

RESPONDING TO A FORECLOSURE LAWSUIT IN DANE COUNTY

Instructions for Homeowners

Introduction

About These Instructions

These two-step instructions are designed to make it possible for you to file a response to a foreclosure lawsuit, even if you do not have a lawyer. However, these instructions are NOT a substitute for legal advice. In order to make sure that you understand all of your rights and responsibilities, you are strongly encouraged to seek legal advice.

The Importance of Legal Advice

The foreclosure process is complicated. Unlike small claims court, the foreclosure process is not designed to be navigated without a lawyer. Even if you think you can't afford a lawyer to represent you from start to finish, you may want to talk with a lawyer briefly to discuss your options and help you decide what to do. If you don't know how to contact a lawyer, the State Bar of Wisconsin operates the *Lawyer Referral and Information Service* (608-257-4666 or 800-362-9082; www.legalexplorer.com), which can refer you to a lawyer who handles foreclosure cases. There is no charge for the referral and, if you qualify for the *Modest Means Program*, you may be referred to an attorney who can help at a reduced cost. Another option is *Legal Action of Wisconsin, Inc.*, which provides free legal services to qualifying low income persons. Call 608-256-3304 on Tuesdays from 9 to noon to go through Legal Action's foreclosure intake process.

How the Foreclosure Process Begins

If you default on the terms of your mortgage loan (e.g. you are late with your payments or you stop making them altogether), your lender may initiate foreclosure. In Wisconsin, all foreclosures are handled through the courts. The lender initiates the process by filing a document with the

court called a Complaint. The lender will serve you with a copy of the Complaint along with a document called a Summons, requiring you to respond to the lawsuit. Copies of the Summons and Complaint will be served on you by a deputy sheriff or a private process server shortly after the original Summons and Complaint are filed with the Court. Your lender is the Plaintiff in the lawsuit and you are the Defendant. If you are married, or if another person signed the mortgage with you, there will likely be more than one defendant. If you have a second mortgage or other liens against your home, those parties may also be identified as defendants. The Complaint will include numbered paragraphs alleging certain facts, such as how far behind you are in your payments, and will demand possession of your home.

Why You Must Respond

If you do not respond to the lawsuit, a default judgment will be entered against you and you will lose your opportunity to dispute the foreclosure. Getting a court to reopen a default judgment is extremely difficult, so your reason for not filing an Answer by the deadline must be very compelling. For example, you may be able to reopen your case if you can show that you were not properly served with the Summons and Complaint. If a default judgment has already been entered, you should consult a lawyer to find out if there is any legal basis for reopening the case.

Remember

The information in this handout does not explain how to successfully defend a foreclosure. Instead, this handout is intended only to provide you with information about the importance of filing an initial response to the lawsuit.

Step 1 – Answering the Complaint

Answering the Complaint

If you wish to dispute the foreclosure, you must file a document with the court called an Answer (see enclosed form). *You have only 20 days from the date you were served with the Summons and Complaint to file your Answer with the court.* You must also send a copy of your Answer to the Plaintiff within the same timeframe. This is a very short window of opportunity — it is *critical* that you file your Answer with the court and serve a copy on the Plaintiff within the 20-day period.

The Answer serves two main purposes. The Answer is your opportunity to 1) respond to each of the statements made by the Plaintiff in the Complaint and 2) raise defenses to the foreclosure. If you do not file a timely Answer, you will lose your opportunity to dispute the allegations in the Complaint and to claim that you have valid defenses to the foreclosure. If you do not file a timely Answer, the court will enter a "default judgment" against you and you will not get your day in court. (You do not need to worry about answering for any

other defendants – they are responsible for filing their own answer with the court.)

If You Need More Time

If you don't think you will be able to file your Answer within 20 days, you can ask the Plaintiff's attorney for more time (you can find the attorney's name and contact information on the last page of the Complaint). If he or she agrees, ask for the agreement to be put in writing and filed with the court. As with all documents filed with the court, make sure to keep a copy for your own records.

What to Write in Your Answer

A. Include a Heading. Your Answer must include the name of the court, the case name and the case number at the top of the first page. This is called the *caption* and it should look just like the caption on the Complaint, except that your document will be titled "Answer."

