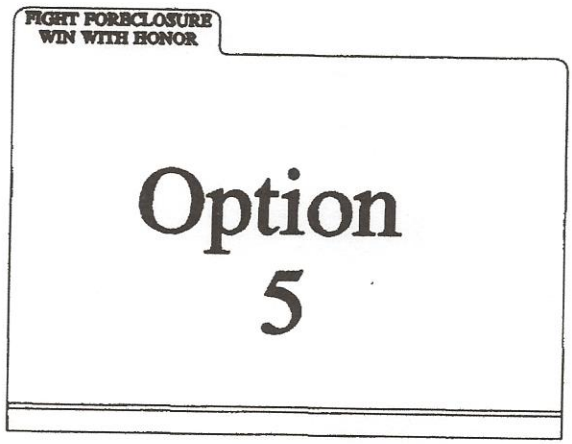

HOW TO WIN BY USING THE LEGAL SYSTEM

Let me preface this chapter by sharing a related story. An earlier draft of this chapter had been read by an attorney, one who does not specialize in foreclosure. Afterwards, he cautioned me to not to build up too many hopes in the legal system when, in fact, it is an uncommon way to fight foreclosure.

Although this may be true, this book would be incomplete without information on the legal system. Certain homeowners in foreclosure not only may need to know what to expect from the legal system, but also when to use it. In certain circumstances, the legal system may be the best route to a fair remedy, or may be a good way to just open up negotiations with a lender.

Most of the information in this chapter was obtained from attorneys, law books, legal digests or consumer groups, all with focuses on foreclosure matters. Among other things, ***this chapter contains important help and research regarding lender fraud or errors*** *from Consumer Loan Advocates (CLA), and, also,* ***5 model lawsuits - legal defenses against foreclosure*** *- written by lawyer Laurence Adams Malone, LL.B, Ph.D.*

As mentioned earlier in the disclaimer, I am not an attorney and am not giving legal advice. I am only trying to save you time and money by reporting what I have discovered while researching foreclosure. If this chapter helps someone, then it will be a success. So, read this chapter with an open mind. If something seems to fit your situation, contact an appropriate legal service for a professional opinion.

Basically, the lender and the foreclosure trustee, as well as other relevant parties, are required to act according to a prescribed set of rules and/or contractual agreements. If they do not, or if they have committed fraud, then the borrower may have the grounds for a lawsuit. The legal system may be used to fight foreclosure when **errors or fraud are found in the documentation, the servicing, the procedural steps or the overall administration of**:

1. **The foreclosing loan(s),**
2. **The foreclosure process, or**
3. **The original property purchase transaction. (This is rare, but possible).**

Even though loans may seem complex, they are really just governed by basic contract principles. When a homeowner stops making loan payments, doesn't the lender use a provision of the trust deed contract to foreclose? Likewise, if the lender commits fraud or refuses to correct an error, then why shouldn't you use the legal system to fight foreclosure?

Some loan watchdog groups, such as Consumer Loan Advocates (see pages 9-7 through 9-10), report that many lenders leave lots of room for errors, and even fraud. (See page 9-6, *Finding Errors In The Loan Servicing*.) Progressive Solutions Institute, which trains real estate agents to help homeowners in foreclosure (see pages 11-8 through 11-9), has said the same about trustees and foreclosure documents. (See page 9-3, *Finding Errors In The Foreclosure Process*.) In fact, errors and fraud can be created by almost anyone connected with your loan, starting with the originator of your loan and ending with the bidders at the foreclosure sale.

It may be possible to use any evidence of the errors or fraud mentioned above to delay or terminate the foreclosure action, or possibly, to obtain a money judgment. **But first, it is important to remember two points about errors and fraud:**

1. **An accidental error is vastly different than intentional fraud, and usually requires a different remedy. (Generally, errors may be used to negotiate a delay or stop in the foreclosure; fraud or uncorrected errors may need strong legal action, such as a lawsuit.)**

2. **In either case of error or fraud, always try to negotiate with the lender first.**

PRELAWSUIT NEGOTIATIONS

A rule of thumb: *Always negotiate for a solution and to avoid a lawsuit. However, if negotiations fail to bring about a reasonable solution, then a lawsuit may be your only remedy in certain cases.* Lenders file a NOD in search of a solution. Many times lenders prefer to negotiate a solution in order to avoid going to a trustee's sale, or becoming involved in a lawsuit. The negotiations will depend largely on the severity of the error or fraud. **Once you have found proof of an error or fraud, you may want to consider the following options before proceeding in negotiations with the lender, servicer or trustee:**

1. **Request that the foreclosure be stopped and that no new action be taken.**

2. **Request that the foreclosure be delayed, suspended or restarted from the beginning.**

3. **Ask an attorney to negotiate your case. This may give the negotiations additional power. (Although this may add an added expense, some lawyers may write letters for a reasonable fee. Also, call your local Bar Association for the telephone number of any free or low cost legal clinics.)**

4. **Threaten to file a lawsuit, if the grounds exist. (Again, an attorney may be helpful.)**

5. **File a lawsuit, if the grounds exist. A filed lawsuit may persuade the lender into negotiations. (Again, an attorney may be helpful; if you need to proceed with a lawsuit, see page 9-11 for a very general overview of what to expect from a lawsuit.)**

FINDING ERRORS AND FRAUD

If you are not already aware of any errors or fraud in your documents, then you may want to look for them anyway. Look through all your loan and foreclosure documents, as well as any other related paperwork. If a NOD has been filed and you are racing against the foreclosure clock, may need to accelerate the reading process. An aggressive researcher, whether yourself or someone you hire, who scrutinizes every aspect of the loan and pre-foreclosure process, including the documentation, can be very effective at finding errors.

"Have an expert realtor (real estate broker) study your loan documents for errors, typographical errors, errors in spelling names, addresses, anything on which you can challenge the documents," advises attorney Laurence A. Malone in his lawsuit-strong

book, *How To Avoid Foreclosure on Your Home, Farm, or Business.* See more on finding a real estate broker on page 11-7. (Progressive Solutions Institute trains realtors to find errors in foreclosure documents and procedures.) Some real estate brokers may have background as an attorney, or vice versa. Or, a real estate broker may be able to recommend an attorney with experience in foreclosure matters.

An attorney who specializes in loans or foreclosures may be very helpful in ferreting out errors. If, at some point, you decide to go to court against your lender or trustee, then you may need an attorney familiar with foreclosure, anyway. To find such an attorney in your area, consult the local and regional yellow pages under such categories as "Legal Aid," "Legal Clinics," or "Legal Services Plans;" or specializations under "Attorneys," such as foreclosure, or maybe even bankruptcy. You might also call the local or state Bar Association or call the CLA number listed on page 9-10 for a recommendation (CLA specializes in interest errors in loans).

Regardless of whether you choose a lawyer, a real estate broker or other appropriate researcher(s) to look for errors or fraud in your documents, take extra care before you hire one to determine: (1) their knowledge of foreclosure legal work, and (2) their fee for reading your documents for errors. On this last point, you may get a free reading from a friend in the legal or real estate business, or from someone in a legal clinic. Also, if a case has the strong potential for money damages, then an attorney may take the case on contingency, meaning no up-front money now, but a large percentage of any future money settlement or judgment.

Interview as many prospects as possible in order to find a reader who knows foreclosure well. Otherwise, you may end up paying for their time to learn the subject! To screen the prospects, rephrase some of the key points in this chapter, and the book, into questions in order to determine whether they know about foreclosure principles. The main point is to make a wise and informed decision when selecting someone to read your documents for errors. Upon finding and retaining the right person, give him/her copies, not the originals, of all your loan documents and foreclosure papers. Remind them that ***time is of the essence.***

Two areas where errors commonly occur:

1. **Errors In The Foreclosure Process.**

2. **Errors In The Loan Servicing.**

Finding Errors In The Foreclosure Process - The lender or trustee often makes mistakes in some aspect of the foreclosure documents or process ranging from a misspelled name to neglecting to publish, post, or mail the NOD and/or the NOTs. By finding these errors and pointing out them out to the lender/servicer, the homeowner can force a delay or stop of the foreclosure. Many times, pointing the error(s) out at the last minute in the foreclosure timeline can create a maximum delay. Significant errors, or fraud, may be sufficient grounds to negotiate favorable changes in the loan terms, to launch a lawsuit or to receive a money settlement.

According to California Civil Code Section 2924, certain events must occur at prescribed times during the foreclosure process. In addition, the names, addresses, document numbers, etc., must be spelled correctly on the foreclosure documents. Since the slightest error is common and helpful, **read every document and check every procedure generated during the foreclosure period for accuracy:**

1. **Study the facts that appear on the NOD and the NOTS that you receive, that appears in the advertising and that is posted in a public place. These must be compared, and checked for errors, to the facts which appear on the promissory note and deed of trust that you signed when you secured your loan.**

2. **The procedure that the foreclosing trustee used must be compared, and checked for errors, to the timelines that are specified by law.**

Check the accuracy of your documents by using the following checklist as a general guide (see pages 1-27 through 1-29 for examples of the documents you most likely received at the time you first signed for your loan secured by a trust deed; see pages 1-30 through 1-36 for examples of documents that are likely to be prepared during the foreclosure process, some of which are sent to you):

1. Compare for exact accuracy the details on your promissory note and trust deed to the details on every document the trustee mails, advertises and posts during the foreclosure process (see page 1-26 for explanations of each detail):

   a. Document Number,

   b. Date of Execution,

   c. Trustor (borrower),

   d. Trustee (unless a Substitution of Trustee, page 1-30, has been filed; if so, check it too),

   e. Beneficiary (lender),

   f. Legal Description,

   g. Amount of Indebtedness,

   h. Venue,

   i. Look for errors or discrepancies.

2. Check the accuracy of the procedure used by the foreclosing trustee. Compare the following timeline to the dates on every document that the trustee mails, advertises and posts during the foreclosure process (see *Power of Sale*, page 17-1, for the California Civil Code Section that governs foreclosure procedure):

Day 1 - Recording the notice of default:

The date that the notice of default (see page 1-31 for an example of a notice of default) is recorded begins the 3 calendar months of the default period. The notice of default must have certain specified information. [See highlighted sections on pages 17-1 and 17-2 within CC§2924.]

Within 10 days from recording the notice of default:

The trustee must mail a copy of the notice of default to every trustor on record and to anyone who has filed a request for notice of default and request for notice (see more on requests for notice on pages 11-15 and 11-43). [See highlighted sections on page 17-4 within CC§2924b(b)(1) and on page 17-6 within CC§2924b(e).]

Also, the notice of default must be published once a week for at least 4 weeks in a newspaper of general circulation in the county in which the property is situated if certain circumstances exist. (See page 1-33 for an example of a published notice of default.) [See the highlighted section on page 17-5 within CC§2924b(d).]

Within the first month from recording the notice of default:

The trustee must send by certified or registered mail a copy of the notice of default to the borrower, and those listed in A through F on page 17-5. [See highlighted sections on pages 17-4 and 17-5 within CC§2924b(c)(1)(2) and page 17-6 within CC§2924b(e).]

3 months from recording the notice of default:

The trustee must give notice of the trustee's sale, stating time and place, and containing certain specified information. (See page 1-32 for an example of an notice of trustee's sale.) [See highlighted sections on page 17-2 within CC§2924 and on pages 17-11 and 17-12 within CC§2924f(b)]

25 days before the trustee's sale date:

The trustee must send a notice of trustee's sale to the IRS whenever the IRS has a lien recorded against the property.

20 days before the trustee's sale date:

The trustee must publish a notice of trustee's sale once a week for 3 weeks in a newspaper of general circulation in the county in which the property is situated if certain circumstances exist. (See page 1-34 for an example of a published notice of trustee's sale.) [See highlighted section on page 17-11 within CC§2924f(b).]

The trustee must post a notice of trustee's sale in a public place and on the property in foreclo-

sure. [See highlighted section on pages 17-11 and 17-12 within CC§2924f(b).]

The trustee must send by certified or registered mail a notice of trustee's sale to each person who was sent a notice of default, including any state tax agencies, notifying them of the date, time and place of the trustee's sale. [See highlighted section on page 17-5 within CC§2924b(c)(3) and page 17-10 within 2924e.]

Within 10 days from the first publication of the notice of trustee's sale:

If the property in foreclosure has no common street address or designation, then the notice must list the name of the lender, who, in turn, must provide written directions to the property upon request. [See highlighted section on pages 17-11 and 17-12 within CC§2924f(b).]

14 days prior to the date of the trustee's sale:

The notice of trustee's sale must recorded with the county recorder of the county in which the property is located. [See highlighted section on pages 17-11 and 17-12 within CC§2924f(b).]

7 days prior to the date of the trustee's sale:

The trustee sale must wait 7 days after the dismissal, expiration or termination of a court ordered injunction, restraining order or stay. [See highlighted section on page 17-14 within CC§2924g(d).]

5 business days prior to the date of the trustee's sale:

A loan in default may be reinstated anytime from the filing of the notice of default until 5 business days prior to the trustee's sale. Within the 5 days before the sale, the loan may be reinstated at the lender's discretion. [See highlighted section on page 17-8 within CC§2924c(e)]

Sale day:

Any reason for postponement must be made public at the time and place of the appointed sale, and concurrently, a new date, time and place must set forth. [See highlighted section on page 17-14 within CC§2924g(d).]

After 3 different postponements by the lender/trustee, which are independent of any borrower-requested or court-ordered postponements, a new notice of trustee's sale must be recorded in the manner prescribed by Section 2924f. This starts the complete notice of trustee's sale period over again. [See highlighted section on pages 17-13 and 17-14 within CC§2924g(c)(1)(2).]

Other Laws: Request the following from the lender. If it fails to comply, you may have the basis for negotiation or other action:

1. According to Section 941 of the Affordable Housing Act (see page 9-9), lenders/servicers have a duty to respond to borrower's inquiries.

2. According to California Civil Code Section 2943, within 2 months after a NOD, and within 21 days of the receipt of a written demand from the borrower, a lender must deliver a beneficiary statement, which includes the unpaid loan balance, any back payments, the amounts of periodic payments, the date(s) the loan is due, the date(s) the taxes have been paid, amount or insurance, amount of impound accounts, amounts of liens paid by the lender and whether the loan can be transferred to a new borrower.

3. According to California Civil Code Section 2937, if a loan has been transferred to another lender, then the borrower must receive the following notice by mail: The name and address of the person to which the transfer of the servicing of the loan is made, the date the transfer was or will be completed and a statement of the due date of the next payment.

4. According to California Civil Code Section 2934a, if the original trustee named in the trust deed is to be substituted, then a substitution of trustee must be recorded before the notice of default. Additionally, if a notice of default has already been recorded, then the borrower and all others requiring notice, must be notified by mail of the substitution of trustee.

Finding Errors In The Loan Servicing - Lenders often charge more interest than their contract specifies, collect too much for the impounds/escrow account or make some other type of mathematical error. By these errors and pointing them out to the lender/servicer, the homeowner can force a delay or stop of the foreclosure. Many times, pointing the error(s) out at the last minute in the foreclosure timeline can create a maximum delay. The more severe errors may even be used to negotiate favorable changes in the loan terms, to receive a money settlement or to launch a lawsuit.

Regulation Z may provide a powerful basis for negotiating with the lender regarding errors in the loan documents. **Regulation Z, the Truth in Lending Law**, was enacted by Congress on July 1, 1969. It provides for certain procedures that must be implemented by anyone who loaned money more than 25 times during the year or more than 5 times a year for transactions secured by dwellings (This includes almost every bank, savings and loan or institutional lender.) The procedures these institutions must follow include full disclosure of items such as the interest rate charged, the full amount of the loan, the full amount of the interest, and the annual percentage rate (APR). There is even a specific method of calculating the APR that must be used.

Most real estate transactions governed by Regulation Z are termed closed-end credit transactions because they are offered for a specific time period. The amount of the loan, the costs and the schedule for repayment are all agreed to in advance. The lender is obligated to reveal to the borrower the exact amount of the finance charge under Regulation Z. This includes interest on the mortgage, transaction charges, service charges, loan fees, mortgage insurance, premiums for property insurance (if required by the lender) and premiums for health or accident insurance (if required by the lender).

The bottom line to all of this is that calculating the APR accurately can be very difficult for the lender. Even when the calculation is made by an experienced member of the lender's team, often there are mistakes. An example of this is the Campbell case, which occurred in southern California. In this case, a borrower was negotiating a $500,000 mortgage for a residence he intended to occupy. The loan was arranged and all of the documents were ready to sign. That is when the borrower had to back out of the deal. A few weeks later, the borrower came back and said that he was now ready to proceed. This happened twice before the borrower finally went through with the deal.

So, what was the problem here? The escrow company, faced with having to draw and redraw documents, added an additional fee of a little over $100 for its extra work. This fee was clearly listed in the closing statement the borrower signed. However, it was never added into the APR. The Regulation Z document the borrower signed did not reflect this fee.

A while later, when the property went into foreclosure, the borrower's attorney claimed that the lender had violated the law by not including the extra $100 when calculating the APR. The final disposition of the case was that the lender agreed that the borrower did not have to pay any interest at all. Also, the borrower was required to repay only $400,000 of the original $500,000 debt.

Obviously, Regulation Z can be a strong tool in stopping foreclosure. Even a tiny error in the documents may be sufficient grounds for halting a foreclosure. Regulation Z also provides penalties for lenders who make errors, including loss of part or all of the interest due the lender, fines up to 3 times the amount loaned and possible rescission of the transaction.

If you choose to try to delay or stop foreclosure by suing your lender for not complying with the Truth in Lending Law, your first step is to locate your Regulation Z documents. If you can't find them, contact your lender and ask for copies. If the lender refuses for any reason, you probably can force him to give you copies by contacting the appropriate agency that regulates your particular lender.

