

Practical Guide to



Foreclosures and Foreclosure Alternatives

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INTRODUCTION

With apologies to Churchill for most lenders and law firms foreclosure is a riddle wrapped in an enigma surrounded by a mystery. Over the last several years lenders and their counsel have rarely encountered foreclosure. The present state of the real estate market in New Jersey and the economy in general dictate a re-familiarization with foreclosure and its alternatives. To lenders a foreclosure is the “taking back” the property secured by the mortgage through litigation. To most law firms, foreclosure is an obscure process not litigated through the usual division of the New Jersey Superior Court requiring absolute perfection in documentation and procedure. Additionally, foreclosure involves archaic terms and processes such as equitable subrogation and circuitry of liens; writs of possession versus warrants of removal. Except for the Fair Foreclosure Act of New Jersey which provides for the foreclosure process for residential foreclosure, there are no statutes directly governing foreclosure. Most of the foreclosure process is govern by case law evolving from the mid to late 1800's.

The overall obscurity and unfamiliarity of the foreclosure process leads to frustration of the lenders and their usual counsel. What follows is intended to provide that degree on understanding and familiarity with the foreclosure process to reduce a lender's frustration with the slowness of the process and to improve understanding of foreclosure. What will be avoided is the minutia and legalese.

FORECLOSURES FOR LENDERS

There are four major tasks in the foreclosure process: the filing of the complaint, service of process, default/judgment and sale. Most of the expenditure of time is caused by the applicable laws, procedural rules or bottlenecks in the judicial system.

The foreclosure procedure cannot be initiated until a Notice of Intent to Accelerate is mailed to the borrowers in accordance with the Fair Foreclosure Act of the State of New Jersey. The law requires a specific notice and provides a thirty-four day period for the borrower to bring the loan current. During that time a complaint in foreclosure cannot be filed.

Provided the borrower hasn't reinstated the loan, the complaint may be filed. A title search must be obtained in order to properly determine who must be joined as defendants to the foreclosure. It usually takes about two weeks to secure a search. All foreclosure complaints must be filed through the Office of Foreclosure of the Clerk's Office of the Superior Court of New Jersey in Trenton. No matter the manner of delivery to the Court, there is a natural administrative delay in the filing procedure. On average this delay consumes another two weeks.

Once the complaint is filed, the attorneys will attend to serving all the defendants with a summons and a copy of the complaint. Assuming the law firm employs a private service firm, this process will usually take from thirty to forty five days. Once service is accomplished, the applicable Rules of Court provide each of the defendants with thirty-five days within which to answer the allegations of the complaint. If one of the defendants is the State of New Jersey or the United States of America, the time period is extended to sixty days.

Assuming no answer is filed, the third step is the request to enter default as to all defendants. Again the Court will take about two weeks to return the defaults.

After the defaults are entered another notice must be sent to the borrowers advising them of the lender's intent to apply for entry of final judgment in foreclosure. The notice requirement is effectively fourteen days. If the borrower responds in accordance with the statute that he believes he will be able to reinstate the mortgage within forty-five days, then the lender must wait until the forty-sixth day after notice to apply for final judgment. Because the law and the courts are very sensitive to the Constitution of both New Jersey and the United States, the Office of Foreclosure very carefully reviews all submitted papers and documents for compliance with the law and procedure. This process presently consumes about eight weeks. Any discrepancy no matter minor is cause for rejection of the application. If rejected, corrections and discrepancies are addressed and re-submission is made. Unfortunately, several more weeks can pass before judgment is entered.

The last step is to send the Writ of Execution to the sheriff of the county in which the property is located. The sheriff must publish a form of the writ for four weeks. The sheriff also will also consume an additional two to four weeks with administrative tasks and scheduling.

The process seems straight forward. Where is the riddle, enigma and mystery? Where is the frustration. The following is a partial list of issues that can arise to both frustrate and delay the process.

ISSUE	TIME DELAY *
Defective Notice of Intent to Accelerate	30 days
Title issues	
unrecorded/mis-recorded mortgage or deed	90 days
description variances	60 days
prior liens	30 days
condominium association liens with priority.	30 days
minor/incompetent defendants	90 days
death of borrower	60 days
unknown heirs	60 days
Service issues	
Borrower whereabouts unknown	21 days
Many defendants to serve	30 days
Other defendants' whereabouts unknown	21 days
Defendants avoiding service	45 days
Service by mail	30 days
Service outside of New Jersey	60 days
Service by publication	45 days
Insufficient "diligent inquiry" for substituted service	45 days
Judgment Issues	
Fictitious defendants	45 days
Minors - Incompetents - Guardian ad litem	90 days
Defective Service	60 days
Defective Acknowledgment of Service	60 days
Defective return of service	60 days
Default application 6 months after service	40 days
Judgment application 6 months after default	40 days
Contesting Answer	60 days
Incorrect form of Certificate of Amount Due	21 days
Accumulated interest amount	21 days
Tax payment amount	21 days
Insurance payment amount	21 days
Late charges amount	21 days
Defective Notice to USA	75 days
Defective Notice of Intent to Apply for Judgment	60 days
Sale Issues	
Incorrect short description	90 days
Failure of Notice of Sale	90 days
Omitted announcement of priority lien i.e. taxes	90 days
Omitted announcement of condominium lien	90 days
Failure to re-publish after 5 month delay	90 days
Third parties failure to pay within 30 days of sale	90 days

* Assuming 1 day turn around by foreclosure attorney

COSTS, TIME AND FORECLOSURE COUNSEL

A lender loses money every day a loan remains in foreclosure. Simple logic dictates therefore that the sooner a foreclosure is complete or a defaulted loan is otherwise resolved the sooner the lender is made whole or at least curtails the losses. Just about any law firm is competent to prosecute a foreclosure but the choice of foreclosure counsel can be critical to the lender. A firm that restricts its practice to creditor's rights and the prosecution of foreclosures and bankruptcy is a great advantage to a lender who retains such a firm. Those few firms in New Jersey that so restrict their practice provide their lender/clients with the advantage of completing foreclosures within the FNMA/FHLMC three hundred (300) day time line requirement. The delays, pitfalls and difficulties that are encountered are routinely resolved. The more unusual problems are quickly addressed with innovative solutions. Those firms have a long standing relationship with the Office of Foreclosure and its personnel and therefore, are given a degree of respect and latitude from which other firms and their clients do not benefit. Those few firms have dedicated computer programs for the prosecution of foreclosures and the tracking of timely progress.

If one were to consider the average loan and its costs to the lender in interest lost, the advantage of the choice of the correct foreclosure counsel clear. A \$ 200,000.00 loan at 6% interest provides a per diem of \$ 33.34. The pitfall which causes the greatest delay in the prosecution of a foreclosure is the completion of the service of the summons and complaint in accordance with the applicable rules and a form acceptable to the Office of Foreclosure. What are the additional costs to a lender where a lien holder defendant cannot be located? First, a law firm

will attempt service through the sheriff's office. That process whether successful or not takes about four weeks and automatically incurs a sheriff's fee for attempted service. A foreclosure firm engages a private process service firm; communication is over the internet and the return of service is made within seven business days and the lender does incur costs if the service is not successful. There is an immediate saving of twenty one days (\$ 70.14). The law firm will then conduct a diligent inquiry in accordance with the Rules of Court. That process including a post office inquiry and perhaps the engagement of a private investigator to conduct a skip trace will generally consume another month without taking into consideration of that law firm's turn around time. The foreclosure firm will address the issue of the unserved defendant within 48 hours and conduct its own skip trace in accordance with the Rules of Court; another savings to the lender of about \$ 70.00. The law firm that does not usually practice in foreclosure will not know whether its "diligent inquiry" or alternate form of service will be acceptable to the Office of Foreclosure until entry of final judgment is requested. If that "diligent inquiry" or alternate form of service is unacceptable, the Office of Foreclosure will require attendance to service in a manner within the Rules of Court and acceptable to the Office of Foreclosure. The time lost in that instance would be about 90 days or an additional lost to the lender of an additional \$ 3,000.00. The foreclosure firm's experience and continuing communication with the Office of Foreclosure rarely results in such a rejection.

The economic advantage to the lender of engaging a foreclosure firm in the estimated amount of \$ 3,100.00 for this one pitfall is clear and cannot be over-emphasized. In addition the foreclosure firms provide a flat fee structure which is a real economic savings to the lender. The reduction of supplemental or credit reserves required by applicable regulations is an additional advantage to the lender. The few foreclosure firms have been averaging about 250 days to

complete foreclosures. If the average time line in reality is 350 days, the foreclosure firm provides a \$ 7,000.00 advantage to a lender on that \$ 200,000.00 loan.

POST SALE PROCEDURE

There are two possible results of a sheriff sale; first, the lender is the successful bidder and becomes the owner of the property, secondly, a third party is the successful bidder and the lender receives the proceeds of the sale.

If the lender is the successful bidder, the sheriff will provide a deed in due course which is then recorded. The lender then is burdened with selling the premises which obviously incurs more time and costs. The premises must be brought to saleable condition, there are the usual realtor commissions, transfer taxes and if not current, past due real estate taxes and possibly condominium association fees.

More often than not the former borrowers still occupy the premises. In order to sell and close the property must be vacant. The lender can try to persuade the borrowers to vacate the premises voluntarily. Many lenders try to provide "cash for keys". Sometimes the incentive of a cash payment from the lender is enough to convince the borrowers to vacate. Most often however, the lender must evict the occupant of the premises. If the occupants are the former borrowers, the process is accomplished through a Writ of Possession and affected through the sheriff of the county. The process usually takes an additional three months. The lender can expect the borrower to apply to the court for the extension of the eviction for a variety of reason and the courts are generally very liberal in extending the date. Once the final eviction date is established, the lender must provide a representative at the designate time at the property along with a locksmith and mover. The sheriff only attends the eviction to insure and peaceful turnover of the property.

If the premises are occupied by persons other than the borrowers or their relatives, the eviction process is subject to applicable tenancy laws. New Jersey has what is generally referred

to as an anti-eviction statute. The statute's effect is that as long as a (tenant(pays the rent, the landlord cannot evict the tenant. There are several steps the lender and its attorney must follow to eventually effect an eviction. Suffice it to say that the process is much slower than the eviction of the former borrowers. Several legal issues arise. Are the premises properly registered with the municipality; what can the lender/landlord reasonably demand as monthly rent; should the lender offer a lease and if so, on what terms; if the property is a multi-family, is it in compliance with applicable state regulations effecting multi-family dwellings; what if the property is a FHA Section 8 premises? Clearly the lender must be in close communication with its attorney who hopefully is well versed in this area of the law. Without going into all the intricacies of the process, assuming the tenant does not pay the rent, a tenancy action is instituted which will eventually result in a Warrant for Removal which is effected by a constable along with a representative of the lender/landlord, locksmith and mover.

ALTERNATIVES TO FORECLOSURE

It is clear that a performing loan is preferable to a defaulted loan. In the event of a default therefore the sooner the loan can be returned to a performing status or complete resolution of the default, the sooner the lender can return to the business of lending.

