring the property at a foreclosure sale (including plaintiffs acquiring the property) to honor all terms and conditions of the existing lease. This means the tenant can remain in the property for the time remaining in the lease term. However, if the new owner wants to live in the property, then the new owner may terminate the tenancy by giving the tenant at least 90 days written notice.
- If you are a tenant without a lease: In the case of tenants without a current lease (usually month-to-month tenants), the new owner must provide the tenant with a minimum of a 90-day written notice before terminating the tenancy. This also applies when there is an unexpired written lease which has less than 90 days remaining.

HOMEOWNER'S ASSOCIATIONS (HOA'S) AND CONDOMINIUM ASSOCIATIONS (COA'S) IN FORECLOSURE LAWSUITS

In nearly every case where a first mortgage of record exists on a property, a condominium or homeowner's association's lien is subordinate or inferior to that mortgage. This means if an association decides to foreclose its lien and takes title to the property, it will take title subject to the right of the first mortgagee to foreclose its mortgage. Associations in the past were reluctant to foreclose when the mortgagee already commenced its own foreclosure action or when the value of the property did not exceed the amount of debt secured by the first mortgage. That's changing now.

Associations are now making the decision to foreclose more often under these circumstances. The primary reason for this is serious delay in the prosecution of the case. These delays are brought on by a variety of factors including the sheer volume of foreclosure cases, efforts to work with the borrower either to short sale the property or modify the loan, problems locating documents that need to be filed with the court, back log in the courts and even strategic decisions by mortgagees to slow down the process.

In some cases, associations can obtain favorable results when foreclosing, even against properties that have fair market values below their mortgaged amount. Sometimes the homeowner has the means to pay the association but has elected to spend money on other concerns. Because foreclosure results in the owner losing title to the property, if the owner has the means to pay and does not desire to walk away, they pay rather than lose title. Foreclosure can be a powerful deterrent for owners who have the means to pay but elect not to or to pay late because they hear others doing the same. Another option is the association's right to rent the property once it takes title, if permitted by the association's governing documents. For some associations, the rental market is favorable and significant income can be recovered before the mortgagee forecloses and takes title. Alternatively, associations can deny rights to homeowners who refuse to pay, including the right to use common area facilities (pools, clubhouses, etc.) and automatic gate access.

Many times the owner cannot or will not pay and rental is not a viable option. However, associations still make the decision to foreclose for any number of reasons. Because so many mortgage foreclosures are being contested by owners raising defenses unique to the mortgage foreclosure action, and thus stalling the mortgage foreclosure case for months or even years, the association can effectively render those defenses moot as they relate to the mortgagee's foreclosure by foreclosing the association's lien. When the owner is divested of title by the association, the owner will drop or lose the fight against the lender in the mortgage foreclosure action, thus paving the way for the lender to take title and begin paying assessments. Another option for associations taking title is negotiating a short sale with the lender or tendering a deed in lieu of foreclosure to the lender. An association can also file motions in mortgage foreclosure actions notifying the court that the association has taken title and does not contest the mortgagee's foreclosure, therefore, speeding up the lender's acquisition of title. These associations understand the key is getting a paying owner into the property sooner rather than later. That way, more in terms of future assessments are recovered rather than lost while a mortgage foreclosure lingers on for years and no one pays the assessments.

What every association should consider is each case is different and the association is well served if it carefully considers all of its options and selects a strategy that works best in any given case. In this ever changing environment, there is no one size fits all approach. Homeowners facing foreclosure should always endeavor to pay their HOA/COA dues, even if they cannot afford to pay their mortgage.

PRO SE DEFENDANT
(not represented by a lawyer)
PLEADING FORMS
Martin County

**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 MOTION REQUESTING AN
ENLARGEMENT OF TIME TO FILE AN ANSWER (OR OTHER RESPONSE)
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 of papers you were served with; the “Summons” is generally on the first page). The mortgage company that filed the Complaint is referred to as the “Plaintiff.” The 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 that information as true.

The original answer must be filed with the Court within 20 (calendar) days of receiving the mortgage complaint.

**How to Complete the “Pro Se Defendant’s Motion Requesting An
Enlargement of Time to File an Answer (or Other Response) to Plaintiff’s
Complaint or 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, (insert 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 with (admit) or disagree with (deny), 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.