Next, examine the documents carefully to look for errors. The APR is so complicated to calculate that your lender, even someone very experienced, could easily make a mistake. It could be extremely hard for you to determine if there are errors in your

Regulation Z form by yourself. At this point, consulting an attorney is a good idea. Even though the attorney may cost money up front, if errors are found, and if you want to save your house, then it may be worth it. Remember, make sure you consult an attorney who has expertise in real estate loan and foreclosure matters.

Even if you are unsure whether anything is wrong with the documents, Regulation Z is a good delaying tactic to slow down a foreclosure. Because of the liability involved, some lenders will abandon the foreclosure or reduce the mortgage amount when faced with a Regulation Z lawsuit.

When do you attempt a Regulation Z lawsuit? First, try to negotiate with the lender. If your lender will not be reasonable, then it may be best to consult a lawyer.

Consumer Loan Advocates (CLA) - CLA is the nation's foremost loan auditing firm. For example, in 1991, CLA audited 9,000 adjustable rate mortgages and found a 47% error rate with an average overcharge of $1,588. Seventy-seven percent of the errors were overcharges by the lender. In a more recent study, close to a 75% rate of error was found in the monthly payment calculations on 110 home equity lines of credit, now the most popular type of consumer borrowing (see page 8-4). Sixty-seven percent of the errors were overcharges by the lender.

The following is reprinted from the summer 1992 edition of the CLA newsletter *Loan Watch Series*: CLA has identified **5 major causes for errors** in ARMs, commercial loans and lines of credit:

1. **Inadequate Training of Personnel** - In surveys of servicing operations, the personnel charged with managing thousands of notes on a daily basis are often the lowest ranked employees in the institution. Moreover, because lenders/servicers view these positions with such little regard and expect "high turnover," they choose not to invest in training programs.

2. **Inadequate Number of Personnel** - Lenders often "sell the note in the secondary market," and servicers tend to operate under thin margins. Their primary objective is to operate with as small a support staff as possible.

3. **Inadequate Data Servicing Systems** - Many of the servicing systems still in operation today are outgrowths of the "fixed rate mortgage" environment. That is, as notes evolve and change, servicers are attempting to jam them into a system for which they were not designed.

4. **Sheer Number and Variety of Notes** - In a highly competitive environment lenders are constantly redesigning notes. For example, a newly introduced ARM note now allows the borrower, after the first year, to decide whether to pay interest only for a period of time, or to accelerate principal reduction. Clearly, the dynamics of this flexibility could cause nightmares for servicers. With lines of credit approaching 25% of all consumer debt, new varieties are occurring weekly.

5. **Market Dynamics** - During the 1980's lenders were in a 'production' mode. Their primary objective was to increase loan volume, thereby earning fees on 'upfront points' and servicing rights. Since income on servicing was secondary, computer systems and software were not a priority.

"As interest rates tumbled during 1991 and 1992, lenders entered into the refinancing frenzy. The market place swelled with homeowners who were willing to pay 'points' up front in return for lower interest rates on their mortgage. Given the rapid pace of these transactions, a high percentage of 'pay off' balances were found to be in error. The good news for consumers is that the statute of limitations laws allow them to collect any overcharges on paid off notes.

Finally, the RTC's (Resolution Trust Corporation) assumption of billions of variable rate notes into its makeshift servicing system has only served to worsen error problems. Moreover, it is well known that consumers are having difficulty communicating with this agency.

Key Signs of Errors - The following is reprinted from the summer 1992 edition of the CLA newsletter *Loan Watch Series*:

1. **The Loan has been Sold to Another Lender/Servicer.**

Whenever loan data is being transferred from one lender to another, there is a chance for incompatibility of data service systems. Data processing individuals are faced with having to mesh differing software programs.

2. **The Loan is Based on an Unusual Index.**

"The 1 year treasury bill is a common index. Less common indexes force the lender to perform ongoing research to ensure the correct index is used and is taken from the correct source.

3. **The Loan Note Includes Blank Spaces.**

Blank spaces left on a note allow room for typists to insert other terms and rates.

4. **The Loan is Older.**

It has been shown that ARMs issued prior to 1985 have a higher error rate due to the inadequate software/hardware utilized during that period.

5. **The Loan is Complex.**

Loans with six month terms and biweekly payments leave more room for error.

6. **Lender Confusion.**

If a borrower cannot receive an adequate explanation from the lender regarding a perceived problem there is a good chance the lender does not understand it.

Home Equity Loans are similar to ARMs - The following is reprinted from the summer 1992 edition of the CLA newsletter *Loan Watch Series*: Since home equity loans are ever changing, highly diverse, utilize inadequate servicing software, and need technical support, they are almost identical to ARMs. Additionally, the profit pressures on lenders during the recent recessionary period have led to limited investment in staff training and account servicing, causing customer service problems. **Listed below is a sampling of errors being made by lenders on home equity loans and commercial lines of credit.**

1. **Lender is using an incorrect accrual basis for calculating the daily interest amount.**

Example: The note calls for the following daily interest rate formula.

$$\frac{\text{balance x rate}}{\text{no. of days in year (365)}} \times \text{actual days transpired}$$

If the lender uses 360 days for "no. of days in year" instead of 365, 5 extra days of interest are incorrectly charged to the borrower.

2. **The lender calculates the wrong number of days between two interest charge periods.**

Example: Feb. 1 to Mar. 1 is the interest charge period and the note calls for actual days.

If the lender's servicing system is correct, 28 days of interest will be charged. However, if the lender's servicing system is on a 30 day month, 30 days of interest will be charged.

3. **The lender uses the wrong margin amount.**

Example: The note contract calls for a margin of Prime plus 3. The lender charges the customer a margin of Prime plus 4.

4. **The lender uses the wrong index value during the month.**

Example: The note calls for the index value to be chosen at the end of the month. The lender uses an index value at the beginning of the month.

5. **The lender uses the wrong effective date for rate changes.**

Example: The note calls for the interest rate to change on the fifteenth of each month. The lender changes the interest rate at the beginning of each accounting period. (This could be the first of the month, depending upon the billing cycle.)

6. **The lender uses an incorrect loan balance when calculating the amount of interest due.**

Example: Lender is using a $32,000 instead of a $29,000 balance when calculating interest amount due.

7. **The lender uses the wrong index type.**

Example: The note calls for the Wall Street Prime as the index to be used. However, the lender uses the 11th District Cost of Funds.

8. **The lender uses the correct index type, but the incorrect version.**

Example: The Lender uses the Wall Street Journal Prime. However, it is the highest announced/published version: Wall Street Journal Prime High. But, the note calls for the lowest announced/published version: Wall Street Journal Low. (The different versions are arrived at through surveys of different lenders in various regions of the country. Depending upon lender attitudes in each region, rates can be different.)

9. **The lender uses the incorrect source for the index and other errors.**

Example: The lender obtains the index from Telrate Systems, a firm which disseminates daily indexes direct from the financial markets. These rates can be more volatile based upon the world events of the day. However, the note calls for the index to be sourced from the Federal Reserve Board Statistical Release, which is issued weekly. The timing of the release can impact the interest rate charged significantly.

Lenders Must Respond In A Timely Manner -

The CLA newsletter also reports on new legislation that helps consumers collect refunds. The following is reprinted from the summer 1992 edition of the CLA newsletter *Loan Watch Series*:

"Now, for the first time, borrowers can make their lenders accountable. The lender cannot set its own time table in correspondence with a borrower. They must put in writing why they are servicing the loan correctly. This must be done in a timely manner or they face punitive damages.

"According to Section 941 of the **Affordable Housing Act**, lenders and servicers have a duty to respond to borrower's inquiries. There are 2 key elements for the consumer:

1. The servicer must provide a written response to any borrower inquiry and acknowledge receipt of the correspondence within 20 business days. If the servicer does not respond during this period, the borrower has the right to sue the servicer for up to $1,000, with the servicer paying all attorney's fees.

2. Not later than 60 business days after receipt of the borrower's inquiry, the servicer must make appropriate corrections to the account, or provide the borrower with a written explanation as to why the lender is correctly servicing the account. If the lender does not meet this deadline, the borrower has the right to sue for $1,000, and the borrower can collect all attorney's fees."

How CLA May Help You find Errors - CLA is in the business of analyzing loans for errors in interest rates. For a fee which will vary according to your type of loan, CLA will analyze your loan with its sophisticated computer software. CLA audits adjustable rate mortgages (ARM), a home equity lines of credit and fixed-rate loan. Of the 3 types of loans, CLA typically finds more errors in ARMs and equity loans than in fixed-rate mortgages.

The CLA audit checks for errors in the interest rate adjustments over the life of the loan. **Basically, the audit indicates:**

1. **The nature of the mistake, if any, and**

2. **An approximate dollar value of any overcharge.**

The audit actually does an estimated reamortization, and incudes estimates of overcharges, if any. This will reflect what should be charged by the lender, but cannot reflect any overpayments or under payments made by the borrower. In fact, any such variations in the history of the specified loan payments will affect the CLA analysis by a few percentage points. The reason CLA cannot calculate the exact dollar amount of any error is because CLA takes into account compounding.

CLA's fee does not include payment application. An audit of payment application is analysis intensive and costs an additional fee, which depends on the number of years being audited. Payment application is defined by CLA as:

1. The correct dollar amount of each monthly payment,

2. The correct date that each payment was received by the lender,

3. The precise amount applied separately to interest and to principal.

Since fixed-rate loans usually have the fewest errors, such an audit may not be the best value, unless, of course, an error is found. CLA claims that some problems do exist with fixed-rate loans, primarily, with the way payments are applied. Occasionally, small amounts may be misapplied. For example, instead of a late charge being accrued, it may be added on to the principal balance, and then interest will be charged to it.

When You Order a CLA Audit Analysis Report - When a borrower calls and orders a CLA audit they are sent a manual called **ARM Aid**. Chapter 1 of **ARM Aid** outlines which documents are needed from the borrower for the audit and how to get them if you don't have them already. The documents usually include such things as a copy of the promissory note, a rider, if any, and a copy of any notice of interest rate change. Send legible copies of your documents to CLA, but not the originals. In 4-6 weeks, CLA will provide you with a completed audit analysis report. For an additional rush fee, CLA can have the audit report ready in about 2 weeks.

ARM Aid explains how CLA analyzes your loan with its software. The book also shows how to go about collecting an overcharge from the lender, or how to have the principal amount reduced (See *Decreasing The Principal Amount* under ***Note Modifications*** on page 7-10 for more on principal reduction.) The book contains helpful form letters, templates and procedures to follow.

CLA stands behind their audit 100%. If the lender disagrees with the audit, CLA will explain the audit to the lender. Although most lenders are not aware of errors, when errors are brought to their attention they usually make restitution immediately. However, when a borrower has difficulty collecting, CLA may help the borrower on contingency for a split of the recovery amount. CLA might consider helping a homeowner on a contingency basis. Their decision to take the case depends on who the lender is, what the problem is, and if the dollar amount is high enough to make it worthwhile.

For homeowners looking for errors in hopes of stalling a foreclosure, a CLA audit may be an approach to consider. On the other hand, if no errors are found, then the fees paid to CLA may be wasted money. However, it may be less than the hundreds of dollars that may be paid to a mortgage foreclosure consultant, an attorney, a real estate broker or other consultant to search for errors.

CLA HOTLINE - (800) 767-2768
(708) 615-0024

LAWSUITS

The purpose of this section is to give the borrower some idea of what to expect from a lawsuit. When lender errors or fraud are found and the lender refuses to correct it, then the borrower may be forced to consider a lawsuit against the lender. A homeowner in foreclosure may want to sue not only to recover damages caused by the error, but also, to stall, stop or reverse the lender's foreclosure action. An attorney knowledgeable in both California's foreclosure laws and the federal truth-in-lending laws who is armed with the right error may be able to stall or stop the foreclosure process, and possibly even turn it on the lender to recover a money settlement or judgment.

It is difficult to cover in the limited space of a book all the kinds of cases a worthwhile attorney could possibly build for you. The substance of your particular legal action would depend greatly on your particular situation. That is why it is so important to scrutinize your paperwork and the actions of your lender and trustee.

As indicated in Option chapter 3, FHA and VA lender must attempt to cooperate with borrowers in a workout, or otherwise attempt to give borrowers some latitude in resolving their foreclosure problems. However, there is some confusion as to whether non-FHA and non-VA lenders similarly are required to cooperate. But, if a lender or trustee continues to foreclose without heeding a borrower's attempt to work out the situation, and if this harms the borrower, then the borrower may have the basis for a lawsuit.

For example, let's say a borrower is in the process of selling or refinancing his/her property, but the escrow will not close before the scheduled trustee's sale. If the lender or trustee will not stop the sale to accommodate the escrow, then the borrower may have the basis for a lawsuit. The same may hold true when a lender will not cooperate in a workout with the borrower. This may be especially true in cases where the borrower demonstrates the ability to cure the default at a date after the scheduled trustee's sale, such as with an upcoming lump sum payment from an inheritance or business contract or other verifiable source of funds.

In such cases, the lender's action may unnecessarily harm the borrower. To prevent this, the borrower would have to go into court and ask the judge to issue a preliminary injunction (PI) or temporary restraining order (TRO) to stop the trustee's sale. Typically, the judge would give the borrower an extra month or so, but would stipulate that if the borrower did not perform as promised, then the trustee's sale would to occur after all.

Nevertheless, there are a few legal tactics that homeowners or their attorneys have used to stop or stall foreclosure. When faced with foreclosure, the best legal defense is to take offensive action as soon as possible. Since it is so important to act early in the foreclosure process and since these legal techniques may take time to process, the homeowner also should concurrently pursue any other applicable foreclosure remedy/option mentioned in this book. The following legal techniques may not apply to every foreclosure situation. However, when they do apply, they may have dramatic results.

Lawsuits can be filed by an individual, or by an entire group of people in what is known as a class action suit. **Lawsuits can be filed on several levels,** according to syndicated columnist Kenneth Harney. The following excerpts are from a Harney article regarding mortgages (©1992, *Washington Post Writer's Group. Reprinted with permission)*:

1. **"The most basic is breach of contract under state law."**

2. **"If the (borrower's) legal counsel can show that the lender's breach of contract was part of a larger pattern or practice, the borrower can sue for fraud or fraudulent concealment - opening the way to even stiffer monetary damages."**

3. **"Finally, the borrower can sue for violations of the federal truth-in-lending statue."**

Even though loans may seem complex, they are really just basic contract law. Some lenders may scoff at the reasoning behind some claims of errors and say such claims are a twist of the intent of the original loan agreement. But when a borrower is four payments delinquent, doesn't the lender claim that the intent of the note for non-payment calls for foreclosure? So, too, if the lender makes a material breach of the loan agreement, then shouldn't the lender be subject to legal action by the borrower?

In cases where the lender refuses to correct an error, the borrower should confront the lender with the error in writing. A letter form your attorney may have more impact. The point is to get the lender to explain, in writing, why its position is in accordance with the original contract. For example, if the loan agreement states that the lender is to charge interest according to a certain method, but if the lender actually charged interest according to a different method, then explain this in your letter. The borrower's letter to the lender might include copies of the loan agreement highlighting the specified interest method along with payment receipts highlighting the interest method that was actually used.

If and when the lender does respond with a letter, then the borrower now has documentation of the lender's position. This documentation may be used to compare and analyze both the lender's error and the lender's excuse for the error. If the lender's excuse does not reasonably resolve the dispute, then there may be a basis for a lawsuit against the lender. In addition, if the lender does not respond to your letter in a timely manner, then the lender also may be additionally sued for violation of section 941 of the Affordable Housing Act (see page 9-9).

Sometimes, lawsuits on a one-on-one basis are costly and, thus, impractical. But, perhaps your attorney will handle the case on contingency. Some loan contract specifies attorneys fees to the prevailing party. Or your case amy be so strong that you feel you will win. Just the threat of a lawsuit may prompt a lender to attempt to negotiate a settlement out of court. But if the lender still refuses to acknowledge or correct an error, then a lawsuit may be inevitable.

Class Action Lawsuits - A class action lawsuit may be possible if your loan is one that has systemic errors, i.e., one of many loans in a lender's system of loans which all have the same error. Due to the fact that it may be possible to delay the trustee's sale until such a case is resolved, the lender may be more willing than usual to negotiate a settlement with terms favorable to you.

If your loan is one of the first to be discovered, then you may become a lead plaintiff in a class action suit. Lead plaintiffs usually pay nothing for participation in the lawsuit, and also may be paid an extra bonus.

In order to file a class action you must gather a group of borrowers with a similar problem. CLA may be able to help establish up a class (See Consumer Loan Advocates [CLA] on pages 9-7 through 9-10). CLA may be able to analyze its thousands of audits to see if others match a borrower's particular lender with the borrower's particular error.

Preliminary Injunctions and Temporary Restraining Orders

Due to the out-of-court nature of the non-judicial foreclosure process, the courts usually get involved only if the borrower or another interested party files a legal action attacking the foreclosure sale. In such a legal action, the relief available to a borrower depends on whether the action is filed before or after the trustee's sale. If the suit is filed before the sale, the borrower may attempt to enjoin or prohibit the sale with a **Preliminary Injunction (PI) or Temporary Restraining Order (TRO)** until the court can determine the underlying issues (To compare PIs and TROs with the automatic stay in bankruptcy proceedings, see page 6-3.) Preliminary injunctions are not available after the conclusion of a sale. However, if the suit is filed after the sale, the borrower may ask the court to set aside a completed sale (see below).

Grounds for prohibiting the trustee's foreclosure sale fall into 2 categories:

1. The trustee's right to foreclosure is contested because:

   a. No actual default exists under the loan agreement,

   b. The lien against the property is invalid, or

   c. Fraud existed in the original transaction.

   In other words, since the borrower's default is not always looked at by the courts as a breach of contract, the courts may be persuaded to issue a PI or TRO to prohibit the trustee's sale until they can resolve the above issues.

