

# HOW TO RESPOND TO A MORTGAGE FORECLOSURE COMPLAINT

## Who can use the *Mortgage Foreclosure Appearance & Answer*?

- You can use the Mortgage Foreclosure Appearance & Answer if your name is listed on the Summons and the Mortgage Foreclosure Complaint as a Defendant.
- **NOTE:** a Mortgage Foreclosure Complaint might also be called “Complaint to Foreclose Mortgage” or “Complaint for Foreclosure.”

## What form may I fill out and file with the court to respond to a Mortgage Foreclosure Complaint?

- You may fill out the *Mortgage Foreclosure Appearance & Answer* form.
- If you and the other Defendants want to answer differently from each other, you may each file a separate *Mortgage Foreclosure Appearance & Answer*.
- **NOTE:** If you think the Complaint or the way you received it is defective in some way and you want to ask the court to dismiss the case or take other action, talk to an attorney before filing this form.

## What is a *Mortgage Foreclosure Appearance & Answer*?

- The *Mortgage Foreclosure Appearance & Answer* tells the court you know about the foreclosure case and whether you agree or disagree with what was stated in the Mortgage Foreclosure Complaint.
- It also allows you to tell the court what defenses you have to the complaint.
- If you do not file a *Mortgage Foreclosure Appearance & Answer*, the foreclosure case can go ahead without you and the court might rule against you.

## Where can I find the form I need?

You can find the form at:

<http://www.illinoiscourts.gov/Forms/approved/>.

## Is there a deadline for filing the *Mortgage Foreclosure Appearance & Answer*?

You must file within 30 days after you were properly served with the Mortgage Foreclosure Complaint. If you miss this deadline you can ask the court for an extension of time by filing a *Motion to Extend Time to File*.

**NOTE:** If you have legal reason to challenge (quash) service of process you need to file a *Motion* before you file your *Foreclosure Answer*. You can find the *Motion* form at: <http://www.illinoiscourts.gov/Forms/approved/>. You may want to consult with a lawyer about whether you have a legal reason to challenge (quash) service [735 ILCS 5/2-301](#).

## What costs will I need to pay to file a *Mortgage Foreclosure Answer & Appearance*?

- There is a fee for each *Mortgage Foreclosure Appearance & Answer* filed with the Circuit Clerk.

- If you cannot afford the fee, you can ask the court to file for free. Fill out and file an *Application for Waiver of Court Fees* to ask the court for a fee waiver. This is a separate set of forms you can find at: <http://www.illinoiscourts.gov/Forms/approved/>.

## What if I think I have a defense to the foreclosure lawsuit?

- In Section C of the *Mortgage Foreclosure Appearance & Answer*, enter any defenses you have. You must state facts that support your defenses.
- If any of the following applies, you may wish to contact a lawyer:
  - Your lender violated any of the Making Home Affordable Program (HAMP) guidelines; for more information go to <http://www.makinghomeaffordable.gov>;
  - Your mortgage company wrongfully denied your application for a loan modification;
  - Your mortgage company failed to respond to your request for a mortgage modification;
  - You had a loan modification application under review with your mortgage company when the foreclosure case was filed;
  - Your refinance or home equity loan is less than 3 years old and the lender did not accurately tell you information about the loan's Annual Percentage Rate (APR), finance charges, amount financed, total of payments or schedule of payments;
  - Your broker received an unreasonable lump-sum payment (commission) for brokering the loan;
  - A contractor started the loan as part of a home repair contract;
  - You have your own insurance, and the lender has added an insurance premium to your account (force-placed insurance). In certain circumstances, forced insurance may be legal; OR
  - Your lender has not applied all of your payments to your account.
  - These situations do not necessarily mean you have a defense to your mortgage foreclosure case. Also, you might have a defense not listed here.
- When you use the form *Answer*, you may be automatically admitting that certain facts are true, like that you were given all the required notices about the default on the mortgage. This is because if the Plaintiff uses an approved form foreclosure complaint, these facts do not have to be listed in the complaint.

A complete list of the facts that do not have to be listed in the approved form complaint can be found at [735 ILCS 5/15- 1504\(c\)](#). If you want to deny any of these facts, do not use this form.

- Visit <http://www.illinoislegalaid.org/foreclosure> for more information about mortgage foreclosure defense or to apply for legal help.

### **What do I do if I want to try to refinance my loan?**

- Check with your local courthouse to see if your county has a mediation program to assist foreclosure defendants.
- See a HUD counselor for advice on your options. Call 800-569-4287 or visit <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> for a list of HUD counselors in your area.

