

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

\_\_\_\_\_ ,

Plaintiff,

v.

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

\_\_\_\_\_ ,

Defendant(s).

**ANSWER TO COMPLAINT FOR FORECLOSURE AND COUNTERCLAIM**

COMES NOW, the Defendant(s), \_\_\_\_\_, *pro se* and  
Answers 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 equitable defenses to the foreclosure.

\_\_\_\_ 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 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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\_\_\_\_\_  
\_\_\_\_\_  
I have additional counter claims against the Plaintiff: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**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 Answer for yourself or *pro se*. You normally have 30 days after being served with the Complaint for Foreclosure to file your Answer to avoid being in default. Failing to file an Answer to the Complaint within the specified time period could result in a default judgment being entered against you, so it is important that you file an Answer in a timely manner.

Filling out the Answer form:

1. Hand-write or type all of the information at the top of the first page of the Answer (called the caption) exactly as it is written on the first page of the Complaint, being sure to notate the appropriate court, plaintiff and defendant names, and case number.
2. You should then read 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.
3. 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.
4. Review your 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 Answer and state your full mailing address and telephone number.
5. There is a Certificate of Service prepared at the bottom of your Answer for your use. This certificate is a statement that you have mailed a copy of your 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* 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 to the attorney for the Plaintiff and keep one for your records.