Lenders are well aware that the longer a loan remains in default the less likely a workout will be successful. Therefore, the earlier communication can be established with the borrowers, the better. The most frequent impediment to resolving a loan that has fallen into default is the borrower's reluctance to acknowledge their situation. The reasons for this reluctance are varied and include embarrassment, lack of financial understanding and panic among others. Lenders will find that attempts at communication with borrowers who have fallen ninety (90) days into default rarely receive responses from the borrowers. The borrowers will avoid perceived collection attempts, reminders, possible embarrassment. They have no immediate remedy for their problem and do not consider any alternative for the attempted communication.

The foreclosure procedure provides several opportunities to establish communication with the borrower. The law firm prosecuting the foreclosure should stay in close communication with the lender in order to take advantage of any communication from the borrower so that if an alternative to foreclosure can be realized every opportunity is exhausted.

Workout or loss mitigation is always less expensive than foreclosure both in the aspects of time and money. Many lenders are becoming experienced with foreclosures. A quick review of the real time and expense incurred demonstrates the preferability of loss mitigation to foreclosure.

The legal fees and costs incurred can easily reach \$ 7,000.00. The actual out of pocket costs without reference to possible sheriff(s) commissions average about \$ 3,000.00. The lender should also add the costs of appraisal, inspections, repairs and the normal costs of re-sale of the premises once taken into REO.

Any of the alternatives to foreclosure will save the lender both time and money. The most efficient and easiest of these is the forbearance agreement. Simply stated the lender agrees to forbear from initiating or continuing foreclosure for a period of time during which the borrowers agree to resume payments whose result is the full payment of all arrears thereby reinstating the loan. A lender should make a determination as to the likelihood of success after considering several factors. Obviously the basic financial information required by a loan application should be obtained from the borrowers. Then a determination can be made as to the amount available to reduce the arrears while maintaining regular monthly payments and the time which will be required to eliminate the arrears. Most lenders limit the forbearance time period from six to twelve months. It is believed that if the time required to bring the loan current exceeds twelve months the likelihood of success becomes almost nil. The time to attend to the preparation, execution and initiation of performance by the borrowers of the forbearance agreement is determined by the attentiveness of the parties but in any case involves substantially less time and money than a foreclosure.

The second most preferable alternative to foreclosure is the loan modification. Again the lender must secure loan application information. The information provides the means by which a determination can be made as to what modifications to the interest or term of the loan can be made in order to successfully return the loan to performing status. Again both the time parameters and costs to the lender are substantially reduced when compared to foreclosure.

Although less attractive than forbearance and modification, the remaining alternatives to foreclosure, deed in lieu of foreclosure and accepting of short payoff are nonetheless preferable to a complete foreclosure. Unfortunately, the opportunity to take advantage of these alternatives most often present themselves after foreclosure has been initiated. Although the foreclosure may be well along when the opportunity arises as to a deed in lieu of foreclosure arises, the savings in

time and legal fees and costs still militate for this option. For example even after foreclosure judgment and before sheriff(s) sale, a lender will save the time to attend to a sheriff's sale (presently, 2 to 3 months) plus the sheriff(s) fees for the sale (average \$ 2,400.00).

The least desirable alternative to foreclosure is the acceptance of less than the total amount due to the lender. Most often such an offer or request comes from the borrower late in the foreclosure action but the lender when taking into consideration the time and costs incurred for a sheriff(s) sale, intake and sale of the REO may very well determine the amount of loss will be less by accepting the short payoff. Of course the lender should review any documents involved in the sale or refinance; a pro forma HUD-1 to determine the likelihood of successful completion of the transaction and the time period it will likely consume and ultimately the benefit derived therefrom to the lender.

FORBEARANCE AGREEMENT

A forbearance agreement is an agreement by the lender to suspend any action whose goal is the recovery of the loan amount or the secured property upon the condition of the performance of promises by the borrowers. Most often the borrowers agree to make regular payments during a period of several months. A forbearance agreement will generally have a term of six to twelve months and a schedule of payments which will eliminate the arrears and costs of lender. The criteria by which approval of a forbearance agreement will be determined are set by the internal underwriting standards and rules of the lender. Additionally, there are non-financial considerations which contribute to the ultimate determination and terms of the forbearance agreement.

1. Have the circumstances leading to the default been eliminated or ameliorated to an extent that the successful performance of the forbearance by the borrowers reasonably likely ?
2. Is the shortest term within which the borrowers can be reasonably expected to successfully perform the agreement acceptable to the lender?
3. If a foreclosure has been initiated, would the suspension of the action at the time of forbearance agreement cause a loss of time in the repetition of legal services on default or should the forbearance allow for the completion of the foreclosure sub-procedure being pursued at that time?
4. Tax Considerations - What is the status of real estate taxes? Should they or any arrears of those taxes be included in the forbearance agreement? Would the inclusion of the tax arrears or previously paid taxes by the lender over the term of the forbearance cause an unintended violation of RESPA's requirements of escrow analysis?

5. Hazard Insurance Considerations. What is the status? Can forced placed insurance be replaced by a regular policy? If the premium is paid by the lender, would the provision for payment of same in the forbearance negate the borrowers ability to successfully perform the agreement? Would the inclusion of the insurance premium over the forbearance term violate RESPA ?

6. Should the agreement include a clause allowing the entry of the foreclosure judgment considering the point of progress of the foreclosure?

MODIFICATION AGREEMENT

Although the Modification Agreement is less preferable than the forbearance agreement, it provides the lender with the most versatility. The only restrictions are those set by applicable regulations and the internal loan underwriting parameters of the particular lender. The lender must remain conscious of the issue of priority of its lien. If the modification results in a principal greater than originally lent, then to the mortgage will lose priority to any intervening lien to the extent of the excess principal. This issue is addressed by searching the title to the present. If no intervening liens appear, the issue as to partial loss of priority is eliminated. If intervening liens do appear, then the lender would make an informed business decision as to the likelihood of the intervening lien holder pursuing its rights and decide whether concluding a modification is nonetheless advisable. Any of the basic terms of the original note and mortgage may be modified, e.g. the interest rate, term or principal. The arrears could be added to the principal and the monthly payment recalculated; in addition or in the alternative the term could be simultaneously extended. The creativity of the lender is bounded only by the applicable Federal or state regulations.

DEED IN LIEU

Where the amount due on the mortgage exceeds the value of the premises or the borrowers financials are such that a forbearance or modification is not an alternative, a deed in lieu of foreclosure will still save time and money. Even at sheriff's sale a deed in lieu is an option. A more advantageous time line can be achieved in securing the premises in a vacant condition saving the legals involved in an eviction. Further, assuming the foreclosure is not at sheriff's sale, the time and usual expenses are saved as a result on the curtailment of the foreclosure.

A determination must be made whether the lender will receive marketable and insurable title. This is accomplished through a title search and close communication with counsel. A deed in lieu of foreclosure is a title closing for all intents and purposes and should not be attempted without advice of counsel. . It is advisable that a contract or at least a memorialization of the agreement be signed by the lender and borrower with clear terms as to the date of transfer of title and possession. If title is marketable and insurable, arrangements can be made to close title and take possession

SHORT PAY OFF

The short pay off is obviously the least acceptable of the foreclosure alternatives. Weighing the time and costs of foreclosure against the acceptance of the pay off is simply a cutting of losses that although a distasteful alternative is nonetheless a business wise decision when the math is clear. The lender should compare the cost to complete foreclosure, take in and resell the REO to the amount offered in settlement. Naturally, the lender should confirm that the borrower is financially incapable of resolving the default or to contributing to an increase in the amount offered in settlement. Additionally, the lender should confirm that the contract between the borrower and buyer is legitimate as to parties and price.

FORBEARANCE CHECKLIST

The following checklist is suggested in addition to the basic personal and financial information gathered through an application or financial statement when considering a forbearance agreement.

ISSUE	RESPONSE	COMMENT
What is foreclosure status		
Cause of default letter		
Loss of income verified		
Resumption of income verified		
Cause of default eliminated		
Borrower occupied property		
Monthly surplus above expenses and regular mortgage payment		
Status of real estate taxes		
Escrow analysis		
Surplus sufficient to reinstate within internal time criteria		
If surplus insufficient, will internal guidelines allow modification		
If surplus insufficient, will internal guideline allow short term forbearance then modification		
If adjustable rate, what effect of forbearance and borrowers' ability to perform		
Counsel advised terms		

MODIFICATION CHECK LIST

The following checklist is suggested in addition to the basic personal and financial information gathered through an application or financial statement and forbearance checklist:

ISSUE	RESPONSE	COMMENT
What is status of foreclosure		
Has forbearance been considered		
Review Forbearance checklist		
Confirm Income/Expense analysis and verification		
Income/Expense surplus sufficient to pay regular monthly payment		
Internal criteria		
	rate adjustment	
	term modification	
	graduating payment	
	combination	
If term extension or initial principal amount exceeded confirm priority lien status maintained		
Confirmation of terms with counsel and arrange execution and recordation of modification		
Counsel advised terms in light of foreclosure/bankruptcy status		

DEED IN LIEU CHECKLIST

ISSUE	RESPONSE	COMMENT
What is foreclosure status		
Review Forbearance criteria		
Verified lost income and inability to pay		
Verify no intervening liens or adverse title conditions		
Occupancy of premises		
Vacation of the premises		
Tenancies and terms of leases, if any		
Attornment of rents, if applicable		
Assignment of leases		
Compliance with local and state regulations		

SHORT PAY OFF CHECKLIST

ISSUE	RESPONSE	COMMENT
What is status of foreclosure		
Verified lost income and inability to pay		
Review Contract of Sale		
Legitimate Parties		
Purchase Price		
Market Value/appraisal		
Date of Closing		
Seller Concessions		
Post Closing Occupancy		
Pro forma HUD-1		

1. Amount due on Mortgage	+	
2. Additional cost to complete foreclosure	+	
3. Cost of recovery of premises	+	
4. Cost of reconditioning premises	+	
5. Realtor commission	+	
6. Closing costs	+	
7. Total Costs to Lender	=	
8. Probable sale price		
9. Lender's net gain/(loss) difference between 7 & 8		
10. Short Pay off		
11. Net Advantage/Disadvantage difference between 9 & 10		