2. The trustee's sale procedure is defective, such as the NOD, the NOTS, or the proposed conduct of the sale.

   In other words, a PI or TRO may be granted when the foreclosure trustee fails to comply with the statutory regulations which regulate trustee's sales. For instance, if a NOTS is not published, but a sale is scheduled, then the sale may be prohibited due to defective procedure. In such a situation, the borrower's only remedy may be to correct the incorrect procedure before allowing the trustee to proceed with the sale. Nevertheless, the PI or TRO may delay the sale long enough to give the borrower some added advantage, such as time to cure the default by using 1 or more of the other options mentioned in this book.

The California Code of Civil Procedure specifies the difference between a PI and a TRO. A temporary restraining order halts the foreclosure process only long enough for a court to decide whether to grant a preliminary injunction. A preliminary injunction halts the foreclosure process until a final determination is made in the case. Additionally, a permanent injunction may be issued depending on the outcome of the trial. The borrower must decide when to seek a PI or TRO. Basically, if a trustee's sale is scheduled to take place within 15 days, then a TRO should be sought at once since this time period is too short to obtain a PI.

Even if a borrower loses a lawsuit to prohibit the sale, the court might allow some period of time after its decision to reinstate the defaulted loan, if the borrower so requests.

Bonding Requirements - The court may or may not require a bond to be posted when issuing a PI, depending on the case. In situations where a bond is ordered, the PI does not become effective until the bond is posted.

File a *Lis Pendens* - Another important tool in fighting foreclosure through the legal system is the lis pendens (which means "a lawsuit is pending.") A notice of lis pendens should be recorded against the property immediately after the action is filed to prohibit the trustee's sale. If the property is sold with a notice of lis pendens recorded against it, the purchaser buys it subject to the borrower's legal action. A lis pendens may be sufficient to scare off a buyer as well as a title insurance company.

Setting Aside the Sale - If a trustee's foreclosure sale has already been completed, then the borrower may want to file a suit to have the sale set aside. The same grounds mentioned above to prohibit a sale also may be used to attempt to set the sale aside. However, it may be impossible to set a sale aside under certain circumstances.

In previous cases, grounds for setting aside a sale have included:

1. There was no breach of contract,

2. Problems existed with the presale foreclosure process,

3. Improper conduct by the trustee/lender at the sale, and

4. Gross disparity between sale price and value when unfairness and irregularity are also present.

Credit Is Not Money

In his book, *How to Avoid Foreclosure on Your Home, Farm or Business*, attorney Lawrence Adams Malone, LL.B., Ph.D. (see *Additional Reading and Services* on page 20-1), cites examples of ultra vires bank contracts. When a corporation executes a contract beyond the scope of its powers, the courts consider the contract void or "ultra vires."

One example is the case of Merchant's Bank vs Baird (160 F 642). In this case, the court decided, "A national bank...cannot lend its credit to another by becoming surety, endorser, or guarantor for him, such an act is ultra vires...." Thus, if you did not receive cash from your lender, you may have grounds to sue your lender for breach of contract and fraud, according to Malone.

A few foreclosures have been fought and won by homeowners who sued lenders for fraud, usury, mail fraud and racketeering or who challenged the accuracy of the documents they received upon loan approval. In your battle against foreclosure, one of the most important questions you may answer is, "After obtaining a loan, did I actually receive any real money--not just a slip of paper--from my lender?

When applying for a loan from a bank or other lending institution, the borrower is negotiating an agreement by which the lender promises to provide a certain amount of money. In exchange, the borrower repays the lender at regular intervals at an agreed upon interest rate. The lender's profit is the finance charge. The potential problem here is that the lender agrees to give "legal tender" to the borrower. Not only does the lender typically provide only a bookkeeping entry or check (a piece of paper symbolizing credit), but the lender usually does not have the money to back up the loan.

Even though the lender's check appears to represent money because it can be deposited into your bank account, it is not "real" money. What you received was credit. And credit is not legal tender. While this may seem harmless, when a bank lends its credit, it is unjustly enriching itself and, as a result, it is breaking the law.

Here's the problem: Banks keep a minimum of 5% of their reserves in their vault. This means that if $5,000 is deposited in the bank, $5,000 can be used to create $100,000 in credit, which the bank, in turn, can lend.

Actually, the bank loans liabilities or debts, not cash or assets. The bank's money in its vault are its cash assets. When it lends cash, it lends assets. When the bank lends its credit, it is actually lending its liabilities and lending your liabilities simply is not legal for any person or institution.

There is no bank charter that gives a bank permission to lend its debts as money. In article I, section 10, paragraph 1 of the U.S. Constitution, it states that no state shall "coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, ex post facto law, or law impairing the obligations of contracts."

In addition to breach of contract and usury, a homeowner may have grounds to sue a lender for mail fraud and racketeering. The Federal law (18 USCS 1342 & 1962) states that anyone who uses the US mail 2 or more times within 10 years to collect an unlawful debt is engaged in mail fraud and is guilty of racketeering. Your lender, who may have created an unlawful debt by lending you credit undoubtedly will have sent you 2, 3 or more notices that your payments are late and that legal action will be taken against you. If they have sent 2 or more of these letters within the past 10 years, your lender is breaking federal law. In addition, under 18 USCS 1964 section C, a person injured in his business or property by a violation of section 1962 of that chapter may sue for "3-fold the damages he sustains and the cost of the suit, including reasonable attorney's fees."

Mallone's book gives very detailed instructions on how to proceed with this kind of lawsuit. A borrower exploring this type of legal action may want to get a copy of Mallone's book from the local library. (See *Additional Reading and Services* on page 20-1.) Also, see model lawsuit #5 for more on this type of legal action.

Personally, I do not fully understand all the mechanics behind the "credit-is-not-money" legal approach. I only include it here since it is a foreclosure defense recommended by an attorney. I strongly suggest that if you are considering this type of legal action, then please consult an attorney who is knowledgeable in this area of the law and who can further clarify this legal approach.

MODEL LAWSUITS

The following model lawsuits are included for 3 reasons. First, they have been written as legal defenses against foreclosure by a licensed attorney. Second, reading through the models may give you a better understanding of foreclosure lawsuits. Third, they may be handy to you or your attorney when preparing a lawsuit. After reviewing these 5 model lawsuits, if you want to proceed with a lawsuit, then consider consulting an attorney with experience in foreclosure matters.

The following *5 Model Lawsuits* and the subsequent section, *Legal Karate in the Courtroom*, are reprinted here from the book ***How to Avoid Foreclosure on Your Home, Farm or Business***, with permission from the author, attorney Lawrence Adams Malone, LL.B, Ph.D. Malone's book is lawsuit-strong and is billed as having "courtroom karate with model lawsuits for the layman and his attorney." Although Malone's book is currently out of print, a great number are in circulation in many of the city and county library systems throughout the state of California. Despite the fact that Malone's book was last published in 1986, Mr. Malone told me in a telephone conversation that the principles behind the model lawsuits reflect current legal proceedings.

Malone's book was written to cater to the entire United States. Since each state has specific laws which apply to foreclosure, these models should be taken as they are labeled: as models only. They do an excellent job of conveying the differences in the types of lawsuits that can be filed as well. Since the particulars of each lawsuit may be different, use part or all of the models to help create a lawsuit which is tailored to your specific needs.

The remainder of this chapter includes the 5 model lawsuits reprinted **verbatim** from Chapter 8 of Malone's book, plus his section on courtroom karate (Please note that throughout Malone's models blanks are provided for information specific to individual case; also, question marks [?] appear before certain paragraphs which may or may no need to be added to your particular lawsuit):

MALONE'S FORECLOSURE DEFENSES

Foreclosure Impending. When foreclosure is impending, you should act right away to commence suit against your lender, especially in states where foreclosure can occur by a mere advertisement or some other form of public notice and sale take place under third party Trustee Sale.

Model Lawsuits. In the following pages, you will find five model lawsuits, any one of which may be applicable to your particular situation.

Model #1: If you are suing a bank use Model lawsuit #1.

Model #2: If you are suing a mortgage company or a financial institution other than a bank, use Model Lawsuit #2.

Model #3: If you are filing a lawsuit after a sheriff or Trustee sale, use the information given in #4 with either #1, or #2, to make up Model Lawsuit #3.

Model #4: If you are going to a sheriff or trustee sale to buy in your property with constitutional money, then use Model Lawsuit #4 and combine it with information given in Model Lawsuit #5.

Model #5: If you use a check to pay off an unlawful debt (created by the lender bank by mere bookkeeping entry), then combine the information in Model #3 with either #1 or #2 and file it in court before a sheriff or trustee sale can take place.

When Using Model Lawsuits. When you use a model lawsuit, omit any data not pertinent to your case and add any material that is new or particularly applicable to your case.

FRAMING YOUR LAWSUIT

The biggest challenge that anyone will have is to have his attorney frame a good lawsuit. We want a lawsuit that will survive a Motion to Dismiss hearing or Demurrer and finally reach a jury trial. **The key parts of a lawsuit are:**

1. **The caption** - The first page, usually the top of which lists the plaintiffs and defendants, the court, Case # etc.;

2. **Jurisdiction** - The first part of the body of the complaint or counterclaim that invokes part of the Constitution and state or federal laws applicable and states whether this is a Complaint at law or in equity;

3. **The Parties To The Action** - This is the section where you list the names and addresses of the defendants and the plaintiffs;

4. **Factual Background** - This is the most important section of the lawsuit. Here, you must plead with particularity and state the facts chronologically. Avoid any mention of law here, avoid theory and conclusionary statements. **Case law is never cited in a complaint.** In framing a lawsuit on the credit issue, you must first list every loan of credit made, from the last one to the first one. Many debts are based on refinancing of existing debts, thus you must go all the way back to the original loan, regardless of how many years were involved. **You must then state the lender failed to lend you "legal tender" or "lawful money" as promised for all the loans involved, but that he did deliberately issue a "bad" check and passed it on to you to circulate as "money" and that he did this deliberately to your detriment and damage. You must also state that you did not become aware of his fraudulent activity until after the date of your last loan, otherwise you are a party to fraud and have waived your claim for relief.** If you have a note that has been sold by the original lender to several other lenders, then you must sue the original lender and name all the other parties to whom the note was assigned as defendants. You will have no claim for relief against the assigns (lenders who bought the note), but you can use your lawsuit to challenge jurisdiction of any action they bring against you based on #7 mentioned earlier that there is an existing action pending between the same parties on the same cause of action. In your factual background section, you should add any other issues that are relevant to your case such as "breach of oral promises," any demands made on you regarding financial decisions that were detrimental to you, and any other things done to injure or violate your rights under the law.

5. **The Counts** - This is a section where you will restate the allegations of your factual background section and then apply the law to the facts and state which laws they violated. Breach of Contract is a violation of the common law as well as Art. 1, Sec. 10, U.S. Constitution. Fraud is a violation of the common law and voids any contract. Usury is a violation of the contract based on the amount of lawful money or coins and currency actually risked in the loan. Racketeering is a violation of federal law and some state laws. Fraud can also involve a violation of state securities laws that is when the lender obtains a note (a security) for a fraudulent or insufficient consideration. **Check your State Statutes on Securities.**

6. **Relief Requested** - Here is where you ask for any relief that was not mentioned in the Counts section. You demand your trial by jury and ask for empanelment of a grand jury so you can present criminal charges against the defendants or ask to be directed to an existing grand jury so you can present testimony concerning violations of various state or federal criminal laws. This is the basic structure of a well written lawsuit. Reread this section before writing your lawsuit. Once you have written your lawsuit, you must make enough copies to serve one on each defendant. All copies must be signed.

Then you will need a Summons form. While you can write up your own in many states, copies of a standard Summons form are available from the clerk of courts in your state or federal court or bankruptcy court, if you are filing a lawsuit there. Another form you will need is a Notice of Lis Pendens. This is a notice of a lawsuit pending and must include the legal description of your property. You prepare this form yourself--a sample one is enclosed. This is filed usually in the register of deeds and clouds title to the property while the lawsuit is in progress. It is very important that you use all these forms to protect your interests.

After your lawsuit is written and filed, then you will need someone to serve it. You can get the sheriff's department to do this or you can hire a process server. To locate a process server, look up "Process Servers" in your Yellow Pages phone directory. Also, a friend or neighbor can serve the Summons and Complaint also. As a party to the action, you cannot serve any Summons and you cannot serve any other pleadings either, except for Motions, which in most areas can be served by mail, along with a Certificate of Service usually signed by someone other than yourself who did the actual mailing of the Motion. Once the defendants have been served, you must have the party serving it fill out an Affidavit of Service, which you must file with the court.

DEFAULT JUDGMENTS

If a defendant does not Answer your Complaint or does not file a Motion to Dismiss within the time allowed in the Summons, you can then get the clerk of court to enter a Default Judgment for you. You will need 4 separate forms which you can prepare yourself or you can get preprinted forms from the clerk of courts. **These forms are usually called:**

1. Request to clerk of courts to enter default judgment,
2. Affidavit of no answer and amount due,
3. Affidavit of non military service, or
4. Default judgment.

Once the default judgment is entered, a copy is sent to the defendant. After their appeal time has run out, you have a judgment that can be collected by requesting the clerk of courts to issue a Writ of Execution to the sheriff. It should be noted here that a default judgment can be removed by a judge based on good cause presented by the defendant such as newly discovered evidence or insufficiency of service and for other reasons. If you were the defendant, you could file a Motion to Set Aside Default Judgment. In this motion, you could ask the court for permission to answer the complaint and/or file a Counterclaim based on newly discovered evidence. ("Newly discovered evidence" must be evidence which the defendant *could not*, in the exercise of diligence, have discovered prior to judgment.) Support your motion with an affidavit. If the judge does not grant it, then you must file a new lawsuit against the lender. After doing this, you can then file a Motion to Consolidate Cases--that is, to combine their case against you with your case against them. This will stop the clock on their execution of the judgment against you. Other options to stop them from seizing your property are to file a Petition for a Temporary Restraining Order (TRO) or to file a Chapter ll or Chapter 13 bankruptcy plan. An automatic stay of execution goes into effect upon the filing of any bankruptcy plan.

IMPORTANT PRINCIPLES TO REMEMBER

1. The best defense is a good offense.
2. By What Authority? Always challenge the authority of the adversary to do what they do when you cannot find their authority for doing something. Challenge the authority of the court when your Constitutional rights are violated.
3. Use arguments based on natural equity and combine them with arguments in law in your pleadings.
4. If possible, go after your adversary criminally as well as civilly.

5. Always use Affidavits to support your motions and always use Affidavits to oppose their motions that you are opposed to.

6. Use all Discovery aggressively. Use Depositions for your most effective results to trap your adversary.

7. As a plaintiff or defendant, your very first motion should be a "motion for a Court Ruling on Jury Trial Demand." Support your motion by arguments based on the Constitution and case law. The best set of books to find supporting case law are called "Supreme Court Digests" and these can be found in your local law library, usually in the courthouse or at a college. When using case law, use Supreme Court cases primarily as these override all lower court decisions. Case law is always used in supporting briefs that are supported by affidavits.

COURTROOM PROCEDURE

In a court room, the party making a motion speaks first and the other party then responds. To present your arguments, make a sketch or outline of the points you will raise. Any surprise arguments you raise will throw your opponent off track. If the opposing attorney baffles you with a lot of legal mumbo jumbo, then ask the court to make him explain in plain English just what each of his words means. If you are not confident of yourself, then tell the court that you are standing by your written pleadings as being a person not trained in law, you are not qualified to debate the opposing attorney. ONE VERY IMPORTANT THING TO REMEMBER IS THAT AT A MOTION HEARING, STICK TO THE ISSUES IN THE MOTION AND DO NOT GET INTO A DISCUSSION ON THE MERITS OF THE CASE. Otherwise, you will get thrown off track. To get back on track, if the other attorney or the judge gets off track, you must point out that the new issues raised are not in the motion, but are part of the merits of the case which is not before the court today. By getting them back on point and to the issues before the court in the motion hearing, you will spare yourself a verbal debate on the merits of the case. Memoranda and briefs are always presented at the pretrial hearing, but may be used to oppose a Motion to Dismiss or a Motion for Summary Judgment.

SERVING MOTIONS

While the complaint is always served directly on the party you are suing, "motions" written afterwards are served on the attorney for the other party and this constitutes service on the other party. If any paper is served on the other party directly such as interrogatories or a Notice of Deposition, the other party's attorney must always get a copy. A Certificate or Affidavit of Service is then always filed with the court, usually the judge's secretary. While motions may be served by mail, usually certified, return receipt requested, a Notice of Deposition or Subpoena must always be personally served on the party affected.

QUESTIONS AND ANSWERS ABOUT TRIAL PREPARATION

Q: Where can I get a book on the rules of civil procedure for my state?

A: *Your State, Court Rules and Procedures* can be obtained from West Publishing Co., P.O. Box 64526, St. Paul, MN 55164-1804. The fastest way to contact them regarding orders is at 612-687-7000. Give them the name of your state that you want the court rules and procedures on. If you plan on being in Federal Court, send for a copy of Federal Rules of Civil & Appellate Procedure. Then go to the state court or the federal court and ask for a copy of the local court rules. If you are planning on being in bankruptcy court, see the Legal Karate packet for the names of the books you will need there.

Q: When can a case be removed to federal court?

A: Within 30 days after a federal issue is raised. Only defendants can remove a civil case to federal court.

Q: How do you gather evidence for a case?

A: It is vitally important that you have a pocket tape recorder with you at all court proceedings, all interviews with your lenders to record all verbal promises made, and at all sheriff or trustee sales. A tape recorder can provide evidence that will be invaluable to you in going after your adversaries both civilly and criminally. A Polaroid camera may be helpful to photograph the high bidder's check or other monetary instrument. Use a tape recorder when going into a bank to find out if a cashiers or certified check from the lender at a sheriff or trustee sale is any good that is, if the bank has the cash to redeem it. Believe it or not, about half of them don't. See Model Lawsuits #4 and #5. If no check is tendered, then amend Model #4 or #5 accordingly and charge the sheriff with failure to comply with the Constitution and state statutes by not requiring any money from the high bid that he accepted. You can also sue as an assigns to a land patent as this is the best and paramount title at law. These issues can be combined.

