

FORECLOSURE FAQ

Many foreclosures can be prevented by calling your mortgage company and asking to speak to someone in the “Loss Mitigation Department” about loan workout solutions, such as, a repayment plan, loan modification agreement, forbearance agreement, loan assumption or a deed-in-lieu of foreclosure or short sale. You may also be eligible for various State and Federal foreclosure prevention program help. The New Jersey Department of Banking and Insurance http://www.state.nj.us/dobi/division_consumers/finance/foreclose_subprime.html and the New Jersey Housing Resource Center <http://www.state.nj.us/njhrc/consumers/foreclosure/> web sites should be consulted. **The sooner you ask for help, the easier it is to formulate a plan to save your home.**

WHAT IS A FORECLOSURE?

A foreclosure is a court-ordered sale of property to satisfy a mortgage debt. A person who has not paid his/her mortgage is considered to be in default and the lender can begin foreclosure proceedings.

HOW CAN I AVOID A FORECLOSURE ONCE A COMPLAINT HAS BEEN FILED AGAINST ME?

Participation in the foreclosure mediation program may help you avoid foreclosure. Information about the foreclosure mediation program is included with the summons and complaint that you received. See the section on foreclosure mediation for more information.

WHERE IS A FORECLOSURE COMPLAINT FILED?

All foreclosure complaints are filed with the Clerk of the Superior Court, Richard Hughes Justice Complex, P.O. Box 971, 25 Market St., Trenton, New Jersey 08625. Even though the complaint is filed in Trenton, a complaint’s caption states venue to be the county where the property is located. All subsequent pleadings continue to be filed in Trenton until an action becomes contested. When an action is contested, pleadings are filed with the General Equity judge in the county of venue.

WHAT SHOULD YOU DO IF SERVED WITH A FORECLOSURE COMPLAINT?

You should try to get an attorney to represent you in the foreclosure action. If you cannot afford an attorney, you may be eligible for legal help from Legal Services of New Jersey or your regional Legal Services program. To find out if you are eligible and to apply for assistance, call LSNJ-LAW™, Legal Services of New Jersey’s statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529).

Do not ignore the complaint or you may have a default entered against you. You generally have only 35 days to respond to the foreclosure complaint.

How do I respond to a foreclosure complaint?

If you believe that the lender does not have a legal basis to foreclose on your property, you may file a written Answer to the complaint and a Foreclosure Case Information Statement along with the \$135.00 filing fee.

WHAT IS AN ANSWER?

An answer is the document filed by the debtor- property owner (defendant) which contains the response to each of the statements made by the plaintiff and the reasons or circumstances why the defendant is or is not responsible for any loss claimed by the lender (plaintiff). Answers give notice to the court and to the other parties, in short and plain terms, why the relief requested in the complaint is opposed. An answer responds to each numbered paragraph in the complaint and admits the statement, denies the statement or states that the party is without knowledge or information sufficient to form a belief as to the truth of the statement (allegation). Whenever you deny a statement in the complaint, you should also state briefly the reason why you are denying the statement or any part of it.

In foreclosure actions, a response that the defendant is without sufficient knowledge or information is not a denial. Answers may also assert affirmative defenses. Affirmative defenses are specific and separate statements of facts asserted to prevent the relief requested in the complaint. An answer's caption, layout, paper size, weight and format for filed papers must conform to the Rules of Court. An answer on behalf of a corporation, limited liability corporation or limited partnership must be filed by an attorney.

How Much Time Do I Have to File An Answer?

If you look at the summons, which often is the first page of the papers that you received from the lender's attorney, you will notice that it demands that you answer the complaint within 35 days after you receive the summons and complaint. Filing means filing the original answer with the court. Serving means providing a copy of it to the lender's attorney who sued you.

How Do I File My Answer?

Deliver or mail the original and one copy of your answer to the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, 25 Market Street, Trenton, New Jersey 08625 along with the \$135.00 filing fee and the Foreclosure Case Information Statement (FCIS). If you mail the papers, it is recommended that you use certified mail, return receipt requested. Enclose a stamped self-addressed envelope so the file-stamped copy can be returned to you. Keep your file-stamped copy in a safe place because it is your proof that you filed your answer in the place and on the date indicated in the file stamp.

