

THE WHOLE TRUTH
ABOUT ILLINOIS
MORTGAGE FORECLOSURES
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Foreword

When you go to court, you raise your right hand and they say, "*Do you swear that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?*" We at Lakelaw believe you deserve no less than the whole truth from us. You're getting the straight story from us.

Why do we defend against mortgage foreclosures in Illinois? A few years ago, our founder, David Leibowitz, thought about mortgages in his work as a bankruptcy trustee. He learned about the Truth in Lending Act. He attacked mortgage rescue frauds against bankruptcy debtors. Soon he was writing about foreclosures. People all over the country became interested in his thinking.

When the mortgage crisis hit, David defended people in Illinois against foreclosures. And he started to win. The Circuit Court for the 19th Judicial Circuit in Lake County asked David to help organize its *Mortgage Foreclosure Help*

Desk. He did it and along the way trained hundreds of lawyers about Illinois mortgage foreclosures. In gratitude for his work, the Court bestowed upon David the Liberty Bell Award, its highest honor for service.

Now, Lakelaw has helped innumerable people deal with their foreclosure issues. Lakelaw has learned you can fight foreclosures in Illinois - it's difficult - but it's not impossible either. Lakelaw can help you. It's the truth.

Introduction

Foreclosures in Illinois are not as bad as they used to be. But Illinois suffers a foreclosure rate higher than the rest of the country. Thousands of Illinois homeowners face foreclosures due to job losses, medical expenses, increased property tax bills, or bad luck. People in Illinois also look at foreclosure as a strategic option when their mortgage debt is much higher than the value of their homes. Foreclosure in Illinois continues to be a statewide crisis. Lakelaw represents people in foreclosure throughout Northeast Illinois, as far west as Rockford, as far south as Kankakee and as far north as Zion

This book is Lakelaw's gift to you. We hope to make it a little easier to understand how foreclosure in Illinois works, and to give you some practical advice. And while we're at it, we'd like to show you some of the things we've done to help our clients achieve their objectives.

Chapter 1

The Summons and Complaint

Who's your Lender?

Let's call the company to which you pay your mortgage payment the *Lender*. The Lender is probably not the company you borrowed from. Probably it's not the company that actually owns your loan. The Lender usually takes care of or *services* your mortgage loan for whoever really owns it. The Lender probably is the *Servicer* of your mortgage loan. This can make a difference to us when defending your mortgage foreclosure. When you see us about your foreclosure case, ask about the difference between a Lender and a Servicer. To keep it simple, we'll call your mortgage company - the one you're supposed to pay - the *Lender*.

Foreclosures shouldn't come as a surprise to you. Lenders can't foreclose on you unless you are in default. Many things can cause a default. The most common reason for defaults are (1) failure to make mortgage payments, (2) failure to pay real estate taxes, (3) failure to maintain insurance on the property, and (4) failure to maintain proper escrow balances. The escrow balances are the additional payments you make each month to pay for annual charges like real estate taxes and insurance.

If you default, your Lender will let you know. It will hit you with late charges and penalties. Finally, it will demand that you "cure the default" by making payments

or fixing the problem. If you don't, the Lender will declare the entire loan due and payable. This is called *acceleration*. This demand letter in Illinois has some important requirements. The demand letter must be given in accordance with the terms of the mortgage. So save it. Maybe the demand letter was improper. If the demand letter is improper, the Lender can't foreclose.

Illinois imposes some important requirements on *demand letters* prior to foreclosure. The Lender must send the demand letter in accordance with the terms of the mortgage. So save it. Maybe the demand letter was in improper form. Maybe the Lender sent it to the wrong people or the wrong address. If the demand letter is improper, the Lender can't foreclose.

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Case Study:

Jack W. was sued for foreclosure. The Lender had demanded that Jack pay the amounts due in the form of a certified check. It had no right to do so under the mortgage documents. The affirmative defense was allowed and the Lender had to dismiss the case.

