

**New Jersey  
N2K Hour:**

**Chancery  
Proceedings  
in  
New Jersey**

**Webex Presentation:  
February 14, 2023**

**stewart title®**

*Real partners. Real possibilities.™*

## 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. Thus, chancery courts are courts of equity. These cases are heard in the Superior Court of New Jersey, Chancery Division.
- As a result, the type of cases heard in chancery court are cases involving issues of fairness. The person or entity seeking relief in a chancery court is not seeking money damages, but rather they are seeking an equitable resolution.
- 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, with the eventual result being a fair and just outcome.

## What is a Chancery proceeding continued?

- Sometimes, in a chancery court, a party needs or is seeking immediate intervention. In this situation, the party is often seeking injunctive relief via an order to show cause with the request for the court to provide immediate relief.
- As in the Law Division, Chancery Division cases are instigated by the filing of a complaint. However, unlike the Law Division, there is no jury trial, and the judge makes the final decision.
- In a court of law, the plaintiff may seek a jury trial or a bench trial. The Chancery Division is a good place for complex business or real estate disputes because of the lack of a jury trials and the tendency to effectively manage these cases.
- Whether in law or equity, the process of discovery is essentially the same, i.e., motions made, depositions are conducted, interrogatories answered, and documents produced.

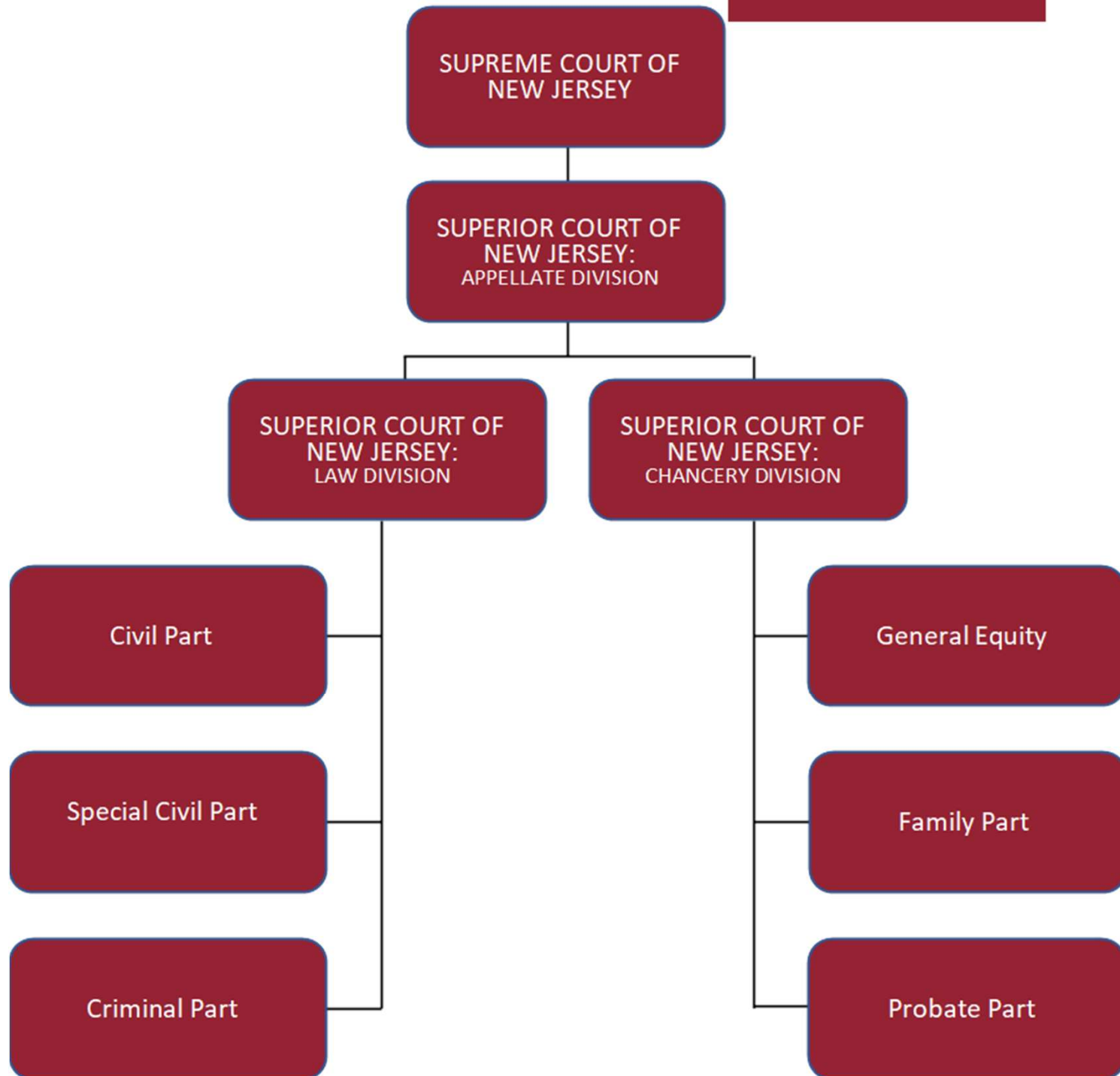
## What is a Chancery proceeding continued?

- When there are multiple causes of action in a case with some being law issues and some being chancery issues, the predominate issues will dictate whether it will be heard in a law court or a chancery court. Thus, law courts may hear issues of equity and chancery courts may hear issues of law.
- When the matter involves probate, Will contests or family matters, the rules are a little different. These matters often involve disputes involving money conflicts. Although they may concern money conflicts, they are heard in the Chancery Division. They are not heard in the Law Division.
- The Chancery Court in New Jersey consists of three parts: the General Equity Part; the Family Part; and 3. the Probate Part.

# NEW JERSEY COURTS

part title

*Real partners. Real possibilities.™*



## **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

## The Notice of Lis Pendens (the LP):

- The LP is a document filed in many of these chancery cases. You will not see an LP filed in a Law Division case where the objective is to obtain money damages.
- The LP is latin for “suit pending” or “pending lawsuit” and once filed it is notice to the world that there is a dispute that may affect the title to real property.
- The LP binds the defendant(s) and any party claiming an interest in the property and any parties claiming an interest in the property who filed their claim subsequent to the filing of the LP.

## The Notice of Lis Pendens, continued:

- The LP is an incredibly powerful tool and comes into play when we are dealing with cases in equity. The LP must be filed in the county where the property is located. It has an effective period for 5 years from the date of filing and as stated above, it binds the defendant(s) and others. You can't sell or mortgage the property, etc., until the litigation is either resolved or the LP discharged.
- The LP must describe the real property and if the underlying action is a mortgage foreclosure action, it must include the mortgage book and page. It must also be served on the opposing party along with the complaint.
- In your review of title or in your communications with the parties to a transaction you must be aware of any possible pending or threatened litigation. Ask the question: does it affect title to property even if you don't find a filed LP?



## What is a mortgage foreclosure?

- When a mortgagor fails to pay his monthly mortgage payment, the mortgagee will declare the loan in default. At that time, the mortgagee will seek to recover on its loan by bringing a foreclosure action to foreclose on the mortgagor's "equity of redemption" and compel the sale of the residence.
- The mortgagee's burden of proof is not difficult to establish. If the mortgagee can demonstrate that they delivered a mortgage to the mortgagor and disbursed funds in execution of the mortgage and establish that the mortgagor has defaulted, the mortgagee has established a case for foreclosure. The burden then shifts to the mortgagor to establish a defense to the foreclosure.

# Residential Foreclosure vs. Commercial Foreclosure:

- A residential mortgage is security on 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. The purpose of loan is irrelevant; thus, if it is a business loan on the home, it is a residential mortgage.
- A non-residential mortgage is security on any other type of property and “The Fair Foreclosure Act” does not apply.
- Residential mortgage foreclosures in NJ are governed by the Fair Foreclosure Act N.J.S.A. § 2A:50-52, et seq. with the intended public policy that everyone, including the homeowners and lenders, benefit when debtors are able to cure mortgage defaults.

## **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.
- 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.

## When is the review of a Chancery Abstract required?

- 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, a chancery abstract must be reviewed.
- After the first BFP in the chain of title, i.e., usually the one after the sheriff's deed, there is no need to review a chancery abstract.
- If uncertain, please contact your underwriter to confirm if the chancery abstract is required.

