

FORECLOSURE INFORMATION & RESOURCES



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FAIR HOUSING PROJECT ▪ FORECLOSURE DEFENSE UNIT

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THE FORECLOSURE PROCESS

- 1) Default** – Default occurs when the borrower fails to perform an obligation required by their loan document, which in most cases is the promissory note and mortgage. Most commonly, this is the obligation to make monthly mortgage payments, but a default may also be caused by other breaches of the loan documents, including failure to maintain property insurance, pay property taxes, or association assessments.
- 2) Summons and Complaint** – Your lender (in this article “lender” may refer to the lender, authorized agent or owner of the note) files a complaint for foreclosure with the Court and serves you with process (a copy of the Summons and Complaint.). Your lender is now the Plaintiff against you in a lawsuit.

Order to Show Cause – At the time of filing the complaint, or any time thereafter, the Plaintiff may also request that the court enter an Order to Show Cause, which is an order issued by the court directing you to appear at a specific date and time for a hearing to determine whether you have any defenses to the lawsuit. If an Order to Show Cause is issued, it may be served upon you along with the complaint and summons, or it may be served at a later date.

If you receive an Order to Show Cause, it is important that you file a response to the complaint, as described below, prior to the date of the hearing provided in the order. You must also attend the hearing and inform the court of the defenses you have to the foreclosure. If you fail to attend the hearing on the Order to Show Cause and set forth valid defenses to the foreclosure, the court may enter a Final Judgment of Foreclosure against you in a summary procedure at the hearing. Upon entry of a Final Judgment of Foreclosure, your property will be scheduled for judicial sale.

- 3) Responding to the Complaint** – As the summons explains, you have 20 days from the date of service to file a response to the complaint. You must mail a copy of your response to the Plaintiff’s attorney.

Don’t ignore the Summons and Complaint!

If you fail to respond to the complaint, a **DEFAULT** may be entered against you. If a default is entered, then you are deemed to have admitted all the allegations of the complaint. A default may result in the loss of your right to defend against the foreclosure. The Plaintiff may be entitled to foreclose on the property.

If an Order to Show Cause has been issued, it is extremely important to respond to the complaint before the date of the hearing stated in the order so you can avoid the summary procedure described above.

... If you file a timely response to the complaint, the process continues as follows...

- 4) **Be Persistent in Working With Your Lender** – Don't think it's over just because you have been sued and you have responded. You own the property until the property is sold at the foreclosure sale, as described below. Even after a foreclosure case is filed, you can still sell the property, refinance your loan, modify your loan, or engage in some other loss mitigation with your lender. 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) in working with your bank to pursue alternatives to a foreclosure judgment. If you are having difficulty obtaining a response from your lender, you can also request mediation by filing a motion for mediation with the court.
- 5) **Defenses** – If you raise defenses in your response, the Plaintiff must respond before they are entitled to a judgment of foreclosure. That is, they cannot ignore your requests and must fully prove their case, which necessarily requires that they overcome the defenses that you may raise.
- 6) **Summary Judgment** – Quite often, foreclosure is accomplished through *Summary Judgment*. This occurs when the Plaintiff files a *Motion for Summary Judgment*, in which the Plaintiff indicates they have provided legally sufficient, undisputed proof entitling them to a judgment of foreclosure. A full trial on the matter is not necessary to enter a final judgment. The Plaintiff will provide the original note and mortgage to the court, along with affidavits (sworn, notarized statements) outlining the amount owed under your loan, as well as for attorney's fees and court costs.

If you disagree with the facts set out in the Plaintiff's affidavits, then you must file your own affidavit or other supporting documents showing the facts as you know them to be. These affidavits and documents are the only evidence the judge will consider at this stage. If the judge finds that there is a disputed issue of material fact, the judge will deny the summary judgment. If summary judgment is denied, the case will proceed to trial and further evidence will be considered. If the summary judgment motion is granted, a final judgment of foreclosure will be entered against you and a date for the sale of your property by judicial auction will be set.

