



COMMUNITY
LEGAL SERVICES
of MID-FLORIDA

What you need to know about...



Foreclosure

CLSMF may be able to help!



I'm behind in my mortgage payments...now what?

If you have a mortgage on your home and you are behind in your payments, pay close attention to any letters you receive. Your rights may depend on the type of mortgage you have. Be sure to keep copies of all letters and notices; do not throw them out! Do not ignore letters from the mortgage company. Call them immediately to see if you can work out an agreement to save your property. *Contact CLSMF for HUD approved counseling services.*

If you believe you have been the victim of consumer fraud, you may contact the **Florida Attorney General at (866) 966-7226**. If you have a:

◆ **Conventional Loan**

Write a letter to the mortgage company requesting to pay the back payments over time. The mortgage company may accept your offer.

◆ **Veterans Administration Loan**

Contact the V.A. as soon as you are behind in your mortgage. They may be able to help you with your mortgage payments.

◆ **Farmers Home Mortgage**

You may get a letter saying you are behind in your payments. Call the Farmers Home office and ask for help with your mortgage. They may be able to give you interest credit, delay your payments, or provide some other help. If you are turned down, you can ask for an appeal hearing.

I've been served court papers for foreclosure...now what?

If the bank or mortgage company has started a foreclosure suit against you, you will be served court papers by the sheriff or a process server. You will probably receive a summons, a complaint, and an order to show cause. These papers come with a deadline: You must respond within 20 days.

As soon as you receive court papers, read them. Talk with an attorney to get advice.

Call the CLSMF Legal Advice Helpline to see if you are eligible for free legal assistance. Find the number of the office nearest you on the back of this booklet.

If you respond to the papers yourself, you should:

On plain paper, type (or print clearly) the information at the top of the complaint, including the court name, names of the parties, and the case number, then print or type “Answer of Defendant.”

Use numbered paragraphs to point out anything you believe is untrue or wrong in the court papers you received. You should also write down the reasons why there should be no foreclosure. These reasons are called “affirmative defenses.”

For example: The mortgage company may have accepted late payments from you for several months, did not send you a new written notice that payments are due on time, but then filed a foreclosure when you were late again. Perhaps a home improvement company placed a mortgage on your house to pay for its services. A defense may be that the work was not done properly. The judge may still rule that you owe the mortgage, but it may be less than the mortgage company is asking.

Other defenses are possible. Any reason that would make it unfair for the mortgage company to take over your home should be written down as a defense.

Sign the answer. Write that you are mailing a copy to the lawyer for the bank or mortgage company, including the date you mail the copy. Then, mail a copy of the answer to the lawyer for the bank or mortgage company. Take the original answer to the Court Clerk and file it. There is no charge for this. Keep a copy of your answer for your records.

You may receive a Motion for Summary Judgment. This will tell the date and time that a judge will decide whether to foreclose on the house. The rules require that you present an affidavit stating the reasons why the foreclosure should be denied. You must serve the affidavit on the mortgage company’s attorney 5 days before the hearing. You can go to that Motion for Summary judgment hearing and tell the judge why there should be no foreclosure.

If the judge decides that the house should be foreclosed, he/she will set a day and time for the sale. That day will be at least 20 days after the hearing, but probably not more than 35 days later. If you need more time than that, tell the judge. It will be up to the judge to decide if you get more time.

At the sale, someone will purchase the house. The new owner cannot take possession of the house until the Clerk of the Court issues the title, usually 10 days after the sale. If you have not moved, the new owner is entitled to move in, and you will be served a “Writ of Possession” by the sheriff. The Writ of Possession will give you 24 hours to move.

If you do not file an answer or if you do not show up at the “Motion for Summary Judgment” hearing, a default can be entered against you. This is like automatically losing your case. The next piece of paper you could receive would be the notice to leave your house.

Once the foreclosure action is filed, you will start to receive mailings from individuals who will offer you ways to “save” your home. Do not sign anything until you have the opportunity to have an attorney review the documents, since you may be signing away your ownership rights and will receive nothing for your home!

Are There Any Other Options?

