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How to File a Response to a Motion in a Foreclosure Case Before a Judge

(Superior Court of New Jersey - Chancery Division - General Equity)

Who Should Use This Packet?

You should use this packet if you are a party to a foreclosure case and you have received a Notice of Motion filed before a judge, and you want to object to that motion. Unless you have received a motion for summary judgment, you MUST respond to the moving papers at least eight days before the return date listed on the Notice of Motion. A summary judgment motion requires that the response be filed at least ten days before the return date.

DO NOT use this packet for motions that were submitted to the Office of Foreclosure.

With limited exceptions, any paper filed with the court can be looked at by the public. You may only file a motion on behalf of yourself. You may not file a motion for anyone else. A Power of Attorney does not allow you to file on behalf of anyone else. Motions filed on behalf of anyone else will be returned.

Note: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The instructions and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available on the Judiciary's Internet site njcourts.gov. However, you are ultimately responsible for the content of your court papers.

Completed forms are to be submitted to:
Superior Court Clerk's Office
Foreclosure Processing Services
P.O. Box 971
Trenton, New Jersey 08625

Things to Think About Before You Represent Yourself in Court

Try to Get a Lawyer

***CAUTION*: Some Foreclosure cases are very complex and you should consider getting a lawyer.** The court system can be confusing and it is a good idea to get a lawyer if you can. The law, the proofs necessary to present your case, and the procedural rules governing cases in the Chancery Division, General Equity Part are complex. Most likely, your opponent will be represented by a lawyer. It is recommended that you make every effort to obtain the assistance of a lawyer. If you cannot afford a lawyer, you may contact the legal services program in your county to see if you qualify for free legal services. Their telephone number can be found in your local yellow pages under "Legal Aid" or "Legal Services."

If you do not qualify for free legal services and need help in locating an attorney, you may contact the bar association in your county. That number can also be found in your local yellow pages. Most county bar associations have a Lawyer Referral Service. The County Bar Lawyer Referral Service can supply you with the names of attorneys in your area willing to handle your particular type of case and will sometime consult with you at a reduced fee. There are also organizations of minority lawyers throughout New Jersey, as well as organizations of lawyers who handle specialized types of cases. Ask your county court staff for a list of lawyer referral services that include these organizations.

If you decide to proceed without an attorney, these materials explain the procedures that **must** be followed to have your papers properly filed and considered by the court. Failure to follow procedures can result in a delay with processing your documents.

These materials do not provide information on the law governing your claims or defenses; information on how to conduct pretrial discovery; information on alternative dispute resolution procedures, such as mediation, that may be available or required in your case; information on the kinds of evidence you need to prove your claims or defense at trial; or information on other procedural and evidentiary rules governing civil law suits.

What You Should Expect If You Represent Yourself

While you have the right to represent yourself in court, you should not expect special treatment, help, or attention from the court. The following is a list of some things the court staff can and cannot do for you. Please read it carefully before asking the court staff for help.

- We *can* explain and answer questions about how the court works.
- We *can* tell you what the requirements are to have your case considered by the court.
- We *can* give you some information from your case file.
- We *can* provide you with samples of court forms that are available.
- We *can* provide you with guidance on how to fill out forms.
- We *can* usually answer questions about court deadlines.

- We *cannot* give you legal advice. Only your lawyer can give you legal advice.
- We *cannot* tell you whether or not you should bring your case to court.
- We *cannot* give you an opinion about what will happen if you bring your case to court.
- We *cannot* recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.
- We *cannot* talk to the judge for you about what will happen in your case.
- We *cannot* let you talk to the judge outside of court.
- We *cannot* change an order issued by a judge.

Keep Copies of All Papers

Make and keep copies of all completed forms and documents related to your case.

Definitions of Words Used in This Packet

Adversary – Your *adversary* in a lawsuit is the person or persons whose position is opposite to you. In a case in which there is only a plaintiff and a defendant and you are the plaintiff, your adversary is the defendant. Likewise, if you are the defendant, your adversary is the plaintiff. In this packet, service on your adversary means service on the attorney(s) representing your adversary or adversaries and/or on any party(ies) not represented by counsel.

Brief – A *brief* is a written argument submitted to the court in which you present the facts and the history of your case and the legal argument supporting the request you have made to the court in your motion.

Caption - A *caption* is the name of the case; it lists the name of both the plaintiff(s) and the defendant(s). For example: ABC Mortgage Company, Plaintiff v. Mary Smith, Defendant.

Certification - A *certification* is statement that certain facts are true to the best of the knowledge of the person making the statement. It is like an affidavit, but is not sworn before a notary or other authorized person.

Contesting Answer - A *contesting answer* is one that challenges the right of the lender to foreclose on the defendant's property. A contesting answer will be sent to a judge for a determination on the lender's right to foreclose.

Defendant - The *defendant* is the person being sued.