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. 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 and/or pooled together with other mortgages and then sold as securities to investors. Therefore, the Plaintiff in your case may not be the same company originally named on your mortgage or note. To establish its standing, the Plaintiff must show that it properly owns and holds the mortgage and note, which can be done by offering as proof records of all such transfers of ownership, and/or that it's pooling/bundling of your mortgage complied with applicable laws and regulations. This issue should be raised as an affirmative defense, although it will likely only be possible to obtain that 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 (Ex: the true price of the loan, interest rates, the waiver of consumer protections, etc.) which the lender knows is not true AND which you relied upon in acting or failing to act in some way.

C. **Duress** – unjustified pressure to sign a mortgage. However, these cases are difficult to prove unless the lender compelled you to sign the mortgage by threat or force.

D. **Unconscionability** – when the mortgage terms are unreasonably favorable to the lender, or other bad business practices, such as deceitful conduct, that result in oppressive terms or lack of bargaining power.

E. **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 Florida Rural Legal Services may be necessary.

F. **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.

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. Person who believe in 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 Florida Rural Legal Services, for more information about RESPA, or 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) violations** – many of the defenses for violations already listed (unconscionability, fraud, etc.), or other unfair and deceptive acts are also violations of FDUTPA. A claim for a violation of FDUTPA may also be a

defense to foreclosure. A detailed outline of FDUTPA can also be found on the Florida Senate website at:

http://www.flsenate.gov/Statutes/index.dfm?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 with possible affirmative defenses against an action for foreclosure. There may be other defenses available, and some of the defenses listed may not be available in every case, depending on the circumstances. It is recommended that you consult with an attorney if you are in need of further assistance.

The mortgage company can use anything you write in this section #4 against you in court. You may have to prove the truth of anything that you write in this section. Please note that losing your job or otherwise not having the money to pay the mortgage is not an affirmative defense.

You should consult a lawyer to find out if you have any defenses. You may also contact Florida Rural Legal Services, Inc. at 888-582-3410. Additionally, you may also contact the Plaintiff's attorney to try and 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 can be properly 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.
7. File your Answer (or Motion) as instructed below.

4 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 the Main Courthouse, located at 100 E. Ocean Blvd., Stuart, FL 34994, in downtown Stuart.
 - 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, via regular mail.
4. Keep the remaining photocopy for your records.

**How To Complete Notice of Borrower's Request for Plaintiff's Disclosure
For Mediation and Request to Participate in RMFM Program**

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 "(insert your name), as the borrowers on the mortgage..."
3. 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 and complete your address and telephone number.
4. File your Notice as instructed above in "4 EASY STEPS TO PROPER FILING." In addition, fax to 850-383-9927 **and** 772-345-5124.

REMEMBER: This for MUST be provided at least 25 days before mediation.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY, FLORIDA

CASE NO.: _____
DIVISION: _____

Plaintiff,

vs.

Defendants.

_____ /

**PRO SE DEFENDANT'S MOTION REQUESTING 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 been given 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) 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 NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY, FLORIDA

CASE NO.: _____
DIVISION: _____

Plaintiff,

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:

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

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY, FLORIDA

CASE NO.: _____
DIVISION: _____

Plaintiff,

vs.

Defendants.

_____ /

**NOTICE OF BORROWER'S REQUEST FOR PLAINTIFF'S DISCLOSURE FOR MEDIATION
AND REQUEST TO PARTICIPATE IN RMFM PROGRAM**

_____, as the borrowers on the mortgage sued upon in this case, hereby request the following information and disclosure from the plaintiff:

- Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.
- A history showing the application of all payments by the borrower during the life of the loan.
- A statement of the plaintiffs position on the present net present value of the mortgage loan.
- The most current appraisal of the property available to the plaintiff.

Borrowers further request that this case be referred by the court to mediation using the RMFM Program. The undersigned states, that the Defendants are currently living on the property as a primary residence and the property has a homestead tax exemption.

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) and to the Collins Center, via facsimile transmission to both 850-383-9927 and 772-345-5124, on the ____ day of _____, 20____.

Signature of Defendant

Printed Name of Defendant

Address

City, State, Zip Code

Telephone Number