GLOSSARY OF FORECLOSURE TERMS

Adjournment of Sale	Any defendant may request 2 two week discretionary adjournments from the sheriff. Sheriff always grants. Plaintiff/lender can direct as many adjournments as it wishes. Sheriff has no discretion.
Affidavit of Inquiry	Affidavit required by the Court to justify alternate or substituted service. Affidavit must demonstrate that a “diligent inquiry” was made
<i>Alias</i> Writ of Execution	First replacement writ of execution in the event the original writ expires, is void or has been returned to the Court by the sheriff
Allowed Costs	Also known as “taxed costs” are those out of pocket expenses the lender can recover in accordance with applicable statutes and rules of court included a portion of legal fees
Anti-Eviction Act	N.J.S.A. 2A:18-61.1 Landlord Tenant Law
APO	Adequate Protection Order - In Bankruptcy, an order which usually resolves a motion for relief of the automatic stay providing for payment of post petition arrears over a period of time
Automatic Stay	Automatic and instant law required stoppage and suspension of all effort or attempt to collect a debt or otherwise affect the assets of a person who files for Bankruptcy. Any act or occurrence which violates the “automatic stay” is void whether intentional or not. (Bankruptcy Code § 363)
Bankruptcy Code	11 U.S.C.
Certificate of Amount Due	Certification which accompanies

	application for final judgment in foreclosure which provides the Court with the evidence of the total amount due to the lender as allowed by the law
Condominium Liens	N.J.S.A.. 46:8b-21 Statute which gives condominium associations fees and dues six (6) month priority over any mortgage
Constructive Service	That form of service of the summons and complaint which is allowed by the Rules of Court, i.e. mailed service. Also known as “substituted service”
Contract interest rate	The interest as contained in the Note and Mortgage
Curtesy Rights	Spousal right of a husband in the real property of his wife which she owns in her name only. Right still applies to marriages prior to May 28, 1980.
Defense Manpower Data Center	That division of the Department of Defense which will supply a certificate that the borrower is not on active military duty. The certificate is required as supplementary evidence to the affidavit of non-military service which a prerequisite to entry of foreclosure judgment. Court Rule 1:5-7.
Diligent Inquiry	Is the crucible the court applies to an affidavit of inquiry that in turn justifies “substituted” or “alternate” service ultimately allowing entry of final judgment. The Rule does not specifically define what constitutes “diligent inquiry” (Court Rule 4:4-5).; it does provide a who must make the inquiry. The Office of Foreclosure has set down “unwritten rules” of what in practice constitutes “diligent inquiry”. A partial list would include a postal inquiry; inter-net inquiry; skip trace; inquiry with a state agency such as Motor Vehicles etc.
Dower Rights	Spousal right of a wife in the real property of her husband which he owns in his name

	only. Right still applies to marriages prior to May 28, 1980.
Equitable subrogation	Very simply put, the granting of priority of later recorded mortgage over a prior recorded mortgage given certain circumstances
<i>ex parte</i>	One sided motion on short notice to have stay in Bankruptcy vacated based on a default by the debtor as to an Adequate Protection Order
Fair Debt Collection Practices Act	15 U.S.C. 1601
Fair Foreclosure Act	N.J.S.A 2A:50-53 New Jersey Statute which prescribes foreclosure procedure
Gavel Rule	Bankruptcy case law which determined that a sheriff sale is complete when the sheriff recognizes the highest bidder at a foreclosure sale and that bidder provides the appropriate deposit to the sheriff (<i>In Re Connors</i>). Effectively, the right of redemption ceases as sheriff sale
Guardian <i>ad litem</i>	A person appointed by the court to represent the interests of an incompetent or minor in a foreclosure. A Guardian <i>ad litem</i> and his report is a prerequisite to the entry of a final judgment in foreclosure where any defendant is a minor or incompetent.
Judgment interest rate	The interest rate which is allowed by Court Rule after entry of judgment. That interest rate changes from year to year and is usually significantly lower than the "contract rate"
Late Charges	The additional charge allowed to be imposed in accordance with the terms of the Note. In foreclosure late charges are allowed to be recovered only up to the filing of the complaint.
<i>Lis Pendens</i>	A document filed in the county recorder's

	office which informs the public that there is litigation pending which may affect the title to real property. It specifically describes the object of the litigation e.g. ...to foreclose a specific mortgage.
Mailed service	Form of “alternate” service once personal service has failed. Mailed service is accomplished by simultaneous regular and certified mail return receipt requested
Mortgage Transactions Parity Act	12 U.S.C. §3801 - Federal statute which for certain institutions supercedes state statutes as to the limits of interest, late charges, penalties etc.
Motion for Summary Judgment	In practice a motion brought as soon as possible by a plaintiff in a foreclosure when a “contesting” answer is filed that is interposed for delay. The result is an “Order Striking the Answer” of the borrower/defendant.
Motion to Vacate and Re-Enter Judgment	A motion required where a foreclosure judgment was entered while the automatic stay in bankruptcy was in effect
Motion for Relief of Stay	A motion in Bankruptcy to void the automatic stay. The motion is based upon the lack of “adequate protection”. Lack of adequate protection is the debtor’s lack of equity in the specific realty or the failure of the debtor to make the regular monthly mortgage payments after the filing of the petition in bankruptcy
Non-Military Affidavit	An affidavit required by Rule and a prerequisite to the entry of final foreclosure judgment confirming the borrower/defendant is not on active military duty. The affidavit “in practice” must be accompanied by a certificate to that effect from the Department of Defense
Notice of Intent to Apply for Judgment	Ten (10) notice required by the Fair

Notice to Absent Defendant	Foreclosure Act to be served on the borrower of the lender's intent to apply for final judgment.
Notice of Sale	The title used in the "alternate" form of service for the publication of service after exhaustion of the sequential attempts of personal service and other allowed forms of alternate service.
Notice of Intent to Accelerate	Notice required by Rule to be sent to all defendants in a foreclosure advising of the place, date and time of the Sheriff's sale
Order to Strike	Thirty (30) day notice required by the Fair Foreclosure Act prior to the commencement of a foreclosure suit.
OTBS	The order which usually result from a Summary Judgment motion which negates the answer of the borrower/defendant and enters default as to the borrower/defendant.
PACER	Term used in Bankruptcy indicating that the parties interested in a motion for the relief from the automatic stay have settled the motion and an Order is To Be Submitted .
<i>Plures</i> Writ of Execution	Public Access to Court Electronic Records is the Bankruptcy Court's inter-net site accessible to subscribers to the Court's records and schedules
Predatory Lending Act	N.J.S.A. 46:10B-23
Published Service	Second and following replacement writ of execution in the event the prior writ expires, is void or has been returned to the Court by the sheriff
	The "alternate" form of service for the publication of service after exhaustion of the sequential attempts of personal service

and other allowed forms of alternate service (See also, Notice to Absent Defendant)

Sale Publication

Sheriff's Notice to the public that an auction sale of the real estate will occur at a specific place, date and time in accordance with a Writ of Execution. The sheriff must publish for four (4) consecutive weeks in two (2) newspapers circulated in the county in which the real estate lies.

Servicemembers Civil Relief Act

50 U.S.C. § 501

Sheriff's Commission

Commission is allowed by law to the sheriff upon the sale of realty in pursuit of a writ of execution. The sheriff is entitled to a commission based upon the amount bid and is equal to 6% of the first \$ 5,000.00 bid plus 4% of any amount in excess of \$ 5,000.00 bid. The sheriff is also entitled to half (1/2) the above commission if the lender accepts any amount in settlement or forbearance from the borrower once the writ is received by the sheriff.

Sheriff's Fees

The fees the sheriff charges for complying with the Writ of Execution. All sheriffs require a deposit which usually exceed the total of the charges and vary from county to county.

Sheriff's Upset

Short hand term used to describe the amount the sheriff has determined to be required to pay the judgment, costs and accumulated interest to the date of the sheriff sale in full.

Skip Trace

The process used to investigate and locate a defendant for the purposes of effecting service or substantiating the use of an alternate form of service.

Spousal Possessory Rights

A married persons right to possession (occupancy) of real estate which is/was the marital residence and which is/was owned solely by the other spouse.

Substituted service

That form of service of the summons and complaint which is allowed by the Rules of Court, i.e. mailed service. Also known as “constructive service”

Taxed Costs

Also known as “allowed costs” are those out of pocket expenses the lender can recover in accordance with applicable statutes and rules of court included a portion of legal fees

Ten day notice

Ten (10) notice required by the Fair Foreclosure Act to be served on the borrower of the lender’s intent to apply for final judgment

Warrant for Removal

Order of Court which directs the removal of a tenant to be carried out by a constable

Writ of Possession

Order of Court which directs the Sheriff to dispossess the occupants (prior borrower/defendant) of foreclosed premises.

FAIR FORECLOSURE ACT
N.J.S.A. 2A:50-53 et seq.

AN ACT concerning mortgage foreclosure, amending various sections of the New Jersey Statutes and supplementing Chapter 50 of Title 2A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the "Fair Foreclosure Act."

2. The Legislature hereby finds and declares it to be the public policy of this State that homeowners should be given every opportunity to pay their home mortgages, and thus keep their homes; and that lenders will be benefited when residential mortgage debtors cure their defaults and return defaulted residential mortgage loans to performing status.

3. As used in this act:

"Deed in lieu of foreclosure" means a voluntary, knowing and uncoerced conveyance by the residential mortgage debtor to the residential mortgage lender of all claim, interest and estate in the property subject to the mortgage. In order for a conveyance to be voluntary, the debtor shall have received notice of, and been fully apprised of the debtor's rights as specified in section 4 of this act. For purposes of this act, "voluntarily surrendered" has the same meaning as "deed in lieu of foreclosure."

"Immediate family" means the debtor, the debtor's spouse, or the mother, father, sister, brother or child of the debtor or debtor's spouse.

"Non-residential mortgage" means a mortgage, security interest or the like which is not a residential mortgage. If a mortgage document includes separate tracts or properties, those portions of the mortgage document covering the non-residential tracts or properties shall be a non-residential mortgage.

"Obligation" means a promissory note, bond or other similar evidence of a duty to pay.

"Office" means the Office of Foreclosure within the Administrative Office of the Courts.

"Residential mortgage" means a mortgage, security interest or the like, in which the security is a residential property such as a house, real property or condominium, which is occupied, or is to be occupied, by the debtor, who is a natural person, or a member of the debtor's immediate family, as that person's residence. This act shall apply to all residential mortgages wherever made, which have as their security such a residence in the State of New Jersey, provided that the real property which is the subject of the mortgage shall not have more than four dwelling units, one of which shall be, or is planned to be, occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated.

"Residential mortgage debtor" or "debtor" means any person shown on the record of the residential mortgage lender as being obligated to pay the obligation secured by the residential mortgage.

"Residential mortgage lender" or "lender" means any person, corporation, or other entity which makes or holds a residential mortgage, and any person, corporation or other entity to which such residential mortgage is assigned.

4. a. **Upon failure to perform** any obligation of a residential mortgage by the residential mortgage debtor and **before any residential mortgage lender may accelerate** the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take

possession of the residential property which is the subject of the mortgage, the residential mortgage **lender shall give the residential mortgage debtor notice of such intention at least 30 days in advance of such action** as provided in this section.

b. **Notice** of intention to take action as specified in subsection a. of this section shall be **in writing**, sent to the debtor by registered or **certified mail**, return receipt requested, at the **debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage**. The notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party.

c. The written **notice shall** clearly and conspicuously **state** in a manner calculated to make the debtor aware of the situation:

- (1) **the particular obligation or real estate security interest;**
- (2) **the nature of the default** claimed;
- (3) **the right of the debtor to cure the default** as provided in section 5 of this act;

(4) what performance, including **what sum of money**, if any, and interest, **shall be tendered to cure the default as of the date specified** under paragraph (5) of this subsection c.;

(5) **the date by which the debtor shall cure** the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made;

(6) **that if the debtor does not cure** the default by the date specified under paragraph (5) of this subsection c., **the lender may take steps to terminate the debtor's ownership** in the property by commencing a foreclosure suit in a court of competent jurisdiction;

(7) **that if the lender takes the steps** indicated pursuant to paragraph (6) of this subsection c., **a debtor shall still have the right to cure** the default pursuant to section 5 of this act, **but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules** Governing the Courts of the State of New Jersey;

(8) the right, if any, of the debtor to transfer the real estate to another person subject to the security interest and that the transferee may have the right to cure the default as provided in this act, subject to the mortgage documents;

(9) that the debtor is advised to seek counsel from an attorney of the debtor's own choosing concerning the debtor's residential mortgage default situation, and that, if the debtor is unable to obtain an attorney, the debtor may communicate with the New Jersey Bar Association or Lawyer Referral Service in the county in which the residential property securing the mortgage loan is located; and that, if the debtor is unable to afford an attorney, the debtor may communicate with the Legal Services Office in the county in which the property is located;

(10) **the possible availability of financial assistance** for curing a default from programs operated by the State or federal government or non-profit organizations, if any, as identified by the Commissioner of Banking. This requirement may be satisfied by attaching a list of such programs promulgated by the commissioner; and

(11) **the name and address of the lender and the telephone number of a representative** of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default.

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage

e. The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice.

f. Compliance with this section shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based.

5. a. Notwithstanding the provisions of any other law to the contrary, as to any residential mortgage for which a notice of intention to foreclose is required to be given pursuant to section 4 of this act, whether or not such required notice was in fact given, the debtor, or anyone authorized to act on the debtor's behalf, shall have the right at any time, up to the entry of final judgment or the entry by the office or the court of an order of redemption pursuant to subsection g. of section 11 of this act, to cure the default, de-accelerate and reinstate the residential mortgage by tendering the amount or performance specified in subsection b. of this section. The payment or tender shall be made to the person designated in the notice pursuant to paragraph (5) of subsection c. of section 4 of this act. The debtor may exercise the right to cure a default as to a particular mortgage and reinstate that mortgage only once every 18 months, provided, however, that this limitation shall not apply if the mortgage debtor cures a default by the date specified in paragraph (5) of subsection c. of section 4 of this act. The 18-month time period shall run from the date of cure and reinstatement.

b. To cure a default under this section, a -debtor shall:

(1) pay or tender to the person identified pursuant to paragraph (5) of subsection c. of section 4 of this act, in the form of cash, cashier's check, or certified check, all sums which would have been due in the absence of default. at the time of payment or tender;

(2) perform any other obligation which the debtor would have been bound to perform in the absence of default or the exercise of an acceleration clause, if any;

(3) pay or tender court costs, if any, and attorneys' fees in an amount which shall not exceed the amount permitted under the Rules Governing the Courts of the State of New Jersey; and

(4) pay all contractual late charges, as provided for in the note or security agreement.

c. To cure a default under this section, a debtor shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default as provided for in this act.

d. Cure of default reinstates the debtor to the same position as if the default had not occurred. It nullifies, as of the*date of cure, any acceleration of any obligation under the mortgage, note or bond arising from the default.

e. If default is cured prior to the filing of a foreclosure action, the lender shall not institute a foreclosure action for that default. If default is cured after the filing of a foreclosure action, the lender shall give written notice of the cure to the court. Upon such notice, the court shall dismiss the action without prejudice.

f. The right to cure a default under this section is independent of any right of redemption or any other right or remedy under the common law, principles of equity, State or federal statute, or rule of court.

6. a. 1 **If a plaintiff's action to foreclose a residential mortgage is uncontested**, pursuant to R.4:64-1(a) of the Rules Governing the Courts of the State of New Jersey and the plaintiff chooses not to use the optional procedure for the disposition of foreclosed premises pursuant to section 11 of this act, a **lender shall** apply for entry of final judgment and **provide the debtor with a notice, mailed at least 14 calendar days prior to the submission of proper proofs for entry of a foreclosure judgment**, advising that, absent a response from the debtor pursuant to paragraph (2) of this subsection a., proper proofs will be submitted for entry of final judgment in the foreclosure action and that upon entry of final judgment, the debtor shall lose the right, provided pursuant to section 5 of this act, to cure the default. The manner and address for mailing and the effective date of the notice shall be the same as set forth in subsection b. of section 4 of this act.

2 b.2 **A debtor may, no later than 10 days after receipt** of the notice required pursuant to subsection a. of this section, **mail to the lender a statement** in which the debtor **in good faith certifies** as true that there is a reasonable likelihood that **the debtor will be able to provide payment necessary to cure the default within 45 days of the date the notice** required pursuant to paragraph (1) of this subsection a., became effective. This statement shall be sent registered or certified mail, return receipt requested, to the address of the tender who gave notice as required pursuant to subsection a. of this section.

2 c.3 **A lender who receives a statement** sent by the debtor pursuant to paragraph (2) of this subsection a., **shall not submit proper proofs for entry of final judgment** in foreclosure with a return date **earlier than 46 days after the date the notice** required pursuant to paragraph (1) of this subsection a. became effective.

b. (1) If a plaintiff's action to foreclose a residential mortgage is uncontested, pursuant to R.4:64-1(a) of the Rules Governing the Courts of the State of New Jersey and the lender chooses to use the optional procedure for the disposition of the foreclosed premises pursuant to section 11 of this act, the lender shall provide the debtor with a notice, mailed at least 14 calendar days prior to filing an affidavit or certification with the office or court pursuant to subsection f. of section 11 of this act. The notice shall advise the debtor that, absent a response from the debtor pursuant to paragraph (2) of this subsection b., the lender shall file an affidavit or certification with the office or court requesting the office or court to enter an order of redemption and that upon the entry of the order of redemption the debtor shall lose the right provided pursuant to section 5 of this act, to cure the default. The manner and address for mailing and the effective date of the notice shall be the same as set forth in subsection b. of section 4 of this act.

(2)A debtor may, no later than 10 days after receipt of the notice required pursuant to paragraph (1) of this subsection b., mail to the lender a statement in which the debtor in good faith certifies as true that there is a reasonable likelihood that the debtor will be able to provide payment necessary to cure the default within 45 days of the date the notice required pursuant to paragraph (1) of this subsection b. became effective. This statement shall be sent registered or certified mail, return receipt requested, to the address of the lender who gave notice as required pursuant to paragraph (1) of this subsection b.

(3)A lender who receives a statement sent by the debtor pursuant to paragraph (2) of this subsection b., shall not file an affidavit or certification with the office or court earlier than 46 days after the date the notice required pursuant to paragraph (1) of this subsection b. became effective.

7. If a debtor is successful in curing the default under a repayment plan approved by the United States Bankruptcy Court, the residential mortgage relationship between the parties is reinstated, and the debtor is restored to the same position held before the default or acceleration.

8. Nothing herein is intended to limit or modify any provision of federal law regarding notice of the availability of homeownership counselling.

9. Waivers by the debtor of rights provided pursuant to this act are against public policy, unlawful, and void, unless given after default pursuant to a workout agreement in a separate written document signed by the debtor.

10. The provisions of sections 1 through 9 of this act shall not apply to the foreclosure of a non-residential mortgage nor to collection of the obligation by means other than enforcing the lender's lien on the residential property. A lender shall not be required to foreclose a residential mortgage and a non-residential mortgage securing the same obligation in the same proceedings

11. a. An optional foreclosure procedure without sale for the disposition of a foreclosed premises is hereby established pursuant to subsection b. of this section, wherein a lender may elect to proceed according the provisions of this act and R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey.

b. Use of the optional procedure without sale, as provided in this section, shall be permitted only when:

(1) the debtor has abandoned the property which is the subject of the residential mortgage;

(2) the debtor has voluntarily surrendered the property which is the subject of the residential mortgage by signing a deed in lieu of foreclosure in favor of the lender; or

(3) there is no equity in the property which is the subject of the residential mortgage, as defined in subsection e. of this section.

c. Pursuant to paragraph (1) of subsection b. of this section, and for purposes of this section only, abandonment of the property subject to the residential mortgage shall be established by an affidavit or certification from an individual having personal knowledge of the contents thereof, setting forth the specific facts upon which that conclusion is based. The affidavit or certification shall be submitted to the office or the court at the same time that the lender applies to the office or the court for the order fixing the amount, time and place for redemption.

d. Pursuant to paragraph (2) of subsection b. of this section and for purposes of this section only, if the lender receives a deed in lieu of foreclosure, the conveyance shall be effective only if the deed clearly and conspicuously provides: that the debtor may, without penalty, rescind the conveyance within seven days, excluding Saturdays, Sundays and legal holidays; and that such rescission is effective upon delivery of a written notice to the lender or its agent or upon mailing of such notice to the lender or its agent by certified or registered mail, return receipt requested.

e. (1) For purposes of paragraph (3) of subsection b. of this section, a property subject to a residential mortgage shall be deemed to have no equity if the total unpaid balance of all liens and encumbrances against the property, including mortgages, tax liens and judgments actually against the property (not including similar name judgments), and any other lien, is equal to or greater than 92 percent of the fair market value of the property. An affidavit setting forth with specificity the fair market value of the property, the unpaid balance of the obligation, including all mortgages

and liens and the method by which the lender determined that the property has no equity, shall be submitted to the office or the court at the time the lender applies for the order fixing the amount, time and place for redemption.

(2) If a lender proceeds with the optional procedure under this subsection, and if the debtor has not objected and requested a public sale pursuant to this section, when the foreclosed property is resold by the lender following judgment and provided the resale price received by the lender is in excess of the amount necessary to repay the debt, interest and reasonable costs of the lender, and all carrying charges, including, but not limited to, the reasonable costs of maintenance and resale, the lender shall deposit any such excess in accordance with R.4:57 et seq. of the Rules Governing the Courts of the State Of New Jersey.

(3) Upon deposit of any such excess with the Superior Court, the lender shall notify the debtor and any lien holder who held a lien Junior to the lender and whose lien was lost in whole or in part as a result of the foreclosure. Such notification shall be by certified mail, return receipt requested, to the last known address of the debtor and such lien holders. The debtor and the lien holders shall then have six months to make an application to the Superior Court, in the form of an application for surplus funds, upon appropriate notice to all other parties in interest, to seek an order for turnover of the excess funds. Failure of a lender to comply with the provisions of paragraphs (2) and (3) of this subsection e. shall not affect title to the foreclosed property.

f.(1) In accordance with the provisions of R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey, and subject to compliance with the provisions of this act, a lender may elect to proceed with the optional procedure by filing an affidavit or certification with the office or the court.

(2) The affidavit or certification shall set forth the facts which the lender alleges show that the it is entitled to proceed under one or more paragraphs of subsection b. of this section and shall be supported by the proofs required by this section and such other proofs as may be required by the office or the court.

9. In accordance with the provisions of R.4:64-1(d) of the Rules Governing the Courts of the State of New Jersey, and subject to compliance with the provisions of this act, the office or the court may enter an order fixing the amount, time, and place for redemption, which shall be not less than 45 days nor more than 60 days after the date of the order. The office or the court may grant an extension of time for good cause shown. The order shall provide that:

(1) the redeeming defendant pay to the plaintiff's attorney the amount fixed by the office or the court for redemption, together with interest; to the date of redemption, plus all court costs;

(2) redemption shall be by cash, cashier's check or certified check and made at the office of the plaintiff's attorney, if such office is located in the county where the property is situated, or at such other place as designated by the office or the court, between the hours of 9:00 a.m. and 4:00 p.m. of the date set by the office or the court in the order; and

(3) in the absence of redemption, the defendants shall stand absolutely debarred and foreclosed from all equity of redemption.

h. (1) The order for redemption or notice thereof shall be mailed to each defendant's last known address and, if different, also to the address of the property being foreclosed. The order for redemption or notice thereof shall be sent by ordinary mail and certified mail, return receipt requested, within 20 days after the date the order is entered, except that, as to defendants whose addresses are unknown and who were served by publication, no further publication of the order

for redemption or notice thereof need be made.

