

FORECLOSURE DEFENSE

WRITTEN BY **LAWYERS** AND A **PRO SE LITIGANT**

HOW TO FIGHT TO SAVE YOUR HOME IN CALIFORNIA

ATTORNEYS **GEORGE GINGO** AND **LAYNE HAYDEN**,
AND PRO SE LITIGANT **BERENICE DE LA SALLE**



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Foreclosure Defense WRITTEN BY LAWYERS AND A PRO SE LITIGANT
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“Yes, I have made mistakes.
Life didn’t come with instructions.”

This book is dedicated to all of us, who have made mistakes.

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USING THIS SELF-HELP BOOK

Before you use this self-help law book, you should know why we organized it the way it is organized, and you should fully understand the advantages and disadvantages of doing your own legal case.

A. Why We Organized This Book This Way

Law is complex. Papers you file in court must be formatted a particular way, contain laws, facts, arguments and other information and be accompanied by certain other papers. This book anticipates that this is your first experience with legal proceedings and that you have an emergency on your hands because you were just served with an eviction. So we jump right into a legal challenge to the Summons so that you can buy a little time to finish reading this book and get up to speed on what's going on and develop a strategy for success.

After you have made the challenge to the Summons, you should have a pretty good grasp on the form of the papers to be filed in court, which will help you through the rest of the subjects presented herein.

B. Advantages and Disadvantages

It takes years of training to become a lawyer, and not having a lawyer to handle your case can be a significant disadvantage to you. The State of California requires that before a person may be licensed as a lawyer, that individual must successfully complete years of educational training and pass a rigorous state-wide examination. No book – including this one – is a substitute for competent legal counsel. But, because of the high cost of legal services, many people handle their own legal matters. Most divorces and child support cases are done by people without a lawyer (a person without a lawyer is called a “pro se” litigant). Some judges are very respectful of pro se litigants, understanding that they cannot afford to pay thousands of dollars to lawyers to enforce their legal rights. These judges will give pro se litigants the benefit of every doubt. Other judges don't appreciate pro se litigants and think they should be held to the same high standards as lawyers. These judges tend to look upon the pro se litigant as an annoyance. Do not let one of these judges intimidate you. By reading this book carefully, and following the provided steps,

you will be able to walk into a courtroom, look the judge straight in the eyes, and command his attention. The more confident you are, the less chance that he will be arrogant with you. And, if he is, don't take it personally. Rather, remember the wise words of H.L. Mencken (1880 – 1956): “A judge is a law student who marks his own examination papers.”

This book was written to help people have an alternative to the costly services of a lawyer. In achieving that goal, we have made every attempt to explain the law in as simple and easy to understand terms as possible. We also have kept the legal issues to those that are the most direct and useful to you. Even if you choose to not take any legal action after you read this book, you will come away with a completely different understanding of the process of the mortgage collapse that has negatively affected so many Americans.

Depending on the court you are in, some lawyers may be able to make limited appearances on your behalf. That means that if you cannot afford to hire a lawyer to handle your whole case, you may be able to hire him or her to handle a part of your case. This is called “unbundled” legal services. It may be cost effective for you to handle part of your case and then hire a lawyer to handle another part – such as a trial. You would have to discuss this with a lawyer to find out if it is possible as you may need permission from your court to do this.

You need to have an understanding of where law comes from and how to find it. There are procedural laws that affect the process of your case and rights and substantive laws which are the basis for your rights. The highest law of the land is the Constitution, which establishes the relationship between the government and the people. The United States has a constitution as does the State of California. The United States Constitution can be researched at <http://www.gpoaccess.gov/constitution/index.html>, <http://topics.law.cornell.edu/constitution>, or <http://www.findlaw.com/casecode/constitution/>. The California constitution can be researched at <http://www.leginfo.ca.gov/const.html>, <http://www.law.cornell.edu/states/california.html> and http://california.lp.findlaw.com/ca01_codes/index.html.

The federal government makes laws which are placed in a series of books called the United States Code.¹ The United States Code can be researched at <http://www.gpoaccess.gov/uscode/>, <http://www.law.cornell.edu/uscode/>, or at <http://www.findlaw.com/casecode/uscodes/>.

The State of California has its own laws which also are placed in a series of codes which can be researched at <http://www.leginfo.ca.gov/calaw.html>, <http://www.law.cornell.edu/states/california.html> and http://california.lp.findlaw.com/ca01_codes/index.html.