- ◆ You may wish to sell your home. You have the right to do so until the foreclosure sale. This may be the best way for you to get back the equity you have in the home. If you want to do this, contact a Realtor.
- ◆ You may want to consider bankruptcy. In some situations where the household has a steady source of income, bankruptcy can help you save your home. For advice, talk to an attorney who handles bankruptcy matters.
- ◆ You have the right to “redeem” your home until the sale of the house. To redeem your home, you must pay all amounts owed on the mortgage, plus attorney fees, and the court costs that went with the foreclosure. If you do this, you can stop the foreclosure sale.
- ◆ You may also want to consider deeding the house back to the bank or mortgage company. Contact the attorney representing the mortgage company to discuss this option.
- ◆ You may opt to participate in the “cash for keys” program, also known as a “deed in lieu”, which allows the bank to take property back from a delinquent homeowner who can no longer afford to make their house payment, in exchange for moving expenses.

- ◆ You can use the “cash for keys” money to move all your belongings plus walk away without any additional financial stress or responsibility.
- ◆ You may wish to request a loan modification, which typically involves a reduction in the interest rate, an extension on the term (length) of the loan, a different type of loan or a combination of all three. A lender might be open to modifying a loan because the cost of doing so is less than the cost of you defaulting on the loan.

Foreclosure Prevention:

Your Guide to Workout Options

If your financial hardship will be temporary, your lender may determine that one of the following options works best for your situation:

- ◆ **Reinstatement:**

Paying the amount you are currently behind, in full, in order to bring your loan current.

- ◆ **Forbearance:**

A lender may allow you to reduce or suspend your payments for a short period of time and then agree to another option to bring your mortgage current (may be used in conjunction with a modification).

- ◆ **Repayment Plan:**

Resume making your regular monthly payments plus a portion of your past due amount in order to bring your loan current. These are generally for a set amount of time (3-24 months depending on the lender).

If Your Financial Situation Is Long-Term:

- ◆ **Modification:**

A loan modification is similar to a refinance: the lender agrees to alter/modify your loan but with no fees being charged. By modifying your rate, extending the term of your loan to as long as 40 years will lower your payment. The modification may be for a prescribed amount of time or for the life of the loan.

Making Home Affordable (MHA)

The federal government has several programs for helping homeowners who are having trouble making their mortgage payments due to some hardship through no fault of their own.

How do I qualify for the MHA Programs?

- ✓ Own a 1-4 unit home that is your primary residence **and**
- ✓ Have received your mortgage prior to January 1, 2009 **and**
- ✓ Have a mortgage payment (including principal, interest, taxes, insurance and homeowners association dues) that is MORE than 31% of your gross (pre-tax) monthly income; **and**
- ✓ Owe less than or equal to \$729,750 on your first mortgage.



MHA Programs:

Home Affordable Refinance Program (HARP)

For those loans that are held by Fannie Mae or Freddie Mac and whose borrowers are able to pay their mortgages on time but are not able to take advantage of the record low interest rates, perhaps due to the decrease in property values. HARP may assist you with refinancing into a more affordable mortgage.

Home Affordable Modification Program (HAMP)

For those homeowners with payments greater than 31% of gross monthly income who are struggling to make their mortgage payments on time; may qualify for a modification. Under the HAMP program the borrower’s payment is lowered to no more than 31% of gross monthly income by modifying the rate, term, or principal balance owed, or a combination of these items.

HAMP Trial Period:

Borrowers will be required to pay the reduced payment during a Trial Payment Period while the documents/application they submitted is reviewed for final approval. Once HAMP is final the following could occur in order to bring the payment to the level of 31% of borrower's gross monthly income:

- *Rate reduction, possibly to as low as 2%*
- *Term extended for up to 40 years*
- *Principal forbearance or deferral*

The rate is fixed for the first 5 years and beginning in year 6 the rate may increase no more than 1% per year until it reaches the Freddie Mac market rate at the time the HAMP modification was prepared.

Second Lien Modification Program (2MP)

Offers homeowners a way to lower payments on their second mortgage. Under the 2MP program, if your first lien is modified under the HAMP program and your second-lien holder is a participating servicer (see makinghomeaffordable.gov for list), your second-lien holder may lower your rate to 1% for loans that pay both principal and interest or 2% for those interest-only loans.

