

How to interview a Florida foreclosure defense attorney.

A distressed homeowner's guide.

Introduction

If you have downloaded this guide, it probably means that you are struggling to make your mortgage payments to the bank. The good news is that it was a smart decision to get pro-active and get legal assistance. There are many lawyers and firms advertising for clients that are in foreclosure or who are struggling, but not all lawyers are created equal. Many lawyers have focused on civil litigation their whole careers and others have just recently started to handle civil litigation cases, such as foreclosures.

Most people have never hired an attorneys before and very few have ever hired an attorney for a Florida foreclosure case before. You should interview several firms to see who you have the most confidence in to handle your case.

This guide provides some questions to ask any attorney whom you are interviewing that any good foreclosure defense attorney should be able to answer. I submit to you that if the attorney you are interviewing can not answer all of these questions, she/he may not be the attorney for you. I have also spent some time explaining why each question is so important and what type of answers you should be looking for. I hope you find this guide educational and informative.

Questions to ask when you are interviewing an attorney:

1. How long have you been practicing?

This is an important question to ask because saving a client's house is not typically an easy task. You need an attorney who has the experience to go head-to-head with the bank's lawyers. The founders of Bavaro Legal, Matthew Bavaro and Matis Abravanel have been licensed to practice law in the State of Florida for 11 and 13 years, respectively. The total combined experience of our attorneys at Loan Lawyers, LLC is over 50 years.

2. How many years of your practice was litigation and how much transactional?

The legal profession has been hit unusually hard by the Great Recession and many lawyers that were once transactional lawyers have started to litigate to make ends meet. Transactional lawyers handle matters such as drafting contracts and real estate closings, but do not typically fight in court. Even though the lawyer may have been practicing for many years, they may not have more than a few months or a year or two of actual litigation experience. At Loan Lawyers, our lawyers combined have handled thousands of court cases over the years.

One way to check this would be to go to the county clerk's website to see how many cases a specific lawyer has handled in that county. For example, you can go to browardclerk.org, click on online search and then public search. From there, click the civil link and type in MATTHEW BAVARO. The clerk now limits the search to the first 200 cases that lawyer has handled. As you can see, from 2000 to 2003, Matthew Bavaro, a Loan Lawyers founder, litigated 200 in just over three years. If the clerk would list all of the cases, it would exceed one thousand by this point. This is how you can tell if the lawyer you are hiring has real litigation experience, or is just jumping in now.

3. What county have you primarily practiced in?

This is an important question so you know where to verify the lawyer's experience. You can Google the name of the county followed by "clerk of court" (e.g. Broward County clerk of court) to find the clerk's website address. From here, you can research the lawyer further.

4. Does your firm sue for consumer protection violations, such as the Fair Debt Collection Practices Act and the Florida Consumer Protection Practices Act?

At Loan Lawyers, we handle consumer protection matters as well. We find that banks,

credit card companies, and debt collectors are becoming relentless in their collection efforts. When they step over the line, we will file suit for you against them. You may be entitled to money damages from overzealous debt collection practices. Sometimes you need to take the fight to the bank, but many firms do not represent clients for these matters. A suit such as this against the bank may also give you leverage to negotiate with the bank.

5. What is a pooling and servicing agreement and how will one apply to my case, if at all?

If the lawyer can not answer this question, they are probably not competent to handle your foreclosure matter. Many home loans have been packaged together and sold as shares on Wall Street. Oftentimes, foreclosures are brought by the trustee of this trust. The pooling and servicing agreement is what creates the trusts and the relationships between the originating lender, the trustee, and the investors. The pooling and servicing agreement is a document that may be more than 1000 pages in length. There may be a wealth of defenses for your foreclosure found there. If the lawyer you are interviewing does not understand pooling and servicing agreements and the securitization process, they are probably not equipped to defend your foreclosure.

6. What standard discovery do you send to the banks?

Discovery is the legal process by which you obtain information from the bank. At Loan Lawyers we send Requests to Produce to obtain documents, Interrogatories, which are written questions for a bank officer to answer under oath, and Requests for Admissions where ask the bank to admit or deny certain facts. We see many lawyers simply trying to delay cases rather than actually fighting them. If you are interviewing a lawyer that says they generally do not send discovery, then you probably are not interviewing a fighter.

7. Will you take depositions of any bank officials?

Depositions are sworn statement that you have the right to take from bank officials. We find that oftentimes bank officials are signing things without even reading what they are signing. By taking depositions of these bank officers, it is not uncommon for the bank's case to start unraveling. This puts the homeowner in a stronger position to negotiate or even to go to trial and try to win the case.

8. What arguments do you make about the negotiability of promissory notes?

This is one of the hot topics in foreclosure defense. Banks often come to court with notes that have an indorsement to another party or a blank indorsement. You will know if an indorsement has been made because the note will be stamped on the last page and will say “Pay to the order of _____” and will be signed by a bank official.

At Loan Lawyers, we are leading the charge to argue that most of these promissory notes are not negotiable instruments. This means that the bank must have a bonafide purchase and sale of the note, not just a stamp on the last page. We have just started an appeal to the Fourth District Court of Appeals to argue that the our client’s note was not negotiable. Any competent foreclosure defense attorney will be aware of this issue. If not, again, the lawyer you are interviewing is probably not competent to defend your foreclosure in court.

9. Do you have a system in place to check for the validity of bank officials’ signatures on affidavits and indorsements?

This is another hot issue. At Loan Lawyers, we keep a digital database of signatures by every notary and bank official that we come across. What we are finding are flat out

forgeries. For example, let's say Mr. Smith at ABC bank supposedly signed assignments of mortgages in 5 of our cases. We have all five of those documents scanned into a folder for Mr. Smith. We are seeing a pattern of different signatures for many people at the banks. That means that someone has forged Mr. Smith's signature on these documents making them forgeries and/or fraudulent. Most quality foreclosure defense firms are doing this now. If the lawyer you are interviewing is not doing this, they are behind the eight-ball.

10. In light of the opinion on the rehearing in Riggs v. Aurora, how do you challenge indorsements that may be invalid?

Any lawyer who is staying up to date with recent appellate opinions that are relevant to foreclosure will be able to answer this question in a heartbeat. In Riggs, the Fourth District Court of Appeal recently reversed itself and held that if you do not specifically challenge the authenticity of any bank officials' indorsement on a promissory note, you waive the right to do so. Any foreclosure defense attorney worth their salt understands this opinion and is creating a negative averment regarding authenticity as an affirmative defense.

11. What solutions do you offer for the distressed homeowner?

There are multiple solutions for the homeowner, including bankruptcy, foreclosure

defense, short sale, loan modification, and potentially suing the bank for fraud. You generally want to be with a firm who handles all of them so you can get objective advice on each one to see which would be the best for you. If a lawyer only does bankruptcy, that's what they may steer you to because that's what they do. At Loan Lawyers, we handle all of the solutions for the homeowner, so we can custom tailor a plan of attack that will suit your needs.