



# The Gavel

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A periodic newsletter on legal issues for clients and friends of **David B. Forest, P.C.**  
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*Disclaimer: Nothing in this newsletter is intended to be or is a substitute for legal advice.*

## A process server is on the porch: What to Do?

At some point in their legal careers, virtually every lawyer will get at least one frantic call from a client (or client's family member, friend, etc. ) because a **process server** (either uniformed or not) is on their porch. The caller wants to know if they should go to the door to accept service. The answer is almost always the same: yes, answer the door and accept the papers that are being served. If the process server wants you to sign an acknowledgment that you received the papers, it is okay to sign after reading the acknowledgment to be sure that it accurately describes the papers you were just handed.



Unfortunately, some people think that if they just duck the process server, they will be able to get off the hook. This is rarely true, as the Plaintiff (party who filed the lawsuit) will simply go back to court, explain the circumstances to the Judge, and walk out of Court with an *Order for Alternate Service*. This means that by taking a few simple steps (maybe first class mail, taping a notice on a door, or posting it at the courthouse), the Defendant (party being sued) is now deemed to have been served. This holds true even if the Defendant has no actual notice that he or she is considered served, much less being sued. Since the Defendant is now in the dark, a Default Judgment may issue and the Defendant only discovers this when their wages or bank account is garnished. This is why lawyers recommend accepting the service in the first place; it's better to know the devil you face rather than discovering later that you may have already lost to the devil you never saw.

The papers that are being served may either be a *subpoena* (order to appear in court or for a deposition before a court reporter) or documents informing you that you are being sued. If it is a subpoena, the time and place to appear, along with the name of the Judge or Attorney who issued the

subpoena, should all be spelled out in clear detail. If you have any questions or issues regarding the subpoena, you should directly contact the issuing attorney

However, if you are being sued, the papers will include a *Summons* and a *Complaint*. These papers will detail who is suing you, in what court, and on what grounds. Since you must take some action after being served, the first thing to do is read the papers.

Depending on who is suing you for what, **it may be that your insurance company might have a duty to defend you in the lawsuit.** If the claim arises out of a car accident, you should contact your auto insurance agent right away. If the claim is by someone who may have been personally injured in or around your house, you should immediately contact your homeowner's agent.



If the claim is not covered by insurance, you need to speak with a lawyer. **DO NOT** set it aside and wait for the Court to send you the date and time for the hearing, when you believe you will get to tell *your* side of the story and get this straightened out once and for all. **DO NOT DO THIS.** In almost all cases, there is no date set for anything until the Defendant takes some affirmative steps. When the Defendant fails to respond, a default judgment is entered and the case is over before the Defendant gets to say anything.

If you have contacted a lawyer in sufficient time, he or she will explain the various steps and strategies you can use, and will file an Answer or a Motion to Dismiss with the Court. Depending on the Court and manner of service, you may have as little as three weeks from the date of service to have the lawyer protect you. The moral of the story: accept the service, read it, and do something!

As many of you know, we have handled a lot of litigation over the years and have probably seen just about everything that could be served on you. **If you are unsure what you were served with, or what to do with it, please contact our office and we will do our best to help you out.**

## Reverse Mortgages

Most of us are familiar with a mortgage loan and how it works. If you want to buy a house and can't pay the entire purchase price, you borrow money from a lender, and in turn sign a promissory note to pay it back. You also grant a mortgage lien against the house as collateral for the repayment of the loan.



As you continue to make your monthly payments, the amount of money still owed begins to decrease. As the mortgage loan balance falls, your home *equity* (value of house minus mortgage balance) rises. This continues until the mortgage loan is paid off and your equity is now the entire value of the house. Think of this as a *forward* mortgage.

However, one of *The Gavel's* readers wanted to know about a reverse mortgage. A

*Reverse Mortgage*, as the name implies, works the opposite way. Instead of needing money to buy a house, you already own the house. Rather, you need money to live on, and your house is an ideal place to draw it from. First, you will need to check and see if you qualify (with most lenders, you are age 62 or older, the house is your principal residence, and you have already paid off other mortgages on the house). The lender still lends you money and takes a mortgage on your house, but now you no longer have to make monthly payments. Instead of the money flowing each month back to the lender, the cash flow is reversed and the lender sends the money to you.