### **What do I do after I fill out the *Mortgage Foreclosure Appearance & Answer*?**

#### **Step 1: File your form with the Circuit Clerk in the county where the court case is filed.**

- You must electronically file (e-file) court documents unless (1) you are an inmate in a prison or jail and you do not have a lawyer, or (2) you qualify for an exemption from e-filing.
  - You will qualify for an exemption if: (1) you do not have internet or computer access at home and it would be difficult for you to travel to a place where you could use a computer, (2) you have a disability that keeps you from e-filing, or (3) you have trouble reading or speaking in English.
  - Fill out a *Certification for Exemption from E-Filing* found here: [www.illinoiscourts.gov/Forms/approved/default.asp](http://www.illinoiscourts.gov/Forms/approved/default.asp).
  - File the original and 1 copy of your *Mortgage Foreclosure Appearance & Answer*, and the *Certification*, with the Circuit Clerk's office in person or by mail.
- To e-file, create an account with an e-filing service provider.
  - Visit <http://efile.illinoiscourts.gov/service-providers.htm> to select a service provider. Some service providers are free while others charge a processing fee. For instructions on how to e-file for free with Odyssey eFileLL, see the self-help user guides here: [http://www.illinoiscourts.gov/CivilJustice/Resources/Self-Represented\\_Litigants/self-represented.asp](http://www.illinoiscourts.gov/CivilJustice/Resources/Self-Represented_Litigants/self-represented.asp)
- If you do not have access to a computer or if you need help e-filing, take your form to the Circuit Clerk's office where you can use a public computer terminal to e-file your form.
  - You can bring your form on paper or saved on a flash drive.
  - The terminal will have a scanner and computer that you can use to e-file your form.

### **Step 2: Send a copy of your *Mortgage Foreclosure Appearance & Answer* to the other party.**

- You must send your forms to the other parties in the case. If a party has a lawyer, send the forms to the lawyer.
- You may send forms to the other parties by personal hand delivery, by mail, third-party commercial carrier (for example, FedEx or UPS), or through the court's electronic filing manager or an approved e-filing service provider. You may e-mail your form to a party if they have listed their e-mail address on a court document. Complete the proof of delivery with information to show how you sent the forms to each party. It has room for 3 parties. If you are sending forms to more than 3 parties, fill out and file one or more *Additional Proof of Delivery* forms with the main form.

### **Step 3: Get ready for your court date.**

- Decide and write down:
  - What you want to ask the judge to do for you; AND
  - What you will say to the judge if asked to tell your side of the case.
- Gather and make copies of pictures and documents you want the judge to see. Bring the original for the judge and one copy for you and each of the people in the case.

### **Step 4: Go to your court date.**

- You should have received a court date and time from the Circuit Clerk when you filed your court forms OR on a written notice from the other party or Circuit Clerk. If you cannot find your court date and time, call the Circuit Clerk.
- Bring these items with you to court:
  - A copy of the Mortgage Foreclosure Complaint and Summons;
  - Two copies of your completed and stamped *Mortgage Foreclosure Appearance & Answer*; AND
  - Other papers related to your mortgage or home such as: proof of your payment history, loan modification packet, information from a housing counselor, real estate sale contract, proof of employment or other income.
- Get to the courthouse at least 30 minutes early.
- Go to the courtroom number listed on your court form. If your forms do not have a courtroom number look for a list of cases at the courthouse or ask the Circuit Clerk.
- Check in with the courtroom staff and wait for your name and case number to be called.
- When your case is called, walk to the judge and introduce yourself, and briefly tell the judge what you are asking for. The judge will let you know what will happen next.

## How do I present my case to the judge?

### Step 1: Tell the judge your side of the case and answer questions.

- Bring any important documents relating to your foreclosure including documents mentioned above.
  - Give a copy to the judge and a copy to the other party. Be prepared to explain why the document is important.
- The judge decides what materials can be considered in making a decision about your case.

### Step 2: What do I do when the other party presents their case?

- The other party will also get to present their case.
- Write down your questions while they are speaking to the other party or judge.

### Step 3: What happens after both sides present their case?

- The judge has to make a decision. The decision is called a court order.
- If the judge needs more information to make a decision, the judge may set up another court date. Make sure you understand what information is needed and get it before the new court date.
- If the judge needs to think about it more, the judge may let you know the decision later by mailing a court order or at another court date.
- If the judge has enough information, the judge may decide right then and fill out a court order.
  - Get a copy of the order that has the court stamp on it.
  - If the other party was not in court to get a copy, you must send them a copy by 5:00 p.m. on the date you get the order. Fill out and file a *Proof of Delivery* court form with the Circuit Clerk to show that you sent the copy. You may find the *Proof of Delivery* at: <http://www.illinoiscourts.gov/Forms/approved/>.

### Step 4: Watch your mail

As the case goes on, you may receive important notices about new court dates and other matters.