

# Title

## FREQUENTLY ASKED ^ QUESTIONS

March 2010

**The owner of a residential apartment building is refinancing. The new mortgagee wants us to affirmatively insure that the insured mortgage has priority over all of the tenants' interests under their leases. What language can we give?**

In 1994, the New Jersey Supreme Court held that a foreclosing mortgagee could not evict a residential tenant from a property to which the mortgagee had acquired title through foreclosure without complying with the Anti-Eviction Act of 1986 (N.J.S.A. 2A:18-61.1 et seq.). This decision applied "irrespective of whether the tenancy was established before or after execution of the mortgage." (Chase Manhattan Bank v. Josephson, 135 NJ 209, 1994)

Because of this decision, we cannot simply insure that the mortgage has priority over all of the tenants' interests under their leases. Clearly in New Jersey, tenants' possessory rights are protected. While the mortgagee may be able to obtain fee simple title to the mortgaged property through foreclosure, they will not be able to automatically oust or "cut off" residential tenants.

Accordