

Contents

Chapter 1

Introduction	1
1-1 HISTORICAL BACKGROUND	1
1-2 MORTGAGE DOCUMENTS	3
1-3 EXECUTION AND DELIVERY OF THE DOCUMENTS.....	5
1-4 PRIORITY OF MORTGAGES	6
1-5 RIGHTS AND DUTIES PRIOR TO DEFAULT.....	11
1-6 RIGHTS AND DUTIES SUBSEQUENT TO DEFAULT	14
1-7 NON-JUDICIAL SALES.....	17
1-8 JUDICIAL FORECLOSURE	17

Chapter 2

The Fair Foreclosure Act	21
2-1 INTRODUCTION.....	21
2-2 APPLICABILITY OF THE ACT	22
2-3 NOTICE OF INTENTION TO ACCELERATE AND FORECLOSE.....	26
2-4 REQUIREMENTS AND PROCEDURES FOR NOTICE	28
2-5 THE RIGHT TO CURE	34
2-6 HOW CURE IS EFFECTED.....	35
2-7 CONSEQUENCES OF THE RIGHT TO CURE	38
2-8 APPLICATION FOR FINAL JUDGMENT	39
2-9 THE OPTIONAL FORECLOSURE PROCEDURE	41
2-10 SELECTING THE OPTIONAL FORECLOSURE PROCEDURE ...	45
2-10:1 Abandonment of the Mortgaged Property	45
2-10:2 Deed in Lieu of Foreclosure	46
2-10:3 No Equity in the Mortgaged Property	47
2-11 UNIFORM PROCEDURES FOR PUBLIC SALES.....	48
2-12 TACIT WAIVERS VIA PARTIAL PAYMENT	51
2-13 PROCEDURES FOR SERVICE ON JUDGMENT CREDITORS AND APPEARANCES BY ATTORNEYS GENERAL.....	52

Table of Contents

Chapter 3

The Fair Debt Collection Practices Act	53
3-1 INTRODUCTION.....	53
3-2 WHAT CONSTITUTES A “DEBT”	55
3-3 WHAT CONSTITUTES A “CONSUMER”	57
3-4 WHAT CONSTITUTES A “DEBT COLLECTOR”	57
3-4:1 Creditors Generally Not “Debt Collectors”	58
3-4:2 Other Persons Not “Debt Collectors”	60
3-4:3 Attorneys as “Debt Collectors”	61
3-5 RESTRICTIONS ON ACQUIRING LOCATION INFORMATION.....	62
3-6 RESTRICTIONS ON COMMUNICATIONS.....	63
3-7 INITIAL CONTACT AND BEYOND: DISCLOSURE REQUIREMENTS	66
3-8 THE VALIDATION NOTICE	67
3-9 VERIFICATION OF THE DEBT	71
3-10 HARASSMENT AND ABUSE.....	72
3-11 FALSE, DECEPTIVE OR MISLEADING MEANS	73
3-12 UNFAIR PRACTICES.....	77
3-13 DECEPTIVE FORMS.....	79
3-14 MULTIPLE DEBTS	79
3-15 LIABILITY	79
3-16 STATUTORY DEFENSES	82
3-16:1 One-Year Limitations Period	82
3-16:2 Lack of Intent.....	82
3-16:3 Reliance on FTC Advisory Opinions	83
3-17 VENUE FOR ACTIONS BY DEBT COLLECTORS	83

Chapter 4

Default and Acceleration	85
4-1 DEFAULTS IN GENERAL.....	85
4-1:1 Right to Foreclose.....	85
4-1:2 Right to Possession; Assignment of Rents	86
4-1:3 Notice of Default—General	86
4-1:4 Demand—General.....	87
4-1:5 Premature Foreclosure	88
4-2 TYPES OF DEFAULTS	88
4-2:1 Payment Default.....	88
4-2:2 Other Common Defaults	88
4-2:3 Instances of No Default	90

4-2:4 Defaults Affecting Collateral Value 90

4-2:5 Defaults Caused by Mortgagee’s Conduct 91

4-3 NOTICE OF DEFAULT 91

4-3:1 Notice Generally Not Necessary 91

4-3:2 Presentment and Demand 92

4-3:3 Manner in Which Notice or Demand Is Given 93

4-4 THE RIGHT TO CURE 93

4-4:1 Grace Periods 93

4-4:2 The Opportunity to Cure Payment Defaults 93

4-4:3 The Opportunity to Cure a Default in Taxes or Insurance 94

4-5 ACCELERATION IN GENERAL 95

4-5:1 “Credit on Condition” Clause, Not a Forfeiture Clause 95

4-5:2 Acceleration Is a Right, Not an Obligation 96

4-5:3 Acceleration Permitted 97

4-5:4 Acceleration Not Permitted 97

4-5:5 Impact of an Acceleration Clause on the Holder
of the Mortgage Note 98

4-6 WAIVER OF DEFAULT 98

4-6:1 The Role of Consideration 99

4-6:2 Acceptance of Payment 99

4-7 ESTOPPEL 100

4-7:1 Mortgagee’s Conduct 100

4-8 OTHER CIRCUMSTANCES EXCUSING DEFAULT 101

4-8:1 Mistake 101

4-8:2 Mailing, Futility and Extension 101

4-8:3 Real Estate Taxes and Insurance Premiums 102

4-9 CIRCUMSTANCES NOT EXCUSING DEFAULT 102

Chapter 5

Parties in a Foreclosure Action

105

5-1 PARTIES PLAINTIFF 105

5-1:1 Introduction 105

5-1:2 Mortgagees and Authorized Representatives 105

5-1:3 Co-Mortgagees 107

5-1:4 Assignee of Mortgage 108

5-1:5 Trustees 110

5-1:6 Partnerships 112

5-2 PARTIES DEFENDANT 113

5-2:1 Introduction 113

5-2:2 Mortgagor 113

5-2:3 Record Owner 114

Table of Contents

5-2:4	Spouses	115
5-2:5	Heirs	117
5-2:6	Junior Encumbrancers	118
5-2:7	Trustees	121
5-2:8	Receivers	121
5-2:9	Trustee in Bankruptcy	122
5-2:10	Tenants	123
5-2:11	Prior Encumbrancers	125
5-2:12	State of New Jersey	127
5-2:13	United States	128
5-2:14	Persons Sought to Be Held Liable for Deficiency	131
5-2:15	Persons Who Refuse to Join as Plaintiffs	132
5-2:16	Armed Forces Personnel	132
5-2:17	Minors and Mentally Incapacitated Persons	134

Chapter 6

The Foreclosure Complaint

137

6-1	DRAFTING THE FORECLOSURE COMPLAINT	137
6-1:1	Jurisdiction and Venue	137
6-1:2	Parties; Foreclosure Search	137
6-1:3	Pleading Requirements Generally	138
6-1:4	Pleading Requirements for Married Persons	140
6-1:5	Notice of Default; Acceleration; Assignment	140
6-1:6	No Need to Plead; Consideration, Precise Interests	141
6-1:7	Multiple Counts	141
6-1:8	Non-Germane Claims	142
6-1:9	Joinder of Several Mortgages in One Complaint	143
6-2	FILING OF THE FORECLOSURE COMPLAINT; CERTIFICATE OF REGULARITY	143
6-3	AMENDMENT OF THE FORECLOSURE COMPLAINT	144
6-3:1	Amendment in General	144
6-3:2	The Need to Amend: Common Instances	145
6-3:3	Disallowance of Amendments	145
6-4	SUPPLEMENTATION OF THE FORECLOSURE COMPLAINT	146
6-4:1	Supplementation in General	146
6-4:2	Supplemental Complaints: Instances When Permitted	146
6-5	ISSUANCE OF THE SUMMONSES	147
6-6	BY WHOM SERVED	148
6-7	SERVICE WITHIN THE STATE	148
6-7:1	Personal Service	148
6-7:2	Substituted Service	149
6-7:2.1	Usual Place of Abode	149

	6-7:3 Service by Publication.....	150
	6-7:4 Corporations; the United States.....	151
	6-7:5 Optional Mailed Service	151
6-8	SERVICE WITHOUT THE STATE.....	152
	6-8:1 Diligent Inquiry	152
	6-8:2 Absent Defendants: Strict Adherence	153
6-9	GENERAL APPEARANCE; ACKNOWLEDGMENT OF SERVICE.....	153
6-10	RETURN OF SERVICE	154
 Chapter 7		
The Notice of Pendency		157
7-1	WRITTEN NOTICE OF PENDENCY	157
	7-1:1 The Common Law and the Statutory Change.....	157
	7-1:2 Contents of the Notice	158
	7-1:3 When the Notice Should Be Filed.....	158
	7-1:4 Validity of the Lis Pendens Statute	159
7-2	THE EFFECT OF FILING A NOTICE OF PENDENCY.....	159
	7-2:1 Examples of the Effect.....	160
	7-2:2 The Consequences of Not Filing	161
	7-2:3 Prospective Effect of the Notice.....	161
7-3	DURATION OF THE NOTICE OF PENDENCY	162
	7-3:1 Expiration and the Preservation of Rights.....	162
7-4	AMENDMENT OF THE NOTICE OF PENDENCY.....	162
7-5	DISCHARGE OF THE NOTICE OF PENDENCY: THREE METHODS.....	163
 Chapter 8		
Receiverships in Foreclosure		165
8-1	INTRODUCTION.....	165
	8-1:1 The Need for a Receiver.....	165
	8-1:2 The Application for a Receiver.....	166
	8-1:3 Powers and Duties in General.....	166
	8-1:4 Discharge in General	167
	8-1:5 Alternatives to a Receiver	167
8-2	WHO MAY APPLY	168
	8-2:1 Foreclosing Mortgagee	168
	8-2:2 Junior Mortgagee.....	168
	8-2:3 Other Interested Parties	169
8-3	WHETHER TO APPLY FOR A RENT RECEIVERSHIP.....	169
	8-3:1 The Nature of the Property.....	169
	8-3:2 The Need to Collect Income	169

Table of Contents

8-3:3	Negative Consequences of Failing to Take Action.....	170
8-3:3.1	Mortgagor’s Collection of Rents.....	170
8-3:3.2	Priority to Rents Jeopardized.....	170
8-3:4	Likelihood of Success.....	171
8-3:5	Beyond Rents: Other Reasons for Receivers.....	171
8-4	CRITERIA FOR JUDGING RECEIVERSHIP APPLICATIONS ...	172
8-4:1	“Precarious or Uncertain Security”.....	173
8-4:2	“Appointment upon Default” Clause.....	174
8-4:3	Courts’ Reluctance in Certain Situations.....	175
8-5	PROCEDURE FOR APPOINTMENT OF A RENT RECEIVER....	176
8-5:1	The Motion for Appointment.....	176
8-5:2	Opposition to the Motion for Appointment.....	177
8-5:3	The Hearing.....	177
8-5:4	The Order of Appointment.....	177
8-6	CHALLENGING A RECEIVERSHIP ORDER.....	178
8-7	QUALIFICATION OF THE RECEIVER.....	179
8-7:1	The Bond.....	179
8-7:2	Commencement of Duties.....	179
8-8	THE POWERS AND DUTIES OF THE RENT RECEIVER.....	180
8-8:1	Powers and Duties Contained in the Order of Appointment.....	180
8-8:2	Rents Accruing Prior to and Subsequent to Appointment....	180
8-8:3	Property Expenses.....	182
8-8:4	Rental and Sale.....	182
8-9	ACTIONS AGAINST THE RENT RECEIVER.....	183
8-9:1	Permission to Sue.....	183
8-9:2	Potential Liabilities.....	184
8-10	DISCHARGING THE RECEIVER; APPROVAL OF THE ACCOUNTING.....	184
8-10:1	Discharge.....	184
8-10:2	The Accounting.....	185
8-11	COMPENSATION OF THE RECEIVER.....	185
8-12	DISTRIBUTION OF THE FUNDS HELD BY THE RECEIVER.....	186
8-12:1	Rights of Senior Mortgagees.....	186
8-12:2	Creditors’ Claims.....	187

Chapter 9

Responses to the Foreclosure Complaint	189
9-1 CONTESTING ANSWER.....	189
9-1:1 Time for Filing.....	189

9-1:2 Contents of the Contesting Answer 190
 9-1:2.1 Response to Allegations 190
 9-1:2.2 Affirmative Defenses 190
 9-1:3 Sham or Frivolous Pleadings 193
 9-2 NON-CONTESTING ANSWER 193
 9-3 COUNTERCLAIMS 194
 9-3:1 Germane Counterclaims 197
 9-3:2 Non-Germane Counterclaims 198
 9-4 CROSS-CLAIMS 199
 9-5 PRE-ANSWER MOTIONS 200
 9-6 AMENDED AND SUPPLEMENTAL PLEADINGS 201
 9-6:1 Amended Pleadings 201
 9-6:1.1 Amendment as of Right 201
 9-6:1.2 Leave to Amend 201
 9-6:2 Supplemental Pleadings 201
 9-7 NOTICE OF APPEARANCE 202
 9-8 DEFAULT 203
 9-8:1 Entry of Default 203
 9-8:2 Default Judgments 203
 9-9 SETTING ASIDE DEFAULTS 204
 9-9:1 Setting Aside an Entry of Default 204
 9-9:2 Setting Aside a Default Judgment 204
 9-9:2.1 Excusable Neglect 206
 9-9:2.2 Meritorious Defense 207
 9-9:2.3 The Appellate Standard of Review 207

Chapter 10

Typical Borrower Defenses 209
 10-1 INTRODUCTION 209
 10-2 ABSENCE OF DEFAULT 211
 10-3 ORAL MODIFICATION 211
 10-3:1 The Parol Evidence Rule 211
 10-3:2 The Statute of Frauds 212
 10-3:3 The *D'Oench, Duhme* Doctrine 213
 10-4 FAILURE OF CONSIDERATION 214
 10-5 LENDER LIABILITY 216
 10-5:1 Breach of Fiduciary Duties 216
 10-5:2 Tortious Interference with Contractual or
 Business Relations 219
 10-5:3 Economic Duress 219

Table of Contents

10-5:4	Duty to Lend	220
10-5:5	Lender Liability as a Counterclaim	220
10-6	FRAUD	220
10-7	DURESS.....	224
10-8	ILLEGALITY	225
10-9	CAPACITY	227
10-10	USURY	228
10-11	UNCLEAN HANDS.....	234
10-12	FORGERY.....	234
10-13	LACK OF DELIVERY	236
10-14	DISCHARGE OF MORTGAGE.....	236
10-15	STATUTE OF LIMITATIONS.....	237
10-16	LACHES.....	241
10-17	MORTGAGE AS A FRAUDULENT CONVEYANCE	242
10-18	PRESUMPTION OF PAYMENT	244
10-19	FAIR FORECLOSURE ACT DEFENSES	245
10-20	LACK OF STANDING.....	246
10-21	MISCELLANEOUS ADDITIONAL DEFENSES.....	250
10-21:1	Failure to Locate Original Instruments of Indebtedness.....	250
10-21:2	Tender of Evidence That the Mortgage Was to be Discharged.....	250
10-21:3	Wrongful Acceleration of the Mortgage Loan.....	251
10-21:4	Obligation to Foreclose First	252
10-21:5	Lack of Authority to Execute Loan Documents	252
10-21:6	Waiver of Default	253
10-21:7	Mortgagee's Purchase of Tax Sale Certificates	254
10-21:8	Failure to Join Obligor or Guarantor in Foreclosure Action.....	254
10-21:9	Junior Encumbrancer's Right to Insist upon Marshaling of Assets	254
10-21:10	Impairment of Collateral.....	255
10-21:11	Procedural Defect at Time Mortgage Was Given	256
10-21:12	Apportionment of Mortgage Debt	256
10-21:13	Failure to Comply with HUD Regulations	256
10-21:14	Violation of Ethical Obligations	257
10-21:15	Contract of Adhesion	257
10-21:16	Truth in Lending Act	257
10-21:17	Home Ownership Security Act	259