Federal and state judges also make laws – called case law – which are rulings in particular cases. Some of these cases come out of the trial courts, but most of these rulings come out of the appellate courts – of which both the federal system and the California state system have two levels of appellate courts.²

1 The words “Code” and “Statute” both mean law.

2 The court that you first bring your case in is called a trial court. After the case is over, if someone appeals, they move the case up to an appellate court. Since there are two appellate courts in both California and in the federal system (“United

The federal Ninth Circuit Court of Appeals in San Francisco has jurisdiction over the western part of the United States. Its website is <http://www.ca9.uscourts.gov/>. The United States Supreme Court is the highest appellate court in the United States. Its website is <http://www.supremecourt.gov/>.

California has six different District Courts of Appeal. Their jurisdiction depends upon where in California your case originates. The District Courts of Appeal maintain a website at <http://www.courtinfo.ca.gov/courts/courtssofar/>. The California Supreme Court is the highest California state appellate court. Its website is at <http://www.courtinfo.ca.gov/courts/supreme/>.

These case laws have traditionally been kept by entities called “Reporters” that lawyers would normally pay a fee to have access to. Only recently have cases begun to be available for free on the internet. At this time, not all cases are free, but much good research can be done at the appellate court’s website as listed above, or at <http://www.google.com>, <http://scholar.google.com/>, <http://www.findlaw.com/casecode/> and <http://www.lexisone.com/caselaw/freecaselaw>.

You should also be aware that in addition to the laws, each court has its own set of rules which are available at the court’s website. In addition to rules of court, there also may be “local rules” which your particular local court has adopted specifically for that court. If you don’t find local rules on the court’s website, contact the court clerk to find out if there are any local rules.

Laws can be changed at any time and can affect your case. You should make a point of using your computer to search for any legislative changes or court cases that may change how the law is viewed. If the law changes while your case is pending, you may have to adapt and modify your papers to stay in court. There are many helpful websites maintained by people concerned about the foreclosure crisis which you can find merely by doing an internet search.

Finally, we recommend that you read this book twice; it is concise and will not take you much time. For it is in the *second* reading that everything will gel, giving you the confidence to move forward and attack.

States”), you may be able to appeal a decision of the appellate court to the Supreme Court (California Supreme Court for case moving through California court system, U.S. Supreme Court for case moving through federal system). In some instances, you may be able to appeal from the California Supreme Court directly to the United States Supreme Court.



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CONCLUSION

OR HOW YOU GOT INTO THIS MESS, THE ANSWER MAY SURPRISE YOU

If you have read this book, it is because you are a warrior. You belong to an elite crowd of individuals who are aware of the fact that the recent real estate crisis constitutes the greatest single instance of theft perpetrated on the public since the stock market crash of 1929. Just as the banks manipulated credit used to buy stocks on margin during the roaring twenties, orchestrating the greatest transfer of wealth in the history of the United States up until that point in time, they have manipulated credit used to buy homes by “originating” loans which were then sold via Wall Street to the public. In doing so, they took no risks with their own capital, generated huge sums in fees as the market was artificially pushed upward, and are now generating even more fees as it crashes and they choose, in the name of profit, to foreclose rather than modify your loan. The men and women responsible for this grand larceny care not what happens to our economic system as a result of their actions. They care only about lining their pockets with year-end bonuses procured from the artificial profits generated by their schemes. There is no better example of complete economic decadence, and unless people like you—many thousands of people like you—stand up and fight to regain some semblance of fairness and normalcy, the capitalist system as we have known it is surely doomed.

SO, HOW DID WE GET HERE?

We mentioned earlier in this book that bankruptcy is a constitutional right, and that the main problem with it is the societal stigma it carries, however untrue, that the bankrupt debtor is “a failure.” To fully comprehend the falsity of this belief, it is important to understand just how he got there. How is it that the American Dream of home ownership has, for so many of us, turned into the American Nightmare? To answer that question, you need to understand the forces that generate the phenomenon we refer to as “inflation,” and the economic havoc it has played with our lives.

What Is Inflation? Contrary to what most people believe, inflation is not an “increase in the price of goods.” That is the *consequence* of inflation. Inflation is simply an increase in *the money supply*, one that is calculated to rob you of not only your savings, but your standard of living as well. It is

the primary reason for the slow erosion, the annihilation, of America's middle class. It is what got you into debt, and it is what has turned you into the indentured slave of the banking system.