They may also extend your second lien to 40 years and defer principal if necessary. If principal was deferred or forgiven on the first, then the second-lien holder must forbear or forgive the same amount on the second lien. As an alternative to the 2MP program the second-lien holder may elect to extinguish your second lien in its entirety.

Unemployment Program (UP)

For those borrowers struggling to pay their mortgage due to unemployment. They may receive a forbearance period during which their monthly mortgage payments are reduced or suspended while they seek re-employment.

The minimum forbearance for unemployment reasons is 3 months, though the servicer may extend the term depending on the investor. To be eligible, borrowers may not be more than 3 months past due on their mortgage.

Something to remember: *Even if you don't qualify for any of the options under the Making Home Affordable Program, lenders have offered in-house workout options (modifications, forbearance agreements and repayment plans) so it is in your best interest to contact your lender to see what options may be available to you.*

Partial Claim:

For those borrowers with a Federal Housing Administration (FHA) loan you may have another option available to you. Your lender may assist you in obtaining a one-time interest free loan from the insurer to bring your loan current. Your loan must be at least 4 months delinquent, but no more than 12, to request a partial claim. FHA will place a lien on your property.

For those borrowers who may no longer be able to afford their homes, but want to avoid foreclosure, the Making Home Affordable Program also offers the Home Affordable Foreclosure Alternative (HAFA) program. Unlike many foreclosure alternative options, the HAFA sets clear timelines to keep the process efficient. To qualify under HAFA, you:

- *Do not qualify for a HAMP, or*
- *Do not successfully complete the HAMP trial period,*
- *Miss at least 2 consecutive payments once in a permanent modification; or*
- *Request the short sale or deed-in-lieu options.*

Short Sale:

In a short sale option, the servicer allows the homeowner to list and sell the mortgaged property and agrees to accept the net proceeds from the sale, even if the proceeds are less than the total amount due. Under the HAFA option, your lender/servicer will provide you with a set amount that they would be willing to take, prior to listing your home.

Deed-in-Lieu:

Once all of your options have been exhausted your lender may offer to accept a deed-in-lieu of foreclosure through which a homeowner voluntarily transfers ownership of the property to their lender/servicer. Most lenders will require that homeowner try to sell their home before they will accept the deed-in-lieu.

Your lender may also offer a monetary amount for relocation assistance after closing, often referred to as the Cash for Keys option. Up to \$3,000, this amount is negotiable and is generally given once a final inspection of the property has taken place to see if there has been damage or if the home is in good repair and “broom” clean.

Deficiency Judgments

Participating in the short sale or deed-in-lieu option could result in a deficiency judgment. A deficiency judgment is when the home has sold in the foreclosure sale (including short sale) for less than the full amount owed. Under the HAFA program the lender is agreeing that they will not seek a deficiency judgment. However, lenders who allow short sale or deed-in-lieu options not under the HAFA program or after a home has been foreclosed and sold in a foreclosure sale, the lender may seek a judgment through the courts at a later date to attempt to collect the difference.

You can negotiate this option up front with your lender and should they agree, make sure to get it in writing that they will not seek the deficiency judgment.

Mediation:

Mediation is thought of as “assisted negotiations.” During mediation, the Mediator (a neutral 3rd party) will explain the process to both sides and encourage a conversation regarding a workout. During the mediation, your lender must have someone at the table who can make the final decision, based in part, on the information you provided during your foreclosure counseling session.

BE PREPARED

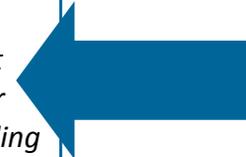
- ◆ Bring ALL required documentation to your counseling session
- ◆ Bring ALL of your updated information with you to mediation (pay stubs, bank statements, etc.)

Not everyone will be able to keep their home, but understanding your options will help you make a more informed decision.

Please remember that the mediation process was put into place to assist you. Plan to attend. Plan to participate.

Need More Information?

