

**A Consumer's Guide to
*Defending Florida Foreclosures***



**Information on Request
prepared by**

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Introduction

By requesting this *Guide*, you've taken an important first step on the road to saving your home. If you're still serious about keeping your home off the auction block, take your time to read through this guide carefully and think about ways you can immediately use this information. Once you've read and thought about this information, pick up the phone and call us at (352) 567-3173 or **toll-free at (888) 830-0830** to schedule a free half-hour consultation with one of our attorneys.

Meet Ricardo & Wasylik:



Jason J. Ricardo: A graduate of the Florida State University College of Law, Jason has practiced law in Florida since 1995. His experience includes service as a state prosecutor in Pensacola, Florida, and several years as a litigator with some of Central Florida's most respected law firms. Jason handles foreclosure defense, consumer protection law; corporate and business litigation; and unemployment claims.



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By the way—we've caught several other attorneys copying this Guide and passing it off as their own. If you see others trying to steal our work as their own, *please let us know!*

Congratulations!

It seems like a funny thing to say to someone who's faced with losing a home, but unlike hundreds, even thousands of other Floridians who face foreclosure every day, you've already taken an important first step to saving yourself. Banks don't want you to know what I'm about to reveal to you. Foreclosure "rescue" scammers don't want you to know what I'm about to reveal to you. You, on the other hand, definitely want to learn as much as you possibly can about your foreclosure.

For you, this is the first, and hopefully the last, time you'll ever have to deal with a foreclosure case. For banks and scammers, they deal with these cases all day long, every day of the week. They know the tricks and secrets to getting what they want out of you. But the best way to beat those tricks and secrets is to arm yourself with knowledge. I hope that you'll find this guide both a powerful tool and an essential weapon in your fight to save your home.



Michael Alex Wasyluk, Esq.

What you'll find inside...

First, you should know that, even though we're lawyers, we're not *your* lawyers yet. And while this *Guide* conveys a lot of legal information, unless you've hired us and we know the specific facts of your case, we *cannot* provide legal advice. So make sure that you do your own research before using any of the information from this *Guide*, or hire an attorney to help you figure out the best course of action for *your* foreclosure case.

Now that we've got that out of the way, here are some of the useful tips you'll find in this *Guide*:

- **NINE** secrets of defending your Florida foreclosure **(Part I)**
- **SIX** of the serious mistakes banks make in foreclosure cases **(Part II)**
- **TEN** warning signs that a foreclosure rescue scammer has set sights on *you* **(Part III)**
- **FOUR** of your important legal rights in a foreclosure case **(Part IV)**
- **SIX** ways to attack the bank's foreclosure case **(Part V)**
- **FOUR** ways to lose your case right from the start, and how to avoid them **(Part VI)**
- **THREE** ways to tell if you've got the wrong attorney, including:
 - ✓ How to tell a paper-pusher from a fighter;
 - ✓ Which attorneys are the last ones you want to handle your foreclosure defense; and,
 - ✓ What to do when you find the right attorney to handle your case.

(Part VII)

When you're ready to start, turn the page to **Part I**.

Part I: Nine Secrets of Defending Your Florida Foreclosure

The foreclosure industry—meaning the banks, their lawyers, and the predators who want to exploit people in foreclosure situations—all thrive on the fact that most people in foreclosure know little about the process or what rights they have. Here are nine secrets that, if everyone knew them, would *devastate the foreclosure industry*.

1. You have rights.

Foreclosure in Florida is a civil lawsuit, and just like any party to any other lawsuit, you have legal rights meant to protect you. Not

You might be surprised to learn just how far that legal protection goes, especially in the case of foreclosure.

only that, but you have rights *outside* the courtroom as well. The business of making home loans is one of the most heavily regulated in this state. Banks and their agents have to be licensed and they have to comply with a complex scheme of local, state, and federal laws and regulations that are designed to protect you, the homeowner. You may already

know about some of these, but you might be surprised to learn just how far that legal protection goes, especially in the case of foreclosure. This *Guide* will show you at least part of the protections that you enjoy as a borrower and homeowner in Florida.

2. Banks make mistakes.

With so many complex laws and regulations in place, it's very easy for a bank to make a mistake at any part of the transaction, whether in the making the loan or in foreclosing it. For example, they may have forgotten to get a signature on an important document—this happens more often than you might think—or made an incorrect disclosure of the interest rate on your loan.

Sometimes they fail to follow the foreclosure procedures set out in your mortgage contract—sending notices, giving you warnings before you foreclose. Even more amazing, sometimes they can't find the very loan documents they are using to take your home from you. The banks' only job is to keep track of who owes them

money, and how much—and all too often, they can't even do that part right.

Any of these or a dozen other mistakes by banks can strip them of the right to foreclose your loan, or cost them thousands of dollars to fix.