(2) The notice shall:

(a) inform the defendants that the plaintiff is proceeding under an optional procedure authorized by section 11 of this act and set out the steps of the optional procedure;

(b) inform all defendants of the terms and conditions under which a defendant may request a public sale of the mortgaged premises pursuant to subsection i. of this section; and

(c) clearly state that no request for a public sale made after 30 days from the date of service will be granted, except for good cause shown.

i. In any matter in which the office or the court has issued an order for redemption and the lender is permitted to proceed by the optional procedure, a defendant who wishes to object to the optional procedure and request a public sale with respect to the mortgaged premises being foreclosed, shall submit to the office or the court a written request for a public sale within 30 days of the date the order or notice thereof is served. If a defendant requests a public sale within the required time period, and subject to compliance with the provisions of this act, the office or court shall enter a judgment of foreclosure which provides for a public sale of the premises in accordance with applicable law. Any such defendant who requests a public sale, other than a natural person who is the owner or a voluntary transferee from that owner, shall be required to post a cash deposit or bond prior to the date fixed for redemption. This cash deposit or bond shall be in an amount which is 10% of the amount found due in the order fixing the amount, time and place for redemption and shall be held to secure the plaintiff against any additional interest and costs, as well as any deficiency, as a result of the public sale. The office or the court may dispense with this requirement for good cause shown. The defendant who requests a public sale, other than a natural person who is the owner or a voluntary transferee from that owner, shall pay all expenses and costs associated with the public sale, including, but not limited to, all sheriff's fees and commissions.

j. In the event of any dispute among defendants over the right to redeem, the court shall enter such order as is necessary to secure the plaintiff pending the resolution of the dispute, including, but not limited to, payment of plaintiff's additional interest and costs which accrue as a result of the dispute.

k. Upon redemption, the plaintiff shall furnish the redemptioner with an appropriate certificate of redemption and the redemptioner shall acquire all rights provided by law and equity but shall not be entitled to a deed or title to the mortgaged premises solely by virtue of the redemption. A redemptioner in proper cases may proceed to foreclose the redemptioner's interest.

l. In the absence of redemption, and on proof of mailing of the order for redemption or notice thereof pursuant to subsection h. of this section and an affidavit of non-redemption, the plaintiff shall be entitled to a judgment debarring and foreclosing the equity of redemption of the defendants and each of them and any person claiming by, through or under them, and adjudging the plaintiff be vested with a valid and indefeasible estate in the mortgaged premises. Anything to the contrary notwithstanding, redemption shall be permitted at any time up until the entry of judgment including the whole of the last day upon which judgment is entered. A certified copy of the judgment shall be accepted for recording by the county recording officer pursuant to P.L.1939, c.170 (C.46:16-1.1)

m. Upon entry of a judgment vesting title in the plaintiff pursuant to subsection l. of this

section, the debt which was secured by the foreclosed mortgage shall be deemed satisfied, and the plaintiff shall not be permitted to institute any further or contemporaneous action for the collection of the debt.

12. a. With respect to the sale of a mortgaged premises under foreclosure action, each Sheriff in this State shall provide for, but not be limited to, the following uniform procedures:

(1) Bidding in the name of the assignee of the foreclosing plaintiff.

(2) That adjournment of the sale of the foreclosed property shall be in accordance with N.J.S. 2A:17-36.

(3) (a) The sheriff shall schedule a sale date within 120 days of the sheriff's receipt of any writ of execution issued by the court in any foreclosure proceeding.

(b) If it becomes apparent that the sheriff cannot comply with the provisions of subparagraph (a) of this paragraph (3), the foreclosing plaintiff may apply to the office for an order appointing a Special Master to hold the foreclosure sale.

(c) Upon the foreclosing plaintiff making such application to the office, the office shall issue the appropriate order appointing a Special Master to hold the foreclosure sale.

(4) That the successful bidder at the sheriff's sale shall pay a 20 percent deposit in either cash or by a certified or cashier's check, made payable to the sheriff of the county in which the sale is conducted, immediately upon the conclusion of the foreclosure sale. If the successful bidder cannot satisfy this requirement, the bidder shall be in default and the sheriff shall immediately void the sale and proceed further with the resale of the premises without the necessity of adjourning the sale, without renotification of any party to the foreclosure and without the republication of any sales notice. Upon such resale, the defaulting bidder shall be liable to the foreclosing plaintiff for any additional costs incurred by such default including, but not limited to, any difference between the amount bid by the defaulting bidder and the amount Generated for the foreclosing plaintiff at the resale. In the event the plaintiff is the successful bidder at the resale, the plaintiff shall provide a credit for the fair market value of the property foreclosed.

(5) It is permissible, upon consent of the sheriff conducting the sheriff's sale, that it shall not be necessary for an attorney or representative of the person which initiated the foreclosure to be present physically at the sheriff's sale to make a bid. A letter containing bidding instructions may be sent to the sheriff in lieu of an appearance.

(6) That each sheriff's office shall use a deed which shall be in substantially the following form::

THIS INDENTURE,

made this (date) day of (month), (year).

Between (name) Sheriff of the County of (name), in the State of New Jersey, party of the first part and (name(s))

party of the second part, witnesseth.

WHEREAS, on the (date) day of (month), (year), a certain Writ of Execution was issued out of the Superior Court of New Jersey, Chancery Division - (name) - County, Docket No.

directed and delivered to the Sheriff of the said County of (name) and which said Writ is in the words or to the effect following that is to say:

THE STATE OF NEW JERSEY to the Sheriff of the County of (name)

Greeting:

WHEREAS, on the (date) day of (month), (year), by a certain judgment made in our Superior Court of New Jersey, in a certain cause therein pending, wherein the PLAINTIFF is:

and the following named parties are the DEFENDANTS:

IT WAS ORDERED AND ADJUDGED that certain mortgaged Premises, with the appurtenances in the Complaint, and Amendment to Complaint, if any, in the said cause particularly set forth and described, that is to say: The mortgaged premises are described as set forth upon the RIDER ANNEXED HERETO AND MADE A PART HEREOF.

BEING KNOWN AS Tax Lot (number) in Block (number) COMMONLY KNOWN AS (street address) .

TOGETHER, with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, use, property, claim and demand of the said defendants of, in, to and out of the same, to be sold, to pay and satisfy in the first place unto the plaintiff,

the sum of \$ (amount) being the principal, interest and advances secured by a certain mortgage dated (date, month, year) and given by (name) together with lawful interest from

until the same be paid and satisfied and also the costs of the aforesaid plaintiff with interest thereon.

AND for that purpose a Writ of Execution should issue, directed to the Sheriff of the County of (name commanding him to make sale as aforesaid; and that the surplus money arising from such sale, if any there be, should be brought into our said Court, as by the judgment remaining as of record in our said Superior Court of New Jersey, at Trenton, doth and more fully appear; and whereas, the costs and Attorney's fees of the said plaintiff have been fully taxed at the following sum: \$ (amount)

THEREFORE, you are hereby commanded that you cause to be made of the premises aforesaid, by selling so much of the same as may be needful and necessary for the purpose, the said sum of

\$ (amount) and the same you do pay to the said plaintiff together with contract and lawful interest thereon as aforesaid, and the sum aforesaid of costs with interest thereon.

And that you have the surplus money, if any there be, before our said Superior Court of New Jersey, aforesaid at Trenton, within 30 days after pursuant to R.4:59-1(a), to abide the further Order of the said Court, according to judgment aforesaid, and you are to make return at the time and place aforesaid, by certificate under your hand, of the manner in which you have executed this our Writ, together with this Writ and if no sale, this Writ shall be returnable within 12 months.

WITNESS, the Honorable (name) Judge of the Superior Court at Trenton, aforesaid, the (date) day of (month), (year).

Attorneys

/s/

Clerk

Superior Court of New Jersey

As by the record of said Writ of Execution in the Office of the Superior Court of New Jersey, at Trenton, in Book (number) of Executions, Page (number) etc., may more fully appear.

AND WHEREAS I, the said (name), as such Sheriff as aforesaid did in due form of law, before making such sale give notice of the time and place of such sale by public advertisement signed by myself, and set up in my office in the (name) Building- in (name) County, being the County in which said real estate is situate and also set up at the premises to be sold at least three weeks next before the time appointed for such sale.

I also caused such notice to be published four times in two newspapers designated by me and printed and published in the said County, the County wherein the real estate sold is situate, the same being designated for the publication by the Laws of this State, and circulating in the neighborhood of said real estate, at least once a week during four consecutive calendar weeks. One of such newspapers, (name of newspaper) is a newspaper with circulation in (name of town), the County seat of said (name) County. The first publication was at least twenty-one days prior and the last publication not more than eight days prior to the time appointed for the sale of such real estate, and by virtue of the said Writ of Execution, I did offer for sale said land and premises at public vendue at the County (name) Building in (name of town) on the (date) day of (month) (year) at the hour of (time) in the (a.m. or p.m.)

WHEREUPON the said party of the second part bidding therefore for the same, the sum of \$ (amount) and no other person bidding as much I did then and there openly and publicly in due form of law between the hours of (time) and (time) in the (a.m. or p.m.), strike off and sell tracts or parcels of land and premises for the sum of \$ (amount) to the said party of the second part being then and there the highest bidder for same. And on the (date) of (month) in the year last aforesaid I did truly report the said sale to the Superior Court of New Jersey, Chancery Division and no objection to the said sale having been made, and by Assignment of Bid filed with the Sheriff of (name) County said bidder assigned its bid to:

NOW, THEREFORE, This Indenture witnesseth, that I, the said (name) , as such Sheriff as aforesaid under and by the virtue of the said Writ of Execution and in execution of the power and trust in me reposed and also for and in consideration of the said sum of \$ (amount) therefrom acquit, exonerate and forever discharge to the said party of the second part, its successors and assigns, all and singular the said tract

or parcel of lands and premises, with the appurtenances, privileges, and hereditaments thereunto belonging or in any way appertaining; to have and hold the same, unto the said party of the second part, its successors and assigns to its and their only proper use, benefit, and behoof forever, in as full, ample and beneficial manner as by virtue of said Writ of Execution I may, can or ought to convey the same.

And, I , the said (name) , do hereby, covenant, promise and agree, to and with the said party of the second part, its successors and assigns, that I have not, as such Sheriff as aforesaid, done or caused, suffered or procured to be done any act, matter or thing whereby the said premises, or any part thereof, with the appurtenances, are or may be charged or encumbered in estate, title or otherwise.

IN WITNESS WHEREOF, I the said (name) as such Sheriff as aforesaid, have hereunto set my hand and seal the day and year aforesaid.