While some borrowers take it all in an upfront lump sum, many borrowers take the money as a credit line or in monthly amounts to supplement their income. If your arrangement is for monthly payments, these can continue for so long as you (a) are alive and (b) still reside in the house as your principal residence.

Since the cash flow is reversed, so too is the balance between debt and equity. Instead of lowering your debt and increasing your equity with each monthly payment in a forward mortgage, the opposite happens. With each payment in a reverse mortgage, the debt goes up and your equity goes down.



When the reverse mortgage stops, you will owe the lender the amount of the cash payments plus interest on the money borrowed. If you don't pay the balance, the house will be foreclosed. However, this is the nice surprise: if the lender's program is nonrecourse, the most you (or your estate if you've passed on) will owe the lender is the value of the house. Since there is no recourse to you, the most you can be on the hook for is the value of the house itself (when the house is sold, the lender will get all of the proceeds, if the amount that you borrowed exceeds the value of the house).

For example, let's suppose a woman had done a reverse mortgage on her house at age 62, and her equity was \$75,000, and she drew \$500 a month on a reverse mortgage. How much would she owe? If she stayed in the house to age 72, she would owe back \$60,000 (\$500/month X 12 months X 10 years) plus interest. If the interest added to the principal exceeded the value of the house, she would still only owe the value of the house and no more.

If you need more information, there are a number of sources on line that have information guides. A few that we reviewed for this article were [www.reverse.org](http://www.reverse.org), [www.aarp.org/revmort/](http://www.aarp.org/revmort/), and [www.reversemortgage.org](http://www.reversemortgage.org), along with *The Wall Street Journal*. **A note of caution: tread carefully into these waters, as the fees can be high, and once you lock a program in, you are really locked in.**

## Legal Answers

For many years, we have run a paragraph at the bottom of *The Gavel* concerning referrals. One of the points in the paragraph is that if we cannot service a legal need of yours or someone you referred to us, we would refer the matter to a specialized attorney.

Despite repeating this in *The Gavel* for countless issues, we still hear after the fact: **"I didn't think you could help with that type of case."** First, many clients are surprised how many different types of cases we do handle. While the matter may seem rather odd and unique to you, most likely we have seen it (or something like it) before. There is never a charge to call our office for the first time to discuss a legal issue.

**As our clients and their friends and family members have learned, many times the answer is a frank assessment of the situation, and that the best alternative is not litigation.**

If there is some type of legal recourse, or it at least merits a more in-depth analysis, we will recommend that the caller either make an appointment for a face to face meeting, or refer them to an attorney who specializes in the area. This is significantly better than finding some attorney from the yellow pages, a television ad, or because some friend's cousin's husband knows a lawyer. We know which lawyers are excellent in particular areas, and which are not.

When you or someone you knows calls us about a legal matter, an answer will be given. It could be to

follow up, or referral to an attorney with the requisite competence to handle the matter further. As many of you have learned, the answer may be that filing a lawsuit is not the best resolution. In any event, the caller will come away from the phone call with a clearer picture of how to proceed.

**Hurt in an accident?** We have answers, and know who else you should talk to.

**Worker's Compensation issue?** We know who you should talk to.

**Ticket for reckless driving?** We have answers.

**A Probate matter?** We either have answers, know who you should talk to, or we will find the right type of lawyer for you, even if it is out of state.

**Buying, starting or changing a business?** We have answers.

**Real Estate problems?** We have answers.

**Someone's been arrested or you're being sued?** We have answers, and (if necessary) know who else you should talk to.

**An elderly relative needs special care?** We have some answers, and know who else you should talk to.

**Someone else is cheating you?** We have answers.

**Don't know where to turn?** Maybe we have some guidance.

*The point is: we are here to help with legal issues. Call us or stop by - a few minutes can save a lot of needless worry.*

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