3. Banks' lawyers make mistakes.

Their lawyers are human, too—at least, if by “human” you mean “flawed.” Lawyers miss deadlines, they fail to file important paperwork, and they make other important mistakes. Why? Because lawyers who handle foreclosures for banks deal in huge volumes of cases for small amounts of money. They can't afford to spend too much time on any one case, and that means they make mistakes. Sometimes, these mistakes can lose their case for them.

4. The bank wants your money, not your house.

Unless the real estate market is hot, hot, hot, no foreclosing bank actually wants to take your house. They're in business to make money, and foreclosure is just a way to force you to give them that money, or at least make some off the sale of your house. They're not

The more time you have, the more chance you have to find that money and pay off your loan or renegotiate your foreclosure.

going to live in it or rent it out—the only thing they want to do is sell it for as much cash as they can get. And in slow real estate markets, banks often find themselves stuck with home inventory they just can't get rid of. If they're convinced that you can give them more money than they could get through foreclosure, odds are you'll get to keep your home. The good news is that Florida homeowners have the right of

“redemption”—paying off the debt—at any time before the sale is final in order to fend off foreclosure. The more time you have, the more chance you have to find that money and pay off your loan or renegotiate your foreclosure.

5. The bank's lawyers don't want you to fight.

Remember that banks' lawyers handle hundreds of cases for small amounts of money—often, flat fees. And in most cases, foreclosure

is easy, because the homeowners don't fight or don't know how to fight back. If more and more homeowners decided to stop rolling over and fighting for their legal rights, these lawyers would have to start working very hard for a relatively small amount of money. And they don't want that. They desperately don't want that.

6. Defending your foreclosure can ease the time pressure you feel right now.

Foreclosure can be a very quick process—from filing to auction is as little as 45 days, in some cases—if the homeowner doesn't bother to fight. But if there are legitimate legal defenses, the court needs time to sort out who's in the right and who's not. According to the *Tampa Tribune*, one homeowner fighting foreclosure stayed in his home for twenty-two months after the bank filed foreclosure papers.¹ The *Wall Street Journal* has even profiled one woman who's fought off the banks for *twenty-six years!*²

The time it takes to fight your foreclosure can be all the time you need to re-finance, negotiate a work-out, or sell your home on your own terms to avoid foreclosure altogether. If nothing else, it takes the immediate time pressure off you while you work towards some other solution that doesn't involve losing your home.

7. Banks and their lawyers have committed stunning fraud again and again.

When the foreclosure wave first began to swell, few people could have predicted the rampant fraud that would come to light in the last few years. The term "robo-signer" had not yet been invented. No one had heard of Jeffrey Stephan, Linda Green, or David J. Stern, Esq. (Not the basketball commissioner).

Now we have entire websites devoted to tracking the fraud in the mortgage foreclosure industry. Law enforcement officials from fifty states and the United States Department of Justice have stepped up to investigate fraud by the banks adding up to *billions* of dollars.

¹ ["Foreclosure Takes Awhile In Florida"](#), *The Tampa Tribune*, October 21, 2007.

² ["The 25-Year 'Foreclosure From Hell'"](#), *The Wall Street Journal*, December 4, 2010

The banks' lawyers here in Florida have been caught up in fraud allegations, too. At least one firm has paid two million dollars just to *settle* an investigation by state officials into deceptive and unfair practices, while at least three other firms have shut down completely. Lying under oath, fabricating evidence that never existed, padding bills and charging illegal fees—all of these claims have come to light against the banks and either led to large cash settlements or are still under investigation.

If the banks are bold enough to defraud the federal government out of billions of dollars, and their lawyer are willing to pay millions of dollars just to make investigations go away, what do you think they might have done in *your* case?

Don't fall victim to foreclosure fraud. Get an experienced attorney to check out the paperwork in your case, and sniff out hidden fraud.

8. No bankruptcy required!

Almost right away, you'll see ads or get letters from bankruptcy lawyers who will tell you that filing for bankruptcy can stop or slow foreclosure, and force banks to negotiate a payment schedule with you. And in most cases, they're right—bankruptcy *can* help you do that.

But unless you're facing debt collectors on all sides, and you're getting sued for more than just your mortgage, it may not be time to declare bankruptcy just yet. It's the "thermonuclear option" of foreclosure relief—the last thing to try *only if everything else has failed*. And you can press that Big Red Bankruptcy Button even in the last few days before the foreclosure sale.

But before then, you may be able to try things that would get you relief without the filing for bankruptcy. And if you do end up heading into bankruptcy court, wouldn't you want to know that you had tried every other possible option first?

9. Many cases settle.

Although any given court may see hundreds or thousands of foreclosure cases filed every month, only a fraction of those are ever sold at auction. Why? Because many cases settle. Whether the real

estate market is hot, hot, hot, or—like it has been recently—a frozen wasteland of plunging prices and vacant properties—the bank wants one thing: money. And taking your house is the last thing that helps them put that money in their pockets.