How Does It Occur? The intricacies of money creation are complicated. To fully understand this subject requires a study of the fractional reserve system—a topic well beyond the scope of this book. But, to explain it in its simplest terms, suffice it to say that money can either be created by “printing” it, as our government does when it can't pay its bills, or by increasing the amount of credit offered, as the banking system does when it gives people loans. In both instances, the money is literally created out of thin air and added to the existing supply which then exerts upward pressure on the prices of everything. Remember the example given to you in Economics 101? If the entire money supply consisted of \$100 and the only products sold in the economy consisted of 5 oranges, what would the cost of each orange be? Twenty dollars, of course. Now, increase the money supply from \$100 to \$200 without increasing the production of products. Price of each orange? Forty bucks.

Why Is Inflation a Problem? If the increase in the money supply were evenly distributed to all members of the economy, it wouldn't be a problem. Prices of goods would be higher, but everyone would have more money to purchase them and no one would be worse off. *But that's not what happens.* The distribution of this new money is anything but even. While prices are rising, the wages of the average American stay fixed. Or, if they do increase, they do so at a rate that is *less* than the rate of increase in the supply of money. To fool you into believing that your wages are keeping pace with inflationary forces, the Consumer Price Index, published by the US Department of Labor each year, is regularly manipulated. You are reassured that inflation is low, running at less than 2.4% per year, you have been told, since the beginning of the millennium. As a result, you can't ask for that raise you desperately need because, inexplicably, while the CPI is up by only a couple of percentage points, your *real* cost of living increase is strangling you. This has been happening year after year and it confuses you to no end. But, rather than admit that you don't understand what is happening, you remain silent. You go home after a grueling day at work, eat your dinner made with *Hamburger Helper* and sit in front of your television set, which systematically bombards you with the reassuring message that you really don't have a problem because: “For everything else, there's MasterCard.” That's right, for all those things you are worried you no longer can afford... the new shoes for the kids, the medical bills for your back, the birthday present for your mother, the once per year vacation for the family— “there's MasterCard.” MasterCard—at the whopping and usurious penalty rate for its use of 29.99% per annum.

You've scratched your head more than once as you've wondered why the banks are allowed to charge that obscene rate of interest. On the nightly news, you've listened to the chief economist at Chase or Citigroup or Bank of America as he explained to Anderson Cooper that “these rates are necessary because of the high incidence of default on credit cards.” But as the sycophant for the bankers uttered these words, you detected in his face that even *he* doesn't appear to believe this. And he doesn't. He knows that rate is calculated to keep you in debt in perpetuity.

If you have any doubt about this fact, consider the following. A credit card account with a

\$1,000 balance that is charged 29.99% interest per year will have a minimum monthly payment of the interest due plus 1% of the outstanding balance. At that rate, it will take you 136 months to be rid of your debt (more than 11 years). And, in that time, you will pay \$1,760.92 in interest charges alone.⁶³

The rates on cards are not high because of the incidences of default.

The incidences of default are high because of the rates on cards.

Before you know it, you're maxed out. No problem. Visa sends you a Gold Card. When that is maxed out, MasterCard sends you a Platinum Card. Suddenly, you are juggling with ten different lines of credit and paying six of them off with four of the others. *There has got to be a solution*, you think to yourself. There must be a way out of this interest rate treadmill you are on. And, if you are fortunate enough to have a bit of saved equity in your home, there is.

Now, of course, you know that you can't really afford to increase your monthly mortgage payment. But, hey, anything beats paying 30% on those cards. And isn't it curious that, in order to get that refinancing *from the bank, it is the bank* that is insisting you use the proceeds of the loan to pay off your cards? No sooner than you do, and your friendly bank rewards you by increasing your lines of credit...increases you now need because your monthly mortgage rate is so much higher.

And on it goes, over and over again, sinking you deeper and deeper into debt until, finally, an extraneous event brings the cycle to a halt. The inflation bubble bursts. The credit extended by the banking system has increased the money supply to such a degree that prices of everything, and especially real estate, are now prohibitive. No matter what the CPI says, the reality of the price increases is such that the middle class can no longer afford to buy the products offered. As they stop buying, the economy heads south; jobs are lost as companies slash their expenses; the real estate market implodes; and the equity in your home disappears. Worse, like the picture on the cover of this book, your house is now underwater and sinking fast.

For the first time home buyer, the consequences are even more severe. Over the past decade as young couples saved their money to make that initial deposit on the home of their dreams, they anxiously watched as the real estate market rose inexorably—pushing that dream out of their reach. Wondering if they would ever be able to buy and, finally, coming to the conclusion that if they didn't jump in immediately, they never would, they understandably made the mistake of their lives. They threw in the towel, accepted the banks offer of a 10% down deposit, and bought...only to then watch as the market crashed and their *life savings* evaporated in front of their eyes. The silent thief of inflation had done his work. And although no one could hear him, he was laughing... “all the way to the bank.”

