

How to use “Produce the Note” in Non-judicial Foreclosure States

March 5, 2009

In some states, a lender can foreclose on your home without going to court. These are called non-judicial foreclosure states. You can still use the [“Produce the Note” strategy](#) in these states, but it takes a few more steps on your part.

First, the concept behind “Produce the Note” is this: When a homeowner is faced with a foreclosure suit, “Produce the Note” requires the lender to prove it has the actual authority to foreclose, by requiring it to officially produce the original promissory note in the lawsuit. But if there is no foreclosure lawsuit, what can homeowners do? In these [“nonjudicial foreclosure”](#) states, such as California, Texas, or the thirty or more other states with similar procedures, the homeowner has to file a lawsuit against the party trying to foreclose.

Here’s how it generally works:

- In a state with nonjudicial foreclosure procedures, a foreclosure sale can be initiated by the lender without using court proceedings.
- Homeowners receive a “Notice of Intent” letter informing them that a foreclosure sale will be scheduled unless the overdue debt is paid within a certain amount of time.
- If the debt is not paid accordingly, a “Notice of Sale” is then sent informing the homeowner that a foreclosure sale will take place at a particular time and place.
- No lawsuit is ever initiated by the lender and the courts are not involved.
- Without a lawsuit, you cannot use judicial procedures to require the lender to “produce the note.”
- Merely sending a private letter to the lender “demanding” that it produce the original note to the borrower may be met with utter disregard or outright refusal by the lender.

So, here’s what you can do:

- In a nonjudicial foreclosure state, in order to protect yourself by demanding that the lender “produce the note,” it will be necessary for you to first actually file your own lawsuit. Even in such nonjudicial foreclosure states, no law prohibits you from instituting your own lawsuit challenging the right of a lender to foreclose on your property. The lawsuit would allege that:
 1. the lender has sent a Notice of Intent to Foreclose;
 2. the homeowner is unsure as to whether the lender still possesses the original debt instrument, upon which the lender claims the right to foreclose;
 3. the homeowner wants proof of such authority; and
 4. the court should intervene and prevent the foreclosure from taking place unless and until such proof is presented.
- Initiating litigation to protect your rights is never a simple process. Requirements as to what must be contained in a pleading, how the facts must be plead, who should be named in the pleading, and how the pleading should be officially “served” on the lender, all differ from state to state.
- Once a lawsuit is initiated, however, all states have judicial procedures that allow a party to require the other side to produce relevant documents, and the [“produce the note” strategy](#) can be used.

Often times, the best way to protect your rights in these situations is to seek professional help from an attorney licensed to practice in your geographical area. Getting involved in a lawsuit by representing yourself, especially if you file the lawsuit yourself, is not easy, but you can do it. Every citizen is able to represent themselves and file a lawsuit on their own. It’s called [pro se](#), which means “on ones own behalf.” If you can afford a lawyer, then by all means, hire one. There are attorneys who specialize in real estate matters, and either advertise or can be found in the yellow pages. Most areas have bar associations that maintain lists of attorneys willing to help in specific areas of the law.

Finally, there are usually “legal aid” organizations around set up to assist individuals who may have difficulty paying for the services of an attorney. A good place to begin your search is by going to [the Legal Services Corporation website](#).

So, even if you are in a non-judicial foreclosure state, you can use “Produce the Note.” This is your home, and if you want to fight for it, you do have a way.

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 - **Links**

 - [“Produce The Note” Documents](#)
 - [Consumer Warning Network’s YouTube Channel](#)
 - [Find Your State Attorney General](#)
 - **Archives**

 - [2010](#)
 - [2009](#)
 - [2008](#)
 - [2007](#)
- [What if Your Lender CAN’T Produce the Note?](#)
 - [Learn how to use “Produce the Note” to Save Your Home](#)
 - [Foreclosure Help “How To” – Make ‘em Produce the Note](#)
 - [Fight Foreclosure: Make ‘Em Produce the Note](#)
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