



# LEGAL AID SOCIETY OF HAWAI'I



## FORECLOSURE:

### WHAT TO DO IF YOU RECEIVE COURT DOCUMENTS ABOUT FORECLOSURE

This brochure may be helpful if:

- Your house is in foreclosure, AND
- You have been served with a Complaint for Foreclosure

#### **Important**

Be sure to start your Answer as soon as possible because you need to meet very strict deadlines with the court.

This packet is only good for papers received from a Hawai'i court. If the papers are from a court in another state, you should seek legal advice from an attorney in that state. Foreclosure laws differ in each state. Call Legal Aid in that area. To get the number of another Legal Aid, call the Legal Aid Society of Hawai'i. *See the back of this brochure for phone numbers.*

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## I. WHY FILE AN ANSWER?

If you have been served with a Complaint for Foreclosure, you must file an “Answer” to preserve your rights. If you do not submit an Answer, the judge could award the lender everything they asked for in the Complaint. That is called a “default judgment.” Also, you will lose your rights to receive further notices.

Your Answer is due at the court within **20 days** after you were served with the Complaint.

This packet can help you write a short Answer to the Complaint for Foreclosure. In your Answer, you will be disagreeing or agreeing with the statements your lender has made in the Complaint for Foreclosure. There is not much room to tell your side of the story on this Answer form. Your main goal is to include the most important issues in this written Answer.

**If you missed a deadline:** You may try to turn in an Answer as soon as possible, even if the 20-day deadline has passed. If you do not, the judge has no record of what you agree or disagree with in the Complaint and may give your lender a default judgment.

**If a hearing is scheduled:** You must show up at the hearing even if you file a written Answer to the Complaint.

## II. THE “ANSWER” FORM: Before you begin:

- Read through the instructions first;
- Have the Complaint and Answer Sample Form beside you; and
- Type if you can or write very clearly in black ink only.

**Filling out the Form:** Each item below corresponds to a section on the form labeled with the same letter.

### A. Write or type your name, full mailing address and phone number.

Fill in your circuit number where it says, “IN THE CIRCUIT COURT OF THE \_\_\_\_\_ CIRCUIT.”

Oahu – FIRST

Big Island – THIRD

Maui – SECOND

Kauai – FIFTH

### B. Your lender is the “Plaintiff.” Write their name *exactly* as it appears on the Complaint.

- C.** You are the “Defendant.” Write your name *exactly* as it appears on the Complaint.
- D.** The civil number is your case # in the Circuit Court and it is how the court identifies your case. Fill in the civil number at the top right corner of the page. This is the same number which is on the Complaint papers your lender served you.
- E.** Look at the Complaint for Foreclosure. Decide which statements you agree and do not agree with. Each statement in the Complaint is numbered. In your Answer, list by paragraph number the statements you agree with. Make sure you agree with the entire statement, because once you agree to it, you have legally agreed it is true and will be held to it for the entire case. If you do not agree with the entire statement, do not list it on line E.
- F.** In your Answer, list the paragraph numbers you do *not* agree with.
- G.** This is where you can tell the judge what your defenses are to your lenders allegations. Write them here in your own words. You can also leave line G blank if you want. Examples of defenses include but are not limited to the following:
- Incapacity;
  - You made all your mortgage payments
- H.** This is where you can tell the judge what counterclaims you have. Write it here in your own words. Your counterclaims may include but are not limited to the following:
- Violation of the Home Ownership and Equity Protection Act (HOEPA)
  - Violation of the Real Estate Settlement and Procedures Act (RESPA)
  - Violation of the Truth In Lending Act (TILA)
  - Unfair and Deceptive Acts and Practices (UDAP)
- I.** Write the county you are in when signing the Answer.
- J.** Write the date you fill in the form.
- K.** Sign your full name.
- L.** Print your name *exactly* as it appears on the Complaint.
- M.** Fill in your circuit number where it says, “IN THE CIRCUIT COURT OF THE \_\_\_\_\_ CIRCUIT.” Copy what you filled in on the first page.
- Your lender is the “Plaintiff.” Copy what you filled in on the first page.
- N.** Fill in the civil number at the top right corner of the page. Copy what you filled in

on the first page.