63 Read more: Bankrate.com credit card calculator -- How much will the minimum credit card payment cost me? <http://www.bankrate.com/calculators/managing-debt/minimum-payment-calculator.aspx#ixzz1CB2Iuukm>

And What Is The Solution Offered? The government steps in. The learned men at the US Treasury who, with their accomplices in the banking industry, created the problem in the first place, use your tax dollars to bail *themselves* out, making sure, of course, to throw you a few crumbs in the process. They call the crumbs HAMP, and they lead you to believe that, *by statute*, these crumbs entitle you to have your home mortgage modified—provided that you are delinquent on your loan payments. You believe it. You stop paying on your home loan, gather up your tax returns, write that hardship letter, submit your proposal to the bank’s “Home Retention Department”—and wait. When the inevitable letter of rejection comes, once again, you think it is *you* who has “failed.” What you don’t realize is that this entire scheme has been planned. It was designed to happen exactly as it has. We repeat: the economic mess we are in has not occurred by accident. The men at Treasury are the former heads of Goldman Sachs and the Federal Reserve Bank of New York. The economic advisers to the President are the same men who advise the banking institutions which reaped the outrageous fees on the trillions of dollars of loans that have created the inflationary bubble we have all suffered from. These Bilderbergers, Trilateralists, and members of the Council on Foreign Relations played an *active* role in the deregulation of Wall Street derivatives contracts. *Without their interference, the securitization debacle would have never happened.*⁶⁴ And yet, as you are struggling to stay afloat, these banksters are living the high life thanks to eight figure bonuses generated from their real estate bubble. The redistribution of wealth that is always created when inflation is allowed to run rampant has taken your hard earned money *out of your pocket* and has *placed it into theirs*.

And They Are Not Content To Stop There. Having committed the greatest financial rape in history, they now want to foreclose on your home *without* offering any proof of owning the underlying debt and *without* presenting your *original* promissory note to you. Having made billions in loan fees as they artificially inflated real estate prices, they now are making billions in credit default swaps and foreclosure fees as they artificially deflate the value of your home and, then, *steal it from you*. In order to finalize their theft, these men and women are not only playing Russian roulette with our economy, they are corrupting the very integrity of our judicial system. From sea to shining sea, they walk into our courtrooms by way of their “tall building” attorneys, all too willing to file false affidavits if need be, in order to confiscate your home. They present unsuspecting judges with forged assignments, re-created allonges, photoshopped blank endorsements and “original” promissory notes, hot off the press from the DocX division of Lender Processing Services, Inc. And they do all of this while having the audacity to insinuate to the court that *you* are the “deadbeat” because you can’t pay your loan.

WHAT CAN WE DO?

As you wage this war, consider yourself the moderating force. When the judge looks at you and says that it is not “fair” that you should be allowed to live in a home for which you are

⁶⁴ For more on this topic, see the television documentary *Frontline: The Warning*, the story of Brooksley Born, the head of the Commodity Futures Trading Commission (CFTC), who fought in vain for the increased oversight of derivatives sales only to be publically ridiculed and, eventually, defeated by Treasury Secretaries Robert Rubin, Lawrence Summers, and Federal Reserve Board Chairman, Alan Greenspan. You can watch the broadcast on NetFlix.

not making monthly payments, look him squarely in the eyes and tell him that you, as well as millions of Americans just like you, are no deadbeat. You have been the voice of reason, trying to negotiate a sensible, modified, solution that is in the best interest of all *real* parties. You have been the home owner attempting to maintain your property rather than see it fall into a state of disrepair as it sits, empty, among rows of other abandoned homes now being vandalized as the weeds entangle a once immaculately kept front lawn. You are the hope for the preservation of a system that encourages economic growth that is genuine, rather than the revolutionary forces that always result from a widening gap between the rich and the poor—a gap well on its way to obliterating the American middle class.

In conjunction with this book, we are launching a legal support site for the *pro se* litigant. We call it *Bailey versus Potter*, and you can reach us by going to www.BaileyVPotter.com. Perhaps you recognize the names. They have been chosen in honor of George Bailey and Henry F. Potter, the legendary characters played by Jimmy Stewart and Lionel Barrymore in that American classic: *It's a Wonderful Life*.