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The demand letter in Illinois must give you notice of rights to seek mortgage loan assistance. If you take this opportunity, you have the right to delay the mortgage

foreclosure at least 60 days. So read the demand letter carefully. Keep it. It may become important evidence

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Case Study

Tamara R. received a demand letter in her foreclosure case. She was in default. She faced an immediate sale. But the demand letter she received never gave her notice of the right to seek mortgage loan assistance in the form required by the statute. The judgment of foreclosure and sale was vacated. She could raise the affirmative defense of improper notice of acceleration. The Lender had to dismiss the case and refile. In the meantime, Tamara had the time to negotiate a modification agreement.

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With all the advance warnings required, foreclosures should never come as a surprise. Yet for many people, they do. When the sheriff comes knocking at your door, people can get upset. Our clients tell us that when they get served with a summons and complaint, they experience fear, denial, anger and confusion. Some people cry. Some people scream. Many people think they will be thrown out of their house immediately. Many of our clients are so upset they can't even open the envelopes from the Lender. Our clients often tell us they got a *letter* from the Sheriff.

Please don't ignore a summons and complaint. And don't panic either. The summons and complaint says

answer within 30 days or judgment might be taken against you. Don't worry, it's not necessarily so. Even if you didn't respond in the initial 30 day period, we can ask the court to eliminate any default and give you a chance to answer or file legal papers in defense of your position. Illinois procedure gives you many chances to defend yourself. Courts and judges are involved at every step. But show up!

To make sure that the homeowners stay involved, the Lender must serve a summons and a copy of the complaint. Sometimes, the sheriff gives it to you. But the Sheriff can also give the summons and complaint to your spouse if you both live in the same household. The Sheriff can give the summons and complaint to a member of the family who lives at home and is over the age of 13.

Sometimes process servers lie about how they served the summons. If you were not actually served with the summons or if a family member living with you and over the age of 13 did not receive the summons, please tell us. We can *move to quash* or eliminate the effectiveness of the summons. We will need evidence from you that you were not served. This can be extremely important if you hire us after a judgment of foreclosure has been entered or if you are at the eve of a sheriff's sale. It can even be important after the sheriff's sale. A foreclosure or sheriff's sale based on an improper service of process is void. The court never had jurisdiction to act. We can make motions to undo a

judgment of foreclosure if you weren't served properly. So be alert to this possibility.

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Case Study

Samantha J's house has already gone to foreclosure sale. She didn't know anything about it except that her next door neighbor told her about it. The next day, the bank posted a notice on her door that she was going to be evicted. But Samantha never received a summons or complaint. Instead, it turned out that the Sheriff had given the summons to her babysitter and the babysitter threw it in the garbage thinking that it wasn't important. On an emergency motion, Samantha, who is in her 40's proved that service on the babysitter, a young woman in her 20's was (a) not on her and (b) not on a member of her family 13 years of age or older who lived with her. This service was invalid. The Court had no jurisdiction to proceed with the foreclosure. The judgment of foreclosure was void and the Lender's case was thrown out. Even though Samantha was in default, the Lender had to start all over with a foreclosure process. Samantha now has a chance to get a modification agreement and stay in her home.

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Don't ignore a summons and complaint. Even though many judges are liberal about letting you respond after the

deadlines, you don't have the absolute right to do so. A summons and complaint may look like a legal letter or correspondence. But it's much more important than any old letter. The summons says you have just 30 days to file an answer to the complaint. **Hire an attorney as soon as possible to appear in court on your behalf.**

The Complaint is the Lender's side of the story. It typically contains just enough information describing what they need to prove to get a foreclosure judgment. This information is in a format defined by the Illinois Mortgage Foreclosure Law. It is a form pleading. Many important *allegations* are implied and not stated in so many words.

