

**New Jersey
N2K Hour:**

**What You
Need To Know
About
Chancery
Proceedings**

**Webex Presentation:
February 13, 2018**

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JOHN CROWLEY, ESQ.



**Moderated by
LARRY BELL, ESQ**

Continuing Legal Education



Beginning in 2016, CLE compliance must be reported through the electronic registration and payment system, unless an attorney has received one of the Court-approved exceptions.

The reporting forms provided on this website are **ONLY** for attorneys who are seeking reinstatement from the CLE Ineligible List and for attorneys who failed to complete their CLE and/or report completion with the current reporting requirement by the expiration of the grace period.

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This program has been approved for 1 standard credit hour of CLE by the New Jersey Supreme Court.

Confirmation/Attendance certificates will be e-mailed to NJ attorneys following the program.



Course History

Course History				
Showing 20 rows of 48 Page 2 of 3 Jump to page 2				
Course ID	Course Title	Course Status	Approved Date	
40	NOT JUST 2 ETHICS CREDITS	APPROVED	04/11/2012	Edit
28	PREVENTING CLAIMS: FROM TIDAL TO TITLE	APPROVED	09/18/2013	Edit
58	REVIEW OF CHANCERY PROCEEDINGS	APPROVED	12/18/2017	Edit
45	STAYING ETHICAL	APPROVED	07/15/2015	Edit



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December 18, 2017

Lawrence C. Bell
Stewart Title Continuing Education School
1055 Parsippany Blvd; Suite 503
Parsippany, NJ 07054

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RE: Continuing Education Course Approval Notification
Insurance Education Provider Code – 13050

Dear Lawrence C. Bell,

The following (course(s) has/have) been approved in accordance with the New Jersey Insurance Producer Licensing Act of 2001 and New Jersey Administrative Code, N.J.A.C. 11:17-3.6.

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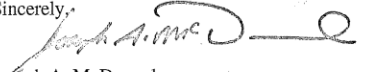
Review of Chancery Proceedings, Title,

88899756

12/18/17	Review of Chancery Proceedings, Title, Classroom	88899756	1
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Providers are responsible for compliance with N.J.A.C. 11:17-(3.2 b) notifying the Department quarterly as to their schedule of course offerings and immediately upon a course cancellation or other changes in the submitted schedule. Providers offering public courses enter their schedules using the PSI Services, Inc. website. Providers offering courses not open to the general producer community must e-mail their schedules to the attention of joseph.mcdougal@dobi.nj.gov.

Sincerely,


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New Jersey Department of Banking and Insurance
Office of Consumer Protection Services
(609) 292-5316 ext. 50552
E-Mail:joseph.mcdougal@dobi.nj.gov

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What You N2K About Chancery Proceedings

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What is a mortgage foreclosure

- When a loan is in default (the majority of time for failure to pay the monthly amounts due), the Lender will seek to recover on its loan by bringing a foreclosure action and compelling the sale of the residence.
- New Jersey has a bifurcated system of foreclosure:
 - Matters which are uncontested remain with the Office of Foreclosure;
 - Matters which are contested are heard for disposition in the Chancery Division of the Superior Court,.
- Generally, a foreclosure action is expected to be completed within one year of filing. However, this is not, and has not always been the case.
- The “Fair Foreclosure Act” effective December 4, 1995, applies to residential mortgage foreclosures.

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.

Understanding the Foreclosure Process in NJ

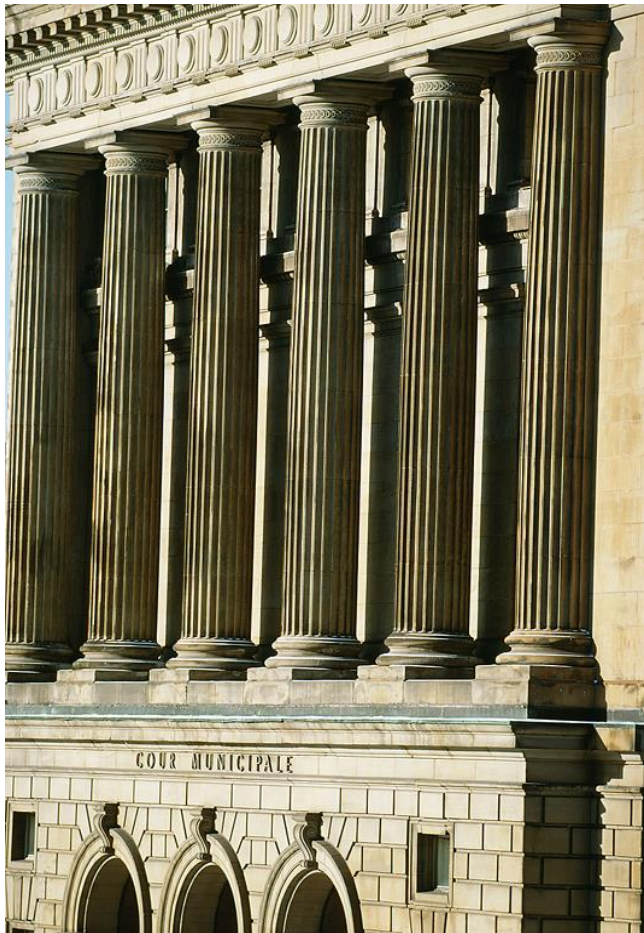
- During the housing crisis, the Supreme Court of New Jersey questioned the prosecution of foreclosure actions...
- The investigation resulted in a moratorium in the prosecution of all NJ residential foreclosure actions.
 - In 2011, after finding inadequacy in the prosecution of foreclosure, the Supreme Court amended Rules 4:64-1 & 4:64-2 to require the filing of a complaint and final judgment to require the filing of a Certification of Diligent Inquiry.
- In 2012 the prosecution of foreclosure actions once again was stayed, pending the resolution of US Bank v. Guillaume, 38 A.3d 570 (2012)

