

# New Jersey Foreclosure Spotlight

RECENT COURT DECISIONS IMPACTING BORROWERS AND LENDERS



## WINTERIZING PROPERTY DOES NOT ELEVATE LENDER TO MORTGAGEE IN POSSESSION

In a decision issued on 11/15/17, the NJ Appellate Division rejected a condo association's claim to charge dues to a mortgage lender who winterized and secured vacant property during the foreclosure case. [Union Hill Condo. Ass'n v. Wells Fargo N.A., 2017 WL 5478310 \(App. Div. 2017\)](#).

## LENDER LOSES RACE AT COURTHOUSE STEPS

In an unpublished decision, the NJ Appellate Division held that a lender who records a mortgage knowing of previously issued but unrecorded mortgage is not entitled to priority over the subsequently-filed mortgage, even if the lender was unaware of the other mortgage holder's identity. [Morgan Stanley Private Bank v. Earle, 2017 WL 5988070 \(App. Div. 2017\)](#).

## NJ SUPREME COURT ENFORCES LOAN MODIFICATION AGREEMENT

In a victory for homeowners, the Court required a mortgage lender to stick to the express terms of a loan modification agreement reached during foreclosure mediation, where the lender offered a permanent modification if the borrower made all trial period payments. [GMAC Mortgage v. Willoughby \(July 31, 2017\)](#)



### TAX FORECLOSURE JUDGMENT VACATED TO PREVENT WINDFALL TO TAX SALE INVESTOR

Unlike a standard mortgage foreclosure case, when a plaintiff in a tax sale foreclosure obtains a final judgment title to the property passes to the plaintiff upon recording the judgment with the County Clerk.

Recently, our firm succeeded in vacating a final tax foreclosure sale judgment because the tax sale investor stood to obtain more than a \$200,000 return over and above the value of his investment which had accrued statutory interest at 18%. Shortly after the judgment had been entered our client obtained the funds necessary to pay off or redeem the tax sale certificate.

Due to these “changed circumstances”, the Chancery Court agreed to vacate the judgment pursuant to New Jersey Court Rule 4:50-1(e) on the grounds that it was no longer equitable to give prospective enforcement to the judgment. \*

**Bascom Corp. v. Mullen, Superior Court of New Jersey, Chancery Division, Passaic County, Docket No.: F. 13914-16**



“Until the Legislature devises a better system, courts of equity must do their best to balance the equities, taking into account the necessity of allowing the transfer to clear title and the need to compel the payment of property taxes, against the necessity of ameliorating, in appropriate circumstances, the onerous impact of the procedure in circumstances where the party has remained in possession of the property and has substantial equity in it.”

I.E.'s, LLC v. Simmons, 392 N.J. Super. 520, 536 (Law Div. 2006).

**\*Results may vary depending on the particular set of facts and circumstances.**