



CENTER for NYC
NEIGHBORHOODS

Working With Legal Services

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What Legal Services Organizations Do

- ◆ Legal services organizations offer free legal assistance and representation to homeowners facing foreclosure.
- ◆ This assistance usually fits one of three patterns:
 - ◆ One-time advice or *pro se* assistance
 - ◆ Settlement conference representation
 - ◆ Full representation
 - ◆ Affirmative litigation (bringing new cases against bad actors)

Legal Services Representation

- ◆ **One-time advice or *pro se* representation** – Legal services attorneys will often provide advice to homeowners about their situation in clinics, intake line conversations, and client appointments. They also frequently help borrowers fill out *pro se* answer forms or respond to motions *pro se*. In these situations, there is not an ongoing attorney client relationship. The attorney will not go to court on behalf of the borrower.
- ◆ **Settlement conference representation** – Most legal services organizations undertake limited scope representation in which legal services will represent the borrower only during the settlement conference portion of the case. While the case is in settlement conferences, there is an attorney client relationship. But once settlement conferences are over, the relationship ends unless a further retainer is signed.
- ◆ **Full representation** – The organization represents the borrower for the entire foreclosure case.
- ◆ **Affirmative litigation** – The organization brings a lawsuit on behalf of the borrower to stop bad practices.

When to Refer to Legal Services

- ◆ Any borrower with a foreclosure suit filed against them should at least speak with an attorney about their legal situation and see if legal services representation is available.
- ◆ Borrowers with title problems or who might be good candidates for bankruptcy should speak with an attorney.
- ◆ If a borrower has been served with a summons and complaint recently, then the borrower should immediately contact legal services, even if the borrower had previously spoken to an attorney, so that they can receive assistance with preparing an answer. All legal services organizations assist with *pro se* answers.
- ◆ If a borrower has a motion pending against them, then the borrower should immediately contact legal services, even if the borrower had previously spoken to an attorney.

When Legal Services Might Refer Borrowers to Housing Counselors

- ◆ The borrower is not in an active foreclosure suit – at this time, the legal services organization may feel that there is not much legal work to be done.
- ◆ There is a lull in the case – the borrower has filed an answer but has not yet been scheduled for a settlement conference date, or the foreclosure case has been released from the settlement conference part but a motion has not been filed yet. Legal services may do an intake and tell the client to work with a housing counselor to put in an application until the next step in the case.
- ◆ The borrower is very late in the process – if the borrower has already lost a summary judgment motion or has a default judgment against them, the case may be far enough along that most of the legal claims have been waived. But, the borrower still may be eligible for a modification.

Legal Services and Housing Counselors

- ◆ If the client has received *pro se* assistance or advice, but not representation, then proceed normally. In this situation, there is not an ongoing relationship.
- ◆ If the client is represented by an attorney – i.e. in settlement conferences or fully represented – then you should speak with the attorney about how to work together.
- ◆ Clients will often want to continue working with their housing counselor due to familiarity and convenience. As long as the housing counselor and attorney can effectively work together, most legal services organizations welcome this.

Working with Legal Services

- ◆ If a borrower is represented by a legal services attorney, the attorney should be the only one who sends loan modification documents to the servicer's attorney.
- ◆ The attorney is the one going to court on the homeowner's behalf and who will have to explain any issues with the submission, so the attorney must be able to review the submission before the other side does.
- ◆ Additionally, if the servicer fails to negotiate in good faith, then the attorney will have to make a motion explaining what the servicer did or failed to do. The attorney can only tell the court what is within his or her personal knowledge.

Best Practices

- ◆ If a homeowner is represented by an attorney, always send applications and missing document submissions to the attorney, who will review the documents and send them to the servicer's attorney.
- ◆ If a homeowner is represented by an attorney, make sure the attorney knows what you have done on the file before the attorney took on the case (if applicable) and all the work you have done on the file, including filing complaints, communicating with the servicer, submitting a MAP application, etc., so that they know what is going on with the case.
- ◆ If you are seeking advice about a specific case, please make sure you have your client's permission to talk about their case with a legal services organization.
- ◆ Unless you have a specific question about a case or there is an emergency, it is best to direct a homeowner to call a legal services organization's intake line or go in person to a clinic.