



Chancery Proceedings in New Jersey

New Jersey N2K Hour

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What is a Chancery proceeding?

- A chancery proceeding is a proceeding that is heard in a court of equity as opposed to a court of law.
- As a result, the type of cases heard in a chancery court are cases involving issues of fairness.
- Or often, a party in chancery is seeking a court order to compel someone to either do something or to refrain from doing some particular act.

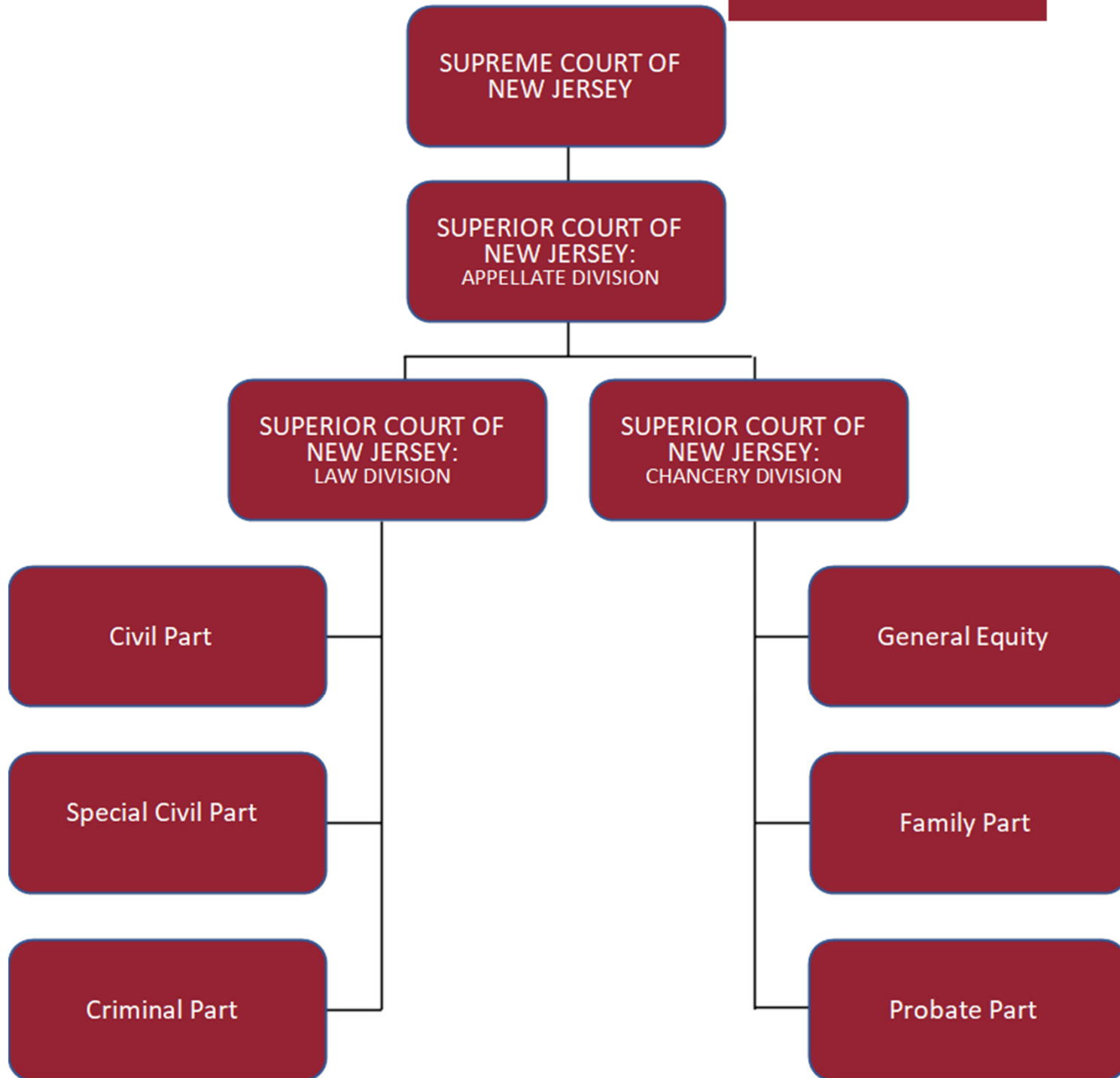
Nature of the Relief Sought (Equitable vs. Legal)

- Law courts award money damages
- Chancery courts order actions or remedies
- Examples of Chancery court actions include injunctions and specific performance
- Chancery proceedings often impact property rights
- Understanding the distinction between equity and law is critical for title review

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What type of cases are heard in the Chancery Court, General Equity Section:

- Foreclosures: Mortgage, In Rem and In Personum Tax Foreclosures, Condominium Lien Foreclosures, etc.
- Quit Title actions
- Partition suits
- Adverse Possession cases
- Cancellation of Mortgage cases
- Acceptance of Court Appointments
- Reformation
- Specific Performance
- Many Others

Lis Pendens-Purpose and Effect

- Lis Pendens (“LP”) = “suit pending”
- Filed typically only in actions affecting title to real property
- Typically seen in Chancery Division cases (equitable relief)
- Not used in Law Division cases seeking money damages only.
- Filing gives public notice of pending litigation affecting title

The Lis Pendens, continued: Filing and Title Review

- Must be filed in the county where the property is located.
- Effective for 5 years from filing.
- Must describe the real property.
- In foreclosure actions must include the mortgage book and page.
- Must be served with the complaint on the opposing party.