There are as many ways to settle foreclosure cases as there are foreclosures. You might:

1. Negotiate the terms of your loan
2. Convince the bank to give you more time to bring your loan current
3. Get a loan from someone else and pay off the defaulted note
4. Sell your home and move out on your terms
5. Work out some other creative deal that gets the bank some money and keeps you in your home

Handled properly, your case could settle, too, so you can stay in your home while paying something you can afford. But in order to reach that point, you need to show your bank that you are ready, willing, and able to fight for every advantage you can get. After you read Part II, next, you'll have a better idea how to do that.

Part II: Just Six of the Many Mistakes that Banks Make

In foreclosure cases, a homeowner will often be able to take advantage of mistakes that a bank makes. What kinds of mistakes? Here are six examples, but there are potentially many more.

1. They lose the original note.

In modern times, most people have come to regard photocopies as “good as” the original paperwork. Most of the time, this is true, even in the courts. But not with a mortgage note. If a bank sues to foreclose a mortgage, they *must file the original document* with the court or they risk losing their right to foreclose. Why? Because anyone who has the original note can then try to enforce it—so if the bank files a mere copy, someone else might still try to collect it from you later. The original document requirement protects you, the borrower, from double-dipping.

Sometimes, banks will try to get around this requirement for the original document by including what’s called a “re-establishment” claim in their foreclosure suit. If you see language about “re-establishment” in your foreclosure papers, this is a red flag that your bank may have lost the original note—and may not be able to prove their right to foreclose!

2. They leave gaps in the chain of assignments

If the bank can't prove every link, they may lose their right to foreclose.

During the housing bubble, home loans often changed hands many times before anyone ever tried to foreclose on them. The original bank may have sold the note to a larger bank, who then might package it with other loans and re-sell it to investors, and so on. Some notes can change hands so many times, it’s hard to tell who owns it. For the last buyer to foreclose, they have to prove that they are the lawful owner of the note, and that every step in the chain is fully documented. It is extremely common for banks to make mistakes when selling loans, so that somewhere

along the chain, one link is broken. If the bank can't prove every link, they may lose their right to foreclose.

3. They don't give you a fair chance to cure your default.

Almost every home loan made in Florida has a provision that requires the bank to give your fair notice before foreclosing on your home. (If your loan uses the standard Form 3010 Fannie/Freddie mortgage, that provision is in paragraph 22 of that mortgage document). If they fail to give you that notice, and give you a fair chance to "catch up" what you owe, they may lose the right to foreclose on you. And even more important, they usually have to *prove* they gave you notice. Between 2009 and 2012, there were at least twenty separate cases where appellate courts *threw out* foreclosures—not because the banks failed to give the notice, but because the banks failed to prove they had given the notice.

Why do banks have such a hard time proving they met the pre-suit notice requirements? Because in many cases, they don't. Either they never send the letter, or the letter fails to contain some of the information that your mortgage contract requires the letter to contain. And if they didn't send a proper letter, or can't prove they sent a proper letter, they may have to start back at square one.

4. They fail to properly credit borrower's payments.

Paid your bill, but the bank won't recognize your payment? This is extremely common, and what could be a better defense to a foreclosure than the fact that you actually paid your bill on time? Failure to properly credit payments to your loan not only gives you a great defense against foreclosure, it also may serve as a basis to recover your attorney's fees.

5. They use abusive or deceptive debt collection methods.

If someone tries to collect a debt, but harasses you, uses abusive language, or lies to you, you have rights under both federal and state law to sue them for damages caused by those acts. Also, some collection practices are completely forbidden by law.

For example, some of our clients report that, even after the foreclosure gets filed, the bank constantly harasses them with phone calls, or sends them misleading letters, or do other things just for the purpose of harassing or annoying you. But there's good news: both federal and Florida law declare these practices illegal. Once you've hired a lawyer, it's against the law for the banks to even contact you without your permission. (Violations of that law can give you counterclaims for \$1,000 or more for a single call.)

In extreme cases, abusive debt collection practices could cost the bank so much it wipes out your debt entirely. If you've got an abusive debt collector calling or writing you about your home loan, you may be able to fight back.

6. They pack loans with hidden fees, illegal interest rates, or illegal payment schedules.

This used to be rare, but unfortunately, it is becoming more and more common for certain banks to take advantage of homeowners by packing their loans with hidden or illegal fees, or "gotcha" payment schedules. Federal and state laws closely regulate the types of loans that can be offered, along with rates and payoff schedules. If your loan fails to meet these strict regulations, you may be able to deduct some or, in rare cases, even all of what you owe. If you see language like "balloon note" or "negative amortization" then you may have an illegal loan. Check with a lawyer to make sure.

Part III: Ten Warning Signs That Foreclosure Rescue Scammers Have Set Their Sights on You

“That’s where the money is.”

Willie Sutton, once on the FBI’s Ten Most Wanted List, earned infamy in the 1930’s as a clever and determined bank robber. Once, when asked why he robbed banks, he replied, “That’s where the money is.” Now, decades later, a whole new generation of crooks and swindlers have set their sights on Florida families desperate to save their homes. Why? Because that’s where the money is now.