- 7) **Trial** – Once the case is scheduled for trial, you will receive a notice of the court telling you the time and date of the trial. You will need to be prepared to attend the trial and make any arguments necessary to support your defenses, including having any necessary witnesses appear and give testimony. If the Plaintiff proves that it is entitled to damages from you due to default under the loan, a judgment will be entered in the Plaintiff's favor.
- 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 foreclosure judgment. If you are still trying to modify your loan, refinance, finalize a short sale, or arrange some other type of loan workout, the lender will likely agree to a sale date that is extended, possibly 60 to 90 days after the judgment or more, although they are not required to do this.

9) **The Foreclosure Sale** – Foreclosure sales in Palm Beach County take place online. Most often, the lender buys the property back, but that is not always the case.

- More information about the online foreclosure sales and the procedures involved can be found at: http://www.mypalmbeachclerk.com/online_foreclosure_sales.aspx.

10) **After the Foreclosure Sale** - Be persistent. When the Plaintiff buys back the house at the foreclosure sale, the Plaintiff sometimes will still work with you even after the sale. It pays to be persistent even after the sale if you want to stay in the foreclosed property.

... If all efforts to negotiate have been exhausted and you are unable to reach an agreement or loan modification ...

11) **Worst Case Scenario** – Ten days after the foreclosure sale, the Palm Beach County Clerk of Court will issue a *Certificate of Title* to the purchaser of the property, officially making that person the new owner. Under Florida law, the Court may then issue a *Writ of Possession* requiring all remaining occupants to leave the property. When the sheriff posts a Writ of Possession on the property, you will have 24 hours to leave before the sheriff comes back to remove you and your personal property.

DON'T BE CAUGHT WITHOUT A PLAN – By the time of the foreclosure sale, you should know where you are going to relocate if necessary and how you are getting there. You may only have 10 to 12 days to leave voluntarily after the sale.

12) **Deficiency Judgment** – A deficiency judgment is a personal judgment against a borrower for the amount of money determined by the difference between the amount owed under the loan and the fair market value of the property at the time of its sale at judicial auction. For example, if the final judgment of foreclosure indicates you owe the Plaintiff \$100,000 under the terms of your loan, but at the time of the judicial auction, the property is found to only be worth \$50,000, then the Plaintiff may seek a deficiency judgment against you personally for the remaining \$50,000 that it is owed.

Unless an agreement to waive a deficiency judgment is reached with the Plaintiff, the Plaintiff has one year from the day after the Certificate of Title is issued to the purchaser in which to seek a deficiency judgment against the borrower in a residential foreclosure.

13) **Disbursement of Sale Proceeds (Surplus)** – *Surplus* is the remaining amount of money paid by a purchaser at the judicial sale for the property after all payments required under the final judgment of foreclosure are made. If there are liens on the property, those liens may have priority claims on the surplus funds. If there are no liens, or funds remain after such liens are satisfied, the owner of record of the property at the time of institution of the foreclosure process may be entitled to the remaining surplus funds.

IMPORTANT: BE PROACTIVE AND STAY INVOLVED!!!

COMMUNITY RESOURCES

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

HOUSING COUNSELING AGENCIES

Consolidated Credit Counseling Services, Inc.	866-435-1876
Clearpoint Credit Counseling Solutions	800-750-2227
DebtHelper.com	800-920-2262
Housing Partnership, Inc.....	561-899-1637
R.E.A.C.H.	561-491-1670
Urban League of Palm Beach County, Inc.	561-833-1461
We Help Community Development Corporation.	561-992-5854

PROGRAMS

Hope Now (888.995.HOPE) www.hopenow.com

Hope Now is a cooperative effort between counselors, investors and lenders. For more information on Hope Now, go to the website above.

Making Home Affordable Program www.makinghomeaffordable.gov

This is a federal initiative that consists of twelve (12) different programs available to assist struggling homeowners, including the Home Affordable Modification Program (HAMP) and the Florida Hardest-Hit Fund. For more information on each of the available programs, go to the website above. Details on HAMP and Florida's Hardest-Hit Program are below.