The Chancery Proceeding of Foreclosure: What is a mortgage foreclosure?

- Occurs when a borrower (mortgagor) fails to make required mortgage payments.
- The lender (mortgagee) declares the loan in default.
- Lender files a foreclosure action in the Chancery Division.
- Purpose of the action: 1. Terminate the borrower's "equity of redemption"; 2. Enforce the mortgage lien; 3. Compel the judicial sale of the property.
- Absent a valid defense, foreclosure is typically uncontested.

Residential Foreclosure vs. Commercial Foreclosure:

- **Residential Mortgage**
 - Occupied by borrower
 - House / condo / residence
 - Loan purpose irrelevant
 - Fair Foreclosure Act applies
 - Borrower cure rights
 - **Key Rule:** Classification depends on use of the property, not the purpose of the loan.
- **Commercial Mortgage**
 - Non-residential property
 - Commercial / investment
 - Loan purpose irrelevant
 - Act does NOT apply
 - Faster foreclosure process
 - **Key Rule:** Classification depends on use of the property, not the purpose of the loan.

FAIR FORECLOSURE ACT: N.J.S.A. § 2A:50-53 *et seq.* (FFA) -Salient features.

- Applies to residential mortgages only and establishes a statute of limitations for initiation of foreclosures.
- Provides additional protections to residential mortgage debtors and imposes time constraints on lenders.
- It does not apply to construction loans where the owner does not reside in the property. Applies to reverse mtgs.
- Requires the filing of a “Notice of Intention to Foreclose” at least 30 days prior to the filing of the foreclosure suit (cert).
- Gives the mortgagor the right to cure the default up to the time of entry of the final judgment.
- Provides for an optional procedure of strict foreclosure.

Understanding the Foreclosure Process in NJ

- A Notice of Intention to Foreclose (NOI) Letter must be sent by the mortgagee to the mortgagors upon default, and pursuant to the FFA. The letter informs the mortgagors of their right to cure the default, the amount necessary to cure, and how to cure. It must be done no sooner than within 30 days of filing suit.
- Pursuant to N.J Ct. R. 4:64-1(a) prior to filing an action to foreclose a mortgage, the plaintiff must 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 must annex to the complaint a certification of compliance with the title search requirements of this rule.

Understanding the Foreclosure Process in NJ: The foreclosure complaint.

- Next, the foreclosure complaint is filed through the Clerk's Office, Office of Foreclosure of the Superior Court of New Jersey in Trenton.
- N.J. Ct. R. 4:64-1(b) sets-forth 13 requirements for what the foreclosure complaint must contain, including mortgagor and lender's names, debt amount, party defendants, details about the mortgage, description of the property, and compliance with the FFA, etc.
- In residential foreclosure actions, plaintiff's attorney must annex to the complaint a certification of diligent inquiry and a certification that the complaint complies with N.J. Ct. R. 1:4-8(a).

Understanding the Foreclosure Process in NJ: The foreclosure complaint; the causes of action.

- The First Count: set-forth the elements necessary to establish the mortgagee's case in foreclosure against the mortgagor.
- The Second Count: in this count the mortgagee sets-forth its right to take possession of the property. Plaintiff may file a writ of possession after the foreclosure.
- Other possible Counts for relief: 1. Reformation 2. Appointment of a Receiver 3. Pendente Lite relief.
- The plaintiff will need to prepare and record an LP. The plaintiff must file the LP after the complaint is filed. Creates a gap that should require plaintiff to do rundown search.

Understanding the Foreclosure Process in NJ: Service of Process.

- Pursuant to N.J. Ct. R. 4:4-3, summons must 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.
- Under N.J. Ct. R. 4:4-4, service of summons, writs and complaints should be made by personal service as the primary method of Service. If unable to serve by personal service, mail service may be acceptable.
- Service on State of New Jersey and United States (USA) have special requirements.

