

# Memo

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## **The Six Warning Signs of a Possible Consumer Protection Law Violation**

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Provided as a resource by the law firm of Denbeaux and Denbeaux

In 2010 at the height of the robo-signing controversy, Chief Justice Rabner took action "intended to provide greater confidence that the tens of thousands of residential foreclosure proceedings underway in New Jersey are based on reliable information.(1)" Justice Rabner said at the time that "nearly 95% of those cases are uncontested, despite evidence of flaws in the foreclosure process.(2)"

The question is, why wouldn't homeowners with the knowledge that they could be facing foreclosure, hearing that the foreclosure process is flawed due to possible fraud, contact an attorney immediately?

The reasons why New Jersey Homeowners fail to act are numerous and varied. Certainly, fear, embarrassment, confusion all top the list of conditions which exasperate an already overwhelming situation and freeze homeowners into inaction until it is too late. What greater humiliation than the loss of honor and dignity of losing one's home and public eviction?

At Denbeaux and Denbeaux we are very empathetic to the feeling our clients experience in this regard. In fact, this area is very personal to us as one of the Partners in the firm, Joshua Denbeaux began fighting foreclosure in 2006 when a friend had a problem with foreclosure, and he discovered irregularities. It was the development of new approaches to the legal work that led to many of the strategies now in place and used by other attorneys.

Also, homeowners' good faith reliance on their efforts working with their loan servicers sometimes lulls a diligent homeowner into a false sense of security. In many circumstances, homeowners have reported that they continue to work with their loan servicing company on the belief that their loan will be modified and home saved without the foreclosure being completed. Homeowners trust the loan servicer and continue to work with them outside of court while the foreclosure is prosecuted. By the time the homeowner finds out the loan servicer will not modify their loan, the foreclosure is complete and the homeowner has effectively waived their right to contest the judicial process.

The promise of time may also be enticing to some homeowners. During the second quarter of 2015, it took an average of 1,206 days to complete a foreclosure in New Jersey according to RealtyTrac, an Irvine, CA, real-estate analytics firm.

For homeowners who want to stay in their home long term, the key is involvement. The earlier into the process a homeowner knows their rights, understands the loan servicers' and lenders' obligations, and takes action, the better the outcomes.

One area homeowners must become aware of is the consumer protection laws enacted by Congress. These Federal laws can have major impacts on a homeowner's case. Issues stem from loan origination, involve loan servicing - including the wrong application of interest rates and escrow charges - and may continue through debt collection efforts.

In particular, homeowners should be aware of these six warning signs which may indicate that their rights have been violated:

- Payments not being accepted by a loan servicing company
- Payments not being recorded correctly by a servicing company or lender
- Being told to go into default in order to get a refinance
- Denial of a loan modification without proper explanation
- Inaccurate charges of interest, penalties, and escrow fees
- The bank falsely and repeatedly claiming that the homeowner has not provided all documents requested as part of the loan modification application process

Once a warning sign is identified, it is imperative that the homeowner consult with an attorney who specializes in the relevant NJ State and Federal laws, and specifically one who can anticipate a lender or servicing company's motives and eventual next steps.

Just as every family and every home is different, so are the circumstances that have led to the financial hardship leading up to default and foreclosure. This is why it is important for a homeowner to get a consultation with an attorney to learn what they don't know. Many intelligent and educated people make the mistake of finding blogs, articles on the web and in trying to make sense of them, operate out of a false sense of fear or hope. A knowledgeable attorney can review documents and situations to clarify a homeowner's rights and devise a course of action designed to benefit the homeowner's best interests.

For those homeowners who recognize that they can and should be contesting the bank's efforts to foreclose, the right attorney can obtain relief for the homeowner. The attorneys at Denbeaux and Denbeaux have achieved such relief by using our knowledge of the state court process to advocate for compliance with state laws at both the trial and appellate level. And when the homeowner's rights under applicable Federal statutes have been violated, we seek to obtain affirmative relief for the homeowner by filing lawsuits in Federal Court. This dual track system can result in providing the homeowner with leverage and motivate the bank to work with the homeowner in ways that may not otherwise be possible.

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(1) "New Foreclosure Procedures Put to Test as Number of Cases Climbs in New Jersey", by Joe Tyrell, February 4, 2015 NJ  
<http://www.njspotlight.com>

(2) State of New Jersey Administrative Office of the Court, and State of New Jersey Department of Banking and Finance, Residential Mortgage Foreclosure Statistics  
[http://www.state.nj.us/dobi/division\\_banking/foreclosedstats.htm](http://www.state.nj.us/dobi/division_banking/foreclosedstats.htm)