Once the bank filed its foreclosure lawsuit against you, your name and address were available to any person who cared to look them up. You probably noticed this right away, as letters, postcards, and phone calls came flooding in offering you all kinds of deals. Most are perfectly legal, even if they aren’t always in your best interest—like the people who want to buy your home for a small fraction of what it’s worth. But every year more and more people get sucked into schemes and con games by people who want nothing more than to steal their money, their house, or both. It may be hard to tell the legal offers from the scams, and it’s definitely hard to figure out which offers hurt you more than they help.

In order to help you steer clear of the con artists and hucksters, we’ve compiled a list of warning signs. When you get a mailbox full of offers, grab this checklist and sort out the scam offers to dump directly into the trash.

1. The Mysterious Stranger

Many scam artists dress themselves up as if they are big companies with lots of resources. But if you dig a little bit deeper, you’ll find that these companies have only been around for a short time. Often, the people associated with them are unknown or have dozens of active and inactive companies registered to them under public records. The mysterious stranger or the fly-by-night operation with no track record or a fake track record should be a clear warning sign for you. You should almost never give money to someone from

another state (like California, or Nevada...) And anyone in Florida who is involved in mortgage lending or mortgage brokering has to be licensed with the state. So do lawyers and other professionals who could work on your behalf. Ask them for license information—and proof of identity such as a driver's license or passport—and check them out. If they say they don't have a license, look out. And *never, ever* do business with someone if you don't know their name.

2. Here, Sign This

Never, ever do business with someone if you don't know their name.

Anyone who asks you to sign something you don't understand, or don't have time to read, is almost always trying to steal from you. A favorite scammer's trick is to wait until the day before the foreclosure deadline, then ask you to sign a thick stack of papers without time for you to read or understand them. They usually tie it with a high-pressure pitch: "Sign these or you'll lose your house tomorrow!" Don't sign *anything* unless you're sure you know exactly what it means. If you're in doubt, ask for time to have a lawyer review the papers. A scam artist will find every excuse in the book to prevent you from doing that. And if it's a last-minute deal, their favorite excuse is that there's no time. Don't believe them, and don't sign those papers unless you know what they say.

3. The Cone of Silence

No legitimate business will ask you to keep your relationship with them a secret from the bank or from anyone else.

Another common warning sign of fraud is the person who asks you to keep your arrangement with them secret from your the bank. They'll tell you not to talk to your bank because they will supposedly do all the talking. This is a ploy designed to keep your bank from telling you that the con artist is, in reality, not doing anything on your behalf. No legitimate business will ask you to keep your relationship with them a secret from the bank or from anyone else.

4. The Trail of Broken Dreams

All foreclosure rescue scams have one thing in common—they don't work. These guys will con homeowner after homeowner and

when it's all over, leave them out of the street. Ask them for a customer reference—someone who they've actually helped. If they can't provide even a single positive reference, you'll know why. (By the way, be sure to check out their story, too—that foreclosure and its result will be a matter of public record.)

5. Out on the Street

Often times, the scammers will file eviction papers to throw the original owners out of their homes. If they've done this, you should be able to see it in the public records at your courthouse. Definitely spend the time to look up those records. If your so-called "rescuer" has a habit of filing evictions, you'll know that you are their next target.

6. Trust Me

One variation on signing over the deed, the "investment trust" is a common scam mechanism used to steal homes from their owners. It involves you signing over your home to a trust, with a third party as trustee. While trusts may sometimes be used as legitimate investment vehicles, when they are tied to foreclosures they are often scams. The public records will tell you what other trusts your so-called rescuers have set up, and whether they've been involved in any evictions. Check them out!

7. House Calls

Very few, if any, legitimate banks will ever send someone to your house to sell you their services. If someone shows up on your doorstep offering to stop your foreclosure, you can be almost certain they're trying to scam you. Ask them to show you some identification—that will scare most of them off. If they insist, review their proposal very carefully for the other warning signs in this guide. If you're thinking about going forward, make sure to tell them you're having a lawyer review the paperwork. Any scam artists who have stuck around this long will try to convince you not to do that. They'll give you any excuse in the book, and you'll know why.

8. Too Good to Be True

The pressure of foreclosure is the time when you'll most need to use your common sense, but that pressure also makes it the hardest time for you to do so. Any offer that seems too good to be true probably *isn't* true—it's probably a scam. Use your common sense, or if you find yourself too upset to think rationally, ask a cool-headed friend to help you think it through. When all else fails, do your research, and don't be afraid to walk away from a deal that doesn't make sense. Because, as you're going to read in Part IV, you have rights in your foreclosure case.

9. I'll Hold Onto Your House for You.

The first and clearest warning sign that someone is trying to steal your house is when they ask you to give it to them. No, they won't ask for your house keys, but many common scams have the homeowner sign a deed—sometimes called a “quit claim”—which gives the ownership of your house to the scam artist or one of his co-conspirators. The most common excuse is that the ownership change is “just temporary” while the new owner works out a deal with your bank or refinances. But while you're waiting for them to save you, they secretly steal any equity you have left in your home, pushing you deeper into debt and making foreclosure that much harder to avoid.