The important points are (1) You borrowed money. (2) You gave a mortgage to secure the loan. (3) You fell behind on payments. (4) Lender demanded full payment. (5) You didn't pay. (6) Lender wants to sell your house to get back some or all of the money you owe. The Lender also has to identify the note and mortgage on which it is suing including information regarding the recordation of the mortgage with the recorder of deeds.

The complaint also makes many other claims you can't even see. These are called the *deemed pleaded allegations*. For example, the complaint is deemed to allege that the Lender made a proper demand for payment against you.

The complaint in foreclosure says the Lender wants (a) to get paid the money you owe and (b) to sell your house to satisfy some or all of the debt. Depending on what the property sells for, the Lender may still go after you for any deficiency that remains.

If your house is in Cook County, the court will set a case management hearing once you have been served with the complaint. This is a preliminary hearing when the court asks about your intentions. If you wish to speak with a housing counselor to discuss your options, the Judge will give you an opportunity to do so. The counselor can discuss options such as how to seek a loan modification.

Lake County is now starting a mortgage mediation program. Under that program, participation results in suspension of all court proceedings while the mediator tries to negotiate resolution of the case. Other counties in Illinois have their own unique procedures.

Now, we need to think about your response to the complaint. This may be by way of motion or answer. The 30 days to answer starts from the time you got the summons. This means the date the sheriff delivered the summons to you. Sometimes the sheriff or process server will write the date and time on a copy of the summons complaint to prove when the service occurred.

The important thing to remember is that after the 30 days is up, you're in default if you don't answer. You

have a good chance of vacating a default, but vacation of the default is not a certainty by any means.

Here are some dos and don'ts about the summons and complaint.

- Contact a lawyer when you get the Summons and Complaint.
- Gather all of your original mortgage papers, all correspondence with your Lender, all documentation regarding modification agreements or trial modification agreements.
- Put together a time-line of all dealings with your Lender and any Lenders who ever collected on your mortgage.
- Try to find out how much you owe on your house and how much your house is worth. We may ask you to get a *comparative market analysis* from a real estate broker or even an *appraisal* from a *certified residential appraiser (CRA)*.
- Try to figure out who really owns your mortgage. If you don't know, we can find out using a federal statute called RESPA. We can make a *Qualified Written Request* for you. Ask us about this. You can gain some valuable legal rights by making this *QWR*.
- Conserve cash. You are no longer making mortgage payments. But you'll need money for a variety of things:

- Keep your taxes current
- You probably will want to keep your insurance current
- You will need to keep any condominium or homeowner association assessments current. Otherwise, you could lose the right to possession of your property.
- You will need money if you ever want to be in a position to reinstate your mortgage
- You will need money to pay an attorney to defend yourself.

Even if you don't have enough money for everything, you'll need some money to do some of the things you want or need to do in defending your foreclosure. And even if you don't want to defend your foreclosure, you will want to buy enough time so you can arrange for your housing.

There are quite a few things which you should not do.

- **Don't ignore the summons and complaint for even a day! This is an emergency!!** If you are served with a summons and complaint, take it seriously and address it immediately. I promise you that if you ignore it, it still is real and won't go away! You have the right to talk with a lawyer and learn your options. Use that right!

- Don't send a letter to the Lender and expect them to give it to the court. If there is a foreclosure in place, that is a legal process. Your Lender has hired lawyers to represent them. They are not your friends and not your lawyers. They can't advise you, and they can't take a document and give it to the court on your behalf. The state law makes you or your lawyer answer the complaint to say what your position is on the lawsuit. The paperwork says it must be submitted to the court and to the attorneys for the Lender (as good practice, it's also good to give a copy of the answer to other defendants as well).
- Don't send a letter to the court. It won't help you and it won't be considered an answer. You won't say what you need to help yourself. Maybe you can change your oil, but you probably can't fix your transmission. Even if you've represented yourself in a traffic ticket or a small claim in the past, this experience won't help you defend a mortgage foreclosure.
- Don't rely on a court help desk for legal advice. The "Help Desk" can give you information about procedures and practice. The "Help Desk"

can't and won't tell you how to defend your case or even who might be a good lawyer for you.