RULE 4:64. Foreclosure Of Mortgages, Condominium Association Liens And Tax Sale Certificates

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

- **(a) Title Search; Certifications.**
 - **(1)** 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.
 - **(2)** In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:
 - **(A)** that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents being submitted and (ii) confirmed their accuracy; and
 - **(B)** the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.
 - **(3)** Plaintiff's attorney shall also annex to the complaint a certification, executed by the attorney, attesting that the complaint and all documents annexed thereto comport with the requirements of R. 1:4-8(a).

The NJ Foreclosure Process



Mortgage foreclosure in New Jersey is an obscure legal process requiring **absolute perfection in documentation and procedure.**

Effect of the foreclosure crisis on land records

- From 2010 to present NJ routinely has one of the highest rates of foreclosure in the nation.
 - The result can be complex and confusing land titles.
- Due to the stop and start nature of foreclosure actions, the records may be littered with remnants of old foreclosure actions (expired Lis Pendens, erroneous marginal notations, voluminous Assignments of Mortgage, etc.)
- It is unusual for discharges to be recorded for the foreclosed mortgage (regardless of lien position).
 - Called a **muniment of title**: a document under which rights are established.

The NJ Foreclosure Process

The four parts of the foreclosure process:

1. The filing of the complaint,
2. Service of process,
3. Entry of default/judgment, and
4. Sale.

The NJ Foreclosure Process

The **FORECLOSURE COMPLAINT** is filed through Clerk's Office, Office of Foreclosure of the of the Superior Court of New Jersey in Trenton after 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 NJ Foreclosure Process

- **SERVICE** of the summons and complaint on all defendants must be made. Once accomplished, Court Rules provide each defendants with thirty-five days to answer the allegations. For 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 **request to enter default** as to all defendants comes next.
- 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.

POST SALE PROCEDURE

- After the completion of a foreclosure, the Sheriff is authorized to conduct a public sale of the property.
- There are two possible results of a sheriff sale;
 - the lender is the successful bidder and becomes the owner of the property, or
 - a third party is the successful bidder and the lender receives the proceeds of the sale.
- It is at this point that a title producer may be asked to insure a transaction resulting from a foreclosure.

Questions We Are Hearing

- What is a chancery abstract?
- Why do I need to order a chancery abstract?
- What does the abstract tell me?
- What are all these notes and what is really important?
- What do I look for in the pleadings?
- What do I do if there is an issue in the foreclosure?

When do I need to order a Chancery Abstract?

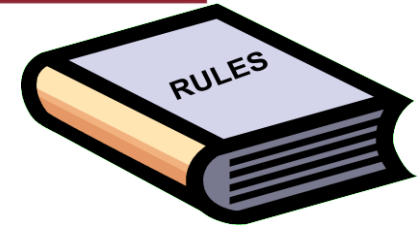
- If we are insuring the purchaser at the sheriff's sale or the first bona fide purchaser for value [BFP] from the purchaser at sheriff's sale, we must review a chancery abstract.
- After the first BFP in the chain of title after the sheriff's deed, there is no need to review a chancery abstract.

Cover Pages and their Function

- The chancery abstract will come with a cover page and synopsis of what documents the abstractor has found in the Court Record, including but not limited to:
 - The name and caption of the proceedings;
 - The documents which were found in the foreclosure proceeding
 - Notes about the documents which the abstractor believes are pertinent to review
- The notes are guidance, you should be reading those in tandem with the pleadings to discern if a genuine issue is being raised.

