

# Title

## FREQUENTLY ASKED ^ QUESTIONS

June 2010

**My examination of title reveals a lis pendens relating to an action to foreclose a mortgage. The foreclosure action has not yet gone to final judgment however the foreclosing lender has provided an Order approving a sale of the premises "pendente lite" (which in this case signifies "pending foreclosure"). Can we insure this?**

Yes. Under New Jersey law (NJSA 2A:50-31) where mortgaged property is of such a character or so situated as to make it likely to deteriorate in value or to make its care or preservation difficult or expensive, the foreclosing lender may obtain an order in the pending foreclosure action to sell the property before entry of the final judgment of foreclosure. The sale may be public or private as the court orders. If public, a sheriff's sale will be held. Upon sale, the proceeds are brought into court where they are held until further order or judgment of the court.

From an underwriting standpoint, examination of these titles is little different from any other title deriving through a mortgage foreclosure action. In addition to the usual Chancery review (confirmation that the proper parties have been joined, served with process, etc.) and typical mortgage foreclosure-related requirements and exceptions, the title examiner must also confirm that each party to the foreclosure action has received service of the application for sale pendente lite (pending foreclosure) and that any objection(s) to the application have been disposed of. The sale must be conducted in strict conformity with the court order approving the sale. Once the sale occurs it will cut off all lienholders who are parties to the foreclosure action just like a "normal" foreclosure sale.

These orders are appealable. Any title commitment issued during the 10 day appeal period (measured from the entry of the order) must take exception to the possibility of an appeal.

As always, please address any questions on this or any topic to a member of our underwriting staff.