- Don't file a paper with the court in which you admit anything.
- Don't file an appearance in the court if there is even the slightest doubt in your mind about whether you were properly served with the summons and complaint.
- Sign no modification agreement until you have reviewed it with an attorney. Otherwise, you may waive or give up very important legal rights.

Chapter 2

The Life History of an Illinois Mortgage Foreclosure

Don't Panic!

You will not lose your house tomorrow. You will not be thrown in the street tomorrow.

Two very important parts of Illinois Mortgage Foreclosure Law can help you. The first is called the *right of reinstatement*. This means that for the first 90 days after you receive the summons and complaint, you have the absolute right to pay the amount you are behind in the mortgage and put it back in good standing as though you had never been in default at all.

The second benefit of Illinois Mortgage Foreclosure Law is the *right of redemption*. In Illinois, you have until 7 months from the date you are served with the summons and complaint or 3 months after the judgment of foreclosure is entered, whichever is later, within which to *redeem* or pay off your mortgage in full. The redemption period can be shortened to just 30 days if you have abandoned your property.

This means that even if the Lender has started a foreclosure case against you, and even if you haven't answered the complaint on time, the Lender can't get a judgment of foreclosure or conduct a foreclosure sale for some time. You can do many things:

- You can try to get a modification agreement
- You can try to vacate the default and defend against the foreclosure
- You can try to give the property back to the Lender for a release of liability (deed in lieu of foreclosure)
- You can consent to a judgment of foreclosure for a release of liability.
- You may try to negotiate a settlement with the Lender

With this in mind, we can turn to how we answer the complaint.

Chapter 3

The Answer, Affirmative Defenses, and Counterclaims

A complaint to foreclose an Illinois mortgage is in a form prescribed by statute. Let's say you are in the 30-day window to respond to the complaint and you want to respond. You can file an *answer*. The easiest way to think of an answer is a set of your side of the story. Look at the scales of justice. They need to be tipped before either side wins. The scales start balanced. If you don't answer, or your answer admits something, the Lender doesn't have to prove it. Otherwise, the Lender must prove its case enough so that the scales tip in their favor. The complaint alleges certain facts. We have three choices. We can admit; we can deny; or we don't know because we don't have enough information to admit or deny, so we demand you prove what you are claiming.

You can make a *motion*. A motion says there is something wrong with the complaint which requires that the court dismiss the complaint.

You can assert *affirmative defenses*. Affirmative defenses say that even if everything plaintiff says is true, they still lose because of some circumstance which legally defeats their claim. Affirmative defenses can be technical. One of the most common affirmative defenses we raise is that the *Lender* does not have the legal right, or *standing* to foreclose.

You may have heard of this as the *Show me the note* defense. We can't get you a free house. If this is your objective, Lakelaw is not the law firm for you. But we might make it very difficult for the Lender to foreclose on your house for a long time. More about this in the chapter entitled *Banks Lie*

You can file a *counterclaim*. In a counterclaim, we say that even if the Lender has a case against you, you have an even bigger case against the Lender. Maybe the Lender promised you a loan modification agreement but didn't follow through. Maybe the original Lender defrauded you when you made the loan. Maybe you have complaints in the way your mortgage was serviced. Maybe the Lender violated federal laws such as RESPA, the Real Estate Settlement Procedures Act. Each case is different. We'll ask you to go over the facts of what happened to you.

You can even file a *cross-claim* against a fellow defendant or a *third party complaint* against someone involved in the transaction not yet a party to the case. You might have a claim against the mortgage broker who placed you in a sub-prime loan when you were qualified for a more regular loan. Or you might have a claim against a mortgage originator who placed you in a risky "Option ARM" loan instead of a conventional regularly amortizing fixed rate interest loan.

If you're not sure if you have defenses, counterclaims, cross-claims or third party complaints, talk to us and we'll go over everything with you.