Also, when you call someone on the phone, have a telephone pickup device which you can obtain from Sears or Radio Shack connected to a cassette recorder to record any advice that you receive from someone on any legal questions you may ask them. A tape recording is better than most people's memories and can always be played back.

Getting A Trial - One of the most important actions goals you can achieve is getting a trial. Most lawyers and many lenders are not knowledgeable in the area of fractional reserve banking. Indeed, many who work for banks don't know exactly how banks create "credit" money; and they definitely do not know on what authority "credit" money is created. Most important is a well pleaded complaint, especially one that is based on the money and credit money issue. You will probably want help in drafting such a complaint and it is of vital importance if you want to win your case and have the help of a "constitutional lawyer" who will know how to get the lender's attorney to answer the complaint. Getting him to answer the complaint virtually guarantees that a case will go to trial. Your next objective is to get a trial by jury. No one likes to see his fellow man put out of his home and you may enlist the sympathy of the jury immediately if you are being foreclosed for reasons not your fault and beyond your control.

FIRST, A FEW MORE NOTES ABOUT DEFENSES AND COMMENTS WITH REGARD TO MODEL LAWSUIT #1

Model Lawsuit #1 - This lawsuit is designed for suing banks in Federal Court and includes the option of suing the Federal Reserve Bank(s) and their Board of Examiners (name all of them in your Complaint). For those who prefer to file their lawsuits in a state court, omit the Federal Reserve Bank by dropping the last 2 paragraphs from the "Factual Background" section of the Complaint and by modifying the Counts and Relief Requested sections accordingly. For those who want to sue the Federal Reserve Banks along with their local bank, there is little to do except plug in the names and dates of loans and dollar amounts on the model form given herein. There may be other factors than those cited on the "Model" form to be considered in documenting your lawsuit, which may require the addition of extra parties and the adding of more facts to the "Factual Background" section of your Complaint. Here is a list of those possible additional factors: Holder in Due Course. Who is a holder in due course? Let us say you took out a loan of credit from Bank A and Bank A sold it to Bank B. Bank B in turn sold it to Bank C. Now Bank C is foreclosing you. The question is: Whom do you sue? What you do is name Bank A, Bank B and Bank C as Defendants in your lawsuit. However in the last section of the "Factual Background" section of your complaint add another paragraph and state: Bank B and Bank C are not HOLDERS IN DUE COURSE under the Uniform Commercial Code. Bank B and Bank C purchased the mortgage, the mortgage note, or deed of trust, security agreement etc., which was first obtained by Bank A, under conditions of Fraud and Misrepresentation. The documents which Bank B and Bank C have obtained from Bank A do not provide them with any claim whatsoever for relief, in either a court of law or equity.

If you live in a state where Bank C is foreclosing on you and they have already filed a suit against you in court, then as Defendant, name Bank A and Bank B as "Third Party Defendants" which will make you both Defendant and Third Party Plaintiff. If you live in a non-judicial state such as Virginia, which permits the lender merely to advertise and sell your property under foreclosure of a deed of trust and Trustee Sale, then you must take the offensive prior to such action, and sue all of the Holders in Due Course, naming all of them as Defendants and yourself as Plaintiff.

MODEL LAWSUIT #1

.....

[your name],
Plaintiff,

Case #.....
vs.

Complaint at Law

Bank of [ ], and
[Bank President or officer] and
Federal Reserve Bank President [name] and
John and Jane Does (1 to 25),
Defendants.

.....

Now Comes the plaintiffs, in propria persona, and relying on the decisions in Haines v. Kerner, 404 U.S. 519 and show their Complaint against the defendants as follows:

JURISDICTION

1. FOR STATE COURTS/(Jurisdiction in this action at law is based on the Constitution of the United States and in particular the 7th amendment as this is a suit at common law. Jurisdiction is further invoked under the Constitution of the state of [ ] and in particular by the...amendment which preserves the right to trial by jury in an action at law and jurisdiction is further invoked under 18 U.S.C. Sec. 964.

FOR FEDERAL COURTS, use the following - (Jurisdiction is invoked under 28 U.S.C. Sec. 1332 and involves diversity of citizenship and more than $10,000 in controversy and jurisdiction is further invoked under 42 U.S.C. 1983 et seq. and 18 U.S.C. Sec. 1964 as well as the Constitution of the United States and in particular the 7th amendment as this is a "suit at common law." This Complaint is filed in propria persona pursuant to Haines vs. Kerner, 404 U.S. 519).

PARTIES TO THE ACTION

2. The plaintiffs in this action are citizens of the United States and residents of the state of [ ]. The plaintiffs' names and addresses are as follows:.... The defendants in this Complaint are the [name of bank] whose business address is as follows:...and a bank employee [President or loan officer] whose name is...and who lives at...and John and Jane Does (1 through 25) whose names and addresses are unknown at this time. (For Federal Court, add: "and other defendants include the President of the Federal Reserve bank of [your district] whose name is... and whose address is [use address of F. R. Bank here] and all members of the Board of Examiners whose names and addresses are unknown at this time.")

FACTUAL BACKGROUND

3. On or about [month, date, year], the [bank of] through its loan officer (or President) did verbally represent to the plaintiffs that it had approved a loan to them for the sum of [X amount of loan] in lawful money of the United States and at annual interest rate of ? %.

4. The [Bank of] and its loan officer [insert name] knew or should have known that the verbal statement that they would lend the plaintiffs "lawful money of the United States" at an annual interest rate of ? % was a false representation that was made recklessly and with deliberate and intentional disregard for the rights of the plaintiffs.

5. Relying on these false representations, the plaintiffs were induced into signing a [mortgage, mortgage note, deed of trust, note, security agreement etc.] on or about [month, date, year]. Since the date of the loan, the plaintiffs have made payments of principal and interest totaling [total $ amount paid].

6. After the plaintiffs had signed the [mortgage, deed of trust, note, etc.], the bank and its officer [name] did fail to lend the plaintiffs lawful money of

the United States for the full value of the loan. For the actual lawful money which the bank risked for the loan, estimated to be no more than 5% of the loan's face value, the bank did charge an interest rate that was 20 times greater than what was authorized in the contract, and did this deliberately to the detriment and damage of the plaintiffs.

7. In carrying out their commitment to lend lawful money of the United States, the bank did write a check for the sum of [$ amount of loan]. The bank in writing this check, did deliberately make a loan beyond its customers' deposits.

8. The check (or checks) which the bank and its officers wrote were not backed by or redeemable in Federal Reserve Notes, coins or lawful money of the United States for their full face value.

9. The bank and its officers did use the U.S. Mails more than twice since the date of loan to collect money on this debt. Plaintiff did not become aware of the fraudulent activity of the defendants until on or around [month, date, year].

10. The only consideration which the bank provided for this loan was a book entry demand deposit which the bank itself created effortlessly and at virtually no cost to itself. The bank in stamping its own check "Paid," did make a false representation as it merely transferred some book entries and never intended to redeem this check in lawful money of the United States.

(Note: to sue the Federal Reserve Banks, add the following sections.)

11. The averments of the previously numbered paragraphs are restated by reference herein. The Federal Revenue Bank President, whose name is... and the Board of Examiners for this bank knew or should have known that the [name of bank] made a loan to the plaintiffs by writing a check on or around [date of loan] and that the bank was charging interest on nonexistent funds. The Federal Reserve Bank President and the Board of Examiners for the F. R. Bank are a party to these false representations as they were a party to the transfer of book entries with the full knowledge that the bank did not have in its possession lawful money to redeem its check and they did all this to the detriment and damage of the plaintiffs. Their collective activities in passing this check are part of a planned scheme.

12. In addition to this, the Federal Reserve Bank President [name] and the Board of Examiners along with John and Jane Does, whose names are unknown at this time, are a party to a conspiracy to do all of the following: keep interest rates artificially high for contract credit to create unemployment and depreciating farm prices, and to select and pressure the bank to foreclose on the plaintiff's property all as part of preplanned conspiracy to eliminate 2.3 million American farmers and to set up 100,000 corporations to own all the farm lands in the nation. All of the illegal activity is being done in violation of Federal Racketeering laws, Federal Antitrust laws, and in violation of the plaintiffs Constitutional rights, particularly the 5th, 7th, 9th and 14th amendments.

COUNT ONE

1. BREACH OF CONTRACT. The averments of the previously numbered paragraphs are restated by reference herein. The [Bank of] and its officer [name], failed to lend the plaintiffs lawful money of the United States and instead substituted a check with the intended purpose of circulating it as money.

COUNT TWO

1. FRAUD AND RACKETEERING. The averments of the previously numbered paragraphs are referred to by reference herein. The [name of bank and its officer, [name], and the president of the Federal Reserve Bank of [your district], whose name is...and the Board of Examiners are all parties to the writing and processing of a check written by the [name of bank] on or about [date of loan]. All these parties are in collusion in using the U.S. Mails and Wire Services to collect on this unlawful debt in violation of 18 U.S.C. 1341 (mail fraud) and 18 U.S.C (wire fraud) and 18 U.S.C. 1962 in establishing "pattern of racketeering activity." Plaintiffs ask for triple damages for actual and compensatory damage! sustained pursuant to 18 U.S.C. 1964 from each and every defendant on all counts.

COUNT THREE

1. USURY AND RACKETEERING. The averments of the previously numbered paragraphs are restated by reference herein. By virtue of the bank's activities in creating an unlawful debt by passing a bad check, the [name of bank] has collected an annual interest rate estimated to be twenty times greater than the amount of interest the plaintiffs agreed to in the note they signed. This violation of

*contract law and usury laws is due to the fact that the actual amount of lawful money risked by the bank in making the loan was less than 5% of the loan's face value.

RELIEF REQUESTED

1. The plaintiffs ask the court to empanel a Grand Jury to investigate the [name of bank], the Federal Reserve bank of [your district], and its President as well as the Board of Examiners for violations of Federal Antitrust laws and the Federal Racketeering laws including 18 U.S.C. 1341 (mail fraud) and 18 U.S.C. 1343 (wire fraud) and 18 U.S.C. 1962 (pattern of racketeering activity) and 18 U.S.C. Sec. 241 for conspiracy to violate the plaintiffs and other citizens Constitutional rights.

2. Plaintiffs ask for actual damages for the sum of [?$ paid on loan] and compensatory damages to be determined as well as three times this amount in punitive damages against each defendant convicted on any count.

3. Plaintiffs demand a trial by jury to be comprised of 12 members to determine all issues of facts in dispute and to determine and award all damages.

4. Plaintiffs ask for a court order declaring the [mortgage, mortgage note, note, deed of trust, security agreement, etc] to be null and void.

5. An injunction against the [name of bank] and the Federal Reserve Bank to divest themselves of any assets they have unlawfully gained and to return the same to the plaintiffs and all other debtors or injured parties.

Date

[Your Name]
Plaintiff--in propria persona.

Note: No statement claiming actual damage to the plaintiff except usury charge, which is questionable. Court will want to know exact nature of the damage suffered.

MODEL LAWSUIT #2 (for financial institutions other than banks)

.....

CAPTION (See Model Lawsuit #1)

Case #.....
Complaint at Law

.....

Now Comes the Plaintiffs, in propria persona, and relying on the decisions in Haines v. Kerner, 404 U.S. 519 and show their complaint against the defendants as follows.

JURISDICTION

1. (See Model Lawsuit # 1)

PARTIES TO THE ACTION

2. (See Model Lawsuit #1)

FACTUAL BACKGROUND

3. On or about [month, date, year], the [FLB/PCA/Mortgage Co., etc.] did verbally represent to the plaintiffs that they had approved a loan to them for the sum of [$ amount of loan] in lawful money of the United States at an annual interest rate of ? %.

4. The [FLB/PCA/Mortgage Co., etc.] and its loan officer, [name], knew or should have known that the verbal statement that they would lend the plaintiffs "lawful money of the United States" at an annual interest rate of ? % was a false representation that was made recklessly and with deliberate and intentional disregard for the rights of the plaintiffs.

5. Relying on these false representations, the plaintiffs were induced into signing a [mortgage, mortgage note, note, deed of trust, security agreement, etc.] on or about [month, date, year]. Since the date of the loan, the plaintiffs have made payments of principal and interest totaling [total amount paid].

6. After the plaintiffs had signed the [mortgage, mortgage note, note, deed of trust, etc .], the [PCA/FLB/Mortgage Co., etc.] did fail to lend the plaintiffs lawful money of the United States for the full value of the loan.

7. In carrying out their commitment to lend lawful money of the United States, the [PCA/FLB/etc.] did write a check for the sum of [$ amount of loan] on or about [date of loan]. The [PCA/FLB/-Mortgage Co.] and its loan officer knew or should have known that they were accepting, lending checks which they had received either directly or indirectly from a commercial bank. They knew or should have known that the bank upon which the check for this loan was drawn had insufficient funds to redeem this check in lawful money of the United States.

8. The [PCA/FLB/Mortgage Co. etc .] and its loan officer, [name], did use the U.S. Mails more than twice since the date of the loan to collect money on this debt. The plaintiffs did not become aware of the fraudulent activity alleged in this complaint until on or around [month, date, year].

9. The check(s) which [PCA/FLB/Mortgage Co. etc.] wrote for the sum of [$ amount of loan] was/-were not backed by or redeemable for their full face value in Federal Reserve Notes, coins, or lawful money of the United States.

10. The [PCA/FLB/Mortgage Co.] knew or should have known that the checks they deposited in the bank account to cover the check they wrote for this loan was a bad check. Subsequently, the bank, against whom [PCA/FLB/Mortgage Co.] wrote the check never did redeem this check in lawful money of the United States, nor did the bank have in its possession the cash to redeem that check. The bank merely laundered the bad check by transferring some book entries.

ll. The defendants, [PCA/FLB/Mortgage Co. etc.] and their loan officer, [name] knew or should have known that they were a party to a check kiting scheme by laundering bad checks which they had received either directly or indirectly from one or more commercial banks that originated the scheme.

12. The defendants, [PCA/FLB/Mortgage Co. etc.] and their loan officer, [name] knew or should have known that they were violating usury laws by charging interest on non-existent funds. The interest rate charged for the actual lawful money risked for this loan is estimated to be twenty times greater than that agreed to in the note signed by the plaintiffs. The interest rate charged should have been applied only to the lawful money risked in making this loan and instead was applied against the entire check even though this check is estimated to have been backed by only 5% of its face value in lawful money. The bank against whom this check was drawn was a party to this check kiting scheme.

(Note: Paragraph 11 and 12 of Model Lawsuit #l can be substituted for paragraph ll and 12 of Model Lawsuit #2.)

COUNT ONE

1. BREACH OF CONTRACT. The averments of the previously numbered paragraphs are restated by reference herein. The [PCA/FLB/Mortgage Co. etc.] and its officer [name] failed to lend the plaintiffs lawful money of the United States and instead substituted a bad check with the intended purpose of circulating it as money.

COUNT TWO

1. FRAUD AND RACKETEERING. The averments of the previously numbered paragraphs are restated by reference herein. The [PCA/FLB etc.] and its officer, and one or more unknown banks are parties to the writing and laundering of a bad check(s) written by [PCA/FLB etc.] on or around [date of loan]. All these parties are in collusion in using the U.S. Mails and Wire Services to collect on this unlawful debt in violation of 18 U.S.C. 1341 (mail fraud) and 18 U.S.C. 1343 (wire fraud) and 18 U.S.C. 1962 in establishing a "pattern of racketeering activity." Plaintiffs ask for triple damages for actual and compensatory damages sustained pursuant to 18 U.S.C. 1964 from each and every defendant.

(Note: if you have previously named the Federal Reserve Bank President and the Board of Examiners as defendants and have used paragraph ll and 12 from the Factual Background of Model Lawsuit #l, then you should use Count Two from Model Lawsuit #l as well.)

COUNT THREE

1. USURY AND RACKETEERING. The averments of the previously numbered paragraphs are restated by reference herein. By virtue of John and Jane Does who were the banks that were writing and passing bad checks to [PCA/FLB etc.] and by virtue of [PCA/FLB etc.] depositing these bad checks and passing them on to borrowers by writing checks against non existent funds, and by virtue of the fact these checks were only backed by 5% or less of their face value in cash, [PCA/FLB etc .] did knowingly charge an interest rate on lawful money actually risked that was about 20 times greater than the interest rate agreed to in the note signed by the plaintiffs. They did this in violation of 18 U.S.C. 1341 (mail fraud) and 18 U.S.C. 1962 by engaging in this pattern of racketeering activity.

RELIEF REQUESTED

1. Plaintiffs ask for actual damages for the sum of [total $ amount paid on loan] and compensatory

damages to be determined as well as three times this amount in punitive damages against each defendant on any count.

2 . Plaintiffs demand a trial by jury to be comprised of 12 members to determine all issues of facts in dispute and to determine and award all damages.

3. Plaintiffs ask for a court order declaring the [mortgage, mortgage note, note, deed of trust, security agreement, etc.] to be null and void.

Date..... [Your Name].....
Plaintiffs--in propria persona.

(Note: if you sued the Federal Reserve Bank President and the Board of Examiners, then use the 5 point Relief Requested material from Model Lawsuit #1 as a substitute for the Relief Requested section of Model Lawsuit #2.)