10. High up-front fees for “loan modification.”

Probably the worst and most common scam is the fake loan-mod negotiator. You might find them on the internet, or through a flyer in your mailbox, or even by word-of-mouth. They promise to help you negotiate with your bank to modify your loan, and they want a huge up-front fee to do it. Not only are these offers usually illegal in Florida—especially if it's a company from another state—but they almost never get results. All they're doing is gathering your papers and faxing them to the same phone number you would if you had done the job yourself.

They don't have any inside track with the bank. They don't get principal reductions, slashed interest rates, or even a big difference on your monthly payments. (We've even heard cases where the

resulting payments after modification went *up*—not down.) So is that worth \$500? \$1,000? \$2,000? *No way*.

The truth is that they rarely get you a loan mod that you couldn't get for yourself. And unless you fight your foreclosure, it's exceedingly rare that you'll get any kind of loan mod at all. So don't pay someone just to modify your loan for you. Fight your foreclosure and *earn* that modification.

Part IV: Your Rights in a Foreclosure Case

You might be surprised to learn that you have important legal rights in your foreclosure case. But, just like any other person caught up in the court system—which you are, if you're in foreclosure—you have rights and the best way to lose them is to not understand them. Here are four important rights you have in a foreclosure case:

1. Right to defend

Just because the bank or someone else has filed a foreclosure action doesn't mean you have to roll over and give up your home. Just like you would in any other court case, you have a right to raise any and all legitimate defenses you might have, and in foreclosure cases, there are lots of possibilities. Even if you're not sure a particular legal or factual defense applies to you, you still have the right to raise it if it's reasonably possible it might work for you.

Why bother, though, if you know you're behind on the payments? Well, just because you're behind on payments doesn't mean that the bank is entitled to foreclose. They have to show that they have met all the legal requirements to get the right to sell your home out from under you, and if they can't, they won't win. In the meantime, by raising legitimate defenses, you might be able to buy yourself time or leverage that you need to borrow money somewhere else or negotiate a better settlement with your bank.

2. Right to discovery

If you choose to defend your foreclosure case, you'll also have the right to conduct *discovery* in your case. Discovery is just what it sounds like—each party to the lawsuit has the chance to uncover

information about the other side and about the facts of the case. There are three main types of discovery: requests to inspect or obtain copies of documents, known as *requests to produce*; written questions known as *interrogatories*; and live testimony of witnesses, taken under oath and on the record, known as a *deposition*. Some cases may also involve *requests for admission*—a way for each side to determine which facts are disputed and which are not.

The discovery phase of the foreclosure is very important to a defendant because it allows you to investigate whether the bank has the evidence to back up their claim that they have the legal right to foreclose, and also if there's any evidence that the bank has violated some law or rule which might stop them from foreclosing on you. Generally, you can conduct discovery on any question that is relevant to your case, and also on any matter that is "reasonably calculated to lead to the discovery of admissible evidence." (Fla. R. Civ. P. 1.280(b)(1)). So if you think your bank has miscalculated a payment, you can ask to see their payment records. If you think that they no longer own your loan, you can ask to see ownership records. And then, you can interview a bank employee, under oath, about what those documents say and don't say.

And if some third party has evidence that's relevant to your case, you can usually get that, too, in the form of document requests or depositions of witnesses.

The discovery process helps the homeowner defend a foreclosure in a few very important ways: First, it exposes any weaknesses in the bank's case against you. Second, it may force them to cough up evidence that hurts them in some way or helps you. And third, the prospect of having to cooperate with discovery on a foreclosure case may motivate some banks—especially banks with something to hide—to settle with you on more favorable terms.

3. Right to proof

Anyone who's ever watched a courtroom drama on TV knows that one side in any court battle has the "burden of proof." If you're defending a foreclosure case, good news! The other side has the burden of proof, which means they have the duty to gather and present all the evidence to prove every required element of their

case. If they miss even one piece of evidence that they need, they lose.

In foreclosure cases, as in other civil cases, the level of proof they have to show is called a *preponderance*, which simply means they need to prove their facts are more likely true than not true. This is a lower standard than the *beyond a reasonable doubt* standard required for criminal cases, but it can still be high enough to protect you if the bank has failed to keep track of important evidence or witnesses. And if they miss even one point that they need to prove... you win.

4. Right to counterclaim

Sometimes, the best defense is a good offense. And because foreclosure cases involve one of the most heavily regulated industries in America—the mortgage lending industry—these cases are excellent chances to defend yourself with a good counterstrike.

Because so many federal and state laws—and regulations, too—limit what banks are allowed to do when making home loans, it's very easy for them to make a mistake. And many of these federal and state laws allow you, the borrower, to sue your bank for any violations. In your countersuit, you might ask for a number of different remedies, such as money damages or cancellation of the loan. And when your bank sues you for foreclosure, you and your lawyer should take a long hard look at your case and see if there's a chance for you to sue your bank right back.