10-21:18	Violation of Affordable Housing Regulations.....	259
10-21:19	Possession of the Mortgage Note.....	260
10-22	SPECIAL DEFENSES TO PURCHASE	
	MONEY MORTGAGES.....	261
10-23	INSUFFICIENT DEFENSES.....	262
10-23:1	Purchaser’s Challenge to the Validity of Prior Existing Mortgages.....	262
10-23:2	Second Mortgage’s Purchase and Foreclosure of First Mortgage.....	262
10-23:3	Borrower’s Intention to Bring the Loan Current.....	262
10-23:4	Improper Motives of Foreclosing Mortgagee.....	263
10-23:5	Failure to Make Demand Before Commencing Foreclosure Action.....	263
10-23:6	Insufficient Event of Default.....	264
10-23:7	Speculation That Property Values Will Rise.....	264
10-23:8	Discharge in Bankruptcy.....	264
10-23:9	Obligors Did Not Derive a Benefit from the Loan.....	265
10-23:10	Failure to Name Guarantors.....	265
10-23:11	Inaccurate Property Description.....	265
10-23:12	Failure to Read or Understand Loan Documents.....	266
10-23:13	Satisfaction of Mortgage Containing Future Advances Clause.....	266
10-23:14	Entire Controversy Doctrine.....	266
10-23:15	Written Assignments.....	267
10-23:16	Successive Actions.....	267
10-23:17	Licensing.....	267
10-23:18	Home Affordable Modification Program.....	268
10-23:19	Pooling and Servicing Agreements.....	269
Chapter 11		
Disposition of the Foreclosure Action		271
11-1	TYPES OF ACTIONS.....	271
11-1:1	Uncontested Actions.....	271
11-1:2	Contested Actions.....	271
11-1:2.1	Conversion of a Contested Action to an Uncontested Action.....	272
11-2	MOTIONS FOR SUMMARY JUDGMENT.....	272
11-2:1	The Timeframe for Summary Judgment.....	272
11-2:2	Motion by Foreclosing Mortgagee.....	273
11-2:3	Mortgagor’s Burden upon Motion by Mortgagee.....	275
11-2:4	Deciding the Summary Judgment Motion.....	275

Table of Contents

	11-2:4.1	When Summary Judgment Should Be Granted.....	275
	11-2:4.2	When Summary Judgment Should Be Denied	276
	11-2:4.3	The Court’s Role in Summary Judgment.....	276
	11-2:5	Impact of Summary Judgment: Return to the Office of Foreclosure	277
11-3		DISCOVERY IN FORECLOSURE ACTIONS	277
	11-3:1	Requests for the Production of Documents	278
	11-3:2	Written Interrogatories	279
	11-3:3	Requests for Admissions.....	279
	11-3:4	Depositions.....	280
	11-3:5	Sanctions	280
11-4		PRETRIAL CONFERENCE	281
	11-4:1	The Pretrial Order.....	281
11-5		PLAINTIFF’S PROOF.....	282
	11-5:1	Proving Execution of the Mortgage.....	282
	11-5:2	Proving Delivery of the Mortgage.....	283
	11-5:3	Proving Nonpayment of the Mortgage	283
	11-5:4	Lost Documents: Secondary Evidence.....	283
11-6		DEFENDANTS’ PROOF.....	284
	11-6:1	Shifting Burden.....	284
	11-6:2	Disproving Execution and Delivery	284
	11-6:3	Disproving Nonpayment: Affirmative Defenses	285
	11-6:4	Other Defense Burdens	286
11-7		IMPACT OF THE PAROL EVIDENCE RULE.....	286
	11-7:1	Exceptions to the Parol Evidence Rule.....	287
11-8		CONDUCT OF THE TRIAL.....	288
11-9		SETTLEMENT OF THE FORECLOSURE ACTION	289
	11-9:1	Reinstatement	289
	11-9:2	The Forbearance Agreement.....	289
	11-9:3	Deed in Lieu of Foreclosure	290
	11-9:4	Discounted Payoff	290
	11-9:5	Mediation	291
11-10		DISMISSAL OF THE FORECLOSURE ACTION	291
	11-10:1	Dismissals.....	291
	11-10:2	The Abandonment Rule: Encumbrancers	292
11-11		SALE OF THE MORTGAGED PROPERTY PENDENTE LITE.....	293

