

**HOW TO ANSWER A
FORECLOSURE
COMPLAINT**

**“PRO SE”
(WITHOUT AN ATTORNEY)**

New York City

**DO NOT IGNORE
A FORECLOSURE
LAWSUIT**

**EVEN IF YOU ARE
NEGOTIATING WITH
YOUR LENDER ...**

**You Could
Lose Your Home**

OVERVIEW

What is Foreclosure?

In New York State, a foreclosure is a lawsuit filed against a mortgage borrower (Defendant) by the owner of the mortgage or a company that represents the owner (Plaintiff).

The Plaintiff files a foreclosure lawsuit to ask the court to sell the home to repay the mortgage debt.

The defendant has the right to go to court in person and to file legal papers to try to resolve the foreclosure, either with or without a lawyer.

What is a “pro se” litigant?

A pro se litigant is a person who starts or defends a lawsuit without the assistance of a lawyer.

DO NOT IGNORE A FORECLOSURE LAWSUIT EVEN IF YOU ARE NEGOTIATING WITH YOUR LENDER ...

Why is it important to file an Answer?

If you have received a Foreclosure Summons and Complaint, you have the right to serve and file an Answer to the Complaint pro se. This will guarantee that you receive notice of all future actions in the court case, and may help preserve your legal rights.

If you don't file an Answer, the judge will enter a "default" judgment against you and you could lose the right to raise any defenses to the foreclosure. You also may not receive notices from the court about what's going on with your house and it could be sold without your knowing about it.

You should keep copies of all court documents (including the Answer and Affidavit of Service) for your records.

REMEMBER: This guide is designed to help you file an Answer. This should not replace finding a non-profit foreclosure prevention attorney or housing counselor to assist you. In New York City, dial 311 and ask for a referral to free foreclosure prevention services.

...YOU COULD LOSE YOUR HOME!!!

PREPARING TO RESPOND

What is the deadline for you to respond?

- o If you were served **personally** (the court papers were handed to you in person), you have 20 days from the date of service (the day you were handed the papers) to answer.
- o If you were served **by mail** (you didn't receive a copy personally, but instead received the foreclosure summons *only* by mail), you have 30 days to answer.

**Do not wait until the last day –
filing an Answer takes time!**

Where can you get the form you need?

A blank Answer form is included at the end of these materials.

Where can you find the information you need to respond?

The information you need to respond comes from the Summons and Complaint you received, your mortgage papers, and your personal experience.

SAMPLE SUMMONS

This sample foreclosure Summons shows the information you need to copy to your Answer.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

LASALLE BANK NATIONAL ASSOCIATION, TRUSTEE,

Plaintiff,

-against-

JANE DOE;

ENCORE CREDIT CORP; NAB CONSTRUCTION CORP;
AMERICAN EXPRESS TRAVEL RELTD SV CO INC; NEW
YORK CITY PARKING VIOLATIONS BUREAU; NEW
YORK CITY ENVIRONMENTAL CONTROL BOARD;
NEW YORK CITY TRANSIT ADJUDICATION BUREAU;
"JOHN DOES" and "JANE DOES", said names being
fictitious, parties intended being possible tenants or occupants
of premises, and corporations, other entities or persons who
claim, or may claim, a lien against the premises,

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance on the Plaintiff's Attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service, where service is made by delivery upon you personally within the State, or within thirty (30) days after completion of service where service is made in any other manner, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The following notice is intended only for those defendants who are owners of the premises sought to be foreclosed or who are liable upon the debt for which the mortgage stands as security.

YOU ARE HEREBY PUT ON NOTICE THAT WE ARE ATTEMPTING TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

The amount of the Debt: \$351,450.53 consisting of principal balance of \$336,865.02 plus interest of \$10,032.02, escrow/impound shortages or credits of \$2,863.07, late charges of \$191.12; Broker's Price Opinion, inspection and miscellaneous charges of \$79.30; attorney fee \$925.00 and title search \$495.00. Because of interest and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown

COPY

Index No.: 17302/08

D/O/F: 7/18/08

SUMMONS

THE BASIS OF VENUE IS
THAT THE PROPERTY IS
SITUATED IN SAID
COUNTY

FILLING OUT THE ANSWER

STEP 1: As shown in the sample Answer below, fill in the top part of the Answer form by copying the necessary information from the Summons or Complaint.

STEP 2: Check "General Denial".

SUPREME COURT County of <u>Queens</u> : State of New York	
<u>Lasalle Bank Nat'l Assn</u> Trustee v. <u>Jane Doe, Et Al</u> Defendant.	Index No.: <u>17302/08</u> VERIFIED ANSWER TO FORECLOSURE COMPLAINT
Defendant Answers as follows:	
<input checked="" type="checkbox"/> General Denial	
I plead the following Defenses and Affirmative Defenses:	
<input type="checkbox"/> Lack of Standing to Sue: Plaintiff does not have standing to sue because it was not the legal owner of the Note and or Mortgage at the time it commenced this foreclosure lawsuit.	
<input type="checkbox"/> Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) for the following reason:	
<input type="checkbox"/> Partial or Full Payment: I have made payments in the amount of \$ _____ which have not been properly credited and are not reflected in the Summons and Complaint:	
<input type="checkbox"/> I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303) (amended 2008).	
<input type="checkbox"/> I have no knowledge that the plaintiff was assigned my debt and there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law Section 1302, high-cost and subprime home loans) (amended 2008): Plaintiff failed to allege (swear) in the Foreclosure Complaint that it is the legal owner and holder of the Note and or Mortgage or has the authority to foreclose.	
<input type="checkbox"/> The 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304, high-cost, subprime and non-traditional home loans) (amended 2008) were inadequate because (circle one): Two copies not delivered, foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.	
<input type="checkbox"/> An active servicemember is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Servicemembers Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)	
<input type="checkbox"/> Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)	

STEP 3: Check off and explain any of the defenses listed that you believe apply to your situation. See pages 16-29 for an explanation of common defenses to foreclosure.

FILLING OUT THE ANSWER (CONT'D)

OTHER FACTS CONCERNING YOUR MORTGAGE, YOUR HOME, OR OTHER DEFENSES OR COUNTER CLAIMS: _____

Wherefore, the Defendant requests that the Complaint be dismissed; the relief requested by the Defendant be granted in its entirety; the costs associated with this defense; and any other relief allowed by law and considered just by this Court.

DATED: 11 / 1 / 08

DEFENDANT'S NAME: Jane Doe, appearing pro se

DEFENDANT'S ADDRESS: 123 Main St, Queens NY, 11691

DEFENDANT'S TELEPHONE NUMBER: 718-111-2222

STEP 4:

Add any additional information or defenses to the “Other Facts Concerning Your Mortgage” section. See pages 30 & 31 below for a discussion of this section.

STEP 5:

Fill in the bottom of the second page with your current contact information.

VERIFYING, SERVING AND FILING THE ANSWER

IN FRONT OF A NOTARY PUBLIC, FILL OUT AND SIGN THE VERIFICATION SECTION OF THE ANSWER FORM. →

A verification is a statement under oath that the Answer is truthful. *After you complete the answer you must sign this Verification in front of a Notary Public and have it notarized.*

MAKE 2 COPIES OF THE VERIFIED ANSWER.

Make two copies of the Verified Answer. You will file the original with the court clerk. You will arrange for one copy to be served on the Plaintiff's attorney (see page 12). **Keep the other copy for your records.**

VERIFICATION	
I, <u>Jane Doe</u> , being duly sworn, state that the within Answer is true to the best of my knowledge, except as to those matters alleged upon information and belief, which I believe to be true.	
	<u>Jane Doe</u> Defendant (Print Name)
Sworn to and subscribed before me on <u>Nov. 10</u> , 2008	<u>Jane Doe</u> Defendant (Signature)
<u>[Signature]</u> Notary Public	
<div>Notary Public, State of New York No. 0123456789 Qualified in Kings County Commission Expires September 16, 2008</div>	

VERIFYING, SERVING AND FILING THE ANSWER (CONTINUED)

“SERVE” THE PLAINTIFF’S ATTORNEY.

Ask someone other than yourself who is at least 18 years old and not a Defendant in the lawsuit to “serve” a copy of the Verified Answer on Plaintiff’s attorney at the address listed on the Summons and Complaint. The easiest way to “serve” the Verified Answer is to arrange for the person to send it by certified mail, return receipt requested, or by overnight delivery service. **Be sure to keep the proof of mailing and delivery.**

THE PERSON WHO SERVED THE VERIFIED ANSWER MUST SIGN THE “AFFIDAVIT OF SERVICE” IN FRONT OF A NOTARY PUBLIC.

The person who served the Verified Answer must fill out the “Affidavit of Service” describing the papers served, the address, and the date of service. *This form must be sworn to and signed in front of a Notary Public and notarized.*

AFFIDAVIT OF SERVICE

I, Robert Smith (name), served the within Verified Answer on Plaintiff’s attorney, Lawyer Bob (attorney name), at 555 Main St. (address). Service was by means of First Class Mail (first class mail/certified mail/overnight delivery service/fax/personal delivery). It was served on 10th day of Nov., 2008 I am 35 (18 or over) years old and am not a Defendant in this lawsuit.

Signed: Robert Smith
Print Name: Robert Smith.

Sworn to and subscribed before me on
Nov. 10, 2008

[Signature]
Notary Public

Notary Public, State of New York
No. 0123456789
Qualified in Kings County
Commission Expires September 16, 2011

VERIFYING, SERVING AND FILING THE ANSWER (CONTINUED)

FILE THE VERIFIED ANSWER AND AFFIDAVIT OF SERVICE IN COURT.

Bring the original and your copy of the Verified Answer and the Affidavit of Service to the Supreme Court in your borough (see list of New York City courts on next page). Go to the County Clerk's office and state that you wish to file an Answer to a Foreclosure Complaint.

Be sure to ask the clerk to "date-stamp" both the original documents that you are filing and your copies to keep for your records, so that you have proof of the day that you filed your Answer.

Bronx:

Bronx County Supreme Court
851 Grand Concourse, Bronx
County Clerk's Office, Room 118
(718) 618-1400

Brooklyn:

Kings County Supreme Court
360 Adams Street, Brooklyn
County Clerk's Office, basement level,
Room 189, Window #9
(347) 404-9772

Manhattan:

New York County Supreme Court
60 Centre Street, Manhattan
Basement level, Room 141B, go to "Law
and Equity" window
(646) 386-5955

Queens:

Queens County Supreme Court
88-11 Sutphin Blvd., Jamaica
County Clerk's Office, Room 100
(718) 298-0602

Staten Island:

Richmond County Clerk's Office – across
the street from the Richmond County
Courthouse
130 Stuyvesant Place, 1st Floor
718-675-8960

COMMON DEFENSES TO FORECLOSURE

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Defendant Answers as follows:	
<input checked="" type="checkbox"/> General Denial	
I plead the following Defenses and Affirmative Defenses:	
<input type="checkbox"/> Lack of Standing to Sue: Plaintiff does not have standing to sue because it was not the legal owner of the Note and or Mortgage at the time it commenced this foreclosure lawsuit.	
<input type="checkbox"/> Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) for the following reason: _____	
<input type="checkbox"/> Partial or Full Payment: I have made payments in the amount of \$ _____ which have not been properly credited and are not reflected in the Summons and Complaint: _____	
<input type="checkbox"/> I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303) (amended 2008).	
<input type="checkbox"/> I have no knowledge that the plaintiff was assigned my debt and there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law Section 1302, high-cost and subprime home loans) (amended 2008): Plaintiff failed to allege (swear) in the Foreclosure Complaint that it is the legal owner and holder of the Note and or Mortgage or has the authority to foreclose.	
<input type="checkbox"/> The 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304, high-cost, subprime and non-traditional home loans) (amended 2008) were inadequate because (circle one): Two copies not delivered, foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.	
<input type="checkbox"/> An active servicemember is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Servicemembers Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)	
<input type="checkbox"/> Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)	

After "General Denial," check off and explain any other defenses to foreclosure if you believe they apply to your case.

Consult with a non-profit foreclosure prevention attorney or housing counselor as soon as possible. Think carefully about whether any of the following legal defenses may apply to your situation, because if you fail to include some legal defenses in your Answer, you may lose the right to raise them later.

COMMON DEFENSES TO FORECLOSURE

- ☐ **Lack of Standing to Sue:** Plaintiff does not have standing to sue because it was not the legal owner of the Note and/or Mortgage at the time it commenced this foreclosure lawsuit.

A Foreclosure Plaintiff must prove that it has the right to foreclose, known as “standing,” by showing that it is the owner of the Note and Mortgage when it starts the lawsuit. *If you don’t include this claim, you may not be able to raise it later. So, if you believe that the Plaintiff may not own your Note and Mortgage, raise this defense to be safe.*

Properties located in New York City (except Staten Island), information concerning mortgage ownership and transfer (“assignment”) is available online at the NYC Department of Finance website’s “Automated City Register Information System” (ACRIS), <http://www.nyc.gov/html/dof/html/jump/acris.shtml>

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Defendant Answers as follows: <input checked="" type="checkbox"/> General Denial		
I plead the following Defenses and Affirmative Defenses:		
<input type="checkbox"/>	Lack of Standing to Sue: Plaintiff does not have standing to sue because it was not the legal owner of the Note and or Mortgage at the time it commenced this foreclosure lawsuit.	
<input type="checkbox"/>	Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) for the following reason:	
<input type="checkbox"/>	Partial or Full Payment: I have made payments in the amount of \$_____ which have not been properly credited and are not reflected in the Summons and Complaint:	
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<input type="checkbox"/>	The 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304, high-cost, subprime and non-traditional home loans) (amended 2008) were inadequate because (circle one): Two copies not delivered, foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.	
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<input type="checkbox"/>	Homeowner’s Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)	

- ☐ **Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) for the following reason:**

You were not properly served with a copy of the Foreclosure Summons and Complaint as required by law.

Proper service requires that the Foreclosure Summons and Complaint be:

- handed to you in person; OR
- left at your home or business with a “person of suitable age and discretion” with another copy mailed within 20 days to your home or business; OR
- if other methods fail, attached to your home or business door, with another copy mailed within 20 days to your home or business.

COMMON DEFENSES TO FORECLOSURE

SUPREME COURT County of <u>Queens</u> : State of New York Lasalle Bank Nat'l Assn Trustee Plaintiff, v. Jane Doe, Et Al Defendant.		Index No.: <u>17302/08</u> VERIFIED ANSWER TO FORECLOSURE COMPLAINT
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I plead the following Defenses and Affirmative Defenses: <input type="checkbox"/> Lack of Standing to Sue: Plaintiff does not have standing to sue because it was not the legal owner of the Note and or Mortgage at the time it commenced this foreclosure lawsuit. <input type="checkbox"/> Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) for the following reason: _____		
<input type="checkbox"/>	Partial or Full Payment: I have made payments in the amount of \$ _____ which have not been properly credited and are not reflected in the Summons and Complaint:	
<input type="checkbox"/>	I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303) (amended 2008).	
<input type="checkbox"/>	I have no knowledge that the plaintiff was assigned my debt and there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law Section 1302, high-cost and subprime home loans) (amended 2008): Plaintiff failed to allege (swear) in the Foreclosure Complaint that it is the legal owner and holder of the Note and or Mortgage or has the authority to foreclose.	
<input type="checkbox"/>	The 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304, high-cost, subprime and non-traditional home loans) (amended 2008) were inadequate because (circle one): Two copies not delivered, foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.	
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<input type="checkbox"/>	Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)	

- ☐ **Partial or Full Payment: I have made payments in the amount of \$ _____ which have not been properly credited and are not reflected in the Summons and Complaint:**

You have paid the mortgage payments, or some portion of the mortgage payments, that the Plaintiff claims you owe.

You believe that the amount of debt is incorrect and that you do not owe what the mortgage company says you owe.

- ☐ **I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with the Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303) (amended 2008).**

For foreclosure lawsuits filed after September 1, 2008 on one-to-four family owner-occupied homes, the Plaintiff is required to include a Notice of "Help for Homeowners in Foreclosure" with the Foreclosure Summons and Complaint. This notice must be printed in bold, large type and on colored paper.

You should raise this defense if you did not receive this notice.

**IF YOU BELIEVE YOU HAVE A HIGH-COST,
SUBPRIME OR NON-TRADITIONAL (PAYMENT-
OPTION OR INTEREST-ONLY) MORTGAGE:**

Under a 2008 New York State law, foreclosure Plaintiffs and mortgage lenders are required to follow additional rules for certain types of mortgages called “high-cost,” “subprime,” and “non-traditional” mortgages. The simplest way to know whether you have a high-cost, subprime, or non-traditional mortgage is that you should have received written notice during the loan closing or foreclosure process. If you believe you have one of these types of mortgages, you should immediately seek assistance from an attorney. In addition, the following rules apply:

- ☐ **I have no knowledge that the plaintiff was assigned my debt or there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law Section 1302, high-cost and subprime home loans) (amended 2008): Plaintiff failed to allege (swear) in the Foreclosure Complaint that it is the legal owner and holder of the Note and/or Mortgage or has the authority to foreclose.**

For foreclosure cases filed after September 1, 2008, the Plaintiff is required to allege (swear) in the foreclosure Complaint and prove that at the time it files the lawsuit, it is the legal owner and holder of the Note and Mortgage, or has been given the legal authority to foreclose.

You should raise this defense if the foreclosure Complaint does not contain a statement similar to EITHER: "Plaintiff owns and holds the subject Mortgage and Note," OR: "The owner and holder of the subject Mortgage and Note has given Plaintiff the legal right to foreclose". You can also raise this defense if you believe that the statement is false. *For properties located in New York City (except Staten Island), current information concerning mortgage ownership and transfer (“assignment”) is available online at the NYC Department of Finance website’s “Automated City Register Information System” (ACRIS),*
<http://www.nyc.gov/html/dof/html/jump/acris.shtml>

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For foreclosure lawsuits filed in New York State after September 1, 2008 on one-to-four-family owner-occupied homes, your mortgage lender or servicer is required to send you a Pre-Foreclosure Notice by first-class mail *and* by registered or certified mail that states: “YOU COULD LOSE YOUR HOME” and lists the number of days the mortgage payments are late and the amount of money required to catch up. These Pre-Foreclosure Notices must be given at least 90 days before the foreclosure Complaint is filed.

You should raise this defense if you did not receive both copies of this Pre-Foreclosure Notice, or if the foreclosure lawsuit was filed within 90 days after you received the Pre-Foreclosure Notices.

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DEFENSES FOR SPECIAL CIRCUMSTANCES:

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<input type="checkbox"/> I have no knowledge that the plaintiff was assigned my debt and there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law Section 1302, high-cost and subprime home loans) (amended 2008): Plaintiff failed to allege (swear) in the Foreclosure Complaint that it is the legal owner and holder of the Note and or Mortgage or has the authority to foreclose.	
<input type="checkbox"/> The 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304, high-cost, subprime and non-traditional home loans) (amended 2008) were inadequate because (circle one): Two copies not delivered, foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.	
<input type="checkbox"/>	An active servicemember is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Servicemembers Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)
<input type="checkbox"/>	Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)

- ☐ An active servicemember is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Servicemembers Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)

Active-duty members of the armed forces, national guard and reservists, and their dependents and co-debtors have special rights under federal and New York State laws to interest rate reductions on mortgage and other debts, to request a stay of foreclosure, and to avoid a tax foreclosure sale.

Homeowners who are serving active military duty and are facing foreclosure should advise their mortgage lender, servicer, and the court in writing, and immediately seek assistance from a Judge Advocate General (JAG) Corps or other attorney.

DEFENSES FOR SPECIAL CIRCUMSTANCES:

SUPREME COURT County of <u>Queens</u> : State of New York	
Lasalle Bank Nat'l Assn Trustee v. Jane Doe, Et Al Defendant.	Index No.: <u>17302/08</u> VERIFIED ANSWER TO FORECLOSURE COMPLAINT
Defendant Answers as follows: <input checked="" type="checkbox"/> General Denial	
I plead the following Defenses and Affirmative Defenses:	
<input type="checkbox"/> Lack of Standing to Sue: Plaintiff does not have standing to sue because it was not the legal owner of the Note and or Mortgage at the time it commenced this foreclosure lawsuit.	
<input type="checkbox"/> Improper Service of the Summons and Complaint (NY Civil Practice Law and Rules Section 308) for the following reason: _____	
<input type="checkbox"/> Partial or Full Payment: I have made payments in the amount of \$ _____ which have not been properly credited and are not reflected in the Summons and Complaint: _____	
<input type="checkbox"/> I did not receive the notice "Help for Homeowners in Foreclosure" that was supposed to be served with Foreclosure Summons and Complaint (NY Real Property Actions and Proceedings Law Section 1303) (amended 2008).	
<input type="checkbox"/> I have no knowledge that the plaintiff was assigned my debt and there was no Affirmative Allegation of Standing (NY Real Property Actions and Proceedings Law Section 1302, high-cost and subprime home loans) (amended 2008): Plaintiff failed to allege (swear) in the Foreclosure Complaint that it is the legal owner and holder of the Note and or Mortgage or has the authority to foreclose.	
<input type="checkbox"/> The 90-Day Pre-Foreclosure Notices (NY Real Property Actions and Proceedings Law Section 1304, high-cost, subprime and non-traditional home loans) (amended 2008) were inadequate because (circle one): Two copies not delivered, foreclosure lawsuit filed within 90 days of Pre-Foreclosure Notices.	
<input type="checkbox"/> An active servicemember is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law (Federal Servicemembers Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.)	
<input type="checkbox"/> Homeowner's Mental Disability or Incompetence (NY Civil Practice Law and Rules Section 1202)	

☐ Mental Disability or Incompetence (Civil Practice Law and Rules Section 1202):

If you are working with a homeowner whom you believe cannot defend himself or herself due to limited mental competence, you should ask the court to appoint a "Guardian Ad Litem" to represent the homeowner's interests during the lawsuit.

In addition, if you believe that the homeowner was not mentally competent at the time he or she signed the mortgage loan, you should describe in detail the timing and evidence of the homeowner's incompetence, and immediately seek assistance from an attorney.

OTHER FACTS CONCERNING YOUR MORTGAGE, YOUR HOME, OR OTHER DEFENSES:

In this section of the Answer, you should add any additional information or defenses that you believe the judge should know about your case. In some cases, the court may decide that a mortgage loan is illegal because the closing or sales process and/or the mortgage loan terms were fundamentally unfair. You should use this section to explain any of the reasons why you think your loan was unfair or any other information about your loan that you think the judge should know.

Some examples of the types of information you might want to include in this section are:

- ☐ You were pressured to sign the mortgage or home purchase documents.
- ☐ You were discouraged from using your own attorney or appraiser or other independent advisor.
- ☐ You did not receive a financial benefit from your mortgage.
- ☐ The interest rate is extremely high, or higher than you qualified for given your credit history.
- ☐ You were charged high closing costs or fees.

TELL YOUR STORY

- ☐ You believe that a mortgage broker, lender, or other person involved with your mortgage intentionally made false statements to you that led you to believe that you would get a better deal on your mortgage or home purchase than you actually received.
- ☐ Your loan application was falsified (e.g., your income was misstated).
- ☐ You were misled about what your total mortgage amount, monthly payments, or interest rate would be.
- ☐ You were told that your interest rate would be fixed but it is an adjustable-rate mortgage (ARM).
- ☐ You were misled about how high the monthly payments on your adjustable-rate mortgage (ARM) would become.
- ☐ You were told that utilities, medical expenses, or other bills would be paid off by your mortgage, but they weren't.

Be as specific as possible

Explain the “who, what, where, when” of misrepresentations or fraud.

- ☐ You were told that your house was worth more than its actual value (fraudulently over-appraised).
- ☐ Your home was in poor condition when you purchased it and you were promised repairs that were never made.
- ☐ You were falsely told that you could earn rental income from your home to help pay the mortgage.
- ☐ You believe that you were targeted for an unfair or abusive mortgage loan based on your race, national origin, sex, mental or physical disability, age, alienage/citizenship status, or other legally protected characteristic

March 2009

Prepared by:

Legal Aid Society Queens,
 Predatory Lending Project
Legal Services for NYC,
 Foreclosure Prevention Project
South Brooklyn Legal Services,
 Foreclosure Prevention Project
Staten Island Legal Services,
 Homeowner Defense Project