Why do this? A legitimate counterclaim might win you some money that can be used to offset the amount of your loan. Or you might be able to cancel the loan—a process known as *rescission*. In cases of extreme wrongdoing by your bank, you might be able to walk away from the loan—interest, principal, and even transaction fees—and still keep your house. Obviously, your bank doesn't want any of this to happen, so the chance you might win gives them some incentive to settle with you. The stronger your case, the more incentive they have. And that might make the difference between keeping your home and losing it on the auction block.

Part V: Fifty Ways to Leave Your Lender (More or Less)

Too many people faced with foreclosure simply give up. They wrongly think that once the bank files a foreclosure action, it's "Game Over" for the homeowner. Nothing could be further from the truth, because in reality, there are dozens of ways to attack a foreclosure action, and depending on the facts of your case, you might be able to attack from multiple angles at once. Just to illustrate my point, here are just a handful of the attacks to use when fighting off a foreclosure.

1. Attack the loan

What happens if your bank violated the law when they originally made you the loan? Depending on what they did, you might be able to win a money award in your favor (offsetting whatever amount you owe to them), rescission of the loan (i.e. canceling the contract) or even a complete walk-away. Some of the laws in question are the Federal Truth-in-Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), Home Ownership Equity Protection Act (HOEPA), and the so-called "Regulation Z" which implements many of the provisions of TILA. Florida also imposes many legal requirements on banks, including the Florida Fair Lending Act, state-law limits on unfair interest rates known as *usury*, along with laws fraud and deceptive practices in lending. A critical analysis of your loan documents and closing documents to find violations can be a vital first step in defending a foreclosure action.

2. Attack fraudulent lending

On that same point, if you've already been a victim of a foreclosure rescue scammer and they're now the ones coming after you, simply fighting the foreclosure based on fraud can be a powerful tool. All states, Florida included, allow victims of fraud to sue for remedies such as money damages or rescission. Proving fraud can stop a rescue scammer dead in his tracks and might, in some circumstances, put some money in your pocket.

3. Attack the missing note

When you agreed to borrow money on your home, you signed two documents: a mortgage and a note. The mortgage was then recorded with the public records at your county courthouse, and the original note (supposedly) put in the bank's files. Legally, that note is just like a check you're written to the bank for the amount of the loan, payable over time. In order to "cash" the note, the bank has to keep the note. So you'd think they'd keep careful track of it, wouldn't you? But in an astonishing number of cases, the bank (or their successor) has failed to keep track of the note. They claim it's been "lost" or "destroyed." If that happens, that's good news for you, because without the note or legal equivalent, they legally can't foreclose on your loan.

In those cases, you'll see a claim to "re-establish" the note as part of the foreclosure action. This means they want the court to take a copy of the original and treat it as if it were the original. That's good news for you, because it's one more hurdle they have to overcome to get to auction your home—and it's one that's beatable.

4. Attack the chain of title

In recent years, more and more banks tried out a new tactic—instead of keeping the loans they made, the banks would "bundle" them and sell them in groups to large institutional investors. With a newly refilled treasure chest, they could then go out and make even more loans to more homeowners like you. In many cases, these loan buyers would then turn around and sell bundled loans to still other investors.

The problem? Some of these buyers and sellers didn't keep good records of the loans they bought or sold. In many cases, the entity filing for foreclosure is three or four buyers down the chain—but they can't prove that they own the loan. And if they can't prove that they—as opposed to someone else—own the loan, then they can't foreclose.

These "chain of title" problems are very common in foreclosure cases where the loan has been flipped one or more times to new owners. If your loan is one of these, taking a careful look at the transaction records could show a great defense for your foreclosure case.

5. Attack the evidence

Just like any other court case, a foreclosing bank has the “burden of proof”—meaning they have the duty to present enough evidence to prove every part of their case. That means they have to prove that they own the note, that the borrower fell behind, that they have the right to foreclose, and the total amount owed. They have to present admissible evidence of each of those facts, or they cannot move to the foreclosure sale. If they can't provide admissible evidence of every element of their case, then the court has no choice but to stop the foreclosure. An attorney skilled in evaluating the evidence may be able to poke holes in the banks' case by keeping out inadmissible evidence, and possibly get the case thrown out entirely.

6. Attack the debt collector

When you're in a bind, some unethical debt collectors may decide that it's the right time for them to turn up the heat. They may use illegal or unfair practices to try to get money from you. Some of the worst will lie to you, scream at you, and call your home or your work repeatedly even if you ask them to stop. Some of them may even pack illegal fees into your loan to try to squeeze even more money out of you.

You don't have to put up with this. State and federal laws protect you from unfair or abusive debt collectors, no matter how much you owe. And those laws can be powerful tools to help you fight back.

Part VI: These Mistakes Can Cost You a Win Before You Even Start

There's never a way to guarantee that you'll win a foreclosure defense, but there are a number of things you can do that will guarantee that you'll lose before you even start fighting.

1. Panic.

Yes, foreclosure is enormously stressful—that's why you need to keep your head straight, arm yourself with information, and take the right steps. Panic clouds your judgment, causes inaction, and leads you to make mistakes.

2. Ignore it.

Surprisingly, a lot of people simply ignore the warnings from their bank and the notices from the court about their foreclosures. Whether it's out of fear, or lack of knowledge, or any of a dozen other reasons, they simply pretend it isn't happening, and do nothing until it's too late. If you miss deadlines in a court proceeding, you can lose by default and your home can be sold out from under you. Remember, in most foreclosure cases, you have to file your first response within 20 days.

3. Help yourself.

Imagine going to see a doctor about stomach pain. He hands you a scalpel, a bottle of disinfectant, and a sponge, and says, "Your appendix need to come out. Let me know if you have any questions." You'd think your doctor was crazy, wouldn't you? You'd probably go find a new doctor right away.

But the real truth is that you can't afford *not* to hire a lawyer. Any other option is going to be messy, painful, and in the long run, cost a lot more than doing it right the first time.

Or maybe you found some instructions on the internet. You rummages around the kitchen for a steak knife, found some rubbing alcohol in the garage, and sat down on the sofa and started to cut. You know *exactly* how that's going to turn out.

So why would you try to handle a foreclosure case by yourself? Court cases require years of training and knowledge to handle properly, just like surgery. Lawyers, just like doctors, have the training and skill needed to help you handle your case to maximize your odds of getting a good result.

The number one reason people butcher their own foreclosure cases? The myth that they can't afford a lawyer to help them. But the real truth is that you can't afford *not* to hire a lawyer. Any other option

is going to be messy, painful, and in the long run, cost a lot more than doing it right the first time.

4. Stay in the dark.

Ignorance is your enemy. Knowing your legal rights, knowing your options, knowing your best possible outcomes—all these things are necessary to finding your way out of the troubled times you're in now. You need good information to make good decisions about your case—and you need to know where to get that information. Ask a lawyer to explain the process to you at the beginning, and to keep you updated about significant events in your case.

Part VII: Your Next Step

Now that you've read this far, you've probably figured out that we strongly recommend you talk to a lawyer about your foreclosure case. And why not? Every time you've touched anything to do with your home loan, you've probably noticed that everyone but you had a lawyer. Your bank had a lawyer. The title company had a lawyer. You signed a thick stack of paper—all drafted by lawyers. The foreclosure papers you've just gotten—all written and prepared by lawyers. Isn't it time you looked for someone to fight by your side?

How to pick the right lawyer

You've tried going it alone—now you want to try getting professional help. But don't want to pick just anyone. You want a lawyer who both understands the foreclosure process and is willing

Just because you find some lawyer, doesn't mean you've found the right lawyer.

to fight for you to give you every possible advantage when fighting your foreclosure. But a word of warning. Just because you find *some* lawyer, doesn't mean you've found the *right* lawyer. There are a lot of lawyers out there who think that foreclosure is just another transaction—just more papers to be shuffled around. They'll shuffle those papers for you, and charge you hundreds of dollars to do it. What they won't do for you, is *fight*.

How do you know you've got the right lawyers to handle your case? Here's what one of our foreclosure clients had to say about us:

The difficulty of our case did not intimidate you. You went to work right away correcting the mistakes that had been made [by prior lawyers]... [U]ltimately we would have lost our home. You successfully settled our case in a matter of days. We could not ask for more. We felt so completely protected.

Sheryl C., Pasco County

If you want to feel "completely protected" like Sheryl, you're going to need a particular kind of lawyer. Just because a lawyer handles real estate transactions doesn't necessarily mean they know how to defend a foreclosure case in court—in fact, most of them won't, because they're never actually tried a contested case in their lives. Foreclosure defense has become a new fad for many lawyers fresh out of law school, or others who tried and failed at personal injury, criminal, or family law. There are too many lawyers who call themselves "foreclosure defense lawyers" even though they can't find the courthouse with both hands and a flashlight.

And just because a lawyer handles bankruptcy cases doesn't necessarily mean they know the best way to stop your foreclosure. In fact, too many bankruptcy attorneys have no idea about how to apply the federal and state laws (like the Truth In Lending Act) that could help you break out of an illegal home loan that's gone to foreclosure.

When you're hiring a lawyer to defend your foreclosure, ask yourself the following questions:

- Do you want a lawyer who was doing this before the foreclosure crisis hit or one who's brand new to foreclosure defense?
- Do you want a lawyer who teaches others how to fight foreclosure or one who's just attended someone else's seminar?
- Do you want a lawyer who knows how to convince a judge of the winning legal argument or one who just files papers other people wrote for him?

- Do you want a lawyer who knows how to win a foreclosure trial or one who's never conducted a trial in their whole career?
- Do you want a lawyer who creates successful, cutting edge defenses or one who just tries stuff he found on the internet?

***DANGER!* Having a lawyer who just “dabbles” in foreclosure defense is worse than having no lawyer at all.**

A lawyer who only does foreclosure defense part time, or as a bolt-on to his bankruptcy practice, or just started doing it last month after attending a brown-bag lunch seminar, could do more damage to your case than if you simply ignored the summons and tossed all the court papers in the trash.

A lawyer unskilled in foreclosure defense can actually do your case more harm than good.

Your foreclosure case needs special, customized defenses designed for your foreclosure case. Only a lawyer experienced in foreclosure defense knows which defenses apply and how to use them in your individual case. But a lawyer who doesn't know what he's doing might miss those defenses, and fail to raise them at the proper time, waiving them. That means you've lost those defenses forever. That's how a lawyer unskilled in foreclosure defense can actually do your case more harm than good.

How do you find a lawyer who knows how to fight a foreclosure case in court, and knows how to apply the laws that protect you?

Ask questions. Read up and educate yourself. Don't be afraid to ask a lawyer exactly what he would do to protect you and your home during your foreclosure case. And make sure you're happy with the answers. Here are some things to look out for.

How to spot the paper shufflers

How can you tell a paper shuffler from a fighter? The paper shuffler will typically promise to “review” some documents, “file” some other documents, and then “attend” your foreclosure hearing. These

lawyers will shuffle all your papers for you, but few can actually tell you how any of that helps you put on a stronger case.

A lawyer who's willing to fight for you, though, will tell you all about ways you can fight back and will be able to tell you exactly what kind of thing he or she can do to give you the maximum possible leverage to win your foreclosure defense... or at least settle on the most favorable terms possible.

Another key to spotting a paper shuffler is the low "flat rate" they offer for a one-size-fits-all defense. Find out what that lawyer's usual hourly rate is—then figure out how many hours their "flat fee" buys you. That's how much time that lawyer is planning on spending on your case—usually no more than two or three hours. Won't it take a lot longer than that if you really want to fight?

What do bankruptcy lawyers really want? Bankruptcy cases.

There are also some attorneys who also think of foreclosure cases as a loss leader into bankruptcy. Bankruptcy attorneys make their money in bankruptcy cases, not foreclosure defense. So if you see an attorney offering *both* foreclosure *and* bankruptcy services what might be happening is that they are using low-rate foreclosure "defense" offers as a way to attract higher-fee bankruptcy cases. Most of these attorneys will make more money if they lose your foreclosure case than if they win it. You want something different—a lawyer who's interested in helping you win.

Beware the "loan mod negotiators" and the carpetbaggers.

Some lawyers are afraid of the courtroom, and take the same approach to saving your home as they would to buying a used car: haggling. No fighting. No defending. No leverage at all. They just try to "negotiate" their way out. And almost every time, they fail—because the banks know they aren't able to fight.

A lawyer with no courtroom experience is a tiger with no teeth. If you stumble across the web site of some lawyer who offers to negotiate a loan modification, but has never stepped foot in a courtroom, don't click. Just close your web browser and slowly back away from your computer.

Another warning sign about these lawyers is they're from out of state. How can they defend a Florida foreclosure in a Florida courtroom if they work in California or Nevada? Short answer: they can't. So if you're considering a lawyer from out of state, or you can't even tell where he's licensed to practice, it doesn't matter what promises that lawyer makes. Don't get suckered.

If you're ready to fight back... give us a call.

At Ricardo & Wasylik, we offer a 30-minute free consultation—in person or by phone—to review the facts of your case and figure out what we can do to help you. But... *don't call unless you're ready to fight.*

We're very serious about this. Every year there are more foreclosures than ever, and there are only a handful of lawyers to go around. If you don't want to fight, you're better off talking to a paper shuffler or a bankruptcy attorney. We want to spend our limited time and manpower working to help clients who are working to help themselves.

So please, do everyone a favor. Call us when you're ready to move forward, but not a minute sooner.

Are you ready yet? There's no time to waste.

Whatever decision you make, you should make it soon. In most foreclosure cases, you only have twenty days to file a response, and if you miss that deadline, you could lose by default. The sooner you call, the sooner you can come in and take the first steps to getting back on your feet. When you decide you're ready, call us at **1 (888) 830-0830** to set up your free half-hour consultation.

Here are 3 easy ways to contact us.

1. **By Phone:** you can reach our lawyers at (888) 830-0830.
2. **By Mail:** You can write to us at RICARDO & WASYLIK, PL, PO Box 2245, Dade City, Florida, 33526.
3. **By E-mail:** You can contact us through our e-mail address, info @ ricardolaw.com, or use our convenient web page form: <http://ricardolaw.com/contact>

One last word...

By taking the time to read this whole *Guide*, you've taken an important step to saving one of the most important things you own—your home. The fight may not be easy, and it may not be quick. But if you're able to win this fight, you'll spend the rest of your life looking back on this battle as one of the most important things you've ever done—faced down the “big guys” who were trying to take your home. And you'll know that every minute you spent, every penny you invested, and every person you convinced to come to fight by your side, was worthwhile.

As you face this fight, whether you call us or not, we wish you the best of luck.