Understanding the Foreclosure Process in NJ:

The mortgagor's response:

- The defendants have 35 days from date of service to file an answer or mortgagor may request mediation within 60 days of service.
- There are three possible responses for the defendants:
 1. Default by not filing an answer. 96% of all defendants will either default or file a non-contesting answer.
 2. File a non-contesting answer.
 3. File a contesting answer alleging defenses (rare).
- If mortgagor does not file an answer within 35 days or if the answer is marked non-contesting, then the lender may request default. This is what typically occurs.

Understanding the Foreclosure Process in NJ: Entry of Default & for Request Final Judgment.

- Assuming no answers are filed, Plaintiff will file a motion requesting that a default be entered as to all defendants.
- After default is entered a notice of the lender's intent to request entry of the final judgment in foreclosure is sent to the borrowers. Plaintiff must prepare and file motion for final judgment. If motion granted, final judgment is entered.
- Along with final judgment, the writ of execution will be issued and served on all defendants. Plaintiff's Counsel will contact the sheriff to coordinate the sheriff's sale.
- The Notice of Sale must be sent to the owner of the property at least 10 days prior to the sale and the Notice must be published: 2 newspapers for 4 consecutive weeks.

Understanding the Foreclosure Process in NJ: The Sheriff's Sale:

- Once the sheriff's sale date is set, the mortgagor has a right to two adjournments prior to the final sale. Each adjournment is for 30 days. This a time when mortgagor may file a bankruptcy petition.
- The sheriff's sale will take place within 120 days of delivery of the writ of execution and the mortgagor has a 10 day right of redemption from the date of sale.
- There are two possible results of a sheriff sale: 1. the lender is the successful bidder and becomes the owner of the property, or 2. a third party is the successful bidder and the lender receives the proceeds of the sale.

Understanding the Foreclosure Process in NJ: Post Sheriff's Sale:

- At the completion of the sale there is a 10 day right to redemption period for the mortgagor to present full payment of the amount due and to reclaim the property.
- Assuming there is no redemption, the sheriff will deliver the new deed to the new owner.
- At this time, the new owner or mortgagee will apply for a writ of possession. This writ, once granted, will give the sheriff the power to evict the occupants of the property. A tenant occupier with a valid lease may be protected.
- Assuming no motion to stay the eviction is successful or bankruptcy petition filed the occupiers will be evicted.

What is a Chancery Abstract and what is contained therein?

- A chancery abstract is a compendium of the abstracted pleadings and documents from a foreclosure file.
- It is prepared to determine if the foreclosure pleadings and documents conform with the New Jersey Court Rules and procedures and identifies the defendants and creditors.
- The pleadings and documents are reviewed by the abstract company to determine if the proceedings were regular and whether there are any defects.
- In addition, an outline of proceedings is attached to the chancery along with comments and Notes regarding possible issues.

What are the objectives for ordering and reviewing a chancery abstract?

1. If the title to property to be insured is derived from a judicial proceeding, such as foreclosure, has the mortgagor's interest and the interest of all other parties or party defendants claiming an interest in the property, subordinate to the mortgage, been divested, i.e., "cut-out"?
2. Are there defects or irregularities in the lawsuit that would make the proceedings vulnerable to an attack on the title.
3. Has due process of law been rendered to all parties.

How to review a chancery abstract? Step 1: Is the Foreclosure Residential or Commercial?

- Determine if the foreclosure is residential or commercial foreclosure.
- If residential the Fair Foreclosure Act Applies — N.J.S.A. 2A:50-53 et seq.
- Notice of Intention to Foreclose (NOI) required. Must be served at least 30 days before filing foreclosure.
- Borrower has statutory right to cure the default and detailed notice requirements must be strictly followed.
- Failure to comply with FFA requirements can delay or dismiss the foreclosure.

Step 2: Gather your Searches and Eliminate Non-Issues

- **Review the following:**
 - The Chancery abstract
 - The County Search
 - The Judgment Search (etc.)
- **Use these searches to identify:**
 - Mortgages
 - Judgments
 - Liens
 - Encumbrances
 - Other recorded interests.

Step 3—Identify Interest that Affect the Title

- **Every remaining item must be placed into one of three categories:**
 - **Category 1:** Interests recorded after the Lis Pendens
 - **Category 2:** Interests recorded after the mortgage but before the Lis Pendens
 - **Category 3:** Interests recorded before the mortgage
- These categories determine whether the interest survives or is divested in the foreclosure.

Step 3— Continued: Category 1- Identify Interests Recorded After the Lis Pendens

Compare the following:

- The Recording date of the Lis Pendens, and
- The Recording date of each lien or judgment (or other matter of concern)
- If the lien or judgment (or other matter) is recorded after the Lis Pendens: The interest is divested by the foreclosure
- **Reason:** The Lis Pendens binds all subsequent interests.

