

Getting Started

Mortgage Foreclosure Appearance & Answer

IMPORTANT: This getting started guide and the instructions are not legal advice. They are only meant to help you learn how to answer a Mortgage Foreclosure Complaint. Your use of the forms does not guarantee you will be successful in court.

To learn how to fill out the forms and file them with the court, read the *HOW TO RESPOND TO A MORTGAGE FORECLOSURE COMPLAINT* instruction sheet and the instructions on the forms.

Names of forms:	<ul style="list-style-type: none">• <i>Mortgage Foreclosure Appearance & Answer</i>• <i>Additional Defendant Signatures, Names, & Addresses</i> (If needed)• <i>Additional Paragraphs for Mortgage Foreclosure Appearance & Answer</i> (If needed)• <i>Additional Defenses for Mortgage Foreclosure Appearance & Answer</i> (If needed)
Purpose of the forms:	<ul style="list-style-type: none">• Tell the court you know about the foreclosure case.• Respond to the Mortgage Foreclosure Complaint.
Types of cases the forms CAN be used for:	Cases in which you are being sued to foreclose on a home mortgage.
Types of cases the forms CANNOT be used for:	The forms may not be appropriate for: <ul style="list-style-type: none">• cases involving commercial properties; OR• cases with additional counts other than foreclosure such as "breach of contract," "reformation," or "quiet title."
Special information or papers needed to complete the forms:	<ul style="list-style-type: none">• The Mortgage Foreclosure Complaint and Summons you received.• Your personal records about your payments on the mortgage.
Statutes covering the forms:	735 Illinois Compiled Statutes , section 5/15-1101 through section 5/15-1706.
Where to find the forms and instruction sheet:	http://www.illinoiscourts.gov/Forms/approved/
For more information:	Read the <i>How to Respond to a Mortgage Foreclosure Complaint</i> instruction sheet that comes with these forms. You may also find more information, resources, and the location of your local county self-help center at www.illinoislegalaid.org/foreclosure .

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 charge(s), 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 my forms?

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

- Make copies of your forms for yourself and each party in the case.
- Call the Circuit Clerk and ask how much it will cost to file your forms and the types of payment (cash, check, credit, online) they take.
- If you cannot afford the fee, fill out and file an *Application for Waiver of Court Fees* found at: <http://www.illinoiscourts.gov/Forms/approved/>. If you already have a fee waiver for this court case, you do not need do this.
- File your forms with the Circuit Clerk in person. You may be able to file by mail or online depending on the county where the court case is filed.
- The Circuit Clerk will stamp your forms. This stamp is your proof that the forms were filed with the court.
- How to File In Person
 - Go to the courthouse in the county where your court case is filed.
 - Give the Circuit Clerk your original forms and the copies to stamp.
 - The Circuit Clerk will keep the original forms and give back your copies.
 - Pay the filing fee or file your *Application for Waiver of Court Fees*.
- How to File By Mail
 - If you will be asking for a fee waiver, there may be local rules requiring you to file your *Application for Waiver of Court Fees* in person. Ask the Circuit Clerk if you have to file your *Application for Waiver of Court Fees* in person.
 - In Cook County, you must go in person to have your fees waived.
 - If you do not need to appear in person, mail your original forms including your *Application for Waiver of Court Fees* and one copy to the Circuit Clerk to stamp.

- If you do not need to have your fees waived, mail your original forms and one copy to the Circuit Clerk to stamp.
- Include the *Letter to the Circuit Clerk* found at: <http://www.illinoiscourts.gov/Forms/approved/>.
- Include a self-addressed and stamped envelope for the Circuit Clerk to mail the copy to you.
- How to File Online
 - Check your local Circuit Clerk's website to see if online filing is an option for you at: <http://www.ilcourtclerks.org/illinois-court-clerks/>.
 - Follow the instructions for filing online provided by the Circuit Clerk.
 - Pay the filing fee as instructed online or file your *Application for Waiver of Court Fees*.
 - Even if you can file online, you may have to appear in person to apply for a fee waiver. Ask the Circuit Clerk if you have to file your *Application for Waiver of Court Fees* in person.

Step 2: Send a copy of your forms to the other party.

- After filing, you must send a copy of your forms to each party in the case.
- If a party has a lawyer, send the copies to the lawyer.
- You may hand-deliver or mail your forms to the other parties. If they have agreed, you may email your forms. The *Proof of Delivery* on your forms must state the way you sent them.
- You must send your copies by 5:00 p.m. on the date you file your forms even if you are filing by mail or online.
- Keep one copy of the forms that were stamped by the Circuit Clerk for your own records.
- Check with the court to see if you need to deliver another copy to the judge's office.

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.

Defendant Signature

Defendant Printed Name

Street Address, Apt #

City

State

ZIP

Phone

Check if you need more room and attach the *Additional Defendant Signatures, Names, & Addresses Form*.

Defendants have attached the *Additional Defendant Signatures, Names, & Addresses Form*

In 2, enter the date you send this form to the other parties. You must send this form by 5:00 p.m. on the same day it was filed with the Circuit Clerk.

Proof of Delivery

1. I am sending *Mortgage Foreclosure Appearance & Answer*

2. At or before 5:00 P.M. on: _____, 20____
Date

3. To:

Name:

First Middle Last

Address:

Street, Apt # City State ZIP

Email: _____

By:

- Hand Delivery
- Regular, First-Class Mail, deposited into the U.S. Mail with postage paid
- Email

Name:

First Middle Last

Address:

Street, Apt # City State ZIP

Email: _____

By:

- Hand Delivery
- Regular, First-Class Mail, deposited into the U.S. Mail with postage paid
- Email

Name:

First Middle Last

Address:

Street, Apt # City State ZIP

Email: _____

In 3, enter the full name and address of the parties or lawyers you are sending a copy of this form, and check if you will send copies of this form by hand, by mail, or by email.

If a party has a lawyer, you must send a copy of this form to the lawyer.

CAUTION: You may only send this form by email if the other party has agreed to receive documents in the lawsuit by email.

Enter the Case Number given by the Circuit Clerk: _____

- By: Hand Delivery
 Regular, First-Class Mail, deposited into the U.S. Mail with postage paid
 Email

Under the Code of Civil Procedure, [735 ILCS 5/1-109](#), making a statement on this form that you know to be false is perjury, a Class 3 Felony.

After you finish this form, sign and print your name.

I certify that everything in the Proof of Delivery is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under [735 ILCS 5/1-109](#).

Your Signature

Print Your Name