

APPENDIX D1

Instructions for Filing an Answer with Defenses and Counterclaims

An Answer is your response to a Complaint. It is the first step in challenging a foreclosure. It must be filed within 35 days of the date you receive the Complaint. If you did not file an Answer within 35 days of receiving the complaint and a default or default judgment has entered against you, you must get a court order allowing you to file an Answer. Instructions for filing a Motion (request) to be permitted to file a late Answer are included in Appendix E to this manual. The completed Answer should be included with your Motion.

I. CONTESTING ANSWER, DEFENSES AND COUNTERCLAIMS

In order to prepare the Answer, you need to have a copy of the Complaint in front of you. You can use the sample in this manual or you can prepare your own. In this manual, it is Appendix D2, the document that says **Contesting Answer, Defenses and Counterclaims**.

A. Caption

Using the sample Answer in this manual, first prepare the top of the form, called the “caption.” You can find the information you need on the top of the foreclosure complaint.

- Fill in your name, address, and telephone number.
- Copy the name of the plaintiff from the foreclosure complaint.
- Copy the name of the defendant from the foreclosure complaint.
- Insert the name of the county.
- Copy the Docket Number from the foreclosure complaint.

B. Contesting Answer

You must answer each allegation (paragraph) in the foreclosure complaint one by one, by either admitting that the allegation is true, denying it, or stating that you don’t have enough information to answer. Read each paragraph of the Complaint carefully. In your Answer, admit those paragraphs that you are completely sure are totally true. Deny those that are totally false. You can admit some parts of a paragraph and deny other parts of the same paragraph. If you are not sure whether an allegation is true, say so. Do not simply admit or deny it.

C. Defenses

There are many defenses to a foreclosure. The sample Answer only contains a few of them. The defenses in the sample Answer may or may not apply to you. If any defense in the sample Answer does not apply to you, cross it out.

This manual explained the Truth in Lending Act and provided a sample letter for you to use (Appendix C2) in order to rescind your mortgage. If you think your lender violated the Truth in Lending Act and you used that letter, be sure to include the date of your letter in the space provided.

D. Counterclaims

Counterclaims are claims that you have against the lender. If you think that you are a victim of predatory lending, you can raise your predatory lending claims as counterclaims.

You should have written out your story, including details about the things that happened when you applied for the loan, the reasons why the loan you got was not appropriate for you, or why the loan itself is unfair. You should also have filled in the chart that explained the terms of the loan. Insert these into this section of the complaint. It is important to be very specific. Attach additional pages if you need more space.

In addition to the document titled “Contesting Answer, Defenses and Counterclaims,” (Appendix D2), you also need the Foreclosure Case Information Statement (Appendix D3), explained below.

II. FORECLOSURE CASE INFORMATION STATEMENT

The court requires you to complete a Case Information Statement (CIS) and send it to the clerk with the first paper you file with the court. If you do not complete the form, the court may return your Answer to you. A sample is attached in Appendix D3. It can also be found on the New Jersey Judiciary’s Web site at:

http://www.judiciary.state.nj.us/civil/forms/10169_foreclosure_cis.pdf

To complete the Foreclosure Case Information Statement, follow these instructions:

- A. In the space marked caption, write the plaintiff’s name and your name, just as you did on the caption of your Answer.
- B. Insert the county and Docket Number.
- C. Insert your name under “Name of Filing Party.”
- D. Check the box marked “Answer.”
- E. Write your name, address, and telephone number in the spaces provided.
- F. In the space for “Foreclosure Case Type Number” check the box for ORF “Residential Mortgage.”

III. FILING FEE OR FILING FEE WAIVER REQUEST

The court requires you to pay a fee of \$135.00 to file an Answer. It should be in the form of a check or money order payable to “Treasurer, State of New Jersey.” You must include the

fee with your Answer or the court will send the Answer back to you. If you cannot afford to pay the filing fee, complete a “Filing Fee Waiver Request.” A sample is included here in Appendix D4. It can also be found on the New Jersey Judiciary’s Web site at:

http://www.judiciary.state.nj.us/civil/forms/11208_filingfeewaivreq.pdf

IV. DEFENDANT’S DEMAND FOR PRODUCTION OF DOCUMENTS

The Demand for Production of Documents (Appendix D5) is your request to the lender to send you all of the documents that it has about your loan. You will need these documents in order to prove your defenses and counterclaims. It is not necessary to file a copy with the court, but it is a good idea to serve it with your Answer.

- A. Fill out the caption, just as you did in the Answer.
- B. In the space that says “To:” write in the name and address of the plaintiff’s lawyer. This information can be found at the top left of the caption of the Complaint.
- C. On the line on the first page, write in the address where the attorneys should send the documents.
- D. Sign and date.

V. COVER LETTER

Your cover letter (Appendix D4) tells the court and your adversary (opposing party) that you are filing certain documents. The sample cover letter in these materials lists all of the things that you need to include. Use it as a checklist to make sure you have each item listed.

You must include a self-addressed, stamped manila envelope. It should have enough postage on it so that the Court Clerk can return a full copy of the package to you, stamped “filed.”

VI. FILING AND SERVICE

You must file all of the above documents with the court, and you must serve them all on the attorney for the lender. You can file and serve by certified mail, return receipt requested.

Make four copies of the entire package

- Original and one copy are for the Court Clerk – one for the Clerk to keep and one for the Clerk to stamp “filed” and return to you.
- One copy for the plaintiff’s lawyer.
- One copy to keep until you get your copy back from the Clerk stamped “filed.”
- One copy for the Attorney General’s Office.

Mail the Clerk's copy to:

Office of Foreclosure
Superior Court of New Jersey
Office of the Clerk
Attn: Foreclosure Unit
Hughes Justice Complex,
25 West Market Street, CN 971
Trenton, New Jersey 08625

Mail the lender's copy to the lender's attorney. The address appears on the top left of the complaint.

Mail the Attorney General's copy to:

Anne Milgram, Attorney General
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
25 West Market Street
Trenton, New Jersey 08625-0080