## **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 does one review a chancery abstract?

## What are the Steps? Step one:

- First, gather and review the chancery abstract, the county search, and your judgment search, i.e., the upper court search.
- Review the county and judgment searches and determine which liens, mortgages, encumbrances, and judgments, etc. do not affect the property and that you may easily disregard as non-issues.
- These are the items that can be easily disregarded because of differences in names, addresses, social security numbers, passage of time, statute of limitations, etc.

## **Step 2: determine which interests attach to the realty and determine which have been divested by the foreclosure and which have survived:**

- There are three categories, and each interest should fall within one of these categories:
- 1. Those interests that were recorded or filed in the county where the subject property is located after the recording of the LP.
- 2. Those interests that were recorded or filed after the recording of the subject mortgage, but prior to the filing of the LP.
- 3. Those interests recorded or filed prior to the subject mortgage.



## Step 2 Continued:

- **Category 1:** review and check the date of the recording of the notice of LP versus the date of recording or filing for any judgments, liens, mortgages, encumbrances, etc. that you gathered together in Step 1.
- Are any of these items recorded or filed after the recording date of the LP? If yes, these items are divested and may be disregarded.
- The recording of the LP protects the plaintiff's interest or rights by binding all subsequent mortgagor's grantee(s), judgments, liens, mortgages, etc. as if they were defendants in the action.

## Step 2 Continued:

- **Category 2**: this category is known as the party defendants. Review the complaint that is found in the chancery abstract and determine the parties that the plaintiff has named as defendants to the action, i.e., those joined in the complaint.
- The party defendants named in the complaint should be: 1. the mortgagor(s), 2. the mortgagor's grantee(s), if any, 3. any tenants occupying the property, and 4. anyone holding an interest in the property whose interest became effective after the recording of the mortgage subject to foreclosure, but prior to the filing of the LP.

## Step 2 Continued:

- Next, continuing with Category 2, compare every defendant named in the complaint with anyone holding an interest in the property as shown in the county search and the judgment search.
- The defendants should be anyone whose interest is recorded after the subject mortgage but prior to the LP. You must be able to account for each defendant's interest by matching those interests to the corresponding lien, etc. found in the county search and judgment search.
- Did the plaintiff miss anyone? If so, that interest is not divested and must remain as an exception to title.

## Step 2 Continued:

- **Category 3**: Finally, you will be left with those parties whose interest are senior to the mortgage being foreclosed and will survive the foreclosure to remain as exceptions.
- These are the liens, etc. that are recorded or filed prior to the mortgage and will maintain priority over it.
- These interests are not divested, and the foreclosing party will take title “subject to” these interests.
- An example would be the foreclosure of a 2<sup>nd</sup> mortgage where there is a 1<sup>st</sup> mortgage on record. The foreclosing 2<sup>nd</sup> mortgage lien holder would take title subject to the 1<sup>st</sup> mortgage lien holder.

## Step 3: Review Service of Process.

- All the parties listed in category 2 must be served a summons and a copy of the complaint, in accordance with N.J. Ct. R. 4:4-3.
- The court will only have jurisdiction over defendants if proper service of process is made. The court must obtain jurisdiction over the defendants in order for a judgment entered against the defendant to be binding upon them.
- Personal service may be made by either the sheriff or a service processor. If personal service is not possible, the rules permit service by registered or certified mail under certain circumstances.

## Step 3 Continued:

- The chancery abstract will contain affidavits and certifications related to service of process. You should review these to make sure service was effectuated against all party defendants as set-forth in the complaint.
- Service by the State of NJ may be made by registered, certified or regular mail or personal service on the Attorney General. No default may be entered against the Attorney General unless service was made by personal service.
- If the USA is named as a defendant service must be made upon the US Attorney for the District of NJ and copies must be sent by registered or certified mail to the Attorney General of the USA in Washington, DC.

## Step 4: Does the foreclosing mortgagee have standing to Foreclose?

- Under N.J.S.A. § 46:18-13, the “established holder of mortgage must be the party taking action to foreclose a mortgage”.
- This means that the mortgagee bringing the foreclosure action must be the mortgagee of record or the latest mortgagee of record by virtue of a recorded assignment.
- Review the search for each assignment to a certain that the correct party filed the action and is the correct plaintiff.
- You cannot bring the action to foreclose if you do not have standing to do so.

## Step 5: Review to determine if the correct legal description foreclosed.

- You must review and compare the record description and the description in the subject mortgage being foreclosed with the description set-forth in the complaint, the LP, the final judgment, the Notice of Sale, and the sheriff's deed.
- If the wrong property is foreclosed upon, this is a major mistake and may require a re-foreclosure.



