

I Received a Summons and Complaint in Foreclosure — Now What?

New York is a judicial foreclosure state, which means that a lender has to sue you (in other words, to file a lawsuit) in order to enforce its rights under the mortgage and note. The purpose of the lawsuit is for the lender to obtain a judgment from the court that allows it to sell the property at an auction. The proceeds of the auction (the total amount of payment received) are used to repay the debt.

The lawsuit is started by the lender filing the summons and complaint with the court, and serving the summons and complaint on you as the homeowner. A complaint can be served by personal delivery (to anyone of age at the residence, or to the borrower at a different location), or by mail.

File and send an Answer

The first step for you after receiving the summons and complaint is to file an Answer with the court and to send the Answer to the law firm that is representing the lender. If the lawsuit is given to you by *personal* service, you have 20 days from the date of delivery to file and send an Answer. If you receive it by *mail*, you have 30 days from the date of mailing to file and send an Answer. It is very important to file and send an Answer. Failing to do so could result in a default judgment against you.

▶ **“Pro se” Answers**

If you are served with a foreclosure complaint but can't get an attorney, it's best to file an Answer or a “pro se” (without an attorney) Answer within the 20 or 30 days mentioned above. The Answer should describe any problems with the loan, such as very high closing costs or a interest rate, fraud or misstatements about the monthly payments or loan terms, or problems with home improvement contractors or missing loan proceeds. Even if you have missed the deadline, before the plaintiff moves for judgment you can file an Answer with the court and it is usually accepted. You can find standardized legal forms (“Blumberg forms”) for Answers and for Notices of Appearance at legal stationery stores.

▶ **Notice of Appearance**

If you do not want to file an Answer but want notice of future court actions, file a Notice of Appearance with the supreme court in your county. This entitles you to written notice of all future proceedings, including the auction of the house. If you file an Answer, you do not need to file a Notice of Appearance.

Attend the settlement conference

Within 60 days of the lender filing the affidavit of service with the court, the court sets up a settlement conference. You will receive a notice from the court informing you of the settlement conference's date and time. The notice should also tell you what documents to bring, such as information on your income, property and school tax, and insurance. *It is very important to attend the settlement conference.*

Do I need a lawyer?

You are *not required* to have a lawyer to file and send an Answer or to come with you to the settlement conference. It is always a good idea to have a lawyer, but many borrowers in foreclosure cannot afford one, and free legal resources are scarce in many areas. The courts are used to homeowners appearing at conferences on their own. See the South Brooklyn Legal Services self-help publication "How to Answer a Foreclosure Complaint 'Pro Se' (without an Attorney)" at <http://www.sbls.org/index.php?id=349>.

v1.0, 09-12