Continued on back.

B. Respond to the Statements in the Complaint. Your Answer should respond to each of the numbered statements in the Complaint, one-by-one. You do NOT need to respond to any paragraphs that come after the word “wherefore”.

- *If the statement in the Complaint is true, admit it.* For example, the plaintiff will usually identify you as the defendant within the first few paragraphs of the Complaint, including your name and address. If this information is correct, your Answer should say so (e.g. “I admit paragraph 2 of the Complaint.”)
- *If the statement in the Complaint is false, deny it.* For example, one of the statements in Complaint may indicate the outstanding balance on your loan. If you know that the stated amount is incorrect, you should deny the statement (e.g. “I deny paragraph 5 of the Complaint.”)
- *If you don’t know whether the statement in the complaint is true, say so.* For example, the Complaint may claim that the Plaintiff is the current owner of your mortgage. If you don’t know whether this is true, you should say so (e.g. “I don’t have enough information to answer paragraph 3 of the Complaint.”)

Generally speaking, the Plaintiff will have to provide proof for the statements that you deny but will not have to prove the statements that you admit. It is important to understand that

you may not be able to later challenge any statements in the complaint that you admit in your Answer.

C. Explain Your Defenses. In addition to responding to each one of the statements contained in the Complaint, your Answer should also explain the reasons why you believe the Plaintiff should not be allowed to foreclose on your home. These are your “Affirmative Defenses.” Be sure to include any reasons that you may want to bring up in court (understand you may be required to produce documentation supporting your defenses). Examples of Affirmative Defenses include, but are not limited to:

- The Plaintiff is _____ but my original mortgage loan was with _____.
- I have not had any dealings with the Plaintiff.
- The Complaint provides no proof that the Plaintiff owns or was assigned my mortgage loan.
- The amount that the Plaintiff says I am behind on my mortgage is not correct because _____.
- I entered into a repayment agreement with my lender and am current on that agreement.

D. Signature. Finally, sign the Answer and be sure to include your name, mailing address and telephone number.

Step 2: File / Serve Your Answer

File Your Answer with the Court

You must file the original with the court and serve a copy on the Plaintiff and any other defendant within the 20-day period. Make at least one copy for you, one for the Plaintiff’s attorney and one for any other defendant identified in the Complaint. The original should be mailed or hand delivered to the court in the courtroom of the judge assigned to your case (the name of the judge is stamped on the front of your summons).

Provide a Copy of Your Answer to the Other Parties

You can mail, fax or hand deliver a copy of your Answer to the other parties at the addresses contained in the Summons and Complaint. If you fax or hand deliver the Answer, keep a copy of a receipt showing proof of the date and time of delivery. If you mail the Answer, prepare a form called an “Affidavit of Mailing” (**see enclosed form**) OR mail it Certified Mail and keep your mailing receipt.

Dane County Foreclosure Mediation Program

Effective February 1, 2010, lenders must provide you with notice of the Dane County Foreclosure Mediation Program (pink form attached to the Complaint). Mediation is a confidential process where you and your lender sit down with a mediator—a neutral third party—to discuss ways to resolve your foreclosure case, which may include reinstatement of the loan and modification of the loan terms. Your home must

be owner-occupied in order to qualify for this mediation program. If you wish to participate, complete the pink form and mail it to the address indicated on the form. You should do this within 10 days of the date you receive the Summons and Complaint. *NOTE: requesting mediation is not an Answer to the foreclosure lawsuit – you must still file an Answer with the court within the 20-day period.*

Next Steps

After you serve and file your Answer, the Court and the lender’s attorney will provide you with copies of all paperwork filed in your case and notify you of any court dates set in your case. To keep track of the status of your case, you can check the online court information system called CCAP (<http://wcca.wicourts.gov>). It is important that you go to all court dates. If you have a scheduling conflict, do not simply skip your court date, call the court as soon as possible.

If you requested mediation, someone from the Mediation Program will contact you. If you are eligible for the program, and if your lender agrees to mediation, you will first meet with a UW Law School student and a housing counselor to prepare. After that, a conference with you, the lender and the mediator will be scheduled and a non-refundable \$75 mediation fee will be charged to you and the lender at that time.