

NAME: _____

ADDRESS: _____

TELEPHONE: _____

Defendant Pro Se

(Name of company or bank that filed the foreclosure complaint)

Plaintiff,

vs.

(Name of homeowner)

Defendant,

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: _____ COUNTY

: (County where the foreclosure complaint was filed)

: DOCKET NO. F-_____

: (Assigned by the court at the time of the filing of the
: foreclosure complaint)

: Civil Action

: **CONTESTING ANSWER, DEFENSES
: AND COUNTERCLAIMS**

CONTESTING ANSWER

Defendant by way of Answer to the Complaint in Foreclosure says:

AS TO THE FIRST COUNT:

Defendant admits the allegations in the following paragraphs of the first count of the
complaint: _____, except that defendant *denies* the following *parts* of these
(list the numbers of the paragraphs)

allegations: _____.
(write out the parts of the allegations that you deny)

Defendant denies the allegations in the following paragraphs of the first count of the
complaint: _____.
(list the numbers of the paragraphs)

Defendant does not have enough knowledge or information to answer the following

paragraphs of the second count of the complaint: _____
(list the numbers of the paragraphs with allegations that defendant

_____.
needs more information about)

AS TO THE SECOND COUNT

Defendant admits the allegations in the following paragraphs of the second count of the complaint: _____, except that defendant *denies* the following *parts* of these
(list the numbers of the paragraphs)

allegations: _____.
(write out the parts of the allegations that you deny)

Defendant denies the allegations in the following paragraphs of the second count of the complaint: _____.
(list the numbers of the paragraphs)

Defendant does not have enough knowledge or information to answer the following paragraphs of the second count of the complaint: _____
(list the numbers of the paragraphs with allegations that defendant

_____.
needs more information about)

DEFENSES

(INSTRUCTIONS: CROSS OUT ANY PARAGRAPHS UNDER “DEFENSES” THAT DO NOT APPLY TO YOU (DEFENDANT))

**FIRST SEPARATE DEFENSE
(Fair Foreclosure Act)**

1. Plaintiff’s Complaint seeks to foreclose upon a “residential mortgage” as defined by the New Jersey Fair Foreclosure Act, N.J.S.A. 2A:50-53 *et. seq.*, and therefore Defendant is entitled to the protections and requirements set forth in the Fair Foreclosure Act.
2. Plaintiff failed to comply with the Fair Foreclosure Act in some or all of the following ways:

(a) Plaintiff failed to serve Defendant with a proper Notice of Intent to Foreclose, by registered or certified mail, return receipt requested at least thirty (30) days in advance of the filing of the Complaint; and/or

(b) To the extent that a Notice of Intent to Foreclose was served upon Defendants, that Notice did not comply with the requirements of the Fair Foreclosure Act as enumerated in N.J.S.A. 2A:50-56(c).

3. Based on the foregoing, the court lacks subject matter jurisdiction to hear Plaintiff's Complaint for Foreclosure.

WHEREFORE, Defendant demands judgment dismissing the Complaint without prejudice for lack of subject matter jurisdiction and/or failure to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

The alleged mortgage is void and unenforceable and Plaintiff's claim is barred because the mortgage was procured by fraud and/or any alleged loss to the Plaintiff is caused by the fraud of the Plaintiff and/or the fraud of third parties over which the Defendant has no control.

THIRD SEPARATE DEFENSE (Truth in Lending Act)

1. The transaction alleged in Plaintiff's Complaint is a consumer transaction that involved a non-purchase money mortgage secured by Defendant's primary residence.

2. At all times relevant hereto, Plaintiff or Plaintiff's alleged assignor was a creditor under the federal Truth in Lending Act, 15 U.S.C.A. § 1601 *et seq.* ("TILA") that was required to provide notices of the right to rescind the mortgage and deliver material disclosures to Defendant.

3. Plaintiff or Plaintiff's alleged assignor failed to comply with TILA by failing to

provide Defendant with proper and accurate written rescission notices and accurate material disclosures as required by TILA.

4. The TILA violations complained of herein were apparent on the face of the assigned documents, resulting in assignee liability pursuant to 15 U.S.C. § 1641(e).

5. In light of these violations, Defendant was and is entitled to rescind the mortgage.

6. Defendant exercised his/her right to rescind the mortgage on or about _____ by sending a Notice of Rescission of
(Date on which defendant mailed rescission notice to plaintiff)

Mortgage to Plaintiff, by certified mail, return receipt requested.

7. By virtue of the foregoing, the mortgage which is the basis of Plaintiff's Complaint is rescinded, and Plaintiff's alleged security interest in Defendant's primary residence is void by operation of law.

WHEREFORE, Defendant demands judgment dismissing the Complaint with prejudice, and awarding actual and statutory damages, attorneys fees and costs pursuant 15 U.S.C. § 1640(a)(2)(A)(iii).

FOURTH SEPARATE DEFENSE

The Plaintiff's claim is barred because any alleged loss to the Plaintiff is caused by its own negligence, or the negligence of third parties over which the Defendant has no control.