Discovery Motion - A *discovery motion* asks the court for a ruling on some phase of the discovery process such as a motion for more specific answers to interrogatories, a motion to compel depositions. Before filing a discovery motion, the moving party must try to resolve the matter with the other party(ies) in the case.

Docket Number - A *docket number* is the number the court assigns to a case so that it may be identified and located easily. You **must** include the docket number on all your communications regarding your case. **Note: Documents without a docket number cannot be filed.**

File - To *file* means to give the court the appropriate documents, forms and fees.

Motion – A *motion* is an application to the court for a specific order or ruling to be made in favor of the person making the motion (the movant).

Motion Day – Courts hear motions on specified days (usually Fridays) on the court calendar called *motion days*. You should obtain the motion schedule on line from the judiciary website at: njcourts.gov. It is the litigant's responsibility to contact the courthouse in the county where the case is filed to inquire about the motion day and to confirm if a case is scheduled for a hearing.

Movant or moving party – The *movant or moving party* is the person who is bringing the motion.

Non-contesting Answer - A *non-contesting answer* is one that does not challenge with specificity the lender's right to foreclose on the defendant's property. A case with a non-contesting answer will not be sent to a judge for resolution, but will be handled by the Office of Foreclosure in Trenton.

Notice of Motion – A *Notice of Motion* is the form used to inform the court and all opposing parties that the moving party is seeking a specific ruling or order from the court. A Notice of Motion must identify the courthouse where the motion will be heard (the courthouse in the county where the case is filed).

Definitions of Words Used in This Packet (continued)

Oral Argument – *Oral argument* refers to the appearance in court by the parties to present their positions to the judge in person. Either side may request oral argument, but the decision on whether there will be oral argument is up to the judge. If oral argument is not requested by either of the parties or the judge, the motion will be decided "on the papers."

Plaintiff - The plaintiff is the person who files a complaint in a lawsuit.

Pro se - *Pro se* is a Latin term that means "on one's own behalf." A plaintiff or defendant in a law suit who does not have an attorney is said to be appearing *pro se*.

Proof of Mailing - *Proof of mailing* is the form in which you provide the dates and method you used to give the other parties copies of the papers that you filed in court.

Proposed Form of Order – A *proposed order* is a form that the judge can use to either grant or deny the relief sought in the motion. Every motion must be accompanied by a proposed form of order.

Redaction - the censoring or obscuring of part of a text for legal or security purposes is called *redaction*.
Note: Any documents received by the Clerk's office will be processed and placed in the case jacket which, with limited exceptions, is available for public view.

Relief - *Relief* is the assistance or remedy sought by a complainant from a judge.

Return date – The *return date* is the date on which the court will consider the motion. If you request oral argument you must appear before the judge. If no oral argument is requested, the matter will be decided "on the papers." That is, the judge will decide the motion on what has been submitted in the moving papers and in the opposition papers, without having anyone appear in court.

Service - *Service* refers to the delivery of the complaint or any other paper in a suit to the other parties in the case. Formal legal service requires that the service be made by an authorized person or by mail or, in limited situations, by publication in a newspaper.

Summary judgment - A motion for *summary judgment* asks the court to resolve the case in the moving party's favor without a trial because there is no dispute over the facts of the case and the law supports the moving party's position.

Venue - the *venue* is the particular county in which a court with jurisdiction may hear and determine a case.

The numbered steps listed below tell you what forms you will need to fill out and what to do with them. Each form should be typed or printed clearly on 8 ½" x 11" white paper only. Forms may not be filed on a different size or color paper.

Steps to Take to Respond to a Motion

STEP 1: Complete the *Certification in Opposition to Motion* and *Certification of Service* (Form A).
The *Certification in Opposition to Motion* tells the court the reasons why you object to the ruling requested by your adversary and why the court should deny the request. Fill in the required information. You must also complete the *Certification of Service* which tells the court the date on which you mailed the copies of your response to your adversary.

You must indicate whether you want to waive oral argument and let the judge decide the motion on the papers or not. If you request oral argument you must tell the court why you think it is necessary.

Note: The judge makes the decision on whether there should be oral argument. The judge may request it even if neither party asked for it. Similarly, the judge may deny the request for oral argument.

Make sure that you have redacted (blacked out) any personal identifiers such as

- Social Security numbers,
- driver's license numbers,
- vehicle plate numbers,
- insurance policy numbers,
- active financial account numbers, or
- active credit card numbers,

from any paper filed with the court, unless any such personal identifier is required to be included by statute, rule, administrative directive or court order. If any active financial account is the subject of your case and cannot otherwise be identified, you may use the last four digits of the account to identify it.

Do not redact (black out) this information in the original papers that you are keeping (such as a bank statement) since you may have to show them to the court at some point.

STEP 2: Attach the Filing Fee
If this is your first filing, the fee is $175. Make a check or money order payable to the ***Treasurer, State of New Jersey*.** If you have previously filed in this case, there is no fee for this filing. **(Initial filings without the $175. fee will not be processed)**

STEP 3: Prepare Your Response for Mailing.
Checklist - You will need the following items:

___ The original *Certification in Opposition to Motion* (Form A).
___ Review your papers to ensure all personal identifiers are redacted, (unless such personal identifies are required to be included).
___ Sign the *Certification in Opposition to Motion* and make copies to be sent to your adversary and any other party.