Chapter 12

Judgment of Foreclosure and Sale	295
12-1	PROCEDURE FOR OBTAINING JUDGMENT 295
12-1:1	Actions Not Governed by the Fair Foreclosure Act 295
12-1:2	Actions Governed by the Fair Foreclosure Act 296
12-1:3	Proofs to be Submitted for Final Judgment 297
12-1:4	The Final Judgment Package 298
12-2	CERTIFICATE OF REGULARITY 299
12-3	CONTENTS OF THE FINAL JUDGMENT 300
12-3:1	Amount Due 300
12-3:1.1	Principal 301
12-3:1.2	Interest 301
12-3:1.2a	Contract Interest 301
12-3:1.2b	Default Rate Interest 302
12-3:1.2c	Unearned Interest 303
12-3:1.2d	Post-Judgment Interest 303
12-3:1.3	Late Charges 304
12-3:1.4	Taxed Costs and Search Fees 305
12-3:1.5	Attorneys' Fees 307
12-3:1.6	Protective Advances 310
12-3:1.7	Prepayment Fees 310
12-3:1.8	Issue Preclusion 311
12-3:2	Subsequent Encumbrancers 311
12-3:3	Manner of Sale 312
12-4	OPERATION AND EFFECT OF THE JUDGMENT 313
12-4:1	Introduction 313
12-4:2	Effect on Unrecorded Instruments 316
12-4:3	Merger 318
12-5	SERVICE OF THE JUDGMENT 319
12-6	AMENDING OR CORRECTING THE JUDGMENT 320
12-7	VACATING THE JUDGMENT 321
12-8	ASSIGNMENT OF THE JUDGMENT 324
12-9	APPEALING THE JUDGMENT 325
12-10	SATISFACTION OF THE JUDGMENT 327

Chapter 13

The Foreclosure Sale	329
13-1	INTRODUCTION 329
13-1:1	Overview 329
13-1:2	The Bidding Process 329
13-1:3	The Foreclosure Sale: A First Look 330

Table of Contents

13-2	THE WRIT OF EXECUTION	330
13-3	THE NOTICE OF SALE.....	332
13-3:1	Contents of the Notice	332
13-3:2	Service of the Notice.....	333
13-3:3	The Need for Advertising.....	334
13-4	ADJOURNMENTS AND STAYS	335
13-4:1	The Sheriff's Power	335
13-4:2	The Role of the Court.....	336
13-5	CONDUCT OF THE SALE	338
13-5:1	Who Conducts the Sale.....	339
13-5:2	Uniform Sale Procedures	340
13-5:3	Local Conditions of Sale	340
13-5:4	Property Descriptions	341
13-5:5	Disclosure of Encumbrances	341
13-5:6	Who May Bid at the Sale	342
13-5:6.1	Puffers and Sham Bidders	342
13-5:6.2	Bidding by Fiduciaries	343
13-5:7	Sale of the Mortgaged Property as a Whole or in Parcels.....	344
13-6	PAYMENT OF THE SUCCESSFUL BID	345
13-6:1	The Redemption Period.....	345
13-6:2	Terms of Payment.....	346
13-7	ENFORCEMENT OF THE SUCCESSFUL BIDDER'S OBLIGATIONS	347
13-7:1	Resale of the Mortgaged Property	347
13-8	RELIEF FROM A SUCCESSFUL BID	348
13-8:1	Clouds on Title	349
13-8:2	Other Grounds.....	350
13-9	REPORT AND CONFIRMATION OF THE SALE	350
13-9:1	Report of the Sale.....	350
13-9:2	Confirmation of the Sale	351
13-9:2.1	Sheriff Sales	351
13-9:2.2	Non-Sheriff Sales	351
13-9:3	Objections to a Sale or Confirmation.....	352
13-9:3.1	Inadequacy of Sales Price	352
13-9:3.2	Other Irregularities.....	353
13-10	VACATING OR SETTING ASIDE A SALE	354
13-10:1	Who May Apply to Set Aside a Sale	354
13-10:2	Grounds for Vacating or Setting Aside a Sale	355
13-10:2.1	Price.....	355
13-10:2.2	Fraud.....	357