How Do I Serve My Answer?

After you have prepared your answer, mail a copy to the attorney who filed the foreclosure complaint against you. Mailing is serving your answer. Although you do not have to mail the answer by certified mail, return receipt requested, it is recommended, since the green card proves when you mailed the answer and the person to whom it was addressed.

COURT STAFF MAY NOT HELP IN PREPARING AN ANSWER

The staff of the Office of Foreclosure and the Office of the Clerk of Superior Court are prohibited from giving legal advice and also may not make attorney referrals. Staff can, however, answer questions about the status of an action or provide general procedural information. Please contact the Customer Service Unit of the Superior Court Clerk's Office at 609-421-6100 to speak with a knowledgeable staff person.

What is a **CONTESTING Answer?**

A contesting answer is one that challenges the lender-plaintiff's right to foreclosure on the property. The Office of Foreclosure sends contesting answers to judges for case management.

What is a Noncontesting Answer?

A noncontesting answer responds to the allegations of the complaint but does not dispute the validity of the mortgage, the priority of the mortgage or create an issue with respect to the lender's right to foreclose. A noncontesting answer also may recite that the party is without knowledge or information sufficient to form a belief as to the allegations of the complaint and leaves the lender-plaintiff to its proofs.. Noncontesting answers remain with the Office of Foreclosure for administrative processing.

WHAT HAPPENS IF I Do Not FILE AN ANSWER?

If you do not file a written answer the foreclosure complaint , you are admitting the claims of the foreclosure complaint. The lender-plaintiff can seek entry of a default against you and thereafter the lender-plaintiff can seek a default judgment. A foreclosure judgment either orders the sale of a particular property to satisfy a debt or awards title to the property to the plaintiff.

A foreclosure judgment is not a money judgment that can be collected by wage garnishments or executions against personal property. However, a mortgagee may seek to recover any deficiency which remains following a foreclosure sale in a separate action filed in the Law Division. For residential mortgage deficiency actions, damages that may be recovered are limited to the difference between the mortgage debt and the fair market value of the property.

TIME TO FINALIZE A FORECLOSURE

New Jersey is a judicial foreclosure state meaning that foreclosures are processed through the courts. It normally takes four to six months for the lender-plaintiff to complete the legal process to obtain a foreclosure judgment. The county sheriff must then advertise the foreclosure sale once a week for four consecutive weeks in a local newspaper.

FEES CHARGED IN A FORECLOSURE ACTION

The fee for filing a foreclosure complaint is \$200. The fee for filing a foreclosure answer is \$135. Any notice of motion is charged a \$30 filing fee.

An attorney's Superior Court Clerk's account can be charged the fee or a check or money order payable to the Treasurer, State of New Jersey can be delivered with the pleading. Foreclosure filing fees can be waived only pursuant to an order entered by a General Equity judge or assignment judge of the county of venue, after a finding that the party seeking the waiver is indigent.

CASE MANAGEMENT

Once you have filed your answer (and the Office of Foreclosure marks it as a contesting answer), you will get other papers from the lender's attorney and notices from the court. Often the lender's attorney files a motion to strike the answer or for summary judgment. If you do not understand these papers, or what will happen in court, you may want to contact an attorney as previously suggested. **Do not ignore subsequent court applications or court notices of conferences or hearings.**

You must keep the court and the other side up-to-date on your current address and telephone number. This is so that the court and the other side can continue to communicate with you. If you move, they will not look for you. If any information you gave the court in your answer changes, send another letter with the new information to the Clerk with the case number and parties' names; make sure you include what was your address.

MOTIONS FILED WITH THE JUDGE

If the foreclosure case status is contested, then all motions are made directly to the General Equity judge assigned to the county where the property is located. The motion's return date (that is, the date the matter is scheduled to be heard) is scheduled to give all parties 16 days notice plus 3 days for mail service. Note: A motion for summary judgment (that is, a motion asking the court to resolve the case in the moving party's favor without a trial because there is no dispute over the facts of the case and the law supports the moving party's position), requires 28 days plus 3 days for mail service).