(To be added to Count 2 of Model Lawsuit #2)

FRAUD AND RACKETEERING

The plaintiff/defendant (strike one), restates the allegations of Counts 1 through 5. PCA/FLB (strike one) created an "unlawful debt" by requiring the Plaintiff/Defendant to purchase "stock" from them in the sum of [dollar value of stock purchased] on [date of loan or stock purchase]. PCA/FLB and its loan officer,_____, knew or should have known that the stock sold to me, the_____in this case does not exist. The plaintiff/defendant in this action has never voted at any stockholders meeting and has never been invited to one. Furthermore, we allege that this stock does not exist and never did exist and the amount required for the stock purchase is nothing more that concealed interest rate charge. However, there is a failure of consideration as there is no stock and no actual ownership in PCA/FLB by me or other farmers as they claim. Because the stock does not exist, there is a failure of consideration, a breach of contract and fraud. PCA/FLB has, through these fraudulent actions created an unlawful debt and has more than twice used the U.S. Mails to collect on this debt, all in violation of 18 USCS 1341, and 18 USCS 1961 and 1962. Our actual damages in the payment of principal and interest on this non existent stock has been the total sum of $_____which is the total amount we estimated we paid for this non existent stock since the first loan was taken out which was on [date of first loan]. Pursuant to 18 USCS 1964, we therefore are for treble damages or the sum of [insert triple damages here] plus punitive damages in the sum of [3 times the damages just quoted] for a total of [add actual and punitive]. In addition we ask the court for the following relief:

a. That the entire debt be declared null and void, and
b. That the damages awarded us be applied against all existing delinquent payments and future payments until paid in full and that the foreclosure action against us be dismissed.

Feb. 1985: Update insert--Because of a number of lawsuits filed against PCAs and FLBs on this issue, stock certificates starting showing up for the first time in February of 1985 in the state of Washington. The issue of fraud for requiring borrowers to buy nonexistent stock can still be in any area where stock certificates have not been issued as other allegations added to Model Lawsuit #2.

THE PRIME RATE CASES
and
HOW TO ADD RACKETEERING CHARGES TO SUITS AGAINST BANKS AND OTHER LENDERS.

APRIL 4, 1984, The Wall Street Journal reports the following:

"When First National Bank of Atlanta agreed recently to settle a 3 1/2 year old lawsuit for as much as 12.5 million, other banks took notice.... At issue is a hallowed banking tradition: the prime rate, which for years has been described as the rate banks charge their best corporate customers.... Angry non-prime borrowers, however, say banks have been overcharging them, often for years, because the prime rate their loans were tied to, wasn't the real prime, or best, rate.... The central figure in the burgeoning litigation is Jackie Kleiner, a 51 yr. old lawyer and business professor who started the Atlanta case in 1980. Since then, he says, he has been involved at one time or another in 38 of the estimated 50 prime rate suits. Currently, he says, suing banks is 'my main occupation'.... In one case, for example, Mr. Kleiner says a client, Milwaukee

Cheese Co., settled with a West German and two U.S. banks for about 10.5 million. He says Milwaukee Cheese paid the banks about $3 million, and the banks forgave about $13.5 million in loans. A banking source confirms that the settlement was for "several million" dollars, but Milwaukee Cheese officials won't discuss the terms.... Meanwhile, the controversy has prompted many banks to redefine the prime rate in lending documents.... Even the new definitions don't bother Mr. Kleiner. He says the banks' new language is 'more deceptive' than before. He wants to challenge it in court."

The above statements are excerpts from the article which appeared in The Wall Street Journal on April 4, 1984. The article was titled: CHALLENGES TO PRIME RATE AS BASE FOR LOANS STIR FEARS AMONG BANKS.

When the above article came to my attention, having been sent to me by a resident here in Milwaukee, I called the Milwaukee Cheese Co. and they provided me with the Case number. I went to the Federal Courthouse and looked the case up. A copy of this case that was apparently worth $10.5 million to the Milwaukee Cheese Co. is part of this packet, so you as a reader can see for yourself how it was placed together.

The issues in the prime rate cases are essentially this: breach of contract for charging an interest above the Prime Rate; fraud for doing it deliberately; and third racketeering for using U.S. Mails to collect on an unlawful debt. My interest in learning about the racketeering charges is because suits against banks on the "credit" issue involve the same fundamental issues which are breach of contract and fraud, for creating and lending "credit" which is not lawful money. Since the banks create an unlawful debt because of their failure to provide a "lawful consideration," and because they use the U.S. Mail to collect on this debt, they are engaging in mail fraud, a violation of 18 USCS 1341, which is incorporated in 18 USCS 1961 which defines a "pattern of racketeering." 18 USCS 1961 defines a "pattern of racketeering" as "two acts of racketeering activity, one of which occurred after the effective date of this chapter [Oct 15, 1970] and the last of which occurred within ten years after the commission of a prior act of racketeering activity."

In other words, if any bank or other lender creates an unlawful debt in whole or in part and they send you statement to collect on this bill two or more times within any 10 year period, they have established a "pattern of racketeering," and under 18 USCS 1962, this is a prohibited activity. Now, Under 18 USCS 1964, section c, it says: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including reasonable attorney's fees.

THAT'S POWERFUL STUFF! You can sue to collect triple damages against anyone who creates an unlawful debt and uses the U.S. Mails to collect it.

What about loans from the Production Credit Association and the Federal Land Bank?

Both PCA and the Federal Land Banks (FLBs) require farmers to buy "stock" when they take out an agricultural loan as a condition for the loan. The farmer usually borrows from 5 to 10% more in order to buy the stock, however, every farmer who has subpoenaed the stock from either the PCA of the FLB have never received any. Why? The answer is obvious--the stock doesn't exist! This is a Breach of Contract and because they are doing it deliberately, it is fraud and because they are using the U.S. Mails to collect on an unlawful debt, they are engaged in a "pattern of racketeering" and are potentially liable to the borrowers (the farmers) for triple damages. Now, I am told that several years ago, the PCAs and the FLBs paid some interest to the farmers on this stock and then discontinued the practice. Also, that this year, one farmer received a check which amounted to 3 % interest on the stock. Is this the same rate of return the other stockholders of PCA and FLBs receiving? I doubt it.

Consider that a farmer may have taken out several loans from either PCA or FLB for the last several years, you can sue to recover triple damages on this 5 to 10 % of the loans value from the very first loan you took out. It is possible that much of your mortgage loan or deed of trust could be wiped out or repudiated.

Here is how you would calculate the amount of actual damages:

1. Get copies of all your original loan papers. Look up the original figures. Check your new loans or notes and you may find this amount already included in the loan that is refinanced. If you cannot

AN EXAMPLE OF AN AFFIDAVIT AND NOTICE OF HIGH BID IN LAWFUL MONEY

THIS IS TO CERTIFY THAT David G. White made the high bid of $21.00 in lawful money of the United States at the foreclosure sale on January 17, 1985 at 10:15 o'clock A.M. at the south door of the Stearns County Courthouse in the City of St. Cloud. David G. White did bid twenty one (21) dollars in silver coins, and each dollar of silver contained 371.25 grains of pure silver and was minted by the United States government prior to 1965. Each dollar is as lawfully defined by the Coinage Act of 1792.

The silver coins were bid in compliance with Article I, Section 10 of the United States Constitution which states: "NO STATE SHALL MAKE ANY THING BUT GOLD AND SILVER COIN A TENDER IN PAYMENT OF DEBTS."

This foreclosure sale was for property described as follows:

S 1/2 NE 1/4, the E. 6 acres of SW 1/4 NW 1/4 and SE 1/4 NW 1/4, except: commencing at the N 1/4 corner of said Sec. 1: thence S. along the North - South 1/4 line of said Sec. 1, a distance of 2017.57 ft. for point of beginning; thence S. along said line 145.20 ft.; thence W. at right angles 300 ft.; thence N. at right angles 145.20 ft.; thence E at right angles 300 ft. to the point of beginning and there terminating, all in Sec. 1; AND EXCEPT that part of the S 1/2 NE 1/4 of Sec. 1, described as follows: Beginning at a point on the west line of said S 1/2 NE 1/4 of Sec. 1, distant 33.00 feet southerly of the northwest corner of said S 1/2 NE 1/4 of Sec. 1, distant 33.00 feet southerly of the northwest corner of said S 1/2 NE 1/4; thence easterly, parallel with the north line of said S 1/2 NE 1/4 a distance of 470.16 feet; thence southerly, parallel with the west line of said S 1/2 NE 1/4 a distance of 276.19 feet; thence northwesterly a distance of 486.74 feet to a point on the west line of said S 1/2 NE 1/4, distant 150.00 feet southerly of the point of beginning, thence northerly along said west line a distance of 150.00 feet to the point of beginning, containing 2.30 acres; all in Sec. 1, T 125 N., R 32 W.

The NE 1/4 SW 1/4, except tract desc. as follows: Beginning at the NE corner thereof; thence W 53 rods to the center of the road; thence S. along said road 3 rods; thence E. to the E. line thereof; thence N. 3 rods to the place of beginning, Also Govt. Lots 1 & 2, except parcels:

Parcel A: That part of Govt. Lot 1 and Govt. Lot 2 desc. as follows: Commencing at the S 1/4 corner of said Sec. 35; thence N 89° 57' W (assumed bearing) along the S. line of said Govt. Lot 2 for 1497.22 ft. to the centerline of a public road; thence along said centerline N 3° 21' 27" W for 1160 ft. to the point of beginning of the land to be described; thence continuing along said centerline N 3° 21' 27" W for 260 ft.; thence S 86° 38' 33" W for 152 ft. more or less to the shore of Freeport Lake; thence SW'ly along said lake shore to its intersection with a line draw
S 86° 38" E for 462 ft. more or less to the point of beginning.

Parcel B: That part of Govt. Lot 2 desc. as follows: Beginning at a point in the S. line thereof 53 rods 3.05 ft. W of the SE corner thereof, said point being the center of the road; thence W 41 rods; thence N 9 rods; thence E 41 rods to the center of said road; thence S 9 rods to the place of beginning and also except that part of said Lot 2 lying W. of County Highway #11, as now constructed and travelled.

S 1/2 SE 1/4, also a part of the NW 1/4 SE 1/4 desc. as follows: Beginning at the SE corner thereof; thence N 1 rod; thence W parallel to the S line thereof 67 1/3 rods; thence NW'ly to a point on the W line thereof which is 66 1/3 rods S of the NW corner; thence S along said W line to the SW corner; thence E to place of beginning, all in Sec. 35, T 126 N., R 32 W.

[signed] David G. White
Rt. 2, Box 286
Avon, MN 56310

THIS INSTRUMENT WAS DRAFTED BY
David G. White
Rt. 2, Box 286
Avon, MN 56310
Subscribed & sworn to me this 18th day of January, 1985 [signed] Jean A. Trunk

locate the papers, then send PCA or FLB a "Notice of Written Interrogatories" and a "Notice to Produce Documents" OR send then a Notice of Deposition and a Subpoena Duces Tecum and ask them to appear before a Court Reporter and to bring the "stocks" with them and all figures of records showing the amount of "stocks" you were required to purchase in dollar values. The following is a list of questions for the interrogatories or for the deposition:

a. What was the dollar value of all stock I was required to buy from PCA/FLB for all loans I took out since [date of first loan]?
b. What percent of all loans that I took out constituted money which was used to purchase the stocks referred to in the above question?
c. What is the dollar amount of all payment (principal and interest) that I made to PCA/FLB since [date of first loan]?

(NOTE: An official of PCA whom I recently talked to indicated that PCA charges 8% of the loan value to stock and that Federal Land Bank charges 5%. There are no stock certificates!)

TO PCA or FLB:

You are required to bring to the deposition a copy of all stocks sold to [your name] which were a condition for the loan or loans executed on [date of loan].

NOTICE TO PRODUCE DOCUMENTS:

TO PCA or FLB:

Along with the answers to the interrogatories above, you are further required pursuant to Discovery statutes to send a copy of all "stocks" sold to [your name] which were a condition for the loan or loans executed on [date of loan].

As you can see from the above, you have two methods of obtaining the information and document you need through Discovery procedures. You can use the interrogatories with the notice to produce documents or you can use a deposition along with a subpoena duces tecum. I prefer the latter method myself, as you can grill them and ask them several questions, some of which you will only think of at the time of the deposition. (To set up a deposition, read the instructions in the book Discovery Made Simple, available from PIN.)

HOW TO CALCULATE ACTUAL DAMAGES

Once you know what percent of each loan you were required to purchase for the stock and you know the total dollar value of all payment you made to PCA or FLB, it is easy to calculate actual damages. Let's take an example: Let's say that on all your loans from PCA or FLB, you were required to buy 10% of the loan's value as "stock," and let's say that in 5 years on this loan you paid $50,000 in payments for both principal and interest. To calculate the actual damages is simple. All you do is multiply the percent of the loans that went for the stock purchase against the total payments you made to PCA or FLB. Take 10% (amount of stock purchase) times $50,000 (total amount of payments). This equals $5,000 ($50,000 x .10 = $5,000).

Now, under the RICO (Racketeering) laws, 18 USCS 1964, you are entitled to triple damages. So three times $5,000 equals $15,000.

$15,000 is the amount federal law requires the court to grant to you in damages. On top of this, you can ask for punitive damages of 3 times $15,000 or $45,000 or a total of $60,000 ($15,000 plus $45,000). Now we are talking about a sum to potentially wipe out the entire loan.

Now when you hit PCA or FLB in Federal Court with one of these suits, and you must sue them on this issue in Federal court, then they may call you and want to settle out of court. If you decide to settle out of court, I suggest that you ask for these three things:

a. That they drop the foreclosure action against you.
b. Refinance the loans you have with them at 6% interest, and not escalator clauses.
c. You will dismiss your suit against them.

JURISDICTIONAL CONSIDERATIONS

Since State Courts have jurisdiction to hear all foreclosure actions and because the racketeering laws (RICO) are Federal, so the State Courts have jurisdiction to hear the RICO cases? According to

Attorney Carla Struble of Columbus, Ohio, they have used RICO in the state courts and jurisdiction has not been challenged. This is good news. However, if the plaintiff challenge the court's jurisdiction to hear the RICO part of your Counterclaim, then you should file a Petition for Removal to Federal Court. Be sure your Counterclaim mentioned, under *Jurisdiction*, 28 U.S.C. Sec. 1332 and that the amount in controversy exceeded $10,000.

If you live in a state where they foreclose against you without going to court, write up your suit on the credit issue and any and all other issues you can think of that apply to your case and add the racketeering charges and file it in the Federal District Court nearest you. Either way, you will need a book called "Federal Rules of Civil Procedure." You can obtain one from West Publishing Co., P.O. Box 64526, St. Paul, MN 55164-1804. The fastest way to contact them regarding orders is at 612-687-7000. Send for this book as soon as possible.

Q: What do I do if I have already filed a Complaint or a Counterclaim in State Court?

A: File an Amended Complaint or an Amended Counterclaim and add the charges. If the time to file an Amended Complaint or Counterclaim has expired under State statutes, then write up a whole new lawsuit and file it in Federal Court. After doing this, then file a Petition for Removal to Federal Court of the existing case in the State court, after which you file a Motion to Consolidate Cases in Federal Court. (Instructions on how to remove a case from state court to federal court are available from PIN for $3.00)

WRITING A SUIT OR AMENDING ONE

Be sure the following information gets in under: (add the following to Model Lawsuit #2)

JURISDICTION

Jurisdiction in this action is based, in part on 28 U.S.C. Sec. 1332, and involves more than $10,000 in controversy. Jurisdiction is also based on 18 U.S.C. 1964.

MODEL LAWSUIT #3

Note: (This model lawsuit contains information that should be added to Model Lawsuit #1 or #2 and should be filed before a sheriff or trustee sale. The purpose of this lawsuit is to stop a sheriff or trustee sale after an FRC was used to pay off a debt or judgment. For purposes of this suit, it is assumed that you have already sent an affidavit to the sheriff/trustee that the debt/judgment has been paid in full and that you have returned to the lender the full amount of credit you owed him. If you lacked the time to use the information in Model #3 before the sheriff/trustee sale, then go directly to Model #4 and file this after the sheriff/trustee sale as soon as possible. Model lawsuit #5 is designed to be used if you go to a sheriff sale and bid 21 or more dollars in silver and gold coins on another person's property. In all these lawsuits, omit what is not applicable to your situation and add whatever else is applicable. These lawsuits may be filed in either state or federal court.)

MODEL LAWSUIT #3

.....

[your name],
Plaintiff,

Case #.....
Complaint at Law

Bank of [?/PCA/FLB etc.], and
Federal Reserve Bank President [name] and
Sheriff [name] and John and
Jane Does (1 to 25),
Defendants.

.....

Now comes the plaintiffs, in propria persona, and relying upon the decisions in Haines v. Kerner, 404 US 519, and show their complaint against the defendants as follows:

JURISDICTION

1. See Model Lawsuit #1.

PARTIES TO THE ACTION

2. See Model Lawsuit #2, and add: (Sheriff [name], who is the sheriff of ? county and whose address is [address of sheriff's department or his home].

FACTUAL BACKGROUND

3 through 12. See Model Lawsuit #1 or #2 and add the following paragraph:

13. (On "day-month-year," the plaintiff sent a check to "bank, FLB, PCA etc." for the sum of $... The plaintiff did pay off the debt/judgment dollar for dollar by returning to [name of lender] the same amount of credit they had loaned us. The plaintiffs have discharged the debt/judgment by returning full payment in like kind of money. On or about "month-day-year," the plaintiff sent an affidavit to the sheriff attesting to the fact that the debt/judgment had been paid in full and requested that the sheriff sale be cancelled. The sheriff knows or should have known that the contents of the affidavit are true. Yet, I have recently been informed by the sheriff's department that they plan to sell my property on "planned date of sale." The plaintiff's right not to be denied property without due process under the 5th and 14th amendments will be violated if the sheriff sale goes through as planned and the title to the plaintiff's property will be clouded by said sale. Furthermore, the plaintiff is not aware of any counter affidavit signed by the [lender] which says that "the debt has not been discharged in a like kind of money." In the absence of such an affidavit, the sheriff is bound by all the principles of our legal system to honor the plaintiff's affidavit and cancel said sheriff sale. The plaintiff believes that the sheriff sale will place the sheriff in violation of 42 USC 1983 and with an unknown party may also be in violation of 18 USC 241.

