

FIGHTING FORECLOSURES

Top 5 things to do when you are served with a foreclosure lawsuit

When you owe three or more mortgage payments to your mortgage company, the bank can start a foreclosure case to sell your property and recoup their money. After filing the lawsuit the bank will hire a process server to serve you with the court papers (Summons and Complaint).

1. Answer The Complaint

When you receive the summons and complaint, you must answer them. The process server is not required to deliver the papers to you in your hand. He can serve them various ways including delivering them to someone else in your home, or taping them to your door, and mailing copies. If the bank believes you were served correctly, and you do not answer the lawsuit, the bank will request a default judgment against you. The time that you must answer the papers depends on how you received them. Although it can be 20 or 30 days, it is always best to answer them within 20 days to be on the safe side.

Your answer must be in writing and mailed to the bank's attorney and filed with the court. Calling your bank or the bank attorney is not an answer. Do not believe anyone including loan modification preparers or your bank if they tell you that you do not have to answer. They are setting you up to lose your house.

To answer you should either hire a lawyer or visit a reputable housing counselor agency. You can also visit the courthouse where your lawsuit is filed. Most of the courts have bar associations or legal services agencies who will assist you in preparing, serving and filing an answer. I do not recommend preparing an Answer yourself. If you do not include certain defenses or language in your answer, you may waive your right to argue or discuss them later.

2. Contact Reputable Housing Counselor

As soon as you fall behind in your mortgage payments and you receive a default letter from the bank, you should contact a HUD-Approved Housing Counseling Agency. One of the best and highly recommend agencies to contact is the New York State Mortgage Assistance Program (NYSMAP) 855-NYSMAP-3. This is a New York State program which provides assistance to homeowners including paying your mortgage arrears, property tax arrears, or water sewer arrears to avoid foreclosure. They have certain guidelines including a cap on the arrears so contact them quickly. I also recommend Neighborhood Housing Services (NHS) of Jamaica [\(718\) 291-7400](tel:7182917400), or Neighborhood Housing Services of New York City 212-519-2500.

3. Save Money

When you start missing mortgage payments, at some point your lender will stop accepting payments from you. You should still place as much money aside each month as if you were paying a mortgage. Open a separate account to place the money and do not apply for an ATM card or checks. Make it as difficult as possible for you to withdraw this money.

It is important to place money aside for a few reasons. First the bank may accept a loan modification only on the condition that you make a lump sum payment. Second you are preparing for the worst in the event various foreclosure defense options fail, you have funds to relocate. Third which brings me to my next advice, save money for a foreclosure defense attorney.

4. Contact An Attorney

Contact an attorney as soon as you start missing mortgage payments especially when you are served with foreclosure papers. The optimal foreclosure defense attorney will provide you with various options including loan modifications, loan workouts, refinance options, reorganization of debt (bankruptcy), and a zealous foreclosure litigation defense. Your attorney will contact the bank and open communication with them which may delay collection efforts if the lender can see viable options materializing. Your attorney will prepare and submit a solid Answer to the lawsuit raising effective defenses and possible counterclaims which may persuade the lender to settle the case. Your attorney can also attend the foreclosure settlement conference with you. An effective foreclosure defense attorney will sit with you at the onset and strategize various, realistic options to address your mortgage arrears and the foreclosure case.

5. Register for Case Tracking

Once you are served with the foreclosure lawsuit, it is very important that you keep track of your case as it proceeds through the court. The court or the bank's attorney will schedule various court appearances at which you must appear (unless you have an attorney). If you miss any of these appearances, the court may hold you in default and permit the bank to proceed without you. You can track your case through the website New York Unified Court System. Select the tab "ecourts". Select Supreme tab. Select your county and insert your index number which is found on your court papers. Your case will appear after hitting the submit button. Only cases that have been assigned a Judge will appear in this search. So, in the first month or two your case may not appear. However a good rule of thumb is to conduct a search of your case every weekend. Do Not miss any court appearances.

Foreclosure may seem like a scary process that many try to ignore. However ignoring the foreclosure case is the quickest way for a bank to win. The earlier you face it, the more options you have. ***Call us and we will work through the process together.***