Home Affordable Modification Program (HAMP)

This program aims to modify mortgages a borrower can no longer afford. To qualify for a HAMP modification, eligible homeowners must meet the following seven criteria:

- You obtained your mortgage on or before January 1, 2009.
- You owe up to \$729,750 on your primary residence or single unit rental property.
- You owe up to \$934,200 on a 2-unit rental property; \$1,129,250 on a 3-unit rental property; or \$1,403,400 on a 4-unit rental property.
- The property has not been condemned.
- You have a financial hardship and are either delinquent or in danger of falling behind on your mortgage payments (non-owner occupants must be delinquent in order to qualify).
- You have sufficient, documented income to support a modified payment.

- You must not have been convicted within the last 10 years of felony larceny, theft, fraud or forgery, money laundering or tax evasion, in connection with a mortgage or real estate transaction.

Effective June 1, 2012, the population of homeowners that may be eligible for the Home Affordable Modification Program was expanded to include:

- Homeowners who previously did not qualify for HAMP because their debt-to-income ratio was 31% or lower.
- Homeowners who previously received a HAMP trial period plan, but defaulted in their trial payments.
- Homeowners who previously received a HAMP permanent modification, but defaulted in their payments, therefore losing good standing.

Home Affordable Refinance Program (HARP)

If you're not behind on your mortgage payments but have been unable to get traditional refinancing because the value of your home has declined, you may be eligible to refinance through the **Home Affordable Refinance Program (HARP)**. HARP is designed to help you get a new, more affordable, more stable mortgage. HARP refinance loans require a loan application and underwriting process, and refinance fees will apply.

You may be eligible for HARP if you meet all of the following criteria:

- The mortgage must be owned or guaranteed by Freddie Mac or Fannie Mae.
- The mortgage must have been sold to Fannie Mae or Freddie Mac on or before May 31, 2009.
- The mortgage cannot have been refinanced under HARP previously unless it is a Fannie Mae loan that was refinanced under HARP from March - May, 2009.
- The current loan-to-value (LTV) ratio must be greater than 80%.
- The borrower must be current on the mortgage at the time of the refinance, with a good payment history in the past 12 months.

If your loan is owned by Freddie Mac, you may check your [potential eligibility for HARP here](#).

**Eligibility criteria are for guidance only. Contact your mortgage servicer to see if you are eligible for HARP.*

Florida's Hardest Hit Program (HHF) <https://www.flhardesthithelp.org>

The Federal government has allocated funding to help pay the mortgages of qualified homeowners who are unemployed or underemployed through no fault of their own. Reduction in household income due to death, divorce, or disability of a borrower or co-borrower, or any other household member DOES NOT qualify as a financial hardship under this program. Homeowners who qualify for assistance may receive up to twelve months of monthly mortgage payments (including escrowed mortgage related payments) with up-front mortgage reinstatement funds, or funds to pay past due mortgage payments to bring a delinquent first mortgage current. These funds are paid directly to the servicer or lender.

To be eligible you must be a Florida resident/legal alien; it must be your primary residence; and you must be unemployed or underemployed with at least 10% reduction in income.

Florida's Hardest Hit Principal Reduction (HHF- PR)

Under the Principal Reduction program, eligible Florida homeowners who owe at least 125% more on their home than its current market value, commonly referred to as the home being "underwater," may qualify for up to \$50,000 to help reduce the principal balance of the first mortgage.

To be eligible, you must be a Florida resident/legal alien; it must be your primary residence; you must be current on the monthly mortgage payment (cannot be 60 or more days late on the first mortgage within the past 24 months); the property must have been purchased prior to January 1, 2010; there must be an unpaid principal balance that does not exceed \$350,000 for the first mortgage; the loan-to-value for the first mortgage must be greater than 125%; and the total household income (including all persons living in the home age 18 years and older) must be less than 140% of the area median income AMI as provided by the US Department of Housing and Urban Development (HUD).