Step 3— Continued: Category 2- Review the Foreclosure Complaint

- These are Parties are known as the Party Defendants and must be joined in the action and made **Party Defendants**
- These are the interests that arise after execution and recording of the mortgage and the filing of the LP.
- Review the Complaint: each interest must be
 1. **Named in the complaint**, and
 2. **Properly served**
 3. **Included in the final judgment**

If they are not joined in the complaint, their interests survive the foreclosure; if joined in the complaint = Divested.

Step 3— Continued: Category 3- Review the Search Documents for Senior Lienors.

- **These are interests recorded prior to the mortgage being foreclosed**
- These interests may include:
 - Prior Mortgages
 - Prior Judgments
 - Easements
 - Restrictions
 - Tax Liens, etc.
- These interests are not divested by the foreclosure and attach to the property and remain as liens, etc.

Steps 4: Verify Standing to Foreclose

- Under N.J.S.A. 46:18-13, the party bringing the foreclosure must be the holder of the mortgage.
- **Confirm:**
- Mortgage Assignments are Recorded
- The Plaintiff is the Mortgagee of Record
- Without proper Standing, the foreclosure may be defective.

Step 5: Verify the Legal Description

- **Compare the property description in each of the following:**
 - The mortgage
 - The complaint
 - The Lis Pendens
 - The final judgment
 - The notice of sale
 - The sheriff's deed

Make sure that the description matches in all documents.

- If the wrong property was foreclosed: **A re-foreclosure may be required.**

Step 6 – Review Service of Process

- All **Category 2 defendants must be served:** (interests recorded after the mortgage but before the Lis Pendens)
- Must be properly served with: Summons and Foreclosure Complaint Pursuant to **N.J. Court Rule 4:4-3**
- The court obtains jurisdiction over the defendant only through proper service. No service; no Jurisdiction.
- Confirm the file contains Affidavits of service and Certifications of inquiry (if applicable) and proof of mailed service
- Special Service Requirements:
 - State of New Jersey
 - United States

Step 7: Review for evidence of any contesting answers.

- **Defendants may:**
 1. Default
 2. File a Non-contesting answer
 3. File a Contesting answer
- A contesting answer must be resolved before final judgment.
- Relevant rules:
 - NJ Court Rule **4:6-4**-motion to strike.
 - NJ Court Rule **4:6-5**-motion to strike for insufficiency.
 - NJ Court Rule **4:64-5**-Joinder of Claims in Foreclosure

Each contesting response must be adjudicated prior to the plaintiff obtaining a final judgment.

Step 8: Review Redemption Rights

- **Important timelines:**
- Borrower may redeem **until sheriff's sale**
- **10-day objection period** after sale (Rule 4:65-5)
- Federal liens create additional rights:
 - IRS redemption period **120 days**
 - Other federal liens **1 year**

Step 9– Review Final Judgment and Writ of Execution

- **Confirm:**
- All defendants listed in the complaint appear in the judgment
- All interests being divested are properly identified
- Legal description is correct
- Contesting answers were resolved
- The judgment should state:
- **Defendants are forever barred and foreclosed.**

Step 10: Review the Notice Sale and The Sheriff's Sale.

- Rule 4:65-2: Before a sheriff's sale can occur, three notice requirements must be satisfied.
- **Posting Requirement:** the Notice of Sale must be posted for 3 weeks, in the Sheriff's Office and on the property.
- **Mailing Requirement:** at least 10 days before the sale, notice must be sent by Reg. or Cert. mail return receipt requested. Notice sent to all parties who make an appearance and owner of record.
- **Publication Requirement:** sheriff must publish the Notice in two newspapers for four consecutive weeks prior to sale.

Step 11: Review any post sale issues or defects.

- Review the Sheriff's Deed
- Identify Surviving Interests
- Check for Bankruptcy Filings
- Review Post-Sale Challenges
- Consider Redemption Rights
- **Is there any post-sale issue that could invalidate the sheriff's deed or impair marketable title?**

Step 12: Review abstractor notes for any discrepancies.

- Notes regarding no proof of mailing of the Notice of Sheriff Sale. Rule 4:65-2 dictates the rule for this notice. This rule must be strictly adhered to.
- Notes regarding improper service of process. Review and make certain service was proper.
- Notes regarding missed judgments or failure to join a party.
- Notes regarding death during prosecution of action. Need to add additional parties.
- Notes regarding court order not followed.
- Notes regarding the legal description issues or standing issues.

SUMMARY:

- Chancery courts are courts of equity and are concerned with issues of fairness.
- The LP is an indicator that the matter involves issues of real property and will affect title.
- A mortgage foreclosure is an action to foreclose the mortgagor's equity of redemption and is regulated under the Fair Foreclosure Act for residential properties.
- A chancery abstract is a compendium of abstracted pleadings and documents reviewed to discover possible irregularities and defects to title from a foreclosure.
- If you have any concerns or issues in your review of a chancery abstract, please contact your Underwriter for assistance.



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Discrimination Laws in Title**

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