

# Your Rights as a Homeowner as well as a Mortgagor

Owning a home – whether it may be a single family home or a condominium unit – is the biggest investment you can make for you and your family. As such, it is very important to know that as a homeowner, you have specific rights even though you are paying a monthly mortgage payment and your mortgage lender has a security interest on your home. The mortgage that you signed at closing is that security interest.

Hopefully the mortgage lender and servicer you have is very reputable, and 99 percent of the time your mortgage lender is very helpful when you have a question or an issue regarding your mortgage. Unfortunately, with the housing and mortgage crisis that has gripped Florida as well as the nation there are a lot of unscrupulous mortgage lenders out there to cause you great anxiety and fear as far as your mortgage is concerned.

What follows is three scenarios that unscrupulous mortgage lenders usually do to make sure that you are paying your mortgage on time. However, it is very important that you reach out to your mortgage lender at the first sign that you may experience difficulty in making your mortgage payments such as loss of your job due to layoff, etc. In this day and age of mortgage lending a reputable mortgage lender will do anything to permit you to stay in your home; after all, a mortgage foreclosure represents a loss of at least \$50,000 to the lender.

## ***IF YOU RECEIVE A TELEPHONE CALL...***

Your lender should not be calling you, especially if your payments are current. No lender would be calling you with information specific to your mortgage account.

*The only time your mortgage lender would be calling you is if your payments are late.* Those phone calls will more than likely come from your mortgage lender's collections department. This type of collection activity is regulated under the Federal Fair Debt Collection Practices Act (FDCPA) which carries statutory penalties for violations.

If you have been late on your payments, or if you have reached out to your lender and you get calls like these, tell them that you are represented by an attorney. If the caller asks for the name of your attorney, tell the caller that the lender will receive a letter from your attorney – after all, it's none of a debt collector's business to learn and know about your personal affairs.

*Once you tell a debt collector that you are represented by an attorney, **all communication between you and the debt collector must cease and all communications regarding your mortgage debt by a debt collector must be through your attorney.*** Any further communication by a debt collector at that point is a violation of the FDCPA which can result in legal action against the debt collector.

Additionally, a debt collector cannot:

1. Call you at work, if your supervisor disapproves of such calls.
2. Call you before 8 AM or after 9 PM local time at home.
3. Threaten you with foul or abusive language or threaten you with arrest. This includes any statement that there is a warrant out for your arrest or a court order for your involuntary commitment in a mental health facility such as that of Florida's Baker Act.
4. Say that he or she is from a law enforcement agency.
5. Say that he or she is from child protective services (such as Florida's Department of Children and Families) and threaten you with the loss of your children and their subsequent placement in foster care, if you have children living with you in the home.
6. Say that he or she is from adult protective services and threaten you with placement in an institution such as an assisted living facility, especially if you are an elderly person.

### ***IF YOU RECEIVE A LETTER IN THE MAIL...***

*Most importantly, do not ignore any correspondence from your mortgage lender! This is true if you are in the process of refinancing your mortgage.*

Most of the time a letter from your mortgage servicer will more than likely be a request to update your homeowners insurance information. If that's the case, you can confidently respond to your mortgage lender's request by sending the information that is needed.

*In all cases, correspondence sent to your mortgage lender or servicer, especially in reply to any request for information, should be sent Certified Mail with Return Receipt Requested, **never** via ordinary First-Class Mail. This proves that someone at your mortgage lender has signed for your letter.*

If in the event you are being asked for information which is more than a request for homeowners insurance information, prior to responding forward the letter to your attorney for advice. Either you can respond or your attorney can respond on your behalf.

### ***IF A VISITOR SHOWS UP AT YOUR HOME...***

The only time someone would show up at your home regarding your mortgage is if foreclosure proceedings have been started against you. A deputy sheriff (in Florida) or a process server (depends on the state, especially if the state is a judicial foreclosure state) will come by to serve you with the documents.

***Foreclosure is a serious matter, as it can involve the loss of your home. Should you be served with a foreclosure summons, see your attorney fast!***

At no other time should your mortgage lender or servicer or any of their agents show up on your property. Unfortunately, there are unscrupulous mortgage lenders out there that insist on making a visit to your home; in fact, mortgage lenders resort to the use of private investigators who are hired for nothing more than harassment of the homeowner.

Additionally, some mortgage lenders go to unlawful extremes such as changing the locks on your front door. The important thing to remember is this: You own your home, and it is your property even though your mortgage lender has a security interest. Moreover, your mortgage lender is **not** your landlord, as you own your own home, not rent or rent to own.

***It is illegal for anyone – including your mortgage lender and/or their representatives or agents – to even step foot on your property without your permission.*** To do so is considered trespassing, and you as a homeowner are well within your rights to ask anyone that is not invited on your property to leave immediately and the person so refuses, call 911 immediately and request police assistance.

The only way you can lose your home to a mortgage foreclosure – especially in a judicial foreclosure state such as Florida – is when the judge signs the writ of possession. In a foreclosure case that takes place in a judicial foreclosure state such as Florida, if the homeowner loses the judge will sign a legal document called a writ of possession, which transfers title to your mortgage lender and at the same time allows your mortgage lender to legally enter (with the help of a deputy sheriff) and evict you and your possessions from your home.

***The important thing to remember: No warrant = no writ = no entry.***

Again, any mortgage lender engaging in homeowner harassment by making visits to your home faces not only criminal trespassing charges but the risk of civil legal action. In fact, civil legal action ranges from violations of the FDCPA to torts such as trespass and harassment. More than half of the time the courts find in favor of the homeowner in cases like these resulting in substantial judgments against the mortgage lenders responsible.

Any incident of mortgage lender harassment, no matter how trivial, should be reported to your attorney immediately. Early intervention by your attorney can stop a trivial incident from escalating into a major incident as far as your mortgage is concerned. This is also true even if you have to press criminal charges against the representatives or agents of your mortgage lender as a result of unauthorized entry into your home.

#### **Disclaimer**

While I may have an A.S. degree in Legal Assisting, none of the information given here in this document should be taken as legal advice. If in the event you are having any issues with your mortgage lender for any reason (especially if your mortgage lender dangles the threat of foreclosure or resorts to extremes such as homeowner harassment), the services of a competent attorney – licensed by the Florida Bar (or the bar in your own state) – and who has experience in real estate matters should be sought.

If you are faced with a looming foreclosure situation as a homeowner, most attorneys in your area will be glad to give you an initial consultation either over the telephone, in the attorney's office or a combination of the two. Be sure to check out the attorney's qualifications and expertise as well as his or her courtroom track record before you sign your name on the retainer contract and pay any money.