Florida Elderly Mortgage Assistance (ELMORE) Program

The federal government has allocated funding to assist senior homeowners with a reverse mortgage remain in their homes by providing eligible borrowers up to \$25,000 to bring their property taxes, homeowner's insurance, flood insurance and/or homeowners/condo association dues (property charges) current, to the extent that these property charges have been paid on behalf of the senior homeowner by the servicer of their reverse mortgage. The senior homeowner may also be eligible to have up to 12 months of future property charges paid on their behalf, as well. The program is available in all 67 counties in the State.

To be eligible you must be a Florida resident and a legal US resident/legal alien; must occupy property as a primary residence; your total household income (including all persons living in the home age 18 years and older) must be less than 140% of the area median income (AMI); if there has been a bankruptcy, it must be discharged or dismissed; and you must have suffered a hardship that has resulted in the inability to repay the amounts advanced on your behalf by the mortgage loan servicer. Complete program information, including frequently asked questions, may be found at: <http://www.floridaelmore.org/> and <http://www.floridaelmore.org/ELMORE%20FAQs.pdf>

Once you review this information, if you have further questions and/or want to apply, please call the toll-free ELMORE Application and Information Line at 1-(800) 601-3534. The only way to apply for the program is to use the the toll-free ELMORE Application and Information Line to speak to a certified ELMORE advisor. **Application for the Florida ELMORE program is FREE-OF CHARGE and you will not be asked to pay for any eligibility determination services in conjunction with applying for the Florida ELMORE program.**

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

For homeowners facing foreclosure, the CFPB issued new mortgage servicing rules effective January 2014. Mortgage servicers are responsible for collecting payments from the mortgage borrower on behalf of the owner of the loan. They also typically handle customer service, escrow accounts, collections, loan modifications, and foreclosures. New protections for borrowers in trouble include:

- Restricted dual-tracking: When the servicer moves forward with foreclosure while simultaneously working with the borrower to avoid foreclosure is restricted.
- Servicers must not make the first notice or filing required for the foreclosure process until a mortgage loan account is more than 120 days delinquent.
- Servicers **must not start a foreclosure proceeding if an application is pending for a loan modification or other alternative to foreclosure.**

Early Notice When in Trouble: Servicers must include information about delinquency in a borrower's monthly statement after the borrower misses two consecutive payments. This information must include the date the borrower became delinquent, the amount required to bring the loan current, and the risks of failing to do so. Servicers must also reach out to borrowers who have missed two consecutive payments. This must be done in a written notice to a borrower within 15 days of the borrower's second missed payment.

In the written notice there must be examples of "loss mitigation" options, which may be available to avoid foreclosure. These options could include changing the interest rate, extending the terms of the loan, deferring or forgiving principal, or coming up with some other alternative payment plan. Servicers must also include information about housing counseling in the written notice.

Direct and Ongoing Access to Servicer Personnel: Servicers must maintain policies and procedures to provide borrowers who are two months delinquent with direct, easy, ongoing access to employees responsible for helping them avoid foreclosure. These personnel are responsible for making sure documents get to the right servicing personnel for processing. And, they must have timely access to the borrower's records and be responsible for providing the borrower with accurate information about the foreclosure process and loss mitigation options; actions the borrower must take to be evaluated for loss mitigation options; and the status of any loss mitigation application the borrower has submitted. **In addition, servicers will not be allowed to require multiple applications for multiple modifications.** They must offer a single application for all available options and a borrower who submits a complete and timely application must be considered for all options at once.