Counts 1 and 2 and 3 (See Model Lawsuits #1 or #2)

Relief Requested (See Models #1 or #2) and add the following:

#? Plaintiffs restate by reference all the averments of this complaint. Plaintiffs ask the court for a Temporary Restraining Order to stop pending sheriff sale and to suspend it for a minimum of 6 months until the merits of their case has been adjudicated before a jury. This request is made pursuant to their right to trial by jury under the 7th amendment to the Bill of Rights as well as their right not to be denied property without due process of law under the 5th and 14th amendments. Plaintiff also ask the court to order the sheriff to show cause why the plaintiff's affidavit is not being honored in the absence of a counter affidavit from the lender.

Date..... X .....

Exhibits: A copy of the Affidavit sent to the sheriff is attached hereto.

MODEL LAWSUIT #4

Note: (Model Lawsuit #4 is filed shortly after a sheriff or trustee sale. If you have previously filed Model Lawsuit #3 and if for some reason, it did not stop the sheriff or trustee sale, then you simply file an "Amended Complaint" and add the new material from Model Lawsuit #4. If you did your homework, you should have plenty of exhibits to attach to Model lawsuit #4. If you did not file Model Lawsuit #3, then #4 provides material to be added to Model Lawsuit #1 or #2 that can be found in the instructions that go with the Memorandum of Law on Bank Credit and Voidable Contracts. Although Model #4 can be used in state court, there are several reasons to believe that it will be more effective to file it in federal court. Model #4 is designed on the assumption that you placed a bid of 21 or more dollars in silver coin at the sheriff or trustee sale and that you also challenged the lender bid in credit money as described in the complaint. If these later conditions are not applicable, then omit them or modify the complaint accordingly.)

.....

IN THE UNITED STATES DISTRICT COURT FOR THE...DISTRICT OF...

Caption--See Model Lawsuits #1, #2 or #3.

Under the defendants, add:
[name of bank against whose account the high bid in credit money was drawn at the sheriff sale]

.....

Now comes the plaintiffs, in propria persona, and relying upon the decisions in Haines v. Kerner, 404 US 519, and shows their complaint against the defendants as follows:

JURISDICTION

1. See Model Lawsuits 1, 2 or 3.

PARTIES TO THE ACTION

2. See Model Lawsuits 1, 2 or 3 and add the sheriff's name and the name of the bank against whom the check was drawn that the sheriff accepted for the high bid.

FACTUAL BACKGROUND

3 through 12. See Model Lawsuits 1, 2 or 3 and add the following:

#? Prior to the sheriff/trustee sale and on or about [month/day/year], the plaintiff sent a check to the [lender] for the sum of $...and paid the debt/judgment in full by returning payment in like kind of money. After this, the plaintiff did send to the sheriff whose name is...an affidavit that attested to the fact that the debt/judgment had been paid and discharged. Also, no counter affidavit was filed by the [lender] that stated that "the debt had not been discharged in a like kind of money." The sheriff knew or should have known that the contents of my affidavit were true as there was no counter affidavit provided by the [lender]. In the absence of a counter affidavit, the sheriff violated all the principles of our legal system by selling the plaintiff's property on [month/day/year] to [name of highest bidder in credit money] . The sheriff did cloud and slander the title of the plaintiff's property and did deny him property without due court process which is the plaintiff's inalienable right under the 7th and 14th amendments to the U.S. Constitution. The sheriff sold the plaintiff's property deliberately to the detriment and damage of the plaintiff. The property the sheriff sold is located at....

#? At the sheriff sale which occurred on [month/day/year], the plaintiff, [your name], in order to protect his interest in said property, felt compelled to place a high bid in lawful money of the United States. The plaintiff, [your name] did place a high bid in lawful money as required by Article 1, Section 10 of the U.S. Constitution. Article 1, Sec. 10 of the U.S. Constitution which says: "No State shall make anything but gold and silver coin a tender in payment of debts." Since the sheriff's department and his position is created under the jurisdiction of the state of....the sheriff is bound by Art. 1, Sec. 10. He is further bound by his oath of office to uphold and defend the Constitution of the United States. The meaning of Art. 1, Sec. 10 is very clear on its face and the sheriff was aware of this prohibition and the sheriff [his name] is aware of its clear and unambiguous meaning. The plaintiff, [your name] did place the high bid in lawful money of the United States by offering the sum of $...dollars in silver coins. This bid was witnessed by the following persons: [insert names of witnesses present]. The sheriff did refuse to accept the high bid in silver coins and instead awarded the sale to [name] for a [Cashiers/Certified Check] which was offered by [name] for the sum of $....

#? The plaintiff having knowledge that many "bad" checks are being submitted by financial institutions at sheriff sales and suspecting that this had happened here, asked the sheriff for a photocopy of the check submitted. This check was drawn on the bank of....The plaintiff, with a tape recorder and with witnesses, went to the bank against whose funds this check was drawn and placed a tape recorder on the counter at the bank and proceeded to show the clerk behind the counter a photocopy of the check. (Note: if the sheriff won't give you a copy of the check, ask him the bank it is drawn against and the name on the corporation listed on the check.) The plaintiff then asked the clerk at the bank after showing the clerk a photocopy of the check (or verbally telling her the amount of the check) if they have sufficient cash in their vault to cash this check

today. The clerk told us that the bank did not have enough cash to cash this check for the sum of $....When asked what her name was she said it was [name of clerk]. (Note: in writing this part of the complaint, describe exactly what happened as it occurred at the bank.)

#? Upon learning that the bank has written/certified a bad check, we returned to the sheriff's department and played the tape recording to him. Yet, in spite of what evidence we showed him, the sheriff still insisted he would accept the cashier's/certified check. We also informed the sheriff that the bank had committed a fraud and that this was illegal. We also pointed out that the state statutes under [statute] requires bids at sheriff's sales to be placed in "cash and lawful money of the United States." We also showed the sheriff sale Art. 1, Sec. 10 of the U.S. Constitution and reminded him of his oath of office. The sheriff did accept a bad check written by [name of bidder] and drawn against the bank of....The sheriff also committed perjury by failing to grant the sheriff's deed to the plaintiff, [your name], and instead gave the sheriff a bad check which was not redeemable in Federal Reserve Notes or coins, let alone gold and silver coin. The sheriff did this deliberately to the detriment and damage of the plaintiff(s).

Counts 1, 2 and 3 (See Model Lawsuits 1 or 2) and add the following:

Count 4

The averments of the previously numbered paragraphs are restated by reference herein. The sheriff violated the plaintiff's Constitutional rights under the 5th and 14th amendments and thus violated 42 USC 1983. The sheriff knew from the affidavit that the plaintiff, [your name] had paid the debt in full, in like kind of money. Yet, the sheriff did deliberately sell the plaintiff(s) property to the detriment and damage of the plaintiff. The sheriff accepted a bad check from [name of bidder] as lawful money and knew that this was not lawful money and the sheriff [name] did this deliberately to the detriment and damage of the plaintiff. The sheriff violated his oath of office by not accepting the high bid in silver coins as he is required to do by his oath of office and then even violated the legal tender laws of Congress by not requiring actual coins or currency issued by the U.S. Government, but instead accepted a bad check from [high bidder]. Plaintiff asks as damages the costs of this action and a verdict from a jury trial voiding the deed issued at the sheriff sale and awarding the sheriff's deed to the plaintiff as well as reasonable compensatory damages to the plaintiff as determined by the jury.

Count 5

The averments of the previously numbered paragraphs are restated by reference herein. For not having cash to redeem the Cashiers check/Certified check, the plaintiff charges the bank and the person who signed or certified the check with Fraud. Plaintiff asks for a jury verdict to determine the fraud charge against the bank and for the costs of this action and for reasonable compensatory damages for the plaintiff as determined by the jury. The person who certified the check/wrote and signed the cashiers check is...(or is unknown at this time).

Relief Requested

1. through 3. (See Model Lawsuits 1 or 2) and add this:

4. Plaintiff ask the court for an Order for the Arrest of the bank official who certified the check/wrote the cashiers check and that he be charged with fraud. Plaintiffs ask the court to issue a Writ of Quo Warranto to execute the same. Plaintiffs further ask the court to empanel a Grand Jury or to direct the plaintiff to an existing Grand Jury so as to allow the plaintiffs to present written and oral testimony to the Grand Jury concerning violations of Federal and State criminal law by one or more defendants named herein.

Date..... X.....

MODEL LAWSUIT #5

.....

[your name],
plaintiff,

Case#.....
Complaint at Law

Sheriff[name] and,
[Name of high bidder in unlawful money] and,
John and Jane Does,
Defendants.

.....

Now comes the plaintiff, [your name] and relying upon the decisions found in Haines v. Kerner, 404 U.S. 519, and shows their complaint against the defendants as follows:

JURISDICTION

1. Jurisdiction in this action is based on the 7th amendment to the Bill of Rights as this is a "Suit at Common Law" and the value in controversy exceeds twenty dollars. Jurisdiction is further based on Article 1, Section 10 of the U.S. Constitution which prohibits states from making any thing but gold and silver coin a tender in payment of debts. Jurisdiction is further based on the common law tort of fraud.

2. Article 1, Section 10 of the U.S. Constitution says in part: "No State shall...make any Thing but gold and silver coin a Tender in Payment of Debts" and the 7th amendment to the Bill of Rights says: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

3. This suit is filed in a court of record and in an action at common law in contrast to a suit in equity or chancery jurisdiction. The plaintiff has the right to have the issues tried to a jury where the issues of law as well as fact can be determined. In contrast, a jury trial only allows issues of facts in dispute to be determined. In a suit at common law, Motions to Dismiss, Demurs and Motions for Summary Judgment are not allowed as these are equity proceedings and are tried to a judge rather than a jury. If the defendants invoke the court's equity jurisdiction, it will be a violation of the plaintiff's 7th amendment rights as well as his 5th and 14th amendment rights. The plaintiff(s) request that the court act as an impartial referee so as both plaintiff(s) and defendants are afforded "due process" and a fair trial.

PARTIES TO THE ACTION

4. The plaintiff(s) in this suit at common law are citizens of the United States and residents of the State of....The Plaintiff(s) names and addresses are as follows:...and....The defendants in this action are Sheriff [name] who is the sheriff for...county. His address is [either insert home address or the address of the sheriff's department]. The sheriff is an elected/appointed official who has taken an oath to uphold and defend the Constitution of the United States. Sheriff [name] is being sued in his capacity as an individual and not in his official capacity. The other defendant in this action is an employee or agent for [bank or other financial institution]. This person [insert name or declare it to be a John or Jane Doe if you don't know the name] is being sued in their individual and not in their official capacity under the common law. The address of the second defendant is.....

FACTUAL BACKGROUND

5. On or about [month/day/year], the plaintiff(s) in this action learned that a sheriff sale for the property located at...would be held by the sheriff's department on [date of sale]. The property located at the above address is legally described as follows:

[Insert legal description here]

6. On the morning of [date of sheriff or trustee sale], the plaintiff(s), [your name], did appear at [describe location of sheriff/trustee sale; give address] for the purpose of placing a bid in lawful money of the United States for the property described in the preceding paragraph. At or about [time], defendant Sheriff [name] came to this location for the purpose of conducting a sheriff sale on the above referenced property. Persons known to the plaintiff who were present to witness the sale were [names of witnesses].

7. In this paragraph, describe what happened exactly as it happened. Have your tape recorder running so you can recall events as they occur.

8. Then I approached the sheriff and told him I had good cause to believe that the check may not be good and I asked him for a photocopy of it. [If the sheriff won't give you the photocopy, then ask for the name of the bank it is drawn against and the account number and the name of

the organization or person issuing it.] The sheriff gave me a photocopy of the check.

Count One

9. The averments of the previously numbered paragraphs are restated by reference herein. Plaintiffs charge the [person who signed and certified the check] with fraud and misrepresentation. Since the bank did not have the coins and currency to cash the check, their Cashiers/Certified check was a fraudulent representation. Plaintiffs ask for a jury determination of this fraud charge. Plaintiffs also ask for the cost of this action plus reasonable compensatory and punitive damages against [name of person signing or certifying cashiers/certified check].

Count Two

10. The averments of the previously numbered paragraphs are restated by reference herein. Sheriff [name] has damaged the plaintiff, [your name], deliberately and knowingly by refusing to accept our/my high bid in lawful money of the United States, which is required by Article 1, Sec. 10 of the U.S. Constitution to be gold or silver coins. The sheriff has also violated his own oath of office to uphold and defend the Constitution of the United States. The plaintiff asks for a jury determination on which of the bidders placed the high bid in lawful money of the United States as required by our Constitution and for a verdict awarding the Sheriff's Deed to the plaintiff, [your name] as the one bid which was the high bid in lawful money. Plaintiff asks for the costs of this action to be assessed against the sheriff in his capacity as an individual.

Relief Requested

11. The averments of the previously numbered paragraphs are restated by reference herein. The Plaintiff(s) ask the court for an Order for Arrest of the bank official who signed/certified the cashiers/certified check and that he/she be charged with fraud for misrepresentation of the check. Plaintiffs ask the court to issue a Writ of Quo Warranto to execute the same. Plaintiffs further ask the court to empanel a Grand Jury or to direct the plaintiff to an existing Grand Jury so as to allow the plaintiff(s) to present written and verbal testimony to the Grand Jury concerning violations of Federal and State law including and not limited to 18 USC 241, 18 USC 1001, and 18 USC 1621 and other violations of law against the defendants named herein as well as any other parties that may have conspired with them to violate the above named laws.

12. Plaintiff(s) demand a trial by jury under the 7th amendment on all issues including the issue of what constitutes "lawful money" for a sheriff department under state jurisdiction. Plaintiff(s) demand all their rights at all times and waive none of their rights at any time including their right to time.

LEGAL KARATE: Additional Notes and Comments.

Refinancing debts or loans - If you have had occasion to refinance your debt or loan, you must list each and every loan amount from the first one you took out with the lender bank and if possible list the first loan as the original loan. Append this bookkeeping detail to your statement of factual background. If you have not kept track of the exact dates then state "On or around [month, date, year], and if you do not know the exact amount you borrowed, you should indicate the approximate amount. Further, if you don't know the exact amount you paid the lender, then add language to your complaint like "Payments totaling approximately $???,000 were made to the bank from 197? to 199?. Usually, Discovery takes care of resolving such questions. However, it is important to note that Complaints are not written under oath or penalties for perjury, so you are not going to suffer for a minor error.

Cosigning and Mortgage Deed of Trust Assumption. If you assumed a mortgage by cosigning for it, then you must proceed to attack the original loan that was made to the person you cosigned the note with or assumed the note from. Your position is much the same as that of someone who has cosigned on a bad note. Detail the facts in the statement of "Factual Background" in your Complaint.

Try to get the person you assumed the note from to join with you in the suit, as a co-plaintiff. If he doesn't cooperate, then list him as a Defendant in your suit, serve him with a Subpoena, charge him with knowledge that he was aware of the bank's fraud, and condoned it even at the time you assumed the note.

Other issues. There are other issues that can be added to individual lawsuits and they vary from case to case. But among these issues, things the lender should not have done would be: 1. "Backdating the Truth and Lending Forms"; 2. "recision forms executed when the loan was taken out"; 3. "your signature appearing on documents you never signed (such signature made by a duplicating machine)." You can and must learn of their existence through Discovery procedures, depositions and interrogatories; 4. "verbal or written promises that were made to you about refinancing the loan which the lender reneged on unexpectedly or for some hidden reason;" 5. "failure of a corporation to register with the Secretary of State or the State Corporation Commission;" 6. "failure to obtain a Certificate of Authority to do business in the state." This is a particularly useful issue to raise in foreclosure. You find out by writing to your Attorney General's office or to the State Corporation Commission for the foreign corporations status regarding a "Certificate of Authority." Do not overlook any jurisdictional challenge.

Stock Fraud Charges. If as a Defendant you file an Answer and Counterclaim to a corporation foreclosure, add stock fraud charges for requiring you to buy nonexistent stock in their associations. If you send them a Notice to Produce Documents, you will find that their stock is nothing more than a book entry and a concealed interest charge.

To block sheriff or trustee sale, use silver dollars with an Affidavit and a Constructive Notice. (See sample instructions in the Models given.)

COUNTERCLAIMS. In states where judicial foreclosures are used, file an Answer and a Counterclaim to any Complaint that is filed against you. In using Model Lawsuits #1 and #2, you reverse positions with the lender, i.e., you are the Defendant counterclaiming against the lender who is the plaintiff. You call your pleading a "Counterclaim at Law" instead of a "Complaint at Law." Also, if you are a Defendant suing another defendant you file a Cross Complaint and you are the Cross Plaintiff. If you bring in a bank or other lender that was not originally mentioned in your lawsuit, you can sue them by filing a "Third Party Complaint. " In this, you will be called the Defendant and Third Party Plaintiff and the bank called the Defendant.

Defenses. Today, our courts often become collection agencies for the nation's banks and mortgage companies. This is because people do not avail themselves of the Defenses provided by the courts. They permit Foreclosure by Default and the courts have no alternative.

The purpose of this work is to teach you how to use courtroom karate techniques (a) to banish your fear and to show you how to use your Constitutional rights, especially to keep possession of your property until your case is decided before an impartial jury. Although these instructions are written mainly for the benefit of the "pro se" or person who proceeds in the proper person or "in propria persona," the information in these instructions will undoubtedly be of interest to the licensed attorney as well. It is now recommended that an attorney use all the Constitutional and legal arguments contained in the pleadings which are made a part hereof.