Please visit the Making Home Affordable Programs website at **MakingHomeAffordable.gov** or contact a HUD Housing Counseling agency for more guidance.



Filing an Answer to Foreclosure

Why File An Answer?

If you are served with a summons and complaint for foreclosure, this means your lender has filed a lawsuit against you.

If you do not want to lose your right to defend yourself and participate in the court proceedings, you must file an answer.

When Must You Respond?

You have twenty (20) days to file your answer. Count twenty days starting with the day after you are served and count every day, including Saturdays, Sundays and holidays.

You must respond even if:

- ◆ you are talking to your lender to try to work out a deal or get a modification
- ◆ your lender says you don't have to respond
- ◆ you have scheduled a mediation

What If I Do Not Respond or Do Not Meet the Deadline?

If you fail to file your answer (written response) to the foreclosure complaint within 20 days after being served, the court will enter a default against you, allowing the foreclosure to proceed without any further notice to you from the court or your lender.

There are some limited circumstances where a default may be challenged. *Contact Community Legal Services of Mid-Florida immediately if you do not understand the response time frames or if you receive a default judgment and you have not previously been notified of the law-suit.*

What Do I Say in My Answer?

Every paragraph in the complaint is usually given a number. You should respond to each numbered paragraph in the complaint. You can group your responses into those paragraphs you agree with, those you disagree with and those you cannot answer.

If you disagree, you DO NOT have to explain why you disagree. You can use the sample form on the next page.

If you have other reasons why there should not be a foreclosure, add additional numbered paragraphs and list your reasons.

At the top of your Answer, put the case number, your name and the names of the lenders as listed on the summons. Sign your answer at the end and add your address, telephone number and the date mailed.

**See Sample Answer
on the following page**

(the rest of this page is intentionally left blank)

SAMPLE ANSWER

(must be completed on 8 1/2" x 11" paper)

IN THE CIRCUIT COURT,
IN AND FOR _____ COUNTY, FLORIDA.

CASE # _____

Plaintiff(s) [Lender]

vs.

Defendant(s) [You]

ANSWER OF DEFENDANT

1. Defendant admits the information in paragraphs _____.
2. Defendant denies all of the information in paragraphs _____.
3. Defendant doesn't know about the information in paragraphs _____.
4. Other reasons why there should not be a foreclosure: _____
_____.

I certify that a copy hereof has been filed with the Clerk of the Court and that a copy has been furnished to the Plaintiff's attorney by mail at [plaintiff's attorney address] _____ on [date]_____.

Signature of Defendant(s)

Street Address

City/State/Zip Code

Phone Number

What Do I Do Next?

Once your original answer is filed, the court will keep you advised of all hearings so that you may continue with your defense.

Make at least two copies of your answer. The original answer is filed with the Clerk of the Court where the lawsuit was filed. Look at the summons to see which court the lawsuit was filed in.

You must also mail one copy of the answer to the plaintiff's attorney. Look at the name and address on the summons to see where to send the plaintiff's copy. Keep one copy for your records.

Contact CLSMF if you have any questions or if you need assistance in preparing your answer.

DO NOT DELAY!

Filing an Answer to Foreclosure Under the New Law

Under law currently in effect, foreclosures of properties are expedited, and if you do not file an answer to a foreclosure complaint you may be taking a risk of losing your house. If you want to be heard and participate in the court proceeding to defend your rights, you must file an answer to the complaint.

Also under the newest law, if you fail to file your answer within the 20 days after being served, the court may issue an Order to Show Cause why your house should not be foreclosed, and the court may request you to deposit into the Court Registry mortgage payments until the court makes a final decision in your case.

When Must You Respond

You only have twenty (20) days after you are served with a summons and complaint to file an answer. Count twenty (20) days after the day you got served, including Saturdays, Sundays and holidays. You must respond even if:

- ◆ *You are working with your lender to try to work out a deal or get a loan modification.*
- ◆ *Your lender says you do not have to respond.*

What Will Happen if You Do Not Respond

If you fail to file your answer to the foreclosure complaint within the twenty (20) days after being served, the court will enter a default against you and the foreclosure case will continue without any further notice to you from the court or lender. If you fail to file your answer after being served, or the answer does not have any defenses (reasons why your house should not be sold), the lender may ask the court to enter an Order to Show Cause why your house should be foreclosed. The hearing on Order to Show Cause may take place 45 days after the expiration of the time you had to respond. So it is imperative you file your answer within the 20 days from the moment you got served, because if you fail to do so, you may lose your house.