FIFTH SEPARATE DEFENSE

The Plaintiff's claim is barred because of the doctrine of unclean hands.

SIXTH SEPARATE DEFENSE

The Plaintiff's claim is barred because of the Plaintiff's failure to add indispensable parties.

SEVENTH SEPARATE DEFENSE

The Plaintiff's claim is barred because the Plaintiff lacks standing and/or is not a real party in interest.

EIGHTH SEPARATE DEFENSE

The Plaintiff's claim is barred because of the Entire Controversy Doctrine.

NINTH SEPARATE DEFENSE

Defendant contests the amount Plaintiff claims is due for any or all of the following reasons:

1. interest was not calculated in the manner prescribed by the note;
2. the amount claimed due does not account for payments made by Defendant;
3. the amount claimed due includes unreasonable and excessive fees not permitted by the note and/or not actually incurred by the Plaintiff.

COUNTERCLAIMS

(INSTRUCTIONS: CROSS OUT ANY PARAGRAPHS UNDER "DEFENSES" THAT DO NOT APPLY TO YOU (DEFENDANT))

**FIRST COUNT
(Consumer Fraud)**

1. Defendant repeats and realleges all paragraphs above as if fully set forth herein.
2. Plaintiff or Plaintiff's predecessor in interest engaged in unconscionable

commercial practices, deception, fraud, false pretense, false promise and/or misrepresentations with regard to the subject mortgage.

3. Alternatively, or in addition, Plaintiff or Plaintiff's predecessor in interest engaged in acts of omission, including but not limited to knowing concealment, suppression and omissions of material facts in connection with the subject mortgage.

4. Specifically,

(Insert specific and detailed facts about any unfair or deceptive action that you think made your loan unfair (predatory))

5. The foregoing acts of Plaintiff constitute violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-2 at seq., as a result of which Defendant suffered ascertainable loss.

WHEREFORE, Defendant seeks judgment against Plaintiff as follows:

- A. Declaratory and injunctive relief declaring the mortgage void and unenforceable;
- B. Declaratory and injunctive relief rescinding and/or reforming the mortgage;
- C. Awarding actual damages;
- D. Awarding treble damages;
- E. Awarding costs and attorneys fees; and
- F. Granting such other relief as the court deems just and equitable.

**SECOND COUNT
(Violations of the Truth in Lending Act)**

- 1. Defendant repeats and realleges all paragraphs above as if fully set forth herein.
- 2. The transaction alleged in Plaintiff's Complaint is a consumer transaction that

involved a non-purchase money mortgage secured by Defendant's primary residence.

3. At all times relevant Plaintiff or Plaintiff's assignor was a creditor under the federal Truth in Lending Act, 15 U.S.C.A. § 1601 *et seq.* ("TILA") that was required to provide notices of the right to rescind the mortgage and deliver material disclosures to Defendants.

4. Plaintiff or Plaintiff's alleged assignor failed to comply with TILA by failing to provide Defendant with proper and accurate written rescission notices and accurate material disclosures as required by TILA.

5. The TILA violations complained of herein were apparent on the face of the assigned documents, resulting in assignee liability pursuant to 15 U.S.C. § 1641(e).

6. In light of these violations, Defendant was and is entitled to rescind the mortgage.

7. Defendant exercised his/her right to rescind the mortgage on or about

_____ by sending a Notice of Rescission of Mortgage to
(Date defendant mailed rescission notice to plaintiff)

Plaintiff via regular and certified mail, return receipt requested.

8. Plaintiff failed to comply with its rescission obligations under TILA.

WHEREFORE, Defendant seeks a judgment as follows:

A. Declaratory and injunctive relief enforcing rescission of the mortgage, including a declaration that Defendant is not liable for any finance charge or other charge imposed in connection with the transaction;

B. Declaratory and injunctive relief voiding the mortgage;

C. Awarding actual damages;

E. Awarding statutory damages;

F. Awarding attorneys fees and costs; and

G. Granting such other relief as the court deems just and equitable.

Dated: _____
(Date on which defendant signs this document)

By: _____
(Defendant's signature) Defendant *Pro Se*

(Defendant's name printed)

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned does hereby certify that the matter in controversy is not the subject of any other pending lawsuits, proceedings or arbitrations in existence or currently contemplated of which I am aware.

SERVICE UPON ATTORNEY GENERAL

Service of a copy of the Answer, Defenses, and Counterclaims in this matter is being made upon the Attorney General of the State of New Jersey, pursuant to the Consumer Fraud Act for the purpose of encouraging intervention, by mailing a copy of said complaint to Anne Milgram, Attorney General, Office of the Attorney General, Hughes Justice Complex, P.O. Box 080, 25 West Market Street, Trenton, NJ 08625-0080.

Dated: _____
(Date on which defendant signs this document)

By: _____
(Defendant's signature) Defendant *Pro Se*

(Defendant's name printed)