In the film, George, eternally-in-debt and who has long considered himself a failure, faces financial ruin by the town despot and banker, Henry Potter. It is only the vision, granted to him by the angel, Clarence, of what Bedford Falls would be were it not for his presence in it that gives George the strength to stop Potter from taking over his hometown entirely, and reducing its inhabitants to penury.

There are many George Baileys today, fighting the Henry Potters of this world. We hope that you will join us.⁶⁵



You can register with us by going to either

www.BaileyVPotter.com *or* www.gingolaw.com.

We will keep you apprised of news relating to foreclosure defense as it breaks.

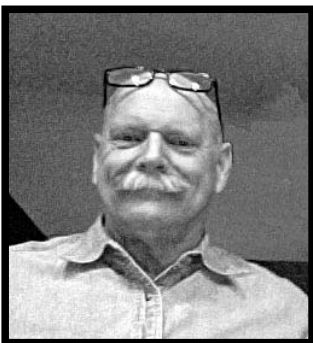
⁶⁵ We use the above picture from the 1946 film, *It's a Wonderful Life*, with the understanding that in 1974, the film's images entered into the public domain.

ABOUT THE AUTHORS



BERENICE DE LA SALLE

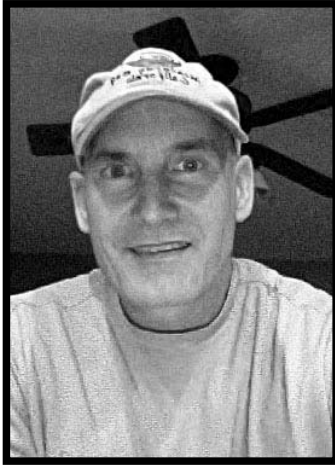
Berenice first became acquainted with the banking industry in 1972, when she became the youngest account executive in the history of the firm she then worked for: Merrill Lynch, Pierce, Fenner & Smith. For the next eight years, while employed by Merrill in their Paris office, she studied the practices of the Federal Reserve intensively. What she learned led her to become a strong proponent for the abolition of the Federal Reserve System, along with Presidents Andrew Jackson, John F. Kennedy and, more recently, Congressman Ron Paul. Berenice is presently a real estate agent for Coldwell Banker in Mammoth Lakes, California. She refuses to represent clients attempting to purchase foreclosed properties or banks attempting to sell them. For the past two years she has fought Bank of America, which rejected a loan modification she proposed on her primary residence. In the course of her fight, still being waged as this book goes to print, she had the good fortune to meet George Gingo who has been of incalculable help to her. In past lives, Berenice has worked as a real estate developer, has served as a member of the Board of Directors of a publically traded aerospace equipment company and as an elected member of the Town Council of Mammoth Lakes where she resides with her husband of thirty-four years, Pierre.



LAYNE HAYDEN

Layne operated his own body shop in Fresno, California, for 25 years before becoming a lawyer. He chose to become a lawyer because he witnessed first-hand the abuse that insured's suffered at the hands of their insurance agencies and the purposeful lack of corrective oversight by the government. This motivated him to become a lawyer so he could fight for the average citizen consumer's rights. In addition to being a lawyer, Layne is currently a reserve

deputy sheriff for the County of Fresno, a position he has held since 1978. Layne also holds an airline transport license and he is a certified flight instructor with an instrument rating. Layne's law office is located at 3805 North West Avenue, Fresno, California, 93705, where he primarily handles bankruptcy cases.



GEORGE GINGO

Shortly after graduating from the Thomas M. Cooley Law School in Lansing, Michigan, in 1989, George took a position as a law clerk for federal District Court judge Edward Dean Price in Fresno, California. For the next 8 years he handled primarily criminal cases and dependency cases and he also had the wonderful opportunity to sit as a Judge Pro Tem of the Superior Court in dependency and small claims actions. In 1998 he became a deputy district attorney and primarily worked in the child abduction unit and family support unit of the district attorney's office. He also was a reserve deputy sheriff for the County of Fresno where he often worked on patrol with Layne Hayden. In 2003, George moved back home to Florida, but he kept close ties to Fresno and his good friend, Layne. In 2007, George started representing homeowners in foreclosure in Florida, which is a judicial foreclosure state. In a judicial foreclosure state the homeowner is entitled to defend against foreclosure in court. With his teeth cut in Florida on foreclosure defense, he started applying his tactics to California, the results of which are found in this book. George is very grateful for meeting Berenice de la Salle, who had invaluable input in the creation of this book. George is most deeply appreciative of his wonderful and loving wife, Lisa, and their three children, James, Luke and Isabella, as this book would not be possible without their patient, loving support.