THE COMPLAINT

- The first pleading to review is the Complaint in Foreclosure.
- Rule 4:64-1 provides the template on what needs to be included in a residential mortgage foreclosure complaint.
 - From 2010 forward, per Supreme Court Order, all Complaints must be filed with a Certification of Diligent Inquiry.
- For purposes of review, one should focus on the following in the complaint:
 - Who is named as a defendant and WHY they were joined;
 - The Legal Description



SERVICE – Know the Rules

- Service is the most essential step in a Chancery Review
- Rule 4:4-1 & 4:4-5
 - Every Defendant named in complaint must be served to the satisfaction of the reviewer.
 - Personal Service
 - Service by Mail
 - Service by Publication
 - All of the above are acceptable forms of service in a mortgage foreclosure action.
 - For service by Mail and Publication: Review of the Certification of Inquiry – Rule 4:4-5(b)

Default, Dismissed or Answered

- You must confirm a disposition as to each named defendant.
 - Default: The defendant was served and failed to properly answer or otherwise appear.
 - Dismissal: The defendant is not a proper party to the action and is dismissed.
 - Fictitious Spouses – no marital interest
 - Unknown Tenants – protected class under Chase v. Josephsson.
 - Answer: Contested v. Non Contested
 - Contested – was there a trial or other disposition of claims
 - Non-Contested- does not dispute validity of action

Judgment and Redemption

- The entry of the Final Judgment contains numerous parts. The reviewer should be looking for:
 - Certification of Mailing of Motion; Mailing of Default; Mailing of Section 6 Notice
 - Ensure notice is being sent to place where service effectuated or counsel (if applicable).
 - Look at the amount of final judgment. This will assist in equitable determination in the event there is an issue.
 - Review the legal description.
 - Ensure any additional counts pled in the complaint have judgment entered.
- Rights of Redemption – Borrower & USA

Sheriff sale

- The most common note found in a Chancery Abstract sets forth that there is no proof of mailing the Notice of Sheriff Sale.
 - Rule 4:65-2 – Notice of Sheriff Sale.
 - May need to reach out to counsel for proofs of mailing if not filed.
 - Strict adherence to the Rule.
 - Notice may be waived by Defendant.

Grab bag of other Filings

- In your chancery abstract you may come across a myriad of additional filings. There are a number of possible motions, certifications which may have been submitted by the parties.
- KEY – review each filing. Understand the purpose of the filing:
 - i.e. Motion to sub plaintiff, Motion to vacate sheriff sale, Notice of Appeal; Amended Final Judgment, Motion to Reinstate the Action
- Some of the Motions are form filings;
- Some Motions are substantive and the outcome will give great guidance in your review.

Possible Issues Regarding Service

- Borrower whereabouts unknown
- Many defendants to serve
- Other defendants/whereabouts unknown
- Defendants avoiding service
- Service by mail
- Service outside of New Jersey
- Service by publication
- Insufficient “diligent inquiry” for substituted service

Possible Entry Of Judgement Issues

- Fictitious defendants
- Minors - Incompetents - Guardian ad litem
- Defective Service
- Defective Acknowledgment of Service
- Defective return of service
- Default application 6 months after service
- Judgment application 6 months after default
- Contesting Answer
- Defective Notice to USA
- Defective Notice of Intent to Apply for Judgment

Possible Foreclosure Sale Issues

- Incorrect description
- Failure of Notice of Sale
- Omitted announcement of priority lien i.e. taxes
- Omitted announcement of condominium lien
- Failure to re-publish after 5 month delay
- Third parties failure to pay within 30 days of sale

That other stuff.....

Court Actions other than mortgage foreclosure affecting title that are also subject to a Chancery review:

- Actions Prosecuted in accordance with N.J.S.A. Section 2A:50-73: Vacant and Abandoned Properties
- Foreclosure of Condo/Homeowners Association Liens
- Tax Sale Foreclosure
- Judgement execution sale

Relying on the Chancery Abstract

- The Chancery only reviews Filed documents.
 - You can use the chancery to omit judgments in your upper court search. If the creditor is named, their interests are “cut off” and you can omit
 - Bankruptcy filing in the Action
- Upper court search reveals a bankruptcy petition during the prosecution of the action.
 - Look at chancery abstract for a Bankruptcy Certification; if none; look at Bankruptcy Docket for Motion for Relief from Stay

NORMAL TITLE ISSUES TO WATCH FOR WHEN INSURING OUT OF FORECLOSURE

- Unrecorded/mis-recorded mortgage or deed
- Description variances
- Prior liens
- Condominium association liens
- Minor/incompetent defendants
- Death of borrower
- Missing interests

I think we have an issue....

- You have reviewed the chancery abstract and notes and believe there is a genuine issue.
 - Examples:
 - » Missed Judgment
 - » Improper Service
 - » Runs afoul of a Court Order
 - » No Relief from Stay in Bankruptcy
 - » Death during prosecution of action
 - » Failed to join a party
 - » Legal description does not match the title work

Every issue has a solution!!

- CALL US!
- Is there equity in the property.
 - Look at the appraised value vs. amount of judgment.
 - Assess likelihood of redemption
- Effect of lis pendens on missed parties
 - Five years and the “gap”
 - Effect of entry of Final Judgment
- Strict Foreclosure
- Contacting Creditors
- Dealing with Condominium Associations and the Super Priority

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Keyword Search

Example : Absentee

Find it

☒ All of these words ☐ This exact phrase ☐ Any of these words

Select a Location

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THANK YOU FOR JOINING US!

Please mark your calendars:

MARCH N2K HOUR

Tuesday

March 13

10:00AM

Titles passing by death and estate issues