Confirm Application and Prompt Review: Servicers must inform the borrower, within five days of receipt, whether a loss mitigation application is complete (as long as the application is received 45 days or more before a foreclosure sale). **Servicers must review and respond within 30 days to complete loss mitigation applications that are received more than 37 days before a foreclosure sale.**

No Foreclosure Sale Until All Other Alternatives Considered: Servicers must not move for foreclosure judgment, order of sale, or conduct a foreclosure sale, if a borrower submits a complete application for a loss mitigation option more than 37 days before a foreclosure sale. One of the following must occur before a servicer can move forward with foreclosure: the servicer has informed the borrower that the borrower is not eligible for any loss mitigation option (and any appeal is not applicable or has been exhausted); the borrower has rejected all loss mitigation options offered by the servicer; or the borrower has failed to comply with the terms of an agreement on a loss mitigation option.

No Foreclosure Sale With A Loss Mitigation Agreement: Servicers must not start foreclosure if they have come to a loss mitigation agreement with the borrower, unless the borrower fails to perform under that agreement. Servicers must explain, in specific terms, why they have rejected a borrower's application for a loan modification, as well as inform the borrower that they can appeal the decision (when one is available) to servicer personnel not involved in the original decision.

Telephone: (855) 411-2372 - A complaint can also be submitted on-line at:
<http://www.consumerfinance.gov/complaint/#mortgage>

Protect Yourself!

Tips for Avoiding Mortgage Foreclosure

Contact Your Lender or loan servicer as soon as you realize you may have a problem and may have missed a payment. Studies show at least 50 percent 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>.

Gather Information. Learn all that 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 Chapter 702 and Section 45.031 of Florida Statutes 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 Non-Profit 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>.

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 may be combined with forbearance when you can show 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.

Even if you and your lender agree that you cannot keep your home, there may still be options to avoid foreclosure.

Available options include:

- **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 to your property to your mortgage company. Frequently, 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.
- **Reverse Mortgage:** A reverse mortgage is a special type of home loan that lets a homeowner convert a portion of the equity in his or her home into cash. The equity built up over years of home mortgage payments can be paid to you. But unlike a traditional home-equity loan or a second mortgage, no repayment is required until the borrower(s) no longer uses the home as their principal residence. HUD's reverse mortgage provides these benefits, and is federally-insured as well. You must keep the taxes, homeowner's insurance and condominium or homeowner's association fees current to avoid foreclosure.
- **Bankruptcy:** Filing a bankruptcy may provide a temporary halt to foreclosure proceedings. However, it could also have additional negative consequences on a borrower's credit and is therefore usually an option that is pursued after other alternatives have been exhausted. If you are considering bankruptcy or would like more information about the different types of bankruptcy available, please consult with a bankruptcy attorney.

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 Statutes § 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 a 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, turning you into a renter instead. You are then vulnerable to losing your home and all of your equity in your home to the so-called “rescuer” *[see the following page for more information]*.

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 1-866-966-7226 or visit <http://www.hud.gov> for these and other helpful tips.

BEWARE OF FORECLOSURE RESCUE SCAMS

Additional information can be found at: <http://www.myfloridalegal.com/mortgagefraud>.

What should consumers do and *not* do?

- Homeowners should NEVER pay any up-front fees and should avoid any high-pressure sales tactics. Fees may only be collected AFTER services are completed.
- Homeowners should first try talking to their lenders or a lawyer before contracting with any third-party company for rescue or modification services.
- If a homeowner believes he or she has been taken advantage of by a disreputable company, he or she should call the Foreclosure Defense Unit of Legal Aid Society of Palm Beach County at (561) 655-8944 *325.

What is a Foreclosure "Rescue" Scam?

Simply put, foreclosure rescue fraud happens when a company or person promises to help save your home from foreclosure, but is actually intent on stealing your home, most of the equity you have accumulated in your home, or a substantial amount of money.

How do I know whether a foreclosure modification company is legitimate?

You should avoid any company that asks you to pay an up-front fee for its services, no matter what that fee is called. This is illegal under Florida Statutes § 501.1377. You should also avoid any company that promises you that it can save your home or get you a reduced mortgage interest rate. If you have any doubts about the company or individual who has contacted you, please call the Foreclosure Defense Unit of Legal Aid Society of Palm Beach County at (561) 655-8944 *325.

Do I need to stop paying my mortgage in order to qualify for a loan modification?