Chapter 4

Tactics and Strategy in Foreclosure Litigation

In Illinois, if you have been served with a foreclosure complaint and nothing is filed by you challenging your Lender's allegations, your Lender can ask the Court for a default judgment. Your Lender can then set an auction to sell the property. The auction could be held either three months after the judgment is entered or seven months after the complaint was served, whichever is later. But if your Lender sells the property for less than what is owed, your Lender can look to you to pay the deficiency. (Remember the "two-pronged" attack of going after the property and the money?)

If you file an answer, affirmative defenses, or counterclaims, then you can not only defend yourself, but you can have time to resolve the issues with your Lender. Some people want time to sell their property on their own and pay off their loan. Other people ask their Lender if they can sell their property for a little less than what is owed and pay most of what is owed. Most people want to keep their property and modify the loan to make it more affordable (this may take some assistance from the court). Still others just surrender their property and move out, but want to see if the Lender will agree to not go after them for any deficiency. The litigation process can take many months and may allow you time to reach a settlement with your Lender that agreeable for all.

By filing an Answer, you are telling the Court you want to participate in the foreclosure lawsuit. The Court will give you some time and will not allow the Lender to seek a default judgment. A good lawyer will know when to ask for more time and how to use their time effectively to prepare a good case. That may mean depositions of bank representatives, a careful review of loan documents and questions based on those documents, and careful arguments to prevent a judgment of foreclosure from being entered.

Chapter 5

Discovery and Qualified Written Requests

Both sides can seek and exchange information while the case is in its early stages. What does that mean for a homeowner? Let's discuss what the borrower can do to beef up their case and defenses.

First, under *RESPA*, the borrower can submit a *Qualified Written Request*. What is this and how can it help? A Qualified Written Request is a formal (and, as the name suggests, written) request usually sent to a special division of the Lender to get verification of the debt and an accounting on the loan. You have the right to ask about the history of your loan. You have the right to know about every payment received and how the Lender applied every payment to your loan. You have the right to know every charge imposed by the Lender. You are entitled to verify payments are properly applied to your account. You are entitled to know exactly who is your Lender, and not just who is taking care of – or servicing – your loan.

You make a *qualified written request* by sending a certified letter with return request requested to the address provided for such matters by the Lender. If no such address is provided, send it to the customer service address provided by your Lender. A important federal case from the Seventh Circuit Court of Appeals called *Catalan* says these qualified written request letters don't need to have any magic words, although calling the letter

a QWR and addressing it to the department that handles the requests usually helps prevent any confusion.

Under the Dodd-Frank Act, servicers now have 5 business days to acknowledge receipt of the QWR. They have 20 business days to respond to the QWR.

This is technical. You can do this yourself. But you'll get better results if we do this for you. This can be a helpful tool because it gives you the Lender's view on where payments were applied and, most importantly, if they were received. If they put you into foreclosure for missing three months payments, and you have cancelled checks and bank records showing you made the payments and they were cashed, something is definitely wrong!

QWRs may take time, but they impose a liability on the Lender to respond, or else there is a technical violation, which you can bring up in court.

Meanwhile, we can conduct discovery for you. Discovery usually comprises asking questions which the Lender must answer, take depositions (interviews under oath) of parties, asking the opponent to admit or deny certain facts, and asking for records.

If the Lender seeks summary judgment we can smoke out fact from fiction. It's not enough that some clerk says they are generally familiar with how records are kept. Someone with actual knowledge must testify under oath with evidence that would be admissible at trial. If the

affidavit of the Lender's representative is no good, they can't get judgment against you without trial.

CASE In the case of Dan M, Lakelaw was sent an affidavit from a Lender with an account history showing what payments were and were not made. In a deposition, Lakelaw's attorney the Lender's representative who prepared the list about the account history. The employee admitted that the Lender did not know for sure what was paid and what wasn't.