## Step 6: Review the chancery abstract for evidence of any contesting answers.

- Has the defendant filed an answer? A defendant can file a contesting answer/response to a foreclosure because that party believes it has a defense(s) to the foreclosure or crossclaims or counterclaims. They have a right to have these defenses heard under N.J. Ct, R 4:6-4. N.J. Ct, R. 4:64.5.
- A defendant can (1) default, (2) file a non-contesting response, or (3) file a contesting response (i.e., a contesting answer or motion to dismiss).
- Each contesting response must be adjudicated prior to the plaintiff obtaining a final judgment.

## Step 7: Review the chancery abstract for any redemption issues.

- The mortgagor has a right to cure up through the time of final judgment and to redeem up to the sheriff's sale by paying the full amount due to the plaintiff.
- Under N.J. Ct. R. 4:65-5, a mortgagor has 10 calendar days from the date of sale to object to the sale in attempt to redeem or any time thereafter before the delivery of the deed. During the 10 days the mortgagor may pay the full amount due and reclaim the property.
- The USA retains certain redemption rights not available others. The USA can redeem the property for one year if federal lien is being foreclosed. If the lien is an IRS lien, the redemption period is 120 days from sheriff's sale.

## Step 8: Review the Final Judgment and the Writ of Execution.

- Make sure all parties being divested in the final judgment match the defendants named in the complaint. Make sure the legal description in the final judgment matches the mortgage description and the complaint description.
- The final judgment will state that the defendants are “forever debarred and foreclosed” and will fix the amount due to the mortgage.
- Check to make sure that defendants have either defaulted or filed a non-contesting answer or if contesting answers filed, they were dealt with through motion to strike.
- Condo liens entitled to 6-month interest priority resolved.

## Step 8: Review the Final Judgment and the Writ of Execution.

- Rights afforded by the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq. or N.J.S.A. 38:23C-4.
- Ensure any additional counts pled in the complaint have judgment entered.
- Pursuant to N.J. Ct. R. 1:5-1, after the court issues the final judgment, both the final judgment and the writ of execution must be served on the defendants. Were they served?
- Pursuant to N.J.S.A. § 2A:50-36 the writ of execution is recorded by the clerk of court. You will find information from the writ in the body of the Sheriff's deed.

## Step 9: Review the Notice Sale and The Sheriff's Sale.

- The Notice of Sale must be posted for three weeks in the office of the sheriff of the county where the property is located and also, on the premises to be sold.
- 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.
- Sheriff must publish the notice in two newspapers for four consecutive weeks in a newspaper of the Sheriff's choosing prior to the sale.

## Step 10: Review any post sale issues or defects.

- The Sheriff will deliver a deed to the highest bidder at the foreclosure sale. Review the deed for accuracy and determine whether the affidavit of consideration references any superior liens or encumbrances that have not been divested.
- Are there any liens or encumbrances that survived the sale that raise an issue of marketability?
- Has the mortgagor filed a bankruptcy petition during the sale process? If so, make sure you obtain a copy of the order lifting the automatic stay. Any objections filed?
- Consider mortgagor's post-sale redemption rights.

## Step 11: 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.



**www.VUwriter.com**

The screenshot shows the top portion of the Stewart Virtual Underwriter application. At the top, there are several tabs: "Picture Clipping", "Images", "Links", "Attach File", "File Printout", "Scanner Printout", "Record Audio", "Record Video", "Tools", "Time Stamp", "Date & Time", "Equalization Symbol", "Symbols", "Select Location", "Recently Viewed", "Terms of Use", and "State Laws and Customs Toolkit". Below these tabs is a dark red banner with the "stewart" logo in white and the text "Virtual Underwriter" below it. To the right of the banner is a large search bar with a magnifying glass icon. At the bottom, there is a navigation bar with several items: a home icon, "Forms", "Bulletins", "Real Estate Practices" (which is circled in blue), "Standard Exceptions", "Underwriting Manual", "Special Alerts", and an empty space.

Everything you need.

With VU, you have access to information needed to underwrite a real estate transaction, 24 hours a day, seven days a week. [Click here](#) for a tutorial.



### Keyword Search

Find it

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

### Select a Location

Select a state

# Virtual Underwriter