13-10:2.3	Mistake.....	357
13-10:2.4	Surprise.....	358
13-10:2.5	Restraint of Competition.....	359
13-10:2.6	Irregularities in Procedure.....	359
13-10:3	Procedure for Vacating or Setting Aside a Sale	360
13-10:4	Liability for Sale Vacated or Set Aside	361
13-11	DELIVERY OF THE DEED	361
13-12	RIGHTS UPON DELIVERY OF THE DEED	363
13-13	THE SELLING OFFICER’S FEES	365
Chapter 14		
Redemption		367
14-1	INTRODUCTION.....	367
14-2	WHO CAN REDEEM	370
14-3	DURATION OF THE RIGHT TO REDEEM	373
14-3:1	Termination by Foreclosure Action	373
14-3:2	Termination Under the Statute of Limitations.....	374
14-3:3	Release or Surrender of the Right.....	375
14-4	AMOUNT REQUIRED TO REDEEM	376
14-4:1	The Principal Amount of the Mortgage Debt.....	376
14-4:2	Interest.....	377
14-4:3	Amounts Paid to Preserve and Protect the Property: Upkeep, Repairs, Taxes, Assessments, and Other Government Liens	377
14-4:4	Counsel Fees and Costs	379
14-5	REDEMPTION WITHIN 10 DAYS AFTER THE SALE	380
14-6	OMITTED PARTIES.....	381
14-7	REDEMPTION BY THE UNITED STATES AFTER SALE	382
14-8	REDEMPTION AFTER DEFICIENCY JUDGMENT.....	382
14-9	ACTIONS TO REDEEM.....	383
Chapter 15		
Deficiency Actions		385
15-1	INTRODUCTION.....	385
15-2	APPLICABILITY OF THE DEFICIENCY ACTION STATUTE...	387
15-3	NECESSITY OF A SEPARATE ACTION	389
15-4	THE FORECLOSURE FIRST REQUIREMENT	390
15-5	LIMITATIONS PERIOD FOR BRINGING A DEFICIENCY ACTION.....	392
15-6	NOTICE OF THE PROPOSED DEFICIENCY ACTION	392

Table of Contents

15-7	THE FAIR MARKET VALUE CREDIT	394
15-8	REVIVAL OF THE RIGHT OF REDEMPTION	395
15-9	PROCEDURE WHERE THE MORTGAGE HAS BEEN EXTINGUISHED BY FORECLOSURE OF A PRIOR MORTGAGE.....	397
15-10	ASSUMING GRANTEES AND GUARANTORS.....	398
15-11	FAIR MARKET VALUE CREDIT IN NON-STATUTORY DEFICIENCY ACTIONS.....	400
15-12	LIMITATIONS PERIOD IN NON-STATUTORY DEFICIENCY ACTIONS.....	402
15-13	NON-RECOURSE CARVE-OUT PROVISIONS.....	404
Chapter 16		
Surplus Money Proceedings		405
16-1	INTRODUCTION.....	405
16-2	PROCEDURES.....	407
16-3	JUNIOR ENCUMBRANCERS.....	408
16-4	SENIOR ENCUMBRANCERS.....	410
16-5	ADDITIONAL SUMS PAID BY THE FORECLOSING MORTGAGEE.....	411
16-6	OWNER OF THE EQUITY OF REDEMPTION	412
Chapter 17		
Strict Foreclosure; Reforeclosure		415
17-1	STRICT FORECLOSURE	415
17-1:1	Introduction.....	415
17-1:2	Complaint in Strict Foreclosure	418
17-1:3	Order for Redemption.....	419
17-1:4	Final Judgment; Reconveyance	420
17-2	REFORECLOSURE	421
Chapter 18		
Municipal Tax Liens		423
18-1	INTRODUCTION.....	423
18-2	MUNICIPAL TAX SALES	426
18-3	TAX SALE CERTIFICATES.....	428
18-4	SALE OR ASSIGNMENT OF MUNICIPAL CERTIFICATES	430
18-5	IN PERSONAM ACTIONS TO FORECLOSE	432
18-6	IN REM ACTIONS TO FORECLOSE.....	437
18-7	REDEMPTION	439

18-8	LANDS TRANSFERRED TO THE STATE OR COUNTY.....	445
18-9	JOINT MUNICIPAL LIEN POOLS.....	445
Chapter 19		
Condominium and Homeowners Association Liens		447
19-1	CONDOMINIUM ASSOCIATION LIENS.....	447
19-1:1	Introduction.....	447
19-1:2	Lien for Common Expenses.....	448
19-1:3	Priority of the Lien.....	449
19-1:4	Liability for Common Expenses Following Conveyance...	450
19-1:5	Foreclosure of Lien.....	451
19-1:6	Applicability of the Fair Debt Collection Practices Act ...	452
19-1:7	Attorneys' Fees.....	453
19-2	HOMEOWNERS ASSOCIATION LIENS.....	453
Chapter 20		
Appeals		455
20-1	APPEALS TO THE APPELLATE DIVISION.....	455
20-1:1	Appealable Determinations.....	455
20-1:2	Who May Appeal.....	456
20-1:3	Time to Appeal.....	457
20-1:4	Procedure for Appeal.....	458
20-1:5	Stays Pending Appeal.....	459
20-1:6	Standard of Review.....	460
20-1:7	Determination of the Appeal.....	461
20-2	APPEALS TO THE NEW JERSEY SUPREME COURT.....	462
Chapter 21		
Bankruptcy		465
21-1	INTRODUCTION.....	465
21-2	GENERAL OVERVIEW.....	466
21-2:1	Applicable Law and Rules.....	466
21-2:2	Different Types of Bankruptcy Cases.....	466
21-2:2.1	Chapter 7.....	466
21-2:2.2	Chapter 11.....	467
21-2:2.3	Chapter 13.....	469
21-2:3	The Debtor's Estate.....	471
21-2:4	The 341 Meeting.....	471
21-3	THE AUTOMATIC STAY.....	472
21-4	USE OF CASH COLLATERAL.....	475
21-4:1	Introduction.....	475
21-4:2	Adequate Protection.....	476

Table of Contents

21-4:3	Cash Collateral Stipulations	477
21-4:4	Procedural Issues Related to the Use of Cash Collateral...	479
21-5	IMPACT OF AN ASSIGNMENT OF RENTS.....	480
21-6	RELIEF FROM THE AUTOMATIC STAY	483
21-6:1	Lack of Equity in Property Not Necessary for an Effective Reorganization.....	483
21-6:2	For Cause, Including Lack of Adequate Protection.....	484
21-6:3	“Single Asset Real Estate” as Defined in § 101(51B).....	486
21-6:4	Burden of Proof and Procedure.....	487
21-7	PRE-PETITION WAIVERS OF THE AUTOMATIC STAY	488
21-8	EFFECT OF BANKRUPTCY ON A PRE-PETITION RECEIVER	490
21-9	CHAPTER 11 PLAN CONFIRMATION AND CRAM DOWN	492
21-9:1	The Impaired Accepting Class	493
21-9:2	The Feasibility Requirement	494
21-9:3	The Absolute Priority Rule and the New Value Exception.....	495
21-9:4	Unfair Discrimination and Fair and Equitable Treatment.....	497
21-10	CHAPTER 13 PLAN CONFIRMATION ISSUES.....	500
21-10:1	The Antimodification Provision of § 1322(b)(2).....	500
21-10:2	Additional Chapter 13 Plan Issues	501
21-10:3	Strip Off of Wholly Undersecured Debt.....	503
21-10:4	Homeowner’s Ability to Cure a Mortgage Default Following a Foreclosure Sale.....	504
21-11	FORECLOSURES AS FRAUDULENT TRANSFERS.....	504
21-12	ATTORNEYS’ FEES.....	506
Appendix: New Jersey Foreclosure Law Forms		507
Table of Cases		519
Index		605