Signed, sealed and delivered in the presence of

L.S.)
(Signature of Sheriff), Sheriff

State of New Jersey) ss
County)

I, (name) Sheriff, of the County of (name) , do solemnly swear that the real estate described in this deed made to

was by me sold by virtue of a good and subsisting execution (or as the case may be) as is therein recited, that the money ordered to be made has not been to my knowledge or belief paid or satisfied, that the time and place of the same of said real estate were by me duly advertised as required by law, and that the same was cried off and sold to a bonafide purchaser for the best price that could be obtained and the true consideration for this conveyance as set forth in the deed is \$ (amount).

(Name of Sheriff), Sheriff

Sworn before me, (name) , on this (date) day of (month), (year), and I having examined the deed above mentioned do approve the same and order it to be recorded as a good and sufficient conveyance of the real estate therein described.

(Attorney or Notary Public)

STATE OF NEW JERSEY) ss.
(Name) County)

On this (date) day of (month), (year), before me, the subscriber, (name) personally appeared (name) Sheriff of the County of (name) aforesaid, who is, I am satisfied, the grantor in the within Indenture named, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same on his voluntary act and deed, for the uses and purposes therein expressed.

(Attorney or Notary Public)

b. At the conclusion of the sheriff's sale, the attorney for the plaintiff may prepare and deliver to the sheriff a deed in the form provided pursuant to paragraph (5) of subsection a. of this section for the sheriff's execution and the deed shall be delivered to the sheriff within 10 days of the date of the sale. The sheriff shall be entitled to the authorized fee, as a review fee, even if the plaintiff's attorney prepares the deed.

c. The sheriff's office shall, within two weeks of the date of the sale, deliver a fully executed deed to the successful bidder at the sale provided that the bidder pays the balance of the monies due to the Sheriff by either cash or certified or cashier's check. In the event a bid is satisfied after the expiration and additional interest is collected from the successful bidder, the sheriff shall remit to the plaintiff the total amount, less any fees, costs and commissions due the sheriff, along with the additional interest.

13. Any judgment creditor shall, upon entry of judgment in the office of the Clerk of the Superior Court, provide the Court with its current address for service. If the judgment creditor's address for service changes, it shall be incumbent upon the judgment creditor to effect a change of address for service by filing an appropriate form with the court in a timely manner. If any judgment creditor fails to provide the Court with a current or change of address for service, in any foreclosure proceeding, the plaintiff may, without having to first make a more diligent inquiry or publish notice in a newspaper, serve the Judgment creditor by ordinary mail and certified mail at the address that is reflected in the records of the Clerk of the Superior Court. The judgment creditor shall, if known, provide the Clerk of the Court with the judgment creditor's social security number or tax payer identification number.

14. N.J.S. 2A:17-36 is amended to read as follows:

2A:17-36. Adjournments of sale of real estate. A sheriff or other officer selling real estate by virtue of an execution may make two adjournments of the sale, and no more, to any time, not exceeding 14 calendar days for each adjournment. However, a court of competent jurisdiction may, for cause, order further adjournments.
(cf: N.J.S. 2A:17-36)

15.a. The United States Attorney for the District of New Jersey may send a letter to the Clerk of the Superior Court of New Jersey which notes the appearance of the Attorney General of the United States and states that neither an answer will be filed nor a default opposed. This letter shall be accepted by the Clerk of the Superior Court of New Jersey in lieu of an appearance by the Attorney General of the United States. The acceptance by the Clerk shall allow the foreclosing plaintiff to proceed as if the United States had filed a non-contesting answer.

b. The Attorney General of New Jersey may send a letter to the Clerk of the Superior Court of New Jersey which notes the appearance of the Attorney General of New Jersey and states that neither an answer will be filed nor a default opposed. This letter shall be accepted by the Clerk of the Superior Court of New Jersey in lieu of an appearance by the Attorney General of New Jersey. The acceptance by the Clerk shall allow the foreclosing plaintiff to proceed as if the State of New Jersey had filed a non-contesting answer.

16. N.J.S. 2A:15-11 is amended to read as follows:

2A:15-11. Notice of lis pendens. No notice of lis pendens shall be effective after five years from the date of its filing. (cf: N.J.S. 2A:15-11)

17. In the absence of an express agreement between the parties to the contrary, a debtor may tender, and a lender may accept, partial payment of any sum owing and due without either party waiving any rights.

18. The Attorney General in consultation with the Commissioner of Banking,¹ shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14A-1 et seq.) necessary to implement this act, including, but not limited to, regulations governing the form and content of notices of intention to foreclose.

19. This act shall take effect on the 90th day after enactment and shall apply to foreclosure actions commenced on or after the effective date.

Makes changes in foreclosure practices and allows use of optional foreclosure procedure without sale in certain cases.

NOTICE OF INTENT TO ACCELERATE

NOTICE OF INTENT TO ACCELERATE AND FORECLOSE

YOU ARE HEREBY GIVEN NOTICE THAT YOU ARE IN DEFAULT UNDER THE TERMS OF THE MORTGAGE AND NOTE DESCRIBED BELOW AND THAT THE HOLDER OF YOUR MORTGAGE INTENDS TO ACCELERATE THE MATURITY DATE OF YOUR LOAN AND FORECLOSE THAT MORTGAGE ON _____ UNLESS YOU CURE THAT DEFAULT PRIOR TO THAT DATE

1. **MORTGAGE AND NOTE:** The note and mortgage dated _____ the original amount of _____ . The mortgage covers property located at _____ , NJ.
2. **DEFAULT:** The default occurred when you failed to make the monthly payment due on _____ .
3. **CURING OF DEFAULT:** You can cure (correct) the default by paying before the sum of \$ _____ In the form of certified check, cashier's check or cash to:

YOU ARE FURTHER GIVEN NOTICE THAT:

- a) if you do not cure the default by that date specified above, the holder of the your mortgage may take steps to terminate your ownership of the property by commencing a foreclosure suit;
- b) if the holder of your mortgage takes those steps, you still have the right to cure the default but then you will be responsible for court costs and attorney's fees of your mortgage holder in an amount not exceeding those permitted by the Rules Governing the Courts of the State of New Jersey;
- c) you are advised to seek counsel from an attorney of your own choosing concerning your residential mortgage default situation, and if you are unable to obtain an attorney, you may communicate with the New Jersey Bar Association or Lawyer Referral Service in the county in which your property is located;
- d) financial assistance for curing a default may be available from programs operated by the State or federal government or non-profit organizations as identified by the Commissioner of Banking. Those organizations so designated at disclosed on the attached list.
- e) if you disagree that a default has occurred or with our calculations as to the amount due to cure default, you may contact _____
- f) **YOU ARE HEREBY ADVISED PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT THAT THIS FIRM IS DEEMED TO BE A DEBT COLLECTOR ATTEMPTING TO TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

THE FOLLOWING IS A LIST OF GOVERNMENT AND NON-PROFIT ENTITIES WHICH MAY PROVIDE FINANCIAL ASSISTANCE OR COUNSELING TO BORROWERS IN FORECLOSURE. IT IS RECOMMENDED THAT YOU CONSULT WITH YOUR ATTORNEY.

AMERICAN CREDIT ALLIANCE, INC.
26 South Warren Street
Trenton, NJ 08608
609-393-5400

HOUSING COALITION OF CENTRAL JERSEY
78 New Street
New Brunswick, NJ 08901
908-249-9700

ATLANTIC HUMAN RESOURCES, INC.
1 South New York Avenue
Atlantic City NJ 08401
609-348-4131

JERSEY CONSELING & HOUSING DEVELOPMENT, INC.
29 Blackhorse Pike 1840 South Broadway
Blackwood, NJ 08012 Camden, NJ 08104
609-227-3683 609-541-1000

BAYONNE ECONOMIC OPPORTUNITY FOUNDATION (Bayonne residents only)
555 Kennedy Boulevard
Bayonne, NJ 07002
201-437-7222

MERCER COUNTY HISPANIC ASSOCIATION
200 West State Street
Trenton, NJ 08607
609-392-2446 609-392-2513

CATHOLIC CHARITIES OF THE DIOCESE OF METUCHEN
540-550 Route 22 East
Bridgewater, NJ 08807
908-722-1881

MIDDLESEX COUNTY ECONOMIC OPPORTUNITIES CORPORATION
841 Georges Road
North Brunswick, NJ 08902
908-846-6600 extension 241

CITIZEN ACTION (Offices statewide)
400 Main Street
Hackensack, NJ 07601
1-800-NJOWNER

MONMOUTH COUNTY DIVISION OF SOCIAL SERVICES
Housing Services Unit 279 Broadway, 3rd Floor
Long Branch, NJ 07740

908-571-5760

CONSUMER CREDIT COUNSELING SERVICE OF DELAWARE VALLEY, INC.

One Cherry Hill
Cherry Hill, NJ 08002
215-563-5665

MORRIS COUNTY FAIR HOUSING COUNCIL

19 Market Street
P.O. Box 773
Morristown, NJ 07963
201-538-2975

CONSUMER CREDIT COUNSELING SERVICE OF NEW JERSEY

185 Ridgedale Avenue
Cedar Knolls, NJ 07927-1812
201-267-4324

OCEAN COMMUNITY ECONOMIC ACTION NOW, INC.

40 Washington Street
Toms River, NJ 08753
908-244-5333

FAIR HOUSING COUNSEL OF NORTHERN NJ

131 Main Street
Hackensack, NJ 07601
201-489-3552

PATERSON COALITION FOR HOUSING, INC.

262 Main Street
Paterson, NJ 07505
201-684-5998

FAMILY GUIDANCE CENTER CORPORATION

2426 Nottingham Way
Mercerville, NJ 08619

PATERSON TASK FORCE FOR COMMUNITY ACTION, INC.

155 Ellison Street
Paterson, NJ 07505
201-279-2333 ext. 20

FAMILY SERVICE ASSOCIATION OF ATLANTIC COUNTY

312 E. White Horse Pike
Absecon, NJ 08201
609-652-4100

TRI-COUNTY COMMUNITY ACTION AGENCY, INC.

143 West Broad 901 Delaware Street
Bridgeton, NJ 08302 Paulsboro, NJ 08066
609-451-6330 609-423-0040
14 New Market Street
Salem, NJ 08079
609-935-8919

GARDEN STATE CONSUMER CREDIT COUNSELING, INC.

55 Schanck Road, Suite A-2
Freehold, NJ 07728
908-409-6281

URBAN LEAGUE FOR BERGEN COUNTY

106 West Palisade Avenue
Englewood, NJ 07631
201-568-4988

URBAN LEAGUE OF UNION COUNTY

272 North Broad Street
Elizabeth, NJ 07208
908-351-7200

URBAN LEAGUE OF ESSEX COUNTY

140 Bloomfield Avenue
Montclair, NJ 07042
201-746-9438

HOMELESSNESS PREVENTION PROGRAM-DEPARTMENT OF CONSUMER AFFAIRS

609-984-7515

Provides limited financial assistance to low and moderate income households who, because of temporary financial problems beyond their control, face foreclosure. Eligibility for assistance is limited as follows: (1) homeowner must have lived in house for at least one year without a financial problem; (2) house must have only one mortgage; (3) assistance is a loan and a lien is placed on the house; (4) homeowner must have documented future income sufficient to support the household and repay the loan; and (5) homeowner may not be in bankruptcy.