While the rights to a trial by jury is always granted in a criminal proceeding, it is frequently denied in civil proceedings, where the only issue in controversy is an amount of money. Legislators, lawyers, judges, sheriffs, have all taken an oath to uphold the Constitution of the United States, yet most of them fail to carefully read the document they are sworn to uphold.

While the Constitution is the foundation of law in the United States, many Constitutional rights have since been abridged and denied through legislative and judicial fiat. As a result, there are today many laws and practices in conflict with one another. However, because each and every judge and attorney at law has taken such an oath, act and proceed on the premise that it is and remains the Supreme Law of the Land. Insist on it.

TRIAL BY MOTION versus TRIAL BY JURY.

Most court cases today are decided with Motion hearings. The most frequently used Motions are a "Motion to Dismiss" and a "Motion for Summary Judgment." If the judge grants either Motion, your case will never come to trial. There is nothing wrong with lawsuits being decided in this manner so long as both sides agree to this format. These types of suits are called "suits in equity or chancery jurisdiction." However, there is another kind of lawsuit called a "Complaint at Law or Suit at Common Law," and you have a right to have this kind of case tried before a jury, under the 7th Amendment to the Bill of Rights, U.S. Constitution, which says: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." **That is a Legal Karate hold.** Use it.

The main difference between a "suit in equity" and a "Suit at law" is that the former is tried before a judge while the latter is tried before a Jury.

Chancery or Equity Jurisdiction - Chancery or Equity Jurisdiction occurs every time you present any Motion before a judge. It is practical and possible to file a "COMPLAINT AT LAW" and then file a Motion before the court for some reason as long as your Motion does not deny the other parties" right to a trial by jury or deny them "equal protection of the laws" under the 14th Amendment. A Motion for a Continuance or a Motion for Certification of the Question are all proper Motions to present to the court.

In a Complaint at Law or Suit at Common Law, a Motion to Dismiss for any reason given, such as lack of jurisdiction or failure to state a claim upon which relief can be granted, must be tried before a jury. INSIST UPON IT. When an attorney files any of these Motions or if you do, it is the right of either party to the lawsuit to have such motions tried before a jury. By using these motions you obtain two jury trials. The first will be to determine if the court has proper jurisdiction or if you have a claim upon which relief can be granted.

If the jury decides in your favor, then you proceed to the second jury trial which deals with the merits of the case. The same jury will probably preside in both trials. While the right to a trial by jury is a Constitutional right under the 7th Amendment, practical experience has shown us the courts don't grant jury trials in civil proceedings unless there are MATERIAL FACTS IN DISPUTE. See to it that you bring MATERIAL FACTS INTO DISPUTE.

ANOTHER DEFENSE. One facing a Foreclosure must frame a COMPLAINT or COUNTERCLAIM in a lawsuit. Your Complaint is when you as a Plaintiff sue the defendant. In a Counterclaim, the defendant who is being sued counter sues the Plaintiff for "Counterclaims." The basic elements of a lawsuit are:

1. **Jurisdiction** - Establish what authority under the Constitution or laws you are invoking, so that the court has the authority to act.

2. **Parties** - The names and addresses of each party to the lawsuit, whether plaintiff or defendant, or third party plaintiff for third party defendant must be spelled out. There are also Cross complaints, where one defendant sues another defendant.

3. **The Facts** - Be specific and show that the intent of the person you are suing was to defraud you or breach contract or injure you in some way. You must name dates, places and names of persons involved. You need evidence for exhibits, such as letter promising to renew your loan, or offers to lend you money, in writing, or verbally, shortly before the lender reneges and calls in his note.

If you are very smart and shrewd you will take a witness with you and go to your lender and make an offer, within your stated means, to settle your debt, refinance it or whatever. Every word of what your lender counter proposes should be noted as well as any threats he may make to foreclose. The event should be recorded in an Affidavit, signed by your witness, notarized, etc. and presented as an exhibit in evidence.

4. Laws Violated. Any laws violated must be cited. You will need the help of an attorney in this area.

5. **Money Damages Relief** - The relief you are requesting in money damages must be stated in your "COMPLAINT." You will need an attorney to help you in this area.

MODEL LAWSUIT #1. Model Lawsuit number one is a basic lawsuit on the "Money and Credit Issue." It is the model lawsuit you will use to sue the lender bank or institutional lender.

You are strongly advised to get the help of an attorney to add more to it than what is given in the skeleton framework presented. The more issues of facts in dispute that you can set forth the more you will increase your chances of getting a trial by jury, even in today's "equity courts."

Examples of issues of facts in dispute to present in your Complaint.

1. Breach of Contract or Agreement - (Such as when the lender in writing or verbally promises to renew your loan and reverses himself.)

2. If the lender presents documents to the court that you do not remember signing, disclaim them. BE SURE TO DENY YOU SIGNED SUCH DOCUMENTS, EVEN IF THE SIGNATURE APPEARS TO BE YOURS. (Many banks and lending institutions have your signature copied by machine and by this means place your signature on documents you never signed.)

   Note: In practice this usage of your signature amounts to forgery, accomplished by "signature machines." When filing your Counterclaim, deny signing any and all documents that you do not remember signing. Have your attorney send the lender an Interrogatory or have him take a Deposition in which they are asked if they own a "signature machine," a machine that duplicates a handwritten signature. At a deposition, if they admit to owning such a machine, and most lender banks and institutions have just such a machine, then ask them for what purpose they own such a machine and why was your signature duplicated as if you had signed documents you had never seen? The answer should be most interesting to the court and especially to a jury.

3. Charge the lender with Usury and violating title 15 of the U.S. Code by not accurately figuring the Annual Percentage Rate based on Regulation Z.

   Note: This is strictly legal karate. Why? It so happens that Regulation Z is so complicated that almost no one can figure out how to use it, including lenders and attorneys. Charge that the Annual Percentage Rate the lender has used is higher than the figure he reported in the Truth in Lending Statement. Then in a written interrogatory or at a Deposition, ask the lender to explain in detail how he arrived at his figures for the Annual Percentage Rate used in the loan further, demand that he show just how this complies with Regulation Z.

4. Add any other issues of facts you can think of including any and all defects in the lenders Complaint, like errors in names, addresses, dates, loan figures, etc.

Courtroom Karate.

WEAPONS IN YOUR ARSENAL OF DEFENSE (Especially as a PLAINTIFF)

- Use of Court Rules.

- Use of an impartial Constitutional lawyer who will present your case in front of an impartial Constitutional judge (one who conscientiously observes his oath to uphold the Constitution of the United States).

- Get your complaint filed before your opponent brings his action to the court. Attack his complaint, which has to be entered as a countersuit (as you have made him the Defendant!).

- Diplomatically challenge the Judge as to where he stands with regard to the Constitution being the "Supreme Law of the Land." Does he agree? If not, have your attorney politely request that he disqualify himself for prejudice.

- If the Judge refuses your request have your attorney enter a Motion for Trial by Jury.

- If denied, enter counterclaims and cross claims against your opponent. Bring up every issue of money and credit that you and your lawyer can think of. Attack the Trustee's Complaint.

- Find flaws in every document your opponent presents to the Court.

- Enter Motion for Discovery. (See sample given on DISCOVERY in the Appendix.)

- The Judge may have a mortgage of record with your lender bank!

- Enter as many Motions for Discovery of facts and evidence in preparation for Trial as you can.

- Enter a Motion to obtain written Interrogatories (Depositions) from every individual connected with the lender in his lending institution who might have performed some act in processing your loan. (At this point, your lender may drop his suit and no longer respond to your Motions. And the Judge upon your Motion to Dismiss may do that very thing.)

- Your best weapons of defense (as a Plaintiff) are Motions for Discovery of Facts and a demand for written Interrogatories.

- Such documentation when gathered over the months, possibly years, will serve you well at trial.

- Get all the documents you can applicable to your case into production, and file a Request for Admission of Documents.

- Enter a Motion to Terminate Litigation without Trial.

- Hold a series of pretrial conference. Invoke Court Rules. (The example has been given as well as the instructions for use as use of these FRCs is becoming better known and more and more successful. Use at your own risk! Better to come into court with clean hands. Author's note.)

Answering a Complaint. If you use the Fractional Reserve check (which the author does not recommend using) you may follow model answers in the instructions that go with its use. If you do not use an FRC, an effective way to answer a Complaint that was used by Bob Bennett from Wisconsin is as follows: He denied everything except his name and address. In other words, an Answer to Complaint is a separate paper with that heading. He worded it: "Now comes the defendant, in his own person, and answers the complaint as follows:

"1. Defendant admits his name is...and that he lives at....

"2. Defendant denies each and every allegation of paragraph Two of the Complaint and leaves the burden to prove such allegations to the plaintiff.

Note: Paragraph two of the bank's complaint said that Mr. Bennett had signed a mortgage not on April 1st, 1979. By denying he signed the paper (even though he did so), Bennett forced the case to trial and caused a delay in the case. Had he admitted he signed the note, the bank's attorney would have immediately filed a Motion for Summary Judgment, which would have wiped out all chance of the case going to trial.

Mr. Bennett's admission of having signed the note would also have wiped out any chance of getting a jury trial.

When you answer - When you answer a complaint, file a Counterclaim against the lender, using every issue you can find that is reasonably available. Use every strategy to get a judge to grant you a trial by jury that he would otherwise deny, especially in an equity proceeding. Your Counterclaim moves the case from the "equity" side of the court to the "at law" side under the protection of the 7th Amendment to the Bill of Rights.

LEGAL KARATE IN THE COURTROOM

USE OF LEGAL KARATE - WHAT TO DO

If you are not experienced in court procedure, you will need all the help you can get. When you find a local attorney, bring this entire section to him and ask him to assist you. Keep a copy for yourself for the inevitable conferences that will take place. I suggest you may want to avoid any attorney who wants a large amount of money down and who will not agree to represent you in court on the Lawful Money and Credit Money Issue.

Of course, time is of the essence and the question of where one starts depends on whether or not your creditors have taken action in court to get a judgment against you or to foreclose on your property.

Legal Karate: Your Options Before Judgment. You have two legal karate courses of action. One is to file an original COMPLAINT at LAW, or wait until the lender files a Complaint and Summons against you, at which time you respond with either a MOTION TO DISMISS or an "ANSWER" and "COUNTERCLAIM AND THIRD PARTY COMPLAINT AT LAW."

If you sue first, with a Complaint at Law, suspend payments and save your money in an account at another bank or in a shoebox at home to cover future payments in the event you lose or decide to abandon the lawsuit down the road. If you are the Plaintiff, demand a Trial by jury, and at once proceed to use interrogatories and admissions as are described in DISCOVERY MADE SIMPLE (see Appendices). If you find that the lender(s) refuse to answer your interrogatories, then serve them with a NOTICE OF DEPOSITION, and with a Subpoena and ask them questions in court. (An attorney with good cross examination would come in very handy.) However, you can prepare your list from the admissions and interrogatories that they have refused to answer. Procedure for taking Depositions is explained in the Discovery Book, Appendices.

Further, should your lender bank refuse to answer a Request for Admissions, you should then file a MOTION for Summary Judgment, as the law says that any Admissions not answered are deemed "admitted." At this point, however, you have moved from a proceeding "at law" to one in "equity," and the judge should grant your Motion for Summary Judgment as a matter of right under the law.

Because of the questionable behavior of some of our judges, you may not be granted your Motion for Summary Judgment. Your next step would be to file a Motion for Leave of Court to Appeal the judge's refusal to grant judgment. If the judge refuses this Motion, immediately file a Petition for Writ of Error in Appellate Court. You are the Petitioner and the Judge then becomes the Respondent. You then ask the Appellate Court for an Order reversing the lower court decision of not granting you your Summary Judgment and cite the Discovery rules under Admissions to support your petition.

Another option which can be carried out at the same time is to file a Third Party Complaint for violation of your 14th amendment rights of not giving you equal protection under the laws. The debtor is entitled to the same protection as the creditor under the law.

Court Room Karate: To support your Complaint, ask your attorney to subpoena to a Deposition adversary and ask him a number of questions which will clarify what the statute says. Then follow this interrogation up with more questions about the particulars of the case. Use your equitable discovery rights, without waiving your trial by jury rights. Since the other party to your suit will not be idle, you must demand your trial by jury rights, especially when he files a Motion for Judgment against you.

YOUR OTHER LEGAL KARATE OPTION.

You may wait until the lender sends you a Summons and Complaint, which are usually filed in Superior or State Court. You have two options here, in reacting to that action they have taken. One is to file a MOTION TO DISMISS for lack of jurisdiction of the court over the subject matter. The other is to file an ANSWER and COUNTERCLAIM and Third Party Complaint at Law. If you are only dealing with a bank lender, you need only to file an ANSWER and COUNTERCLAIM as you can file a THIRD PARTY COMPLAINT against third party holders in due course, if necessary, or if your

Constitutional rights are violated. The Answer and Counterclaim and Third Party Complaint is used as your response against financial institutions other than banks (may be holders in due course). In any case, it is used against Mortgage companies and other like institutions. Name a number of John and Jane Doe respondents as Third Party Defendants. These John and Jane Does are banks or lender officers of such institutions who loaned, or bought your note from the original lender mortgage company, with "checkbook money or check credit money." It is quite safe to assume that they did as it is common practice for these same banks to create money on their books with checkbook or credit money.

FAILURE TO TENDER A LAWFUL CONSIDERATION. In this second type lawsuit, charge the lender(s) with "failure to tender a lawful consideration," "illegality," and "Breach of Implied Contract." Even though they state they have acted in good faith, their contract with you is voidable because what they did was illegal. There is no legal authority under the sun that gives them the right to create "credit money" and demand lawful money in return. Congress has declared only coins and currency to be legal tender in payment of debts, not "credit" or "checkbook money," created by a private corporation. Furthermore, you may then charge your lender(s) with "material representation of facts and "fraud."

An additional karate option - An additional courtroom karate option is your MOTION TO DISMISS . This Motion should be used as your first option and if your Motion is denied, you must immediately file your Answer and Counterclaim.In any state court, when anyone is foreclosing you your property and has filed a Summons and Complaint, you have the right to challenge the court's jurisdiction to hear the case. A simple defense here is to use Article 1, Section 10 U.S. Constitution which says: "No state shall coin money, emit bills of credit (credit money, checkbook money, Ed.) or make anything but gold and silver coin a tender in payment of debts."

Filing Fees - Every court case requires the payment of filing fees to initiate a case, unless the lender (bank or mortgage company) pleaded they had no lawful money (and many of them have very little), and proceeded "in forma pauperis." The filing fees must be paid in either gold or silver coin (have a roll of Roosevelt silver dimes handy) in order to comply with Art. 1 para. 10. In almost every instance, filing fees will be paid by check, which is not even legal tender by act of Congress. Neither checks nor currency nor copper nickel coins comply with the prohibition in Art. 1 Sec. 10 on the states to make nothing but gold and silver coin a tender in payment of debts. Thus, all filing fees paid to file the lawsuits are in violation of Art. 1 Sec. 10 when they are paid in something other than gold and silver coin! Indeed, this is your basis for challenging jurisdiction.

In your Complaint and Motion to Dismiss you must allege that the Defendant/Plaintiff has already violated the law, the U.S. Constitution, which is the Supreme Law of the Land. And immediately thereafter, use a Discovery procedure called a NOTICE OF REQUEST FOR ADMISSIONS. The five questions you must ask the lender to admit are listed in Discovery Made Simple (see Appendices, Discovery Made Simple).

When you file your Motion to Dismiss, ask the judge's clerk for a date AFTER the date the Admissions are due for a Hearing. Get your date set for the Motion to Dismiss hearing. Ask for a date two or three weeks away.

If you send in the Request for Admissions the day after you have received a Summons, your Admissions request response will be due BEFORE the date of the hearing. In that way you will put the Plaintiff/Defendant lender in a "Catch 22" situation. By doing so you will have proved he not only is violating the Constitution; he himself is proving to the court that you are right under Discovery laws. The law says: Any admissions not answered are "admitted." And in this situation, the lender cannot answer the Admissions without admitting that he violated the Constitution under Article 1 para. 10.

USE THE FOLLOWING MOTIONS:

- Notice of Jurisdictional Defect.
- Advance Trial Order of The Judge.

- Motion (have witnesses present) of Demand for Trial by Jury. (Don't let the Judge deny your Right.)
- If Judge denies your right to trial by jury seek publicity. Serve a Complaint on him. Call in the media.
- Otherwise, prepare for Trial before a Jury.
- Voir Dire.
- Opening Statements to the Court, as to the Constitutional Money Issues and as to the invalidity of your debt contract.
- Direct Examination of the Plaintiff.
- Presentation of Exhibits: Copy of the Constitution. Copy of The Bill of Rights. Copy of Sec. 31 U.S.C.A. 392. Copy of The Coinage Act of 1792: Money of Account
- Exhibits of all laws passed by our United States Congress on The Money Issue in contravention of the Constitution of the United States, federal and state statutes (see example, Memoranda, Appendices).
- Point out that Congress has enacted no legislation on the Coinage of Money and the regulation of the value thereof that isn't in contravention of the Constitution.
- ENTER:
- Objections to Plaintiff's Exhibitions (Defendant).
- Objections to validity of any contract existing between yourself and Plaintiff.
- Point out need for lawful coins to provide base for lawful consideration to make a contract valid.
- Cross examination techniques should be skillfully applied by your attorney.
- Additional Motions for Discovery and Interrogatories.
- Motion for Direct Judgment of the Court.
- Motion for Verdict.
- Closing Arguments.
- Instructions to the Jury (the Judge should stick to the Constitution).
- Verdict. If you win, you can go home. If not:
- Post Trial Motions.
- Appeal Procedures explained, again, will be MOTIONS, MOTIONS, i.e.,
- Motion for Judgment notwithstanding the Verdict(non obstento veredicto).
- Motion for New Trial.
- Motion to Vacate or Amend Judgment.
- Motion for Relief from Judgment or Order.
- Independent Suit to Set Aside Judgment.
- Appeal.