STEP 3: Mail or Deliver the Original *Certification In Opposition To Motion* to the Clerk's Office for Filing and Mail Copies to Your Adversary and Any Other Party to the Lawsuit.
You **MUST** serve your adversary no later than 8 days before the specified return date of the notice of motion, if any (10 days if it is opposition to a motion for summary judgment). While the court rules do not require you to send your papers by certified mail, it is suggested that you send your *Certification* by regular and certified mail, return receipt requested. You will then have the green card when it is returned to you as proof of service.

If your Opposition is not timely served on your adversaries and the court, it may not be considered.

STEP 4: Mail or Deliver the *Certification* to the Court.

Mail or deliver the original *Certification in Opposition to Motion* to the Superior Court Clerk's Office at the address below. All Motions sent to the Clerk's Office must have a have an **original, ink signature**.

Superior Court Clerk's Office
Foreclosure Processing Services
P.O. Box 971
Trenton, New Jersey 08625

If you mail the papers, we recommend that you use certified mail, return receipt requested.

Keep copies of all papers you provide to the court or any other party. Make and keep for yourself copies of all completed forms and any canceled checks, money orders, receipts, bills, contract estimates, letters, leases, photographs and other important papers that relate to your case.

Instructions for Completing the Certification in Opposition to Motion (Form A)

1. At the top left of the form, enter your name, address, daytime phone number, and email address. If you are not an attorney, leave the *Attorney ID* field blank. **Note: the email address is required.**

2. On the line labeled *Plaintiff(s)*, type or print the plaintiff's name.

3. On the line labeled *Defendant(s)*, enter the name(s) of the defendants listed on the complaint.

4. On the line labeled *County*, enter the county where the case is filed.

5. On the line labeled *Docket No.*, enter the foreclosure docket number. This information can be found in the complaint that was served on you.

6. On the line that says *I, _____, am the* ☐ *plaintiff* ☐ *defendant in the above-captioned matter*, enter your name, then select the appropriate party (plaintiff or defendant).

7. After the text *I hereby enter my objection to the Motion to*, enter the type of motion you were served with.

8. Select the appropriate party (plaintiff or defendant) for *filed by the.*

9. After the line *This motion should be denied because*, state the facts supporting why your opposition to the motion should be granted. Attach additional sheets if necessary.

10. Under *Pursuant to R. 1:6-2(d), the undersigned*, select one of the checkboxes regarding oral arguments. If you select *Requests oral argument for the following reasons*, state your reasons for doing so in the space following the checkbox.

11. Date and sign the form, and print your name under the signature. **Note**: when you fill out this form, you are certifying that the statements made on the form are true. If you willfully make false statements, you may be subject to punishment.

Instructions for Completing the Certification of Service (Form A)

1. Enter the date you mailed copies of the documents to your adversaries.

2. Select the mailing method you used (regular or certified mail). If you sent it by both regular and certified mail, return receipt requested, check both.

3. List the name and address for each party to the lawsuit. If the party is represented by an attorney, enter the attorney's name and address and enter which party the attorney represents.

4. Date and sign the form, and print your name under the signature.

Print All Forms | Clear All Forms

Form A

NOTICE: This is a public document, which means the document as submitted will be available to the public upon request. Therefore, do not enter personal identifiers on it, such as Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, or active credit card number.

Name _____
Address _____
Daytime Telephone _____
Email Address _____
Attorney ID _____

Superior Court of New Jersey
Chancery Division - General Equity
_____ County
Docket No. F - _____

_____
Plaintiff(s)

v.

_____
Defendant(s)

Civil Action

Certification in Opposition to Motion

I, _____, am the ☐ plaintiff ☐ defendant in the above-captioned matter. I hereby enter my objection to the Motion to

_____

filed by the ☐ plaintiff ☐ defendant

This motion should be denied because:

Pursuant to *R.* 1:6-2(d), the undersigned: (check one)

☐ Waives oral argument and consents to disposition on the papers.
☐ Requests oral argument for the following reasons:

I certify that the above statements made by me are true and that if any of the statements are willfully false, I am subject to punishment.

Date _____

_____
Signature

_____
Print Name

Form A

Certification of Service

I, certify that on _____, I sent a copy of the Notice of Motion, Certification, and Proposed Form of Order to the following parties by: (Check which mailing method you chose. If you sent it by both regular and certified mail, return receipt requested, check both)

☐ regular mail ☐ certified mail, return receipt requested

List each party to the lawsuit; use the attorney's name and address if the party is represented by counsel.

Name _____ Name _____

Address _____ Address _____

_____ _____

Attorney for _____ Attorney for _____

Date _____

_____
Signature

_____
Print Name