Interested persons should call and leave their names and addresses on voice mail. Speak slowly and spell names and addresses. A preliminary packet will be mailed. Applicants will pay a \$5. charge for a credit check.

Rules Governing The Courts of New Jersey

4:4-1. Summons: Issuance

The plaintiff, the plaintiff(s attorney or the clerk of the court may issue the summons. If a summons is not issued within 15 days from the date of the Track Assignment Notice, the action may be dismissed in accordance with R. 4:37-2(a). Separate or additional summonses may issue against any defendants.

4:4-2. Summons: Form Except as otherwise provided by R. 5:4-1(b) (summary proceedings in family actions), the face of the summons shall be in the form prescribed by Appendix XII-A to these Rules. It shall be in the name of the State, signed in the name of the Superior Court Clerk and directed to the defendant. It shall contain the name of the court and the plaintiff and the name and address of the plaintiff(s attorney, if any, otherwise the plaintiff(s address, and the time within which these rules require the defendant to serve an answer upon the plaintiff or plaintiff(s attorney, and shall notify the defendant that if he or she fails to answer, judgment by default may be rendered for the relief demanded in the complaint. It shall also inform the defendant of the necessity to file an answer and proof of service thereof with the deputy clerk of the Superior Court in the county of venue, except in mortgage and tax foreclosure actions an answer shall be filed with the Clerk of the Superior Court in Trenton unless and until the action is deemed contested and the papers have been sent by the Clerk to the county of venue in which event an answer shall be filed with the deputy clerk of the Superior Court in the county of venue. If the defendant is an individual resident in this state, the summons shall advise that if he or she is unable to obtain an attorney, he or she may communicate with the Lawyer Referral Service of the county of his or her residence, or the county in which the action is pending, or, if there is none in either county, the Lawyer Referral Service of an adjacent county. The summons shall also advise defendant that if he or she cannot afford an attorney, he or she may communicate with the Legal Services Office of the county of his or her residence or the county in which the action is pending. If the defendant is an individual not resident in this State, the summons shall similarly advise him or her, directing the defendant, however, to the appropriate agency in the county in which the action is pending. The reverse side or second page of the summons shall contain a current listing, by county, of telephone numbers of the Legal Services Office and the Lawyer Referral Office serving each county, which list shall be updated regularly by the Administrative Office of the Courts and made available to legal forms publishers and to any person requesting such list.

4:4-3. By Whom Served; Copies

(a) Summons and Complaint. Summonses shall be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff(s attorney or the attorney(s agent, or by any other competent adult not having a direct interest in the litigation. If personal service cannot be effected after a reasonable and good faith attempt, which shall be described with specificity in the proof of service required by R. 4:4-7, service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of abode of the defendant or a person authorized by rule of law to accept service for the defendant or, with postal instructions to deliver to addressee only, to defendant(s place of business or employment. If the addressee refuses to claim or accept delivery

of registered or certified mail, service may be made by ordinary mail addressed to the defendant(s) usual place of abode. The party making service may, at the party(s) option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim or accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2. Return of service shall be made as provided by R. 4:4-7.

(b) Writs. Unless the court otherwise orders, all writs and process to enforce a judgment or order shall be served by the sheriff.

(c) Private Service; Costs. When service of process pursuant to this rule has been made by any person other than the sheriff, the allowance of taxed costs pursuant to R. 4:42-8 shall include a cost of service not exceeding the fee and mileage expenses allowable by law to the sheriff for that service.

4:4-4. Summons; Personal Service; In Personam Jurisdiction Service of summons, writs and complaints shall be made as follows:

(a) **Primary Method** of Obtaining In Personam Jurisdiction. The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State pursuant to R. 4:4-3, as follows:(1) **Upon a competent individual of the age of 14 or over, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual(s) dwelling place or usual place of abode with a competent member of the household of the age of 14 or over then residing therein**, or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual(s) behalf;(2) Upon a minor under the age of 14, by delivering a copy of the summons and complaint personally to a parent or the guardian of the minor(s) person or to a competent adult member of the household with whom the minor resides;(3) Upon a mentally incapacitated person, by delivering a copy of the summons and complaint personally to the guardian of the person of the mentally incapacitated individual or to a competent adult member of the household with whom the mentally incapacitated person resides, or if the mentally incapacitated person resides in an institution, to the director or chief executive officer thereof;(4) Upon individual proprietors and real property owners, provided the action arises out of a business in which the individual is engaged within this State or out of any real property or interest in real property in this State owned by the individual, by delivering a copy of the summons and complaint to the individual if competent, or, whether or not the individual proprietor or property owner is competent, to a managing or general agent employed by the individual in such business or for the management of such real property, or if service cannot be made in that manner, then by delivering a copy of the summons and complaint to any employee or agent of the individual within this State acting in the discharge of his or her duties in connection with the business or the management of the real property;(5) **Upon partnerships and unincorporated associations** subject to suit under a recognized name, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule **on an officer or managing agent or, in the case of a partnership, a general partner**;(6) **Upon a corporation**, by serving a copy of the summons and complaint in the manner prescribed by

paragraph (a)(1) of this rule **on any officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or on a person at the registered office of the corporation** in charge thereof, or, **if service cannot be made on any of those persons, then on a person at the principal place of business of the corporation in this State** in charge thereof, or if there is no place of business in this State, then on any employee of the corporation within this State acting in the discharge of his or her duties, provided, however, that a foreign corporation may be served only as herein prescribed subject to due process of law;(7) Upon the State of New Jersey, by registered, certified or ordinary mail of a copy of the summons and complaint or by personal delivery of a copy of the summons and complaint to the Attorney General or to the Attorney General(s designee named in a writing filed with the Clerk of the Superior Court. No default shall be entered for failure to appear unless personal service has been made under this paragraph. In an action under N.J.S.A.2A:45-1 et seq. (lien or encumbrance held by the State), the notice in lieu of summons shall be in the form, manner and substance prescribed by N.J.S.A. 2A:45-2, and shall be served, together with a copy of the complaint, on the Attorney General or designee as herein provided, but if the lien or encumbrance arises by reason of a recognizance entered into in connection with any proceeding in the Superior Court or any criminal judgment rendered in such court, the notice, together with a copy of the complaint, shall be served on the county prosecutor or the prosecutor(s designee named in a writing filed with the Clerk of the Superior Court;.(8) Upon other public bodies, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on the presiding officer or on the clerk or secretary thereof;

(b) Obtaining In Personam Jurisdiction by **Substituted or Constructive Service.**

(1) By mail or personal service **outside the State.** If it appears by affidavit satisfying the requirements of R. 4:4-5(c)(2) that despite diligent effort and inquiry personal service cannot be made in accordance with paragraph (a) of this rule, then, consistent with due process of law, in personam jurisdiction may be obtained over any defendant as follows:(A) **personal service** in a state of the United States or the District of Columbia, in the same manner as if service were made within this State or by a public official having authority to serve civil process in the jurisdiction in which the service is made or by a person qualified to practice law in this State or in the jurisdiction in which service is made; or(B) **personal service outside the territorial jurisdiction of the United States, in accordance with any governing international treaty** or convention to the extent required thereby, and if none, in the same manner as if service were made within the United States, except that service shall be made by a person specially appointed by the court for that purpose; or(C) **mailing** a copy of the summons and complaint by registered or certified mail, return receipt requested, and, simultaneously, by ordinary mail **to: (1)a competent individual of the age of 14 or over, addressed to the individual(s dwelling house or usual place of abode;** (2) a minor under the age of 14 ora mentally incapacitated person, addressed to the person or persons on whom service is authorized by paragraphs (a)(2) and (a)(3) of this rule; **(3)a corporation, partnership or unincorporated association that is subject to suit under a recognized name, addressed to a registered agent for service, or to its principal place of business, or to its registered office.** Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2.

(2) As provided by law. Any defendant may be served as provided by law.

(3) By court order. If service can be made by any of the modes provided by this rule, no court

order shall be necessary. If service cannot be made by any of the modes provided by this rule, any defendant may be served as provided by court order, consistent with due process of law.

(c) Optional Mailed Service. Where personal service is required to be made pursuant to paragraph (a) of this rule, service, in lieu of personal service may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto, and provided further that default shall not be entered against a defendant who fails to answer or appear in response thereto. This prohibition against entry of default shall not apply to mailed service authorized by any other provision of these rules. If defendant does not answer or appear within 60 days following mailed service, service shall be made as is otherwise prescribed by this rule, and the time prescribed by R. 4:4-1 for issuance of the summons shall then begin to run a new.

4:4-5. Summons; **Service on Absent Defendants**; In Rem or Quasi In Rem Jurisdiction Whenever, in **actions affecting specific property, or any interest therein**, or any res within the jurisdiction of the court, or in matrimonial actions over which the court has jurisdiction, **wherein it shall appear by affidavit** of the plaintiff(s attorney or other person having knowledge of the facts, **that a defendant cannot, after diligent inquiry, be served within the State, service may, consistent with due process of law, be made by** any of the following⁴ methods:(a) personal service outside this State as prescribed by R. 4:4-4(b)(1)(A)and (B); or(b) service by mail as prescribed by R. 4:4-4(b)(1)(C); or(c) **by publication of a notice once in a newspaper published or of general circulation in the county in which the venue is laid; and also by mailing, within 7 days after publication, a copy of the notice** as herein provided and the complaint to the defendant, prepaid, to the defendant(s residence or the place where the defendant usually receives mail, unless it shall appear by affidavit that such residence or place is unknown, and cannot be ascertained after inquiry as herein provided or unless the defendants are proceeded against as unknown owners or claimants pursuant to R.4:26-5(c). But if defendants are proceeded against pursuant to R. 4:26-5(c),a copy of the notice shall be posted upon the lands affected by the action within 7 days after publication;(1) The notice required by this rule shall be in the form of a summons, without a caption, and shall state briefly (1) the object of the action and the name of the person to whom it is addressed and why such person is made a defendant; and (2) where the action concerns real estate, the municipality in which the street on which the real estate is situate, and, if the property is improved, the street number of the same, if any, and if a mortgage is to be before closed, the parties thereto and the date thereof.(2) The inquiry required by this rule shall be made by the plaintiff, plaintiff(s attorney actually entrusted with the conduct of the action, or by the agent of the attorney; it shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the defendant(s residence or address or the matter inquired of; the inquiry shall be undertaken in person or by letter enclosing sufficient postage for the return of an answer; and the inquirer shall state that an action has been or is about to be commenced against the person inquired for, and that the object of the inquiry is to give notice of the action in order that the person may appear and defend it. The affidavit of inquiry shall be made by the inquirer fully specifying the inquiry made, of what persons and in what manner, so

that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice; or(d) as may be provided by court order .

4:4-6. General Appearance; Acknowledgment of Service A general appearance or an acceptance of the service of a summons, signed by the defendant(s attorney or signed and acknowledged by the defendant (other than an infant or mentally incapacitated person, shall have the same effect as if the defendant had been properly served.