COURT ROOM KARATE WEAPONS SUMMARIZED.

1. A well written Complaint or Counterclaim.
2. Request for Substitution of Judge or Motion for Disqualification of the Judge supported by an Affidavit of Prejudice or Conflict of Interest.
3. Affidavits in opposition to MOTIONS TO DISMISS.
4. Raise all kinds of Issues of Facts and law In your MOTION to DISMISS.
5. DEMAND TRIAL BY JURY based on the 7th Amendment to the Bill of Rights, U. S. Constitution.

6. Submit Affidavits in Opposition to the lender's Motions for Summary or Default Judgment, by raising issues of fact and law in your Affidavits. State them or have your Attorney state them for you to the Judge. Your case will then have to go to trial.

7. Actual Notice - Use these often and attach each one you use to your lawsuit.

8. Use Affidavits in support of all your Motions.

9. Use Cross Complaints and Third Party Complaints.

10. Use Motions for a New Trial or a Motion for Leave of Court to File Counterclaim, if a judgment has been entered against you.

11. File a Chapter 13, to block entry of Judgment or to stop the Sheriff or Trustee Sale; also file Adversary Proceedings in Bankruptcy Court. (See Appendix for forms.) Present a Complaint before a Grand Jury against any adversaries who get together in a way that violates your Constitutional rights, as their actions are in violation of Title 8, Sec. 241, which could subject them to a $10,000 fine and up to ten years in prison.

12. Use Depositions to win your case throughout all of this.

THIS IS THE ESSENCE OF LEGAL COURT ROOM KARATE.

There is value in using the jurisdictional challenge. First, it is placed in the record and you can always bring it up on appeal. If the issue is not first brought up in trial court it cannot be raised in the future when you appeal. An important strategy in any court proceeding is to use all the defenses, which are valid, and waive none. This strengthens your overall case. In a recent case, it took a judge six months before he decided he had jurisdiction (in a case brought by Dan Palmer of Olmsted Twp., Ohio). Palmer filed an Answer and Counterclaim on the "credit" issue--that of banks lending their credit as money, when in fact they did NOT have the actual amount of cash involved in their safe deposit vaults to back it up.

Another winner on this issue is Walter Moore of Dover, North Carolina. Mr. Moore successfully fought a foreclosure. He had to educate the sheriff, but his position was legally correct and the sheriff refused to carry out the court's order to evict Moore.

The Answer and Counterclaim, Third Party Complaint Definitions - An Answer to a Complaint is exactly that. You answer the lender's complaint by admitting parts of it and denying other parts. You may admit your name and address and deny all the rest.

A Counterclaim, a Complaint at Law, and a Third Party Complaint are all basically the same Motions in the same basic lawsuit used in different situations.

In a Complaint, you are the Plaintiff and the original moving party bringing the action. And it is always best if you are. You start the Action. You file the Summons. After all, you are the injured party, as you have given the lender a mortgage note or a Deed of Trust and note on your property for a mere credit entry on his books, which he created out of thin air. And he has misrepresented to you that he is lending you lawful money of the United States.

Pay the filing fees in currency or silver coin, and get a receipt showing you have paid cash.

In Counterclaim and Third Party Complaint Actions, you are the Defendant who is countersuing the Plaintiff lender or some other party connected with him in the existing case that was started against you. In the Counterclaim you must write up a Complaint against the Plaintiff. Basic court procedure is that both the Complaint against you and your Counterclaim against the Plaintiff must be tried at the same time. The Third Party Complaint which either the plaintiff or defendant can file literally brings a third party into the case as a Third Party Defendant. The Plaintiff would call himself both Plaintiff and Third Party Plaintiff, whereas if the defendant filed a Third Party Complaint he would call himself "Defendant and Third Party Plaintiff."

The action on paper would look like this:

National Bank,
Plaintiff,
vs.
[your name],
Defendant and Third Party Plaintiff,
vs.
[Name of the Judge who broke his oath not upholding the Constitution],
Third Party Defendant.

Even if a judge should dismiss your Complaint or Counterclaim, your Third Party Complaint will effectively drive him off the case, even if you file your action after the judge's dismissal.

Also, in support of your MOTION TO DISMISS, you should submit to the court a MEMORANDUM OF LAW ON CONSTITUTIONAL MONEY.

Motion for Summary Judgment. If the lender submits a Motion for Summary Judgment, you submit a Motion to the county called an Answer and Counterclaim. However, determine first if the judge has ruled on whether or not he has jurisdiction to hear the subject matter in your case. During oral arguments, when the judge says he has jurisdiction, then you say: Your honor I anticipated that the court might overrule me on this Motion for equity consideration, and I have brought with me an Answer and Complaint, with a fifty page brief in support, and I would like now to file a copy with the court and with the Plaintiff/Defendant (lender).

The important point to remember in all this is that when you file a Motion to Dismiss for lack of Jurisdiction or for any other reason, you must not answer the Complaint until the judge rules he has jurisdiction.

Actually, you always have the right to challenge jurisdiction at any point in a trial proceeding, even if you asked for a new trial, or again, at the confirmation of the sheriff or trustee sale.

Summary of Options Before Judgment.

1. File a Motion to Dismiss and challenge jurisdiction of the court based on Article 1 Sec. 10.
2. If denied: File an Answer and Counterclaim and Demand Trial by Jury.
3. Against lender's Motion for Judgment, file a Third Party Complaint. The judge may violate your Constitutional Rights such as total denial of Discovery rights through a "protective order" or if he says you will not get a trial by jury, or if he dismisses your Counterclaim, file your Third Party Complaint and sue him as an adversary party.
4. If you cannot do any of these things, immediately file under Chapter 13 in Federal Bankruptcy Court or a Chapter 11. This will effectively block all action in your case, even a Trustee Sale. If your secured debts are under $300,000 and your unsecured debts are under $100,000 file a Chapter 13 action.
5. If your debts are over the $300,000, mark file a Chapter 11 Action.
6. File your Demand for Jury Trial under Rule 9015.
7. Challenge the alleged debts you owe as loans having been made as "credit" loans. And file your Memorandum of Law on what is Constitutional money.
8. Complete the Chapter 13 statement carefully, with the help of a specialist attorney familiar with all aspects of current bankruptcy law.
9. File a Complaint at Law with a Summons just like any other lawsuit modeled after Bankruptcy Form 34. It is called an ADVERSARY PROCEEDING NUMBER (Abbr.: ADV. PRO. NO.)
10. Proceed with Discovery against the lender (and all other parties connected with your case just as you would in any court. Pay for your Demand for Trial by Jury papers at the Federal Bankruptcy Clerk of Courts Office. Use cash. Get a receipt for payment showing CASH.

OPTION 5: HOW TO WIN BY USING THE LEGAL SYSTEM

THE GOAL OF THIS OPTION: **File a lawsuit, or negotiate, to delay, stop or dismiss the foreclosure when the lender has committed fraud or refuses to correct an error in your loan or foreclosure documents or procedures.**

GETTING STARTED

1. **Error Checklist.** Review the following key documents, as well as the servicing of those documents, for errors or fraud.

   a. The original contract to purchase the property:

      I. Are there any signs of error, fraud or other irregularity? **Yes** **No**

      II. If yes, then describe below.

      _____
      _____
      _____
      _____
      _____
      _____
      _____
      _____
      _____

   b. The escrow papers and procedures to purchase the property:

      I. Are there any signs of error, fraud or other irregularity? **Yes** **No**

      II. If yes, then describe below.

      _____
      _____
      _____
      _____
      _____
      _____
      _____
      _____

c. The original loan documents:

I. Were the amounts of the following items fully disclosed to you on your loan documents?

A. Interest rate	Yes	No
B. Full principal amount of the loan	Yes	No
C. Total interest to be paid	Yes	No
D. Finance charges	Yes	No
E. Service charges	Yes	No
F. Loan fees	Yes	No
G. Mortgage insurance	Yes	No
H. Property insurance	Yes	No
I. Health or accident insurance	Yes	No
J. The annual percentage rate (APR)	Yes	No
1. Was the APR calculated properly (pages 9-8 and 9-9)?	Yes	No
a. Did the lender use the correct accrual basis for calculating the daily interest amount?	Yes	No
b. Did the lender calculate the correct number of days between two interest charge periods?	Yes	No
c. Did the lender use the correct margin amount?	Yes	No
d. Did the lender use the correct index value during the month?	Yes	No
e. Did the lender use the correct effective date for any rate changes?	Yes	No
f. Did the lender use the correct loan balance when calculating the amount of interest due?	Yes	No

g. Did the lender use the correct index type? **Yes** **No**

h. If so, did the lender use the correct version? **Yes** **No**

j. Did the lender use the correct source for the index? **Yes** **No**

d. Your Promissory Note and Deed of Trust (see examples on pages 1-26 through 1-29):

I. Did you compare for exact accuracy the details on your promissory note and trust deed to the details on every document the trustee mailed, advertised and posted during the foreclosure process? (See page 1-26 for explanations of each detail.):

A. Document Number **Yes** **No**

B. Date of Execution **Yes** **No**

C. Trustor (borrower) **Yes** **No**

D. Trustee (unless a Substitution of Trustee, page 1-30, has been filed; if so, check it too) **Yes** **No**

E. Beneficiary (lender) **Yes** **No**

F. Legal Description **Yes** **No**

G. Amount of Indebtedness **Yes** **No**

H. Venue **Yes** **No**

I. Look for other errors or discrepancies **Yes** **No**

e. Your Notice of Default (see an example on page 1-31, and item 2 on page 1-19):

I. Did the trustee record the Notice of Default in the office of the county recorder? **Yes** **No**

II. Did the trustee mail a Notice of Default within 10 days of recordation to the homeowner/borrower? **Yes** **No**

f. Your Notice of Trustee's Sale (see an example on page 1-32, and item 3 on page 1-19):

I. Did the trustee wait until after 3 calendar months expired before proceeding with the trustee's sale? **Yes** **No**

II. Did the trustee publish a Notice of Trustee's Sale once a week for 3 consecutive weeks over the 20 day period prior to the sale in a publication of general circulation in the county where the property is located? **Yes** **No**

III. Did the trustee mail a registered/certified Notice of Trustee's Sale to the homeowner/borrower at least 20 days before the sale? **Yes** **No**

IV. Did the trustee post the Notice of Trustee's Sale for at least 20 days:

A. In at least 1 public place in the city, judicial district or county of sale? **Yes** **No**

B. On the door or other conspicuous place on the property in foreclosure? **Yes** **No**

g. If your foreclosing loan is through Cal-Vet, FHA or DVA, did the agency follow the correct foreclosure procedures as outlined in the corresponding sections in the option chapter 3? **Yes** **No**

I. If no, then describe the incorrect procedures which caused you harm.(Attach additional pages, if necessary.) _____

_____

h. The conduct of the trustee at the sale (see page 1-20, item 7):

I. Did the trustee conduct a public auction on a legal business day between 9 am and 5 pm at a public place in the county where the property is located? **Yes** **No**

II. Was the property sold to the highest qualified bidder? **Yes** **No**

III. Was the high bid paid in cash or cashier's check from a qualified lender as specified in the California Civil Code, or, a "cash equivalent," which has been designated in the notice of sale as acceptable to the trustee? **Yes** **No**

IV. Did the trustee reject all inadequate bids? **Yes** **No**

V. After conclusion of the sale, did the trustee execute and deliver a Trustee's Deed to the buyer and endorse the fact of the foreclosure sale on the trust deed promissory note? **Yes** **No**

VI. Until the exact moment that the sale ends, did the trustee allow the property to be redeemed, or postponed 1 time only for 24 hours, by the trustor, any junior lienholder, or any other party with a legal interest may still redeem the property? **Yes** **No**

VII. After the sale, did the trustee pay off the first trust deed upon completion of the foreclosure (if the sale price equals or exceeds the amount of defaulted debt plus costs and expenses of sale)? **Yes** **No**

A. If so, did the trustee distribute any remaining proceeds to other lien claimants? **Yes** **No**

VIII. After the sale, did the trustee give the successful bidder a Trustee's Deed? **Yes** **No**

i. Did you review the time sequences within item 2 on pages 9-4 and 9-5 for additional error possibilities? **Yes** **No**

j. Are there signs of error, fraud or irregularity with any other aspect of the property? **Yes** **No**

I. If yes, then describe below. (Attach additional pages, if necessary.)

_____

_____

_____

_____

_____

2. List the names of who read and reviewed the documents and procedures listed above for your case?

a. A real estate broker (see page 9-2 for more on finding a broker)? **Yes** **No**

I. _____

attorney address phone number

Response: _____

_____

_____

_____

_____

_____

_____

b. An attorney (see page 9-3 for more on finding an attorney)? **Yes** **No**

I. _____
attorney address phone number

Response:

c. Consumer Loan Advocates (see page 9-9 for more on CLA)? **Yes** **No**

I. _____
attorney address phone number

Response:

d. Yourself? **Yes** **No**

I. _____
attorney address phone number

Response:

e. A friend? **Yes** **No**

I. _____
attorney address phone number

Response: _____

f. Other? **Yes** **No**

I. _____
attorney address phone number

Response: _____

g. Other? **Yes** **No**

I. _____
attorney address phone number

Response: _____

3. **Did you present any errors/fraud to the parties responsible for the errors/fraud?** **Yes** **No**

a. **If yes, did you write a letter?** **Yes** **No**

I. If yes, then attach a copy to this page.

b. **Did you make contact in a telephone conversation?** **Yes** **No**

I. If yes, then summarize the main points of the conversation below.

c. **Did you make contact in person?** **Yes** **No**

I. If yes, then summarize the main points of the visit below.

d. **Did the parties responsible for the errors/fraud respond with a letter?** **Yes** **No**

I. If yes, attach a copy to this page.

e. Did they respond in a telephone call? **Yes** **No**

I. If yes, then summarize the main points of the conversation below.

f. Did they respond during a visit you made to them?

I. If yes, then summarize the main points of the conversation below.

4. At any point, were the parties responsible for the errors/fraud willing to negotiate with you in order to avoid a lawsuit? **Yes** **No**

a. If yes, were they willing to officially stop the foreclosure while negotiations took place? **Yes** **No**

I. If yes, then list below the actions they took.

5. Were the parties responsible for the errors willing to cooperate in negotiating with you to stop the foreclosure? **Yes** **No**

   a. If no, then you may be able to obtain a preliminary injunction or temporary restraining order to stop the sale or to set aside an already completed sale. List below the main points concerning their lack of cooperation.

   b. Were there any extraordinary violations of your rights? **Yes** **No**

      I. If yes, then you may be able to obtain a preliminary injunction or temporary restraining order to stop the sale or to set aside an already completed sale. Explain the details of the violation(s) below.

   c. If you are trying to sell your property and have a strong prospective buyer, or a buyer in an escrow that is scheduled to close after the date of the trustee's sale, then did your lender, upon notification of the buyer, agree to postpone the trustee's sale in order to allow the escrow to close? **Yes** **No**

      I. If no, then you may be able to obtain a preliminary injunction or temporary restraining order to stop the sale. If the sale has already occurred, then you may be able to have it set aside in order to complete the sale. If the trustee's sale caused a bonafide buyer to buy elsewhere and thus caused you harm, then you may be able to sue for damages.

d. Has your lender been cooperative in your attempts to workout the default? **Yes** **No**

I. If no, then you may be able to obtain a preliminary injunction or temporary restraining order to stop the sale, especially if your loan is FHA or DVA guaranteed. Describe the details of your lender's lack of cooperation.

6. Did you attempt to avoid a lawsuit and negotiate an alternative with the lender? **Yes** **No**

a. Did you request that the foreclosure be stopped and that no new action be taken? **Yes** **No**

b. Did you request that the foreclosure be delayed, suspended or restarted from the beginning? **Yes** **No**

c. Did you ask an attorney to negotiate your case? **Yes** **No**

I. If yes, list the attorney's name and telephone number below.

Name **Telephone**

d. Did you threaten to file a lawsuit? **Yes** **No**

e. Did you actually file a lawsuit? **Yes** **No**

7. Do you have the basis for a lawsuit, preliminary injunction or temporary restraining order? **Yes** **No**

   a. If yes, then do you plan to proceed with the lawsuit by yourself? **Yes** **No**

      I. Do you plan to hire an attorney? **Yes** **No**

   b. Do you have the basis for starting or joining a class action lawsuit? **Yes** **No**

   c. Which model lawsuit(s) seems most applicable to your case (see page 9-15)? **1 2 3 4 5**

   d. Did you file a motion for a preliminary injunction? **Yes** **No**

      I. If yes, then attach a copy of the motion to this page.

      II. Did you have to post a bond? **Yes** **No**

         A. If yes, then attach a copy to this page.

   e. Did you file a motion for a temporary restraining order? **Yes** **No**

      I. If yes, then attach a copy of the motion to this page.

      II. Did you have to post a bond? **Yes** **No**

         A. If yes, then attach a copy to this page.

   f. Did you file a lis pendens to give the world and any prospective buyer notice that legal action is pending on your property? **Yes** **No**

      I. If yes, then attach a copy of the motion to this page.

   g. If your property has already been sold in a trustee's sale, do you have the basis to have the sale voided, or set aside by the courts? **Yes** **No**

      I. If yes, then did you file a motion to set aside the sale? **Yes** **No**

      II. If yes, then attach a copy of the motion to this page.

      III. Did you have to post a bond? **Yes** **No**

         A. If yes, then attach a copy to this page.

8. **Contact at least 3 attorneys,** if possible. Look in your local Yellow Pages or newspapers (see page 9-3 for more on finding an attorney). Interview as many attorneys as possible until you find someone you feel comfortable with. List the attorneys you contacted below and what they promised you. **(Circle the one you decided to hire.)**

a. _____
attorney address **phone number**

Response:_____

b. _____
attorney address **phone number**

Response:_____

c. _____

attorney address phone number

Response:_____

NOTES