Sometimes, banks and Lenders may go out of their way not to produce documents. Also, it is rare that a Lender's representative will say under oath "yes, we did receive payments from Mr. Smith, but we ignored them !" Instead, you are looking for support for your defenses and claims and to poke holes in their case, for instance by showing that the foreclosing party does not know where the original note is, or that they misapplied payments along the way.

Chapter 6

Modification

Many people want to keep their homes, but have a hard time making either the monthly payment or catching up on the payments that they have missed. Lakelaw can work with your Lender to see if the loan can be modified.

The Lender must evaluate the loan to see if there can be a change that allows the borrower to pay for, and keep, the property.

If you wish to keep your property, we can help you to gather the information that the Lender must review your modification application. The procedure is similar to when you applied for the original loan. You will complete an application, supply copies of your recent paystubs (or business profit and loss statement if you are self-employed), your bank statements, tax returns, and submit a hardship letter explaining how and why you fell behind. Your Lender will review the documents over a few weeks and check with its investors and loan underwriters to determine if you are eligible for a modification. The process takes a few weeks.

CASE of Richard B. Lakelaw worked with Richard B's Lender for months. Eventually the \$4400.00 mortgage payment was lowered to \$2400.00. The new amount was much easier for Richard B to pay.

In Cook and few other counties in Illinois, borrowers declined in their efforts to obtain a loan modification may ask the Court to assist in a mediation with the Lender. A meeting is set with the borrower and the borrower's attorney, the Lender and its attorney, and a mediator. The parties discuss if a modification can be achieved.

Mediations are effective because mediation departments at mortgage companies are usually better trained than regular loss mitigation departments. They are trained to analyze documents, reach out to Lenders or housing counselors to get information r clarifications, and to deliver a result quickly.

Modifications may be available under government mandated programs such as *HAMP* – the *Home Affordable Mortgage Program*, *HARP* – the *Home Affordable Refinance Program*, *2MP* – the *Second Mortgage Modification Program*, *HAFA* – *Home Affordable Foreclosure Alternatives*, and a wide variety of non-governmental, bank sponsored modification plans. In each instance, you must make submissions on a prescribed form. Usually you must engage in a trial payment program. Then you are supposed to be offered a permanent modification. Some are good, some are not. There are qualifications and limitations for each program. We know all about these. We can help walk you through them. We can direct you to agencies who will help you with this also. The difference between us and the agencies is that the agencies are free. But we are dedicated to you. Each will give you good

quality service. You will certainly get more attention from us or another qualified law firm.

If you complete your modification trial but don't get a modification, we might be in a position to sue the Lender for breach of contract relying on an important case called *Wigod v. Wells Fargo Bank*. If you want, you can look that case on the internet.

Chapter 7

Bankruptcy During The Foreclosure Process

Lakelaw represents debtors in bankruptcies and has filed many bankruptcy petitions for homeowners facing foreclosure.

Bankruptcies create an "automatic stay" that prevents actions like wage garnishments, repossessions, foreclosure judgments and sales and bank levies . This legal red traffic light is critical because it can give homeowners in foreclosure time to prepare defenses, to catch up on missed payments and reinstate their loans, or just get some additional time before leaving the property.

When the Lender files a foreclosure action, the borrower can file a bankruptcy and stop an Illinois foreclosure at any time before the sale of the property at a foreclosure sale. Once the foreclosure sale has occurred, the debtor no longer has a recognizable legal interest in

the property, so bankruptcy does not help preserve your property.

When a borrower during foreclosure files a Chapter 7 bankruptcy, the stay lasts from the time of the filing until either the bankruptcy case closes a few months later or the Lender moves for relief from the automatic stay and gets its rights back to continue the foreclosure process. During or after the bankruptcy, the borrower and Lender may try to work on a loan modification or other loss mitigation options if the trustee in bankruptcy isn't interested in the house (usually because the property has no equity).