What to Say in the Answer

You must admit or deny every single paragraph in the complaint. If you do not know the facts stated in any specific paragraph, you must deny it for lack of information or knowledge. If you believe your house should not be foreclosed, then you must write your reasons in your Answer in separate paragraphs.

Examples of reasons could be:

- ✓ *you never received any letter from the bank stating they were accelerating the mortgage (declaring the full amount due),*
- ✓ *the bank never informed you about options to avoid foreclosure,*
- ✓ *you sent payments to the bank and the bank never credited those payments and the bank never returned the money to you.*

Make sure to write at the top of your Answer the information about the court where the case is pending, your name, and the name of the Plaintiff (lender) as it appears on the Summons.

Where to File an Answer

The original of your Answer should be filed with the Clerk of the Court where the case is filed. You must send a copy of your Answer to the Plaintiff's attorney. Look at the Summons to check Plaintiff's name and address to mail him/her a copy of your Answer. Remember to keep copy for your records.

What About the New Law?

Under the new law the bank has to certify to the court that it has possession of the original note prior to filing the foreclosure case against you or that they have lost the note while it was under their possession. Also, the new law makes the foreclosure judgment final, which means you cannot get the house back after the house is sold and title is transferred to the new owner.

Can I Get the House Back after it is Sold and the Title has been Transferred?

No, you cannot get the house back after it has been sold and title has been transferred to another person. Under the new law the foreclosure judgment has finality, even if you ask the court to set aside the judgment because there were irregularities in the process. In that particular situation all you can get is a money judgment against the bank/lender for any irregularity in the process.

If My House is Sold Am I Still Personally Liable?

Yes, if the house is sold for less than the amount you owed, you will be personally liable to the lender for the difference (deficiency), unless you had agreed with the bank to have the deficiency waived, or you file for protection under bankruptcy. The lender has one (1) year from the moment the title to your house is transferred to the new owner to file an action to recover the deficiency.

Where Can I Get Help?

There are limited circumstances where a default may be challenged. *Contact Community Legal Services of Mid-Florida, if you do not understand the time frames or if you received a default judgment and you have not been previously notified of the lawsuit.*

What Happens After I File My Answer?

After you file your answer, the court will advise you of any hearings scheduled in your case so you may attend and defend your case.

**You may contact CLSMF
if you need any assistance or have questions
on how to prepare your answer.**

See back page for CLSMF contact information.



BREVARD*: 866-469-7444

CITRUS & SUMTER

106 N. Osceola Avenue, Inverness, FL 34450

CITRUS: (352) 726-6592 | **SUMTER:** 800-984-2918

FLAGLER: 800-405-1417

HERNANDO: 866-801-5566

LAKE: (352) 343-6351

226 West Main Street, Tavares, FL 32778

MARION: (352) 629-6257

2300 SE 17th Street, Suite 201, Ocala, FL 34471

ORANGE*: (407) 841-7777

122 E. Colonial Drive, Suite 200, Orlando, FL 32801

OSCEOLA: (407) 933-1791

800 North Main Street, Kissimmee, FL 34744

PUTNAM: (386) 385-0928

216 S. 6th Street, Palatka, FL 32177

SEMINOLE*: (407) 322-6673

VOLUSIA: (386) 258-5600

128 Orange Avenue, Suite 100, Daytona Beach, FL 32114

ADMINISTRATIVE OFFICE: (386) 523-9181

Client toll-free: 800-363-2357

Florida Relay TTY calls Dial 711

Via email: info@clsmf.org

Apply for help online: applyforhelp.clsmf.org

**Certain legal services not provided*

All CLSMF offices are wheelchair accessible.

www.clsmf.org

CLSMF is a HUD-approved Housing Counseling Agency.