MOTIONS FILED WITH THE OFFICE OF FORECLOSURE

A motion can be made returnable any business day as long the number of days notice, as set out in Rule 1:6-3, is given. For the majority of motions this is 19 days (16 days notice plus 3 days for service by mail).

IF A MOTION IS FILED WITH THE OFFICE OF FORECLOSURE, MUST THE PARTIES APPEAR?

No. The Office of Foreclosure is not a hearing office and a personal appearance at the Office of Foreclosure will not serve as an objection. File your written objection or, if applicable, cross motion with the Office of Foreclosure, PO Box 971, 25 Market Street, Trenton, New Jersey 08625, the moving party and all parties who have appeared in the action. Disputed motions must be heard by a General Equity judge assigned to the county where the property is located; the case file will be sent to the judge for resolution and you will be advised by the judge of the time and place of the hearing. You may also send a courtesy copy of your objection or cross motion to the General Equity judge assigned to the county where the property is located (the case file sent from Trenton will include the filed copy of your objection or cross motion).

Note. If a party objects to a motion filed with the Office of Foreclosure, the Office of Foreclosure will not take any further substantive steps to process the foreclosure case until the General Equity judge hears the motion and resolves the dispute.

FORECLOSURE AND RENTERS

If a landlord rents out a home or other property and that home or property is facing foreclosure, residential tenants may be protected by New Jersey's Anti-Eviction statute, *N.J.S.A. 2A:18-61.1 to 61.12*. Legitimate residential tenants have the right to stay on the property notwithstanding a foreclosure.

Frequently, because lenders do not know tenants' names, the foreclosure complaint will name "John Doe, Tenants No. 1 to 10." If a lender is unaware that the property is rented, a tenant may first be told about the foreclosure when the lender has a writ of possession and is attempting to remove the property's occupants. If you are a tenant and are served with a complaint, you should consult an attorney. You may also provide the lender's attorney with a copy of your lease.

HOW CAN PARTIES OR THE PUBLIC GET COPIES OF PAPERS FILED IN A FORECLOSURE ACTION?

Foreclosure files are public records. They can be examined at the Superior Court Clerk's Office in Trenton or at public access terminals in county court houses. Copies may be purchased for the standard copy fees. For information on viewing or obtaining copies of Foreclosure files please go to the following website: http://www.judiciary.state.nj.us/superior/copies_court_rec.htm or call the Customer Service Unit of the Superior Court Clerk's Office at 609-421-6100.

HOW DO SHERIFF'S SALE PURCHASERS OBTAIN POSSESSION OF A FORECLOSED PROPERTY?

If a foreclosure judgment awards possession to the plaintiff or third-party purchaser at the Sheriff's sale, the Office of Foreclosure can issue a writ of possession. A writ of possession is the court's instruction to the sheriff to remove the occupants of the property. A third-party purchaser must submit to the Office of

Foreclosure a copy of the sheriff's deed along with an original and copy of the proposed writ of possession and an affidavit or certification stating (1) the names of the parties to be evicted and (2) if applicable, that the parties to be evicted are not, and why not, protected by the New Jersey Anti-Eviction statute. A corporation, limited liability corporation or limited partnership must be represented by an attorney to apply for a writ of possession.

WHAT ORDERS MUST BE OBTAINED FROM THE GENERAL EQUITY JUDGE, RATHER THAN THE OFFICE OF FORECLOSURE?

Even in uncontested foreclosure actions, some orders must be sought from the General Equity judge of the county of venue. These are orders not listed in *Rule* 1:34-6 that requires the exercise of judicial discretion. They include orders for special modes of service; orders to appoint rent receivers, guardian *ad litem* (a person appointed by the court only to take legal action on behalf of minors or adults not able to handle their own affairs), attorneys for parties in the military or special masters to sell property; orders to vacate foreclosure judgments without the plaintiff's consent; orders to stay a sheriff's sale or eviction or orders to vacate a sheriff's sale.

WHAT IS SURPLUS MONEY?

Surplus money may arise from a foreclosure sale. If a sheriff's auction sale produces more money than is needed to satisfy the foreclosure judgment, then the sheriff delivers the extra money to the Superior Court Clerk. These moneys stand in the place of the land itself for the purpose of distribution among lienholders with an interest in the property or the former owners.