If the borrower files a Chapter 13, the stay lasts as long as the debtor is making current payments on his mortgage and current payments under his chapter 13 plan. Otherwise, the Lender can seek relief from the automatic stay. This allows continuation of the foreclosure. Grounds could include the fact that the borrower is surrendering the home through the bankruptcy, because the borrower missed post-filing mortgage payments in the chapter 13 case, or for some other reason gives the Lender cause. Like in the Chapter 7, the Lender needs to file a "Motion for Relief from the Automatic Stay" and get the Bankruptcy Court's permission to resume the foreclosure action in state court.

In Chapter 13 bankruptcy, you make a set monthly payment to a Chapter 13 Trustee, who then makes payments to all of your creditors, including the mortgage

Lender. The plan lasts for a period of up to five years. You can keep your house by making up the missed payments through the plan, while still paying the regular monthly mortgage payment. So long as the plan payments are made each month to the Chapter 13 Trustee, and the regular monthly mortgage payments are made, the Lender cannot foreclose. However, if you miss making your regular mortgage payments to the Lender, they can ask the Bankruptcy Court for permission to “remove their debt” from the bankruptcy case and resume the foreclosure.

Bankruptcy courts don't allow you to dispute your foreclosure in bankruptcy court. Bankruptcy is a matter of federal law, while foreclosures fall under state law. Under recent court decisions, bankruptcy judges have been told very clearly they cannot have oversight of certain cases. Also, court decisions created a longstanding rule that these courts cannot act as an appellate court for a state court ruling. So if a Lender obtains a judgment of foreclosure against a borrower, the borrower can't go into bankruptcy court and argue a lack of standing or another element relating to the judgment. That is why if a borrower has legal defenses to the foreclosure, they have to be raised after the Complaint is filed in state court.

Because bankruptcy stops the foreclosure process and won't let it resume without court approval, borrowers in foreclosure should consider bankruptcy as a remedy to eliminate debt and obtain more time. So filing a

bankruptcy just before a judgment hearing, before a sale, or before a confirmation of sale all could provide more time and an opportunity to retain the home.

Chapter 7

Redemption Periods

Sam and Sally sat in our office and asked one question immediately: “How much time do we have left in the home?” It’s the most common question we get asked. The time before having to leave your home because of a foreclosure depends on a lot of factors. The most important of those factors is the redemption period.

When a judgment is entered, the bank can’t knock on the door and say “Get out”. We mentioned earlier that Illinois law creates a period that allows for a redemption of the property (paying off the loan through a sale, refinance, or other funds), reinstatement (bringing the loan current and dismissing the foreclosure), or other loss mitigation (a short sale, deed-in-lieu of foreclosure, or loan modification) prior to the judicial sale. The Lender cannot sell the property until either three months after judgment is entered or seven months after the complaint is served, whichever is later. That gap in time is the redemption period. It gives a borrower a last ditch attempt to pay the Lender.

Chapter 8: For Illinois Foreclosure Cases, Timing is Everything

We've already discussed how homeowners have 30 days to respond to a foreclosure complaint with an answer. The litigation process gives both borrowers and Lenders time to prepare their arguments in a foreclosure case. Also, homeowners can time a bankruptcy filing strategically to stop a sale, a confirmation of sale, or a judgment hearing. Defendants who see a judgment of foreclosure entered against them have a redemption period to stay in the home before a sale occurs.

Timing is critical in every aspect of the foreclosure defense process. The same timing that sets a mortgage payment due at the beginning of each month (with a brief grace period) also requires strict deadlines to answer and to make decisions on whether to keep or walk away from your home.

The best way to make sure you maximize your time is get representation by competent counsel right now. Lawyers are trained to analyze a situation and give legal advice.

We at Lakelaw are grateful that you have reached out to us. We are prepared to represent you with the care, kindness, courtesy, respect, professionalism and dedication you expect and deserve. We want you to keep

your home but above all we want you to keep your dignity.