

## **RESPONDING TO A FORECLOSURE LAWSUIT**

**NOTE: This handout will ONLY explain how to avoid a default judgment.** Since a handout cannot explain all the steps of a regular Circuit Court lawsuit, it is recommended that you hire a lawyer. If you cannot hire a lawyer before an Answer is due, this handout will only help you preserve your right to dispute the claims by explaining how to file an Answer. This handout does not explain how to successfully defend a foreclosure. If you hire a lawyer after you file an Answer, he or she may be able to amend your Answer, if needed.

### **CONSULTING OR HIRING A LAWYER**

If you are sued for foreclosure, it is best for you to hire a lawyer. The process in regular Circuit Court is complicated. It is not, unlike Small Claims Court, meant to be navigated without a lawyer. Even if you do not think you can afford a lawyer, you may want to consult one briefly to help you decide what to do. The Lawyer Referral and Information Service (1-800-362-9082 or Dane County residents 608-257-4666) will refer you to a lawyer who takes cases like yours. You can use this appointment to find out what the chances are that a judge will decide you owe nothing, to find out if you have any other defenses, and also how much it would cost to have a lawyer represent you. If you have a good chance of proving you owe nothing or have other defenses to the foreclosure action, it may be worth your while to hire a lawyer.

### **COMPLETING AN ANSWER**

An action is begun by filing a paper called a “Summons” and another paper called a “Complaint.” The company filing a Summons and Complaint is called the “plaintiff.” The Complaint will state how far behind you are in payments and demand possession of the property. These papers will usually be served on you by a sheriff or a private process server. You are called the “defendant.”

You only have a certain amount of time after the date on which you are served to file an “Answer” with the court and to send a copy to the plaintiff. (You usually have twenty (20) days, but you should check the Summons for the exact time allowed.) An Answer contains your responses to the numbered statements contained in the Complaint. It is *very important* that you serve and file your Answer within the time given on the Summons. If you do not, a “default judgment” will be entered against you. This means that the court will enter a judgment against you before you have had a chance to dispute that you owe the money or claim that you have some defenses.

If you are unable to file your Answer before the deadline, you could try to obtain an extension from the plaintiff’s attorney. If he or she agrees, the agreement should be put in writing and filed with the court. As with all documents you may file with the court, you should keep a copy of any agreement that is made.

If you do not need or cannot get an extension and do not want a default judgment, you must file and serve the Answer by the deadline stated in the Summons. The Answer should have the name of the court, the case name, and the case number at the top, just like the caption on the

Complaint, and it should be labeled “Answer.” In the Answer, you should go through each sentence in the Complaint and state whether you admit it is true or deny it if it is not true. Usually the sentences of the Complaint will be organized in numbered paragraphs, and you can use those numbers to identify the paragraphs to which you are responding.

Generally, it is safe to admit the paragraphs that identify the defendant and the location of the property. These are usually some of the first few paragraphs. The plaintiff also asserts information that it relies on to support its claims against the defendant, such as who holds the note and mortgage and how much the defendant owes. It is best to deny these allegations so that the plaintiff will have to prove them. If you admit them, the plaintiff will not have to present the proof. If you are sure the allegation is true, though, you can admit it, but remember that you may not be able to challenge that allegation again. In your Answer, you can also explain any other reasons that you feel you do not owe the money or owe less than demanded. These are your defenses. Then, you must sign the Answer.

After you have properly filed the Answer with the court and served the Answer on the plaintiff or its attorney, you may have a chance to negotiate the amount demanded or modify or refinance the loan. You may want to consult a lawyer to decide what to do next.

### **ALTERNATIVE DISPUTE RESOLUTION**

Wisconsin law allows parties in a civil case to go through “alternative dispute resolution” to resolve their problems outside of court. For example, a party can request mediation, in which a neutral third party would try to help the parties figure out a solution. A judge does not have to order mediation but may do so if he or she thinks the case is appropriate for such process.

If you would like to go through mediation, and you think it would be helpful, you should request mediation in your written Answer and at any hearing you attend. You should write in your answer, “I am requesting mediation under Wisconsin Statute Section 802.12. I believe the parties can resolve the problems if we have help from a neutral third party.” The other party has a right to object to mediation.

Be aware that if mediation is ordered, you could be ordered to pay part of the mediator’s fees and expenses. Reduced cost mediation may be available if you qualify.

Some new Wisconsin bills and local county court rules are pending that would require alternative dispute resolution if a party in a foreclosure action requests it. Check with the clerk of courts in your county for more current information.

### **REOPENING A DEFAULT JUDGMENT**

If a default judgment is entered against you, you may have grounds to “reopen” if you were not properly served with the Summons and Complaint or if you did not answer within the amount of time given. Getting a court to reopen a default judgment is *extremely difficult*, so your reason for not answering by the deadline must be very compelling and justified. The sooner you make a motion to reopen, the better, since waiting too long may mean you lose the chance. You should

consult a lawyer to find out if you have a legal basis to reopen a default judgment and also if you have good defenses to the claims.

**SAMPLE ANSWER**

This is a sample Answer. You will need to fill in the necessary information, substituting the correct information in the places marked with Xs. You will also need to write your own responses, based on what is written in the Complaint and based on the facts of the case.

STATE OF WISCONSIN	CIRCUIT COURT	XXXX COUNTY
XXX		
Plaintiff,		<b>ANSWER</b>
vs.		Case No. XXXXXXXXX
XXX		
Defendant.		
 1. I deny paragraph one of the complaint.  2. I admit paragraph 2.  3. I deny paragraph 3.  4. ...  <b><u>DEFENSES</u></b>  10. ...  <b><u>REQUEST FOR MEDIATION</u></b>  I am requesting mediation under Wisconsin Statute Section 802.12. I believe the parties can resolve the problems if we have help from a neutral third party.  Dated: _____ By: _____ (signature)		

The above is intended to provide general information only and is not a substitute for thorough and specific advice on an individual case. Depending on the complexity of your legal problem, you may need to consult an attorney for advice or representation.

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