No. Avoid any company that instructs you to stop paying your mortgage.

I paid money to a company several months ago and now they are no longer answering their phones or responding to my emails. What should I do?

You should always attempt to negotiate with your original lender first, and you should re-contact them if you still need assistance. You should also file a complaint with the Attorney General's Office.

I negotiated a loan modification with a company in California and paid an up-front fee for its service. I was reading about companies in Florida that are being sued for charging these fees. Does the Florida law only apply to Florida companies?

No. The law applies to ALL companies, regardless of where they are located, if they are assisting a consumer who owns real property in the State of Florida or if the companies are located in Florida.

I am not a Florida resident and a Florida foreclosure rescue company is attempting to charge me an up-front fee. The company told me that the new law only applies to Florida residents, and they can charge out-of-state residents an upfront fee. Is this correct?

No. The law applies to any company doing business in Florida.

I received a flyer in the mail or a telephone call from a company that sounded like it was affiliated with the government. What should I do?

Do not respond to any solicitation, either by mail or by telephone, which does not come from someone you already know and trust. These types of solicitations usually are from private, for-profit companies which are only looking to make money. If you have received one of these solicitations, please call the Foreclosure Defense Unit of Legal Aid Society of Palm Beach County at (561) 655-8944 *325.

I am attempting to do a loan modification with a licensed Florida mortgage broker. He says he can charge me an application fee under Florida law. Is this correct?

No. The Office of Financial Regulation has stated loan modifications are not governed under their regulatory statutes. Consequently, even Florida licensed mortgage brokers are governed by Florida Statutes § 501.1377 and may not charge an application fee or any other up-front fee directly or indirectly.

I have been told by the loan modification company that the fee it is charging is for a forensic audit. Is this legal?

No. Loan modification companies cannot charge any fee or secure payment for any service that has not been completed.

HOW LEGAL AID SOCIETY OF PALM BEACH COUNTY, INC. CAN HELP

Legal Aid Society of Palm Beach County, Inc. assists victims of mortgage rescue scams through the Foreclosure Defense Unit of the Fair Housing Project. Our Foreclosure Defense Unit is equipped to determine whether possible individuals and companies have engaged in mortgage rescue scams. Contact Legal Aid Society of Palm Beach County, Inc. today to find out if we can assist you in your mortgage rescue scam matter by calling (561) 655-8944 ext. 325.

THE HOUSE I AM RENTING IS IN FORECLOSURE

What is 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 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 a Sheriff's deputy 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 a Notice of Tenancy to the foreclosure. In the Notice, state that:

- You currently are a tenant on the property;
- What the terms of your rental agreement are, including the beginning and end dates;
- If you have a written lease, attach a copy.

If you file a Notice of Tenancy, it will tell the judge and the lender that a tenant is living in the property. It will also insure that you receive copies of all further filings and hearings scheduled in the case. If you do not file a Notice of Tenancy, you may not receive any notices about the foreclosure lawsuit, and you will not know what is happening in the case.

IMPORTANT: Even if the property is now in foreclosure, *you must continue paying rent to the landlord.* As long as you are living on their property, a landlord can still evict you for non-payment of rent even if he or she has not been paying their mortgage.

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, through a "lease/buy-back" or otherwise, it is important that you write this in the Notice of Tenancy. You should also consider talking to an attorney because the law in this situation is complicated.

What should I do if my landlord tells me he or she will 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 or modifies the loan, stopping the foreclosure. However, no matter what the landlord says you should still file a Notice of Tenancy.

What should I do if my landlord tells me he or 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 a Notice of Tenancy. Although it may take several months for the lender to obtain a foreclosure judgment, you should prepare to look for a new place to live. If you plan on moving, you need to comply with any notice requirements in your lease. You must continue paying the rent as long as you are living on the landlord's property.

I do not have a written lease. How much notice must I give my landlord before moving-out?