4:4-7. Return The person serving the process shall make proof of service thereof on the original process and on the copy. Proof of service shall be promptly filed with the court within the time during which the person served must respond thereto either by the person making service or by the party on whose behalf service is made. The proof of service, which shall be in the form prescribed by the Administrative Director of the Courts, shall state the name of the person served and the place, mode and date of service, and a copy thereof shall be forthwith furnished plaintiff(s attorney by the person serving process. If service is made upon a member of the household pursuant to R. 4:4(4 that person(s name shall be stated in the proof or, if such name cannot be ascertained, the proof shall contain a description of the person upon whom service was made. If service is made by a person other than a sheriff or a court appointee, proof of service shall be by similar affidavit which shall include the facts of the affiant(s diligent inquiry regarding defendant(s place of abode, business or employment. If service is made by mail, the party making service shall make proof thereof by affidavit which shall also include the facts of the failure to effect personal service and the facts of the affiant(s diligent inquiry to determine defendant(s place of abode, business or employment. With the proof shall be filed the affidavit or affidavits of inquiry, if any, required by R. 4:4(4 and R. 4:4(5. Where service is made by registered or certified mail and simultaneously by regular mail, the return receipt card or the unclaimed registered or certified mail shall be filed as part of the proof. Failure to make proof of service does not affect the validity of service.

4:4-8. Amendment The person serving the process may file an additional or amended proof of service within the time provided by R. 4:4-7. The court may thereafter allow any process or proof of service thereof to be amended upon such terms as it deems appropriate unless such amendment would materially prejudice the rights of the party against whom process issued.

4:64-1. Uncontested Judgment: Foreclosures Other Than In Rem Tax Foreclosures

(a) Title Search. Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which R. 4:64-7 does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.

(b) Contents of Foreclosure Complaint. In an action in the Superior Court to foreclose a lien described in paragraph (a) of this rule, the complaint shall state:

- (1) the name of the obligor, mortgagor, obligee and mortgagee;
- (2) the amount of the debt secured by the mortgage;
- (3) the dates of execution of the debt instrument and the mortgage;
- (4) the recording date, county recording office, and book and page recording reference of the mortgage securing the debt;
- (5) whether the mortgage is a purchase money mortgage;
- (6) a description of the pertinent terms or conditions of the debt instrument or mortgage and the facts establishing the default;
- (7) the default date;
- (8) if applicable, the acceleration of the debt's maturity date;
- (9) if applicable, any prepayment penalty;
- (10) if the plaintiff is not the original mortgagee or original nominee mortgagee, the names of the original mortgagee and a recital of all assignments in the chain of title;
- (11) the names of all parties in interest whose interest is subordinate or affected by the mortgage foreclosure action and, for each party, a description of the nature of the interest, with sufficient particularity to give the court and parties notice of the transaction or occurrence on which the interest is based including recording date of the lien, encumbrance, or instrument creating the interest;
- (12) a description of the subject property by street address, block and lot as shown on the municipal tax map and a metes and bounds description stating whether the recorded mortgage instrument includes that description; and
- (13) if applicable, whether the plaintiff has complied with the pre-filing notice requirements of the Fair Foreclosure Act or other notices required by law.

When a married person who has not executed the mortgage is made a party defendant, the plaintiff shall set out the particular facts relied on to bar the married person's rights and interest in the subject property, including whether the married person's rights and interest in the property were acquired before or after the date of the mortgage.

(c) Definition of Uncontested Action. An action to foreclose a mortgage or to foreclose a condominium lien for unpaid assessments pursuant to N.J.S.A. 46:8B-21 shall be deemed uncontested if, as to all defendants,

- (1) a default has been entered as the result of failure to plead or otherwise defend; or
- (2) none of the pleadings responsive to the complaint either contest the validity or priority of the mortgage or lien being foreclosed or create an issue with respect to plaintiff's right to foreclose it; or
- (3) all the contesting pleadings have been stricken or otherwise rendered noncontesting.

An allegation in an answer that a party is without knowledge or information

sufficient to form a belief as to the truth of an allegation in the complaint shall not have the effect of a denial but rather of leaving the plaintiff to its proofs, and such an allegation in an answer shall be deemed noncontesting to the allegation of the complaint to which it is responsive.

(d) Procedure to Enter Judgment. If the action is uncontested as defined by paragraph (c) the court, on motion on 10 days notice if there are no other encumbrancers and on 30 days notice if there are other encumbrancers, and subject to paragraph (h) of this rule, may enter final judgment upon proof establishing the amount due. Notice shall be served on all parties who have appeared in the action including defendants whose answers have been stricken or rendered noncontesting. Defaulting parties shall be noticed only if application for final judgment is not made within six months of the entry of default. The application for entry of judgment shall be accompanied by proofs as required by R. 4:64-2 and in lieu of the filing otherwise required by R. 1:6-4 shall be only filed with the Office of Foreclosure in the Administrative Office of the Courts. The Office of Foreclosure may recommend entry of final judgment pursuant to R. 1:34-6.

(e) Priorities; Subsequent Encumbrances. A party holding a subsequent encumbrance for a sum certain and filing an uncontesting answer may have the encumbrance included for payment in the foreclosure judgment on the filing of proofs pursuant to R. 4:64-2. The judgment shall not order payment to a subsequent encumbrancer unless

- (1) the priority of the encumbrance has been determined; and
- (2) the encumbrancer has filed an affidavit stating that notice of the amount claimed due on the encumbrance has been served on all defendants whose addresses are known or readily ascertainable and none of the defendants, whose names and addresses shall be listed in the affidavit, has, within 10 days after the date of service of the notice made written objection to the validity, priority or amount of the encumbrance; and
- (3) all prior encumbrances of parties to the action, including answering and defaulting parties, have been previously satisfied or ordered paid; and
- (4) the encumbrance extends to the entire interest being foreclosed; and
- (5) no cross-claim pursuant to R. 4:64-5 has been filed.

No judgment by default shall be entered against a defendant postponing that defendant's rights or claims to those of any other defendant unless the priority of the right or claims of the latter and the facts upon which they depend are distinctly set forth in the pleadings. A controversy between such defendants may be settled upon application for surplus moneys pursuant to R. 4:64-3.

(f) Tax Sale Foreclosure; Strict Mortgage Foreclosures. If an action to foreclose or reforeclose a tax sale certificate in personam or to strictly foreclose a mortgage where provided by law is uncontested as defined by paragraph (c), the court, subject to paragraph (h) of this rule, shall enter an order fixing the amount, time and place for redemption upon proof establishing the amount due. The order of redemption in tax foreclosure actions shall conform to the requirements of N.J.S.A. 54:5-98 and R. 4:64-6(b). The order for redemption or notice of the terms thereof shall be served by ordinary mail on each defendant whose address is known at least 10 days prior to the date fixed for redemption. Notice of the entry of the order of redemption, directed to each defendant whose address is unknown, shall be published in accordance with R. 4:4-5(c) at least 10 days prior to the redemption date and, in the case of an unknown owner in a tax foreclosure action joined pursuant to R. 4:26-5, a copy of the order or notice shall be posted on the subject premises at least 20 days prior to the redemption date

in accordance with N.J.S.A. 54:5-90. The court, on notice to all appearing parties including parties whose answers have been stricken, may enter final judgment upon proof of service of the order of redemption as herein required and the filing by plaintiff of an affidavit of non-redemption. The Office of Foreclosure may, pursuant to R 1:34-6, recommend the entry of both the order for redemption and final judgment.

(g) Security Interest Foreclosure. A plaintiff in the mortgage foreclosure action who also holds a security interest in personal property located on the subject real estate and who elects to have the personal property sold by the sheriff at public sale together with the real property may, by separate count, seek to foreclose the security interest in the mortgage foreclosure action, and the judgment of foreclosure shall direct a single public sale of the real estate and personal property. Notice of the sale of such personal property shall be given to the debtor and the secured creditors pursuant to N.J.S.A. 12A:9-504. If necessary the court shall apportion the proceeds of sale, the proceeds allocated to the personal property shall be distributed pursuant to N.J.S.A. 12A:9-504 whether or not the persons entitled thereto are parties to the foreclosure action.

(h) Minors; Mentally Incapacitated Persons; Military Service. Except as otherwise provided by law or by R. 4:26-3 (virtual representation) no judgment or order for redemption shall be entered under this rule against a minor or mentally incapacitated person who is not represented by a guardian or guardian ad litem appearing in the action. No judgment or order for redemption shall be entered against a defendant in military service of the United States who has defaulted by failing to appear unless that defendant is represented in the action by an attorney authorized by the defendant or appointed to represent defendant in the action and who has appeared or reported therein.

(i) Answer by United States and State of New Jersey. Rule 4:6-1(a) notwithstanding, the United States of America and the State of New Jersey, if a party defendant to a mortgage foreclosure action, shall have 60 days from the date of service of the complaint upon it to file and serve its answer.

4:65-2. Notice of Sale; Posting and Mailing

If real or personal property is authorized by court order or writ of execution to be sold at public sale, notice of the sale shall be posted in the office of the sheriff of the county or counties where the property is located, and also, in the case of real property, on the premises to be sold, but need not be posted in any other place. The party who obtained the order or writ shall, at least 10 days prior to the date set for sale, serve a notice of sale by registered or certified mail, return receipt requested, upon (1) every party who has appeared in the action giving rise to the order or writ and (2) the owner of record of the property as of the date of commencement of the action whether or not appearing in the action, and (3) except in mortgage foreclosure actions, every other person having an ownership or lien interest that is to be divested by the sale and is recorded in the office of the Superior Court Clerk, the United States District Court Clerk or the county recording officer, and in the case of personal property, recorded or filed in pertinent public records of security interests, provided, however, that the name and address of the person in interest is reasonably ascertainable from the public record in which the interest is noted. The party obtaining the order or writ may also file the notice of sale with the county recording officer in the county in which the real estate is situate, pursuant to N.J.S.A. 46:16A-1 et seq., and such filing shall have the effect of the notice of settlement as therein

provided.

4:65-5. Sheriff's Sale; Objections

A sheriff who is authorized or ordered to sell real estate shall deliver a good and sufficient conveyance in pursuance of the sale unless a motion for the hearing of an objection to the sale is served within 10 days after the sale or at any time thereafter before the delivery of the conveyance. Notice of the motion shall be given to all persons in interest, and the motion shall be made returnable not later than 20 days after the sale, unless the court otherwise orders. On the motion, the court may summarily dispose of the objection; and if it approves the sale and is satisfied that the real estate was sold at its highest and best price at the time of the sale, it may confirm the sale as valid and effectual and direct the sheriff to deliver a conveyance as aforesaid.

About the Author

Ralph F. Casale, Esq. has for the past twenty five years represented lenders and high volume servicers in mortgage foreclosure and origination. Mr. Casale and has always taken a practical approach to the thousands of foreclosures he has prosecuted. He has given seminars in the foreclosure, mortgage and real estate law field for the Institute of Continuing Legal Education of New Jersey, Rutgers University, Middlesex County College and Lorman Education Services. Mr. Casale's clients include Citi Residential Lending, Citicorp Mortgage, ResMae Mortgage Company, Bank of New York, Argent Mortgage Company, Deutsche Bank National Trust, and Litton Loan Servicing among others. Mr. Casale is a graduate of Seton Hall Law School, a former Counter-Intelligence Agent and Vietnam War Veteran.



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