

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

v. Plaintiff,

Index No. _____

**VERIFIED ANSWER TO
FORECLOSURE COMPLAINT**

Defendant(s).

Defendant _____ answers as follows:

I generally deny each allegation of the Complaint, including that Plaintiff is the owner of the note and mortgage.

I plead the following Defenses and Counterclaims:

- Lack of Standing:** Plaintiff, upon information and belief, does not own the note and mortgage. Plaintiff therefore 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.
- Foreclosure Cause of Action:** Plaintiff, upon information and belief, does not own the note and mortgage. Because ownership of the note and mortgage is an element of a foreclosure cause of action, Plaintiff has no right to foreclose.
- Statute of Limitations (NY Civil Practice Law and Rules § 213(4)):** Upon information and belief, Plaintiff may not sue on all or part of the mortgage debt because Plaintiff commenced this action more than six years after the debt became due.
 - Additionally, the entire foreclosure action is time-barred by the statute of limitations because Plaintiff commenced this action more than six years after it accelerated the mortgage debt. Defendant requests that the mortgage be cancelled and discharged pursuant to NY Real Property Actions and Proceedings Law § 1501(4).
- Service of Process (NY Civil Practice Law and Rules § 308):** I was not properly served with process in this action for the following reason(s): _____

- **Notice of Default:** Plaintiff failed to comply with the requirements for the notice of default in my mortgage loan agreement, a condition precedent to this foreclosure action.
- **Reverse Mortgage—Notice Requirements:** Plaintiff failed to comply with the notice requirements under New York and/or federal law or failed to comply with contractual requirements of the reverse mortgage, which are conditions precedent to this foreclosure action.
- **Reverse Mortgage—Failure to Specify Alleged Default:** The complaint is vague and does not specify the alleged default and/or the amount(s) plaintiff claims in this action.
- **Reverse Mortgage—Foreclosure on a Reverse Mortgage for Property Charge Defaults is Against Public Policy:** The purpose of reverse mortgage loans under the Home Equity Conversion Mortgage (“HECM”) program is to assist senior citizens to stay in their homes, and reverse mortgage lenders have other remedies in the event of alleged failure to pay property charges. Plaintiff, accordingly, as a matter of equity and public policy, should not be permitted to foreclose.
- **90-Day Notice Requirement (NY Real Property Actions and Proceedings Law § 1304):** Plaintiff failed to comply with the requirements of NY Real Property Actions and Proceedings Law § 1304, a condition precedent to this foreclosure action.
- **90-Day Notice Filing Requirement (NY Real Property and Proceedings Law § 1306):** Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1306, a condition precedent to this foreclosure action.
- **Help for Homeowners in Foreclosure Notice Requirement (NY Real Property Actions and Proceedings Law § 1303):** Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1303, a condition precedent to this foreclosure action.
- **Pending Foreclosure Action (NY Real Property Actions and Proceedings Law § 1301):** Plaintiff impermissibly commenced this action because there is a prior pending action to recover all or part of the mortgage debt.
- **Real Estate Settlement Procedures Act Early Intervention Requirement (12 C.F.R. § 1024.39):** Upon information and belief, Plaintiff violated the early intervention requirements of the Real Estate Settlement Procedures Act because (*check one or both if applicable*):
 - Within 36 days of my delinquency, the loan servicer did not attempt to establish live contact with me to inform me about the availability of loss mitigation options.
 - Within 45 days of my delinquency, the loan servicer did not send me a written notice that included contact information for the servicer, a description of loss mitigation options available from the servicer, information about applying for loss mitigation, and a website listing housing counselors.

- Real Estate Settlement Procedures Act Pre-Foreclosure Review Requirement (12 C.F.R. § 1024.41):** Plaintiff impermissibly filed this foreclosure during the pre-foreclosure review period because (*check one or both if applicable*):
 - Plaintiff commenced this action before my loan was more than 120 days delinquent.
 - I submitted a complete loss mitigation application to my loan servicer but Plaintiff commenced this action (1) before the loan servicer made a decision on that application, (2) before the time period to appeal the loan servicer's decision lapsed, or (3) before the loan servicer made a decision on an appeal I submitted in connection with the loss mitigation application.

- FHA Pre-Foreclosure Requirements:** My loan is insured by the Federal Housing Administration. Upon information and belief, the loan servicer/mortgagee has not complied with regulations of the Department of Housing and Urban Development because the loan servicer/mortgagee did not do one or more of the following (*check all that are applicable*):
 - Send me a notice of default before the end of the second month of my delinquency (24 C.F.R. § 203.602).
 - Attempt to arrange a face-to-face interview with me before three full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.604).
 - Evaluate me for loss mitigation before four full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.605).
 - Wait until three full monthly installments due under the mortgage were unpaid before commencing this foreclosure action (24 C.F.R. § 203.606)

- Certificate of Merit Requirement (NY Civil Practice Law and Rules § 3012-b):** Upon information and belief, Plaintiff failed to comply with the Certificate of Merit requirements of NY Civil Practice Law and Rules § 3012-b.

- Request for Judicial Intervention (NY Codes, Rules and Regulations Title 22, § 202.12-a(b)):** Upon information and belief, Plaintiff did not file a Request for Judicial Intervention.

- Attorney's Fees (NY Real Property Law § 282):** If I retain counsel, I am entitled to recover my attorney's fees in defending this action pursuant to New York Real Property Law § 282.

- Excessive Interest and Fees (NY Civil Practice Law and Rules § 3408(f)):** In a prior foreclosure action, Plaintiff failed to negotiate in good faith pursuant to CPLR 3408(f). This failure to negotiate in good faith has caused excessive interest and fees to accrue which Plaintiff, as a matter of equity and by operation of the CPLR, is not entitled to recover.

- Excessive Interest (NY Civil Practice Law and Rules § 5001(a)):** Plaintiff has unreasonably delayed filing this action, failed to file the Request for Judicial Intervention or engaged in

other dilatory conduct causing excessive interest to accrue which the Court may reduce or toll, as a matter of equity and by operation of the CPLR.

- Action Commenced Against a Deceased Party:** This action is a nullity because it was commenced against Defendant _____ after that party was already deceased and before a personal representative was appointed and it should therefore be dismissed.

- Payment or Partial Payment:** I have paid, in whole or in part, the amounts claimed by Plaintiff.

- Other Defenses or Counterclaims** (*attach additional pages if needed*):

Wherefore, Defendant requests that the Complaint be dismissed; that the relief requested by Defendant be granted in its entirety; that Defendant be granted costs and attorneys' fees if he

or she retains counsel; and any other relief allowed by law deemed just and proper by this Court in the exercise of its equity jurisdiction in this foreclosure action.

Dated: _____, 20____
_____, New York

_____, Defendant *Pro Se*
(Defendant's Signature)

(Defendant's Name)

(Defendant's Address)

(Defendant's Address)

(Defendant's Telephone Number)

Prepared with the assistance of counsel admitted in New York.

VERIFICATION

I, _____, 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

(Defendant's Name)

(Defendant's Signature)

Sworn to and subscribed before me this
____ day of _____, 20____

Notary Public

AFFIDAVIT OF SERVICE

I, _____, served the within _____
_____ on Plaintiff's attorney as follows (*attorney's name and address*):

I served the _____
by the following method (*check all that apply*):

- first class mail
- certified mail
- certified mail, return receipt requested
- overnight delivery service
- facsimile
- personal delivery.

on the _____ day of _____, 20____.

I am eighteen years or older and I am not a Defendant in this lawsuit.

Signature: _____

Print Name: _____

Sworn to and subscribed before me this
_____ day of _____, 20____

Notary Public