

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT COURT

\_\_\_\_\_ ,

Plaintiff,

v.

No. D-\_\_\_\_\_

\_\_\_\_\_ ,

Defendant(s).

**AMENDED ANSWER TO COMPLAINT FOR FORECLOSURE**

COMES NOW, the Defendant(s), \_\_\_\_\_, *pro se* and \_\_\_\_\_  
(*check if applicable*) within 20 days of service of my original Answer or \_\_\_\_\_ (*check if*  
*applicable*) after getting permission from the attorney for Plaintiff in writing, files an Amended  
Answer to the Complaint for Foreclosure as follows:

1. I admit or agree to the following paragraphs of the Complaint:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. I deny or disagree with the following paragraphs of the Complaint:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. I deny the following paragraphs because I do not know whether they are true or  
not: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

4. Defendant(s) further requests that the Court consider the following defenses (check those  
that apply):

\_\_\_\_\_ I did not receive a letter from my servicer notifying me of the default, my right to  
cure the default, the date by which I needed to cure to avoid a foreclosure case, and/or

notice that the loan would be accelerated by a certain date in violation of NMSA, 58-21A-6.

\_\_\_\_ I have an FHA, VA, or USDA loan and I do not believe that the lender followed federal regulations related to loss mitigation prior to filing for foreclosure.

\_\_\_\_ I took out this loan with a mortgage company named \_\_\_\_\_, but the Plaintiff in this case is named \_\_\_\_\_, and I dispute that they are entitled to enforce the note and/or mortgage and do not have proper standing to bring this law suit.

\_\_\_\_ I was told by my lender to stop making payments on this loan and therefore I have defenses to the foreclosure equitable defenses.

\_\_\_\_ I am making payments on a loan modification plan and therefore this law suit should not have been filed and I should not be required to pay attorney's fees and costs to Plaintiff and the case should be dismissed.

\_\_\_\_ I tried to make payments on this loan but the lender returned them or refused to accept payment and therefore I have equitable defenses.

5. Defendant(s) generally assert(s) any of the following defenses, if applicable: estoppel, failure of consideration, fraud, unconscionability, illegality, laches, payment, release, waiver, unclean hands, failure to state a claim, breach of contract, and failure to mitigate damages.

6. \_\_\_\_ I have additional defenses to the foreclosure including: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

7. Pursuant to NMSA §39-4-15 Defendant asserts his/her claim of a homestead exemption as allowed by law.

**WHEREFORE**, Defendant(s) respectfully request the Court to:

- Dismiss the Complaint;
- Order the parties to mediation,
- Extend the redemption period to nine months;
- Bar the collection of any costs and fees incurred by the initiation and preparation of this lawsuit by the Plaintiff;
- \_\_\_\_\_, and

Grant such other relief that the Court determines is just and equitable.

8. Defendant(s)/Counter claimants(s) further requests that the Court consider the following Counterclaims (check those that apply) against the Plaintiff as the principal to the servicer or as the servicer itself:

\_\_\_ I did not received a letter within five days of submitting a loss mitigation application to the servicer of my loan acknowledge receipt of my application and/or notifying me whether the application was complete or not in violation of RESPA, 12 C.F.R. Section 1024.41 (b)(2).

\_\_\_ I did not receive a letter from the servicer of my loan within 30 days of them having a complete loss mitigation application from me with a decision on all loss mitigation options available to me in violation of RESPA, 12 C.F.R. Section 1024.41 (c). I received a letter from my servicer on \_\_\_\_\_ (date) notifying me that my application was complete.

\_\_\_ I submitted a complete loss mitigation application to the servicer of my loan and I was denied for a loan modification option but the servicer \_\_\_ did not send me a letter in writing, \_\_\_ did not state the specific reason for the denial and/or \_\_\_ did not advise me in the letter that I had the right to appeal the decision in violation of RESPA, 12 C.F.R. 1024.41(d). *Check those that apply.*

\_\_\_ The servicer of my loan had a complete loss mitigation application from me under review prior to the filing of the foreclosure this is a violation of the dual-tracking restriction in RESPA, 12 C.F.R. 1024.41(f).

\_\_\_ The servicer of my loan had a complete loss mitigation application from me more than 37 days before a foreclosure sale was scheduled however, they filed a motion for default judgment in violation of RESPA 12 C.F.R. 1024.41(g).

\_\_\_ The servicer and/or Plaintiff made a false or misleading oral or written statement, knowingly made in connection with the extension of credit or in the collection of debts by a person in the regular course of his trade or commerce, which may, tends to or does deceive or mislead any person in violation of the NM UPA, NMSA § 57-12-3. The facts related to this are (attach additional pages if necessary):

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WHEREFORE**, the Defendant(s)/Counter claimant(s) asks the Court to:

- Award Defendant/Counter claimant(s) actual damages;
- Award Defendant/Counter claimant(s) statutory damages pursuant to 12 U.S.C. Section 2605(f), if applicable;
- Award statutory damages pursuant to NMSA § 57-12-10(B) for a willful practice, if applicable,
- Award Defendant/Counter claimant(s) their costs and any attorney's fees,
- Order the parties to mediation,
- \_\_\_\_\_, and
- Grant such other relief that the Court determines is just and reasonable.

Respectfully submitted,

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name (printed)  
\_\_\_\_\_  
Mailing address  
\_\_\_\_\_  
City, State, Zip Code  
\_\_\_\_\_  
Telephone number

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name (printed)  
\_\_\_\_\_  
Mailing address  
\_\_\_\_\_  
City, State, Zip Code  
\_\_\_\_\_  
Telephone number

**Certificate of Service**

I hereby certify that a copy of this Answer was mailed/faxed/hand-delivered (circle one) to the attorney for the Plaintiff on \_\_\_\_\_  
month/day/year

\_\_\_\_\_  
Signature

## DO NOT FILE—INSTRUCTIONS PAGE

Disclaimer: The contents of this *pro se* Answer and instructions do not constitute legal advice. Foreclosure is a complicated area of law and it is strongly recommended that you contact a licensed NM attorney for advice about your specific case.

If you are not represented by an attorney you have the option of filing an Amended Answer for yourself or *pro se*. You normally have 20 days after you served your original Answer to file an Amended Answer without getting special permission. If its been more than 20 days since you served your original Answer on the Plaintiff's attorney you will need to get permission to file an Amended Answer from the attorney for Plaintiff in writing. This can be an email from the attorney just confirming that they spoke to you by phone and gave you permission to file an Amended Answer.

If the attorney for Plaintiff will not give you permission or will not return your phone call you will need permission from the Judge to file an Amended Answer, to get permission from the Judge. The first step if you need permission from the Judge is to file a Motion for Leave to Amend and attach a copy of your Amended Answer to the Motion. This *pro se* Motion for Leave to Amend is available on the [keepyourhomenm.org](http://keepyourhomenm.org) website.

Filling out the Amended Answer form:

1. Hand-write or type all of the information at the top of the first page of the Amended Answer (called the caption) exactly as it is written on the first page of the Complaint, being sure to write in the appropriate court, plaintiff and defendant names, and case number.
2. You should check the correct box indicating whether you are within 20 days of service of the original Answer or if you got written permission to file the Amended Answer.
3. You should then fill out the Amended Answer completely, making whatever changes that you want from your original Answer but also filling out the form completely as if you never filed the previous Answer.
4. You should start by reading each allegation or numbered paragraph in the Complaint carefully to determine whether you will need to admit or deny the allegations, or whether you have insufficient knowledge to admit or deny the allegations contained in that specific paragraph. Respond to each numbered paragraph from the Complaint for Foreclosure by placing each number from the Complaint paragraph on either lines 1, 2, or 3 of your Answer.
5. Put a check mark next those defenses or counter claims which apply to your case, and enter in any additional defenses or counterclaims, or requests for relief on the blank lines as appropriate in your case.
6. Review your Amended Answer, comparing each numbered response with the numbered paragraphs of the Complaint to ensure that you answered each allegation in the Complaint. If all allegations have been answered, you should sign your Amended Answer and state your full mailing address and telephone number.
7. There is a Certificate of Service prepared at the bottom of your Amended Answer for your use. This certificate is a statement that you have mailed a copy of your Amended

Answer to the Plaintiff's attorney. You should be sure to sign and date the Certificate of Service and mail out the copy of the Answer on the date indicated on the certificate.

Once complete make two copies of the pro se Amended Answer and take the original and two copies to the district court clerk's office for filing. There is no fee to file the document but they will charge for copies. The Clerk will stamp all three documents. The Clerk will keep the original and return the two copies to you. Remember you **must** mail one of the copies of the Amended Answer to the attorney for the Plaintiff and keep one for your records.