For oral (unwritten) leases, you must give written notice that you are terminating the tenancy a certain number of days before your next rent payment is due. The number of days is based on when you normally pay rent:

You pay rent:	Notice is due # days before next payment
Once a year	60 Days
Once a quarter (3 months)	30 Days
Once a month	15 Days
Once a 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 and schedule a foreclosure sale. The sale will usually be scheduled 20-35 days after the judgment, though it could be as many as 90 days. Title is issued to the buyer another 10 days after the sale. Once title is issued to the new owner, you should stop paying rent to your old landlord. You should instead begin paying rent to the new owner. If a bank purchases the property, it may be difficult determining where to send your payments. Try contacting the bank, their attorney or their realtor to make payment arrangements.

Is it true there are legal protections for tenants in foreclosure?

Yes, this is true. You may remain in possession of the premises for 30 days following the date of the purchaser's delivery of a **written** Notice of Termination.

What happens if I do not leave after being given a Notice of Termination?

If the new owner has given you a proper, written notice of termination, you will have to vacate. If you do not, you may be subject to a Writ of Possession. This allows the Sheriff to remove you and your belongings from the property 24 hours after the Writ is posted on your door.

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 recover 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.

What should I do if the new owner asks me if I want to stay?

Sometimes, the new owner will ask you to remain as a tenant. Make sure that the person who contacts you is really the new owner. You should ask for proof of ownership before you

pay any rent. If you cannot reach an agreement to continue your tenancy, the new owner cannot force you out by changing the locks or turning off the utilities.

What should I do if the HOA or condominium association demand I pay rent to them?

If you receive a court order or a valid written demand stating your future rent payments should be made payable to your condominium or homeowner's association, you should notify your landlord and make all future payments to the association.

I RECEIVED A NOTICE OF HEARING. NOW WHAT?

The following is a breakdown of the day-to-day mechanics of foreclosure hearings in Palm Beach County.

1. You will receive a Notice of Hearing, which will come via US Mail, from the Plaintiff's law firm. The only time you will be personally served is when you receive the Summons and Complaint.
2. The Notice of Hearing will have two key pieces of information. First, it will provide you the date, time and location of your hearing. Second it will provide you with what motion is being called up before the Judge.
3. Once you enter the Courtroom, you will find that the Plaintiff's attorney will usually approach you to discuss the upcoming hearing. The Court encourages this behavior as it can save the Court a great deal of time by the parties coming to an agreement prior to arguing before the Court. It is perfectly fine to speak with the attorneys and try to resolve your matter, but never forget that they represent the Plaintiff and not you.
4. The Judge will call up the cases by name, so you must wait until your case is called up. Plan on setting aside at least 2 hours for a hearing as the motion calendar is very crowded due to the number of foreclosures filed in Palm Beach County.
5. After your hearing, wait and the Court will usually provide you with a copy of the Court's Order, which puts in writing how the Court has ruled on the motion.
6. Finally, should you get lost or need assistance, just ask. Most attorneys will take the time to look at your Notice of Hearing and point you in the right direction.

PRO SE FORMS

DISCLAIMER: THE FOLLOWING FORMS PROVIDED FOR THE PURPOSES OF GUIDANCE ONLY AND SHOULD NOT BE CONSIDERED LEGAL ADVICE.

INSTRUCTIONS TO PREPARE, COMPLETE, & FILE A PRO SE ANSWER TO A 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 you were served with, after the *Summons*). The lender that filed the Complaint is referred to as the *Plaintiff*. The borrower or other person being sued is referred to as the *Defendant*. You generally are the Defendant in the foreclosure lawsuit.

Pro Se – For one’s own behalf, in person. Appearing for oneself.

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. If you are unable to agree or deny the claims in any paragraph because you do not understand them or do not have enough information, you should indicate that.

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 it as true.

Your original Answer must be **filed** with the Court within 20 calendar days of **being served** with the foreclosure complaint. You must also **mail** a copy to the Plaintiff’s attorney.

How to Complete the Pro Se Defendant’s Answer to Complaint for 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, _____ [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 or disagree with them, 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. You may have to prove the truth of anything that you write in this section—for example, by providing affidavits or other supporting documents. Please note that losing your job or otherwise not having the money to pay the mortgage is not an affirmative defense.
- 5.

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. This can be shown through records such as an assignment of the mortgage or an endorsement of the promissory note. 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 or pooled together with other mortgages and then re-sold to investors. Therefore, the Plaintiff in your case may not be the same company that actually has the right to enforce the mortgage and promissory note. If the mortgage and note attached to the Complaint show that they are payable to or owned by a different entity, the Plaintiff in your case may not have standing. This issue should be raised as an affirmative defense, although it may be necessary to obtain this 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 (e.g., the true price of the loan, interest rates, waiver of consumer protections, etc.) which the lender knows is not true and which you relied upon in acting some way.
- c.) **Failure of Condition Precedent** – This means the lender has failed to take certain actions that are necessary before a foreclosure lawsuit can be filed. For example, mortgages usually require that a “Notice of Acceleration” be served first, or the mortgage and federal law may require the lender to advise you that housing counseling is available. Further consultation with an attorney or Legal Aid may be necessary.
- d.) **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.
- e.) **Unconscionability** – when the mortgage terms are unreasonably unfair to the borrower, or other bad business practices, such as deceitful conduct, that result in oppressive terms or lack of bargaining power.
- f.) **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 Legal Aid may be necessary.

- 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, in a credit transaction. As with usury, TILA is a limited defense and contains complex legal terms. Persons who believe a 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 Legal Aid, or for more information about RESPA, visit the U.S. Department of Housing and Urban Development (HUD) website at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/respa_hm
- i.) **Florida Deceptive and Unfair Trade Practices Act (FDUTPA)** – Florida law prohibits businesses from engaging in deceptive or unfair acts or practices. Some of the defenses listed above may also be FDUTPA violations. An outline of FDUTPA can be found on the Florida Senate website at: http://archive.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0501/0501PartIIContentsIndex.html&StatuteYear=2010&Title=-%3E2010-%3EChapter%20501-%3EPart%20I

NOTE: This list of Affirmative Defenses is not exhaustive and is merely a guide. There may be other defenses available, and some of the defenses listed may not be available in every case depending on the circumstances.

You should consult a lawyer or the Self-Service Center located at the Palm Beach County Courthouse to find out if you have any defenses. You may also contact the Legal Aid Society of Palm Beach County, Inc. at 561-655-8944. Additionally, you may also contact the Plaintiff's attorney to try to work out a settlement, request a reinstatement quote or possible forbearance plan, or to ask for more time to file your Answer.

- 6. 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 will be notified of any future court hearings.
- 7. 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. The Certificate of Service tells the Court that you have mailed the Plaintiff a copy of your Answer on the date you have written.
- 8. File your Answer (or Motion) as instructed on page 20.

FOUR 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 one of the Palm Beach County Courthouses, located at:
 - 205 North Dixie Highway, West Palm Beach, FL 33401
 - 200 W. Atlantic Ave., Delray Beach, FL 33444
 - 3188 PGA Blvd, Palm Beach Gardens, FL 33410
 - 200 Civic Center Way, Suite 500, Royal Palm Beach, FL 33411
 - 2950 State Road 15, Belle Glade, FL 33430
 - 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.
 - It is not necessary to mail this via Certified Mail. Regular U.S. Mail is sufficient. Keep the remaining photocopy for your records.

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

_____,
Plaintiff,

Case No. _____
Division: AW

vs.

_____,
Defendant(s).

**PRO SE DEFENDANT'S MOTION FOR
ENLARGEMENT OF TIME TO FILE 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 had 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 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 FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

_____,
Plaintiff,

Case No. _____
Division: AW

vs.

_____,
Defendant(s).

**PRO SE DEFENDANT'S ANSWER
TO PLAINTIFF'S COMPLAINT FOR MORTGAGE FORECLOSURE**

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:
