

# **Produce The Note "How-To"**

**More than 2% of the mortgages in this country are in foreclosure! If yours is one being foreclosed on you will be interested in reading the below "how to!"**

## **Produce the Note - Steps To Follow:**

**Using the "produce the note" strategy is something all homeowners facing foreclosure can do. If you believe you've been treated unfairly, fight back. We have created templates for a legal request, a letter to your lender and a motion to compel to help you through the process.**

## **WHO OWNS THE NOTE?**

**Your goal is to make certain the institution suing you is, in fact, the owner of the note (see steps to follow below). There is only one original note for your mortgage that has your signature on it. This is the document that proves you owe the debt.**

**During the lending boom, most mortgages were flipped and sold to another lender or servicer or sliced up and sold to investors as securitized packages on Wall Street. In the rush to turn these over as fast as possible to make the most money, many of the new lenders did not get the proper paperwork to show they own the note and mortgage. This is the key to the produce the note strategy. Now, many lenders are moving to foreclose on homeowners, resulting in part from problems they created, and don't have the proper paperwork to prove they have a right to foreclose.**

## **THE HARM**

**If you don't challenge your lender, the court will simply allow the foreclosure to proceed. It's important to hold lenders**

**accountable for their carelessness. This is the biggest asset in your life. It's just a piece of paper to them, and one they likely either lost or destroyed.**

**When you get a copy of the foreclosure suit, many lenders now automatically include a count to re-establish the note. It often reads like this: "the Mortgage note has either been lost or destroyed and the Plaintiff is unable to state the manner in which this occurred." In other words, they are admitting they don't have the note that proves they have a right to foreclose.**

**If the lender is allowed to proceed without that proof, there is a possibility another institution, which may have bought your note along the way, will also try to collect the same debt from you again.**

**A Tennessee borrower recently had precisely that happen to her. Her lender, Ameriquest, foreclosed on her in July of 2007. About three months later, another bank sent her a default notice for the mortgage on the house she just lost. She called to find out what was going on. After being transferred from place to place and left on hold for lengthy periods of time, no one could explain what happened. They said they would get back to her, but never did. Now, she faces the risk of having her credit continually damaged for a debt she no longer owes.**

## **FIGHT FOR FAIRNESS**

**This process is not intended to help you get your house for free. The primary goal is to delay the foreclosure and put pressure on the lender to negotiate. Despite all the hype about lenders wanting to help homeowners avoid foreclosure, most borrowers know that's not the reality.**

**Too many homeowners have experienced lender resistance to their efforts to work out a payment structure to keep them in their homes. Many lenders bear responsibility for these defaults, because they put borrowers into unfair loans using**

**deceptive, hard-sell practices and then made the problem worse with predatory servicing.**

**Most homeowners just want these lenders to give them reasonable terms on their mortgages, many of which were predatory to begin with. With the help of judges who see through these predatory practices, lenders will feel the pressure to work with borrowers to keep them in their homes. Don't forget lenders made incredible amounts of money by using irresponsible practices to issue and service these loans. That greed led to the foreclosure crisis we're in today. Allowing lenders to continue foreclosing on home after home, destroying our neighborhoods and our economy hurts us all. So, make it hard for your lender to take your home. Make 'em produce the note!**

## **STEPS TO FOLLOW**

**A. If your lender has already filed suit to foreclose on your home:**

- 1. Use the first form. It's a fill-in-the-blank legal request to your lender asking that the original note be produced, before it can proceed with the foreclosure. In some jurisdictions, the courts require the original request to be filed with the clerk of court and a copy of the request to be sent to the attorney representing the lender. To find out the rules where you live, call the Clerk of Court in your jurisdiction.**
- 2. If the lender's attorney does not respond within 30 days, file a motion to compel with the court and request that the court set a hearing on your motion. That, in effect, asks the judge to order the lender to produce the documents.**
- 3. The judge will issue a ruling at your hearing. Many judges around the country are becoming more sympathetic to homeowners, because of the prevalence of predatory lending and servicing. In the past, many lenders have relied upon using lost note affidavits, but in many cases, that's no longer enough to satisfy the judge. They are holding the lender to the**

**letter of the law, requiring them to produce evidence that they are the true owners of the note. For example:**

**A In October 2007, Ohio Federal Court Judge Christopher Boyko dismissed 14 foreclosure cases brought by investors, they failed to prove they owned the properties they were trying to seize.**

**B. If you are in default, but your lender has not yet filed suit against you:**

**1. Use the second form. It's a fill-in-the-blank letter to your lender which also requests they produce the original note, before taking foreclosure action against you.**

**2. If the lender does not respond and files suit against you to foreclose, follow the steps above.**

**UPDATE:**

**Features The Consumer Warning Network and the "Produce The Note" strategy.**

**Borrowers are putting this plan into action and getting results**

**Consumer Warning Network Featured on CNN**

**THE LATEST: Borrower wins more time to fight foreclosure! At a court hearing Tuesday, a Pinellas County, Florida Judge denied Wachovia the right to proceed with its foreclosure against borrower Jacqueline O'Brien (profiled in the CNN story). Instead, O'Brien was granted a continuance, as she pursues the produce the note strategy. Wachovia expressed interest in renegotiating the terms of the loan, rather than continuing the court battle. We'll keep you posted!**

**Source:**

<http://www.consumerwarningnetwork.com/2008/06/19/produce-the-note-how-to>

