

# QUERIN LAW, LLC

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## **REPRESENTATION DURING JUDICIAL FORECLOSURE LAWSUIT** **ENGAGEMENT LETTER**

Since I no longer go to court, I do not represent clients who want to “fight” a judicial foreclosure. If you want to fight the foreclosure, there are several good attorneys who may be able to help.

My legal service is designed primarily for those who have already been served, or are about to be served with a Summons and Complaint in a judicial foreclosure. It is intended to provide the following service: (a) To be informational, i.e. helping you understand the judicial process along the way; (b) Coordinating with the bank’s attorneys so that they are informed of your goals and timeframe; and (c) If you believe you may want to enter into a Resolution Conference with a representative of the plaintiff bank or servicer under the recently enacted Senate Bill 558, the terms of representation and scope of work will be similar to those described below, but will also include preparation for and attendance at the conference (hereinafter collectively “the Matter”).

***Scope of My Representation.*** While we may discuss other legal issues, the scope of my legal services will be limited solely to the Matter. We may discuss the general credit issues, tax issues, and promissory note/deficiency issues as they pertain to the information you have provided me in the Distressed Housing Questionnaire. I am not a CPA or tax attorney; our tax discussions will be general in nature. Although I am familiar with the major tax issues affecting distressed housing choices, it is important that you secure expert tax counsel or a qualified advisor familiar with your specific financial and tax situation.

Note that completion of the Distressed Housing Questionnaire and/or this Engagement Letter, does not automatically mean that I am representing you. My legal representation only commences when: (a) I have agreed to provide representation; (b) You have returned to me this signed Engagement Letter, the completed Questionnaire, and Summons and Complaint, and (c) The agreed-upon retainer has been paid.

Client: \_\_\_\_\_

Date: \_\_\_\_\_

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Upon commencement of the representation, I will do the following:

- Propose to resolve the litigation with opposing counsel through one or more of the following options:
- Reviewing and explaining all of the legal papers that are filed with the court in your case.
- If the arrearage amount is manageable, you may authorize me to propose that the past-due debt be repaid, the loan reinstated, and the foreclosure complaint dismissed.
- Offering that the bank completes its foreclosure against you without the assessment of any deficiency judgment for unpaid monies due under the promissory note, or costs and attorney fees.<sup>1</sup>
- Offering the bank a deed-in-lieu of foreclosure without the assessment of any deficiency judgment for unpaid sums due under the promissory note, or costs and attorney fees.<sup>2</sup>
- Advising the bank that:
  - You have a short sale pending; or
  - You would like to short sell the property although do not yet have a buyer.<sup>3</sup>
- Offering some other form of foreclosure avoidance solution or bank concession, depending upon your specific situation.

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<sup>1</sup> In most, but not all, cases, the banks do not seek deficiency judgments against defendant borrowers. However, this can be deceiving, as some foreclosure complaints make it sound as if they *will be seeking a money judgment*.

<sup>2</sup> A Deed-in-Lieu ("DIL") is not normally an attractive alternative to the bank, since the foreclosure will already accomplish that, and if there are junior liens on the property, the foreclosure may have to be continued against them.

<sup>3</sup> If the property is encumbered by one or more junior liens, the holders of those liens will have to grant their consent to the short sale. The success of obtaining consent depends on whether the junior lienholders have a financial incentive to grant consent.

Client: \_\_\_\_\_

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- Representing your interest in a Resolution Conference with a representative of the lender or servicer.
- Securing an agreement not to take a default judgment against you until the terms have been worked out between counsel.<sup>4</sup>
- If the bank agrees to a foreclosure avoidance proposal I will review it for you, and negotiate the terms, where necessary.<sup>5</sup>
- Communicating with the bank attorneys and paralegals who may need information regarding the property, its condition and occupancy, etc., which I will coordinate with you.

### **MY LEGAL FEES AND COSTS**

***Hourly Rate.*** My current hourly rate for distressed housing matters is \$250/hour. I charge for all services undertaken on the Client's behalf on the described Matter, such as telephone conferences, electronic communications, document drafting, correspondence, depositions, hearings, etc. My minimum time entry charge is .10 hour. Unless other arrangements are made, I normally charge for travel time. I do not charge for postage, photocopying, scanning, etc., although I do charge for voluminous scanning by staff when hard copies of Client documents come to me without being first copied, or scanned or faxed to me.

***Invoicing and Payment.*** I remit periodic invoices showing work performed, costs incurred or advanced, and sums due. My invoices generally describe the event or task for which I performed the service: [E.g. "Telephone conference with client regarding \_\_\_\_\_"; "Email from/to client regarding \_\_\_\_\_"; or "Prepare for and attend \_\_\_\_\_"]. If there are no retainer funds in trust sufficient to cover the latest

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<sup>4</sup> Note that the taking of a default by the bank attorneys does not necessarily mean that you may not proceed with a foreclosure avoidance measure, such as short sale. Even late in the foreclosure process, banks have been known to consent to the short sale and dismiss the foreclosure suit.

<sup>5</sup> Although some foreclosure complaints suggest that the bank will - or may - seek a deficiency, my experience has been that in *most* cases they do not do so, even when they can. However, there are other advantages to securing a collaborative agreement between lawyers on the outcome of the foreclosure, such as avoiding the "appearance" of having a personal judgment rendered against you.

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fees, all sums are due within 15 days of the date of invoice. If they are not so paid, I reserve the right to discontinue my representation.

***Litigation/Arbitration.*** Although I have been a real estate litigator for nearly 40 years, I generally no longer go to court. *[I continue to handle matters in mediation and arbitration, but only on a select basis.]* If the Matter includes a dispute that cannot be resolved without the filing of legal papers in court, it is likely that I will not continue handling the Matter. I can recommend one or more attorneys I have worked with to handle some litigation. Of course, you are always free to decide upon any litigation attorney of your choice. My representation does not include a guarantee that I can find a litigating attorney to handle your Matter in court. You make the final decision on such representation.

***Termination.*** If you decide that you wish to discontinue our attorney-client relationship you may do so at any time, for any reason, or no reason - *as am I*. All unused trust funds will be returned, as will documents and other data, not already in your possession.

***Electronic Storage Only.*** Since I strive to have a paperless office, I prefer that my clients retain all original documents, and only provide me with copies. I retain all client records in electronic format. I expect clients to retain their own copies of documents they obtained prior to my representation, and those I have previously transmitted to them.

***Electronic Mail.*** I prefer electronic mail for most communications, as it helps both parties retain a record of communications. However, you are always free to contact me by phone at any time. If you have not heard back from me within 24 hours of sending an email *[excluding weekends]*, please call me to follow up. Between my spam filter and other business, I may occasionally miss a client's email.

### **RETAINER**

Over the course of a judicial foreclosure *[which can take nearly a year]*, I estimate total time to be approximately four (4) hours. It could be more or less. I request an advance retainer of \$1,000 to commence representation, assuming there will be no Resolution Conference. If you will want to engage in a Resolution Conference with the plaintiff

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Date: \_\_\_\_\_

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bank or servicer, the additional retainer will be \$1,500, for a total retainer of \$2,500. These funds are placed in my trust account and not withdrawn until earned.

Please understand that the above retainer amounts are *not firm bids* for completion of the Matter - the total cost could exceed that. Much depends upon the amount of time necessary in discussing/negotiating with the other side, you, and as usual, those unanticipated events that can - and do - occur, compliments of Murphy's Law. Periodic accountings are rendered, however you are encouraged to discuss fees with me at any time. If the retainer is exhausted, I will either request an additional sum to be deposited into trust, or render periodic invoices for the additional time. Any unused sums in trust at the conclusion of the matter will be returned to you upon completion. If it appears that my work will substantially exceed the amount remaining in trust, I will notify you on a *best efforts basis*.

If you have any questions regarding my representation, please do not sign below, and contact me to discuss further. If you feel you do understand and agree to these terms, please sign below and return to me via regular mail, e-mail, or facsimile. I look forward to working with you!

[Continued on following page.]

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Date: \_\_\_\_\_

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*An electronic or facsimile copy of this Engagement Letter shall have the same legal effect as the original.*

Very truly yours,

Phillip C. Querin  
QUERIN LAW, LLC

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**I/WE ACKNOWLEDGE THAT I/WE HAVE READ, UNDERSTOOD, AND AGREED TO THE ABOVE TERMS.**

\_\_\_\_\_  
**SIGNATURE**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE**

**DATE:** \_\_\_\_\_