- O.** You are the “Defendant.” Copy what you filled in on the first page.
- P.** Write the date you will serve the Answer to your lender’s attorney.
- Q.** Write the name and address of your lender’s attorney as it appears on the Summons served with the Complaint.
- R.** Write the county where you are when signing the Certificate of Service.
- S.** Write the date you fill out and sign the form.
- T.** Sign your full name.
- U.** Print your name *exactly* as it appears on the Complaint.

### **III. HOW TO FILE AND SERVE YOUR ANSWER**

After you have finished filling out the form, you need to “file” it. “Filing” your Answer just means giving your forms to the clerk at the court. Make 4 copies of your completed and signed Answer. For each copy, staple the 3 pages together at the top left corner. Take the original and all copies to the court – *it must be filed in the same circuit where the Complaint was filed*. The clerk will date-stamp them, keep the original, and give you the copies.

Oahu: Kaahumanu Hale, 777 Punchbowl Street, Honolulu, HI 96813  
Maui: Hoapili Hale, 2145 Main Street, Suite 106, Wailuku, HI 96793  
Big Island: Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720  
Kauai: 3970 Kaaha Street, Lihue, HI 96766

After you have filed your answer, you must “serve” the other party. “Serving” means giving the other party a copy of what you filed with the court. You can serve the Answer by mail or in person. To serve by mail, send 2 filed copies to your lender’s attorney at the address as it appears on the Summons served with the Complaint. Send it by United States Postal Service, certified mail, return receipt requested.

#### **IV. WHAT HAPPENS NEXT?**

After you have filed your Answer and served your lender's attorney, either you or your lender must ask the court to do something or nothing will happen in your case. Your lender's attorney will usually ask the court for a hearing date for a "Motion for Summary Judgment". The lender's attorney will then notify you of the hearing date and time. Even if you have filed an Answer, you must show up for any hearings and you may have to file additional documents with the Court.

**REMEMBER: This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes and each case is different.**

**For more information or assistance call Legal Aid at (808) 536-4302  
or toll free at 1-800-449-4302. You may also access additional information at  
[www.legalaidhawaii.org](http://www.legalaidhawaii.org).**

**A. Name:**  
**Address:**  
**City, State, Zip:**  
**Telephone No.:**

**Defendant *Pro Se***

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ CIRCUIT  
STATE OF HAWAI'I

<b>B.</b> _____	)	<b>D.</b> CIVIL NO. _____
	)	
Plaintiff,	)	
	)	<b>ANSWER TO COMPLAINT FOR</b>
vs.	)	<b>FORECLOSURE; CERTIFICATE OF</b>
	)	<b>SERVICE</b>
	)	
<b>C.</b> _____	)	
	)	
Defendant.	)	
	)	
_____	)	

**ANSWER TO COMPLAINT FOR FORECLOSURE**

I, Defendant above-named, Answer the Complaint filed in this case and assert:

1. I agree with paragraph(s) **E.** \_\_\_\_\_.
2. I do not agree with paragraph(s) **F.** \_\_\_\_\_.

3. **G.** I allege the following defenses:

4. **H.** I allege the following counterclaims:

5. I deny anything stated in the Complaint that I have not specifically admitted, qualified, or denied.

DATED: **I.** \_\_\_\_\_, Hawai'i, **J.** \_\_\_\_\_

**K.** \_\_\_\_\_

**L.** \_\_\_\_\_  
(Print Name)

Defendant *Pro Se*

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ CIRCUIT

STATE OF HAWAI'I

**M.** \_\_\_\_\_ )

Plaintiff, )

vs. )

**O.** \_\_\_\_\_ )

Defendant. )

**N.** CIVIL NO. \_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two (2) copies of the foregoing document were duly served on **P.** \_\_\_\_\_ by  hand-delivery or  depositing said copies in the United States mail, first-class postage prepaid, certified mail return receipt requested, addressed as follows:

**Q.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED: **R.** \_\_\_\_\_, Hawai'i, **S.** \_\_\_\_\_

**T.** \_\_\_\_\_

**U.** \_\_\_\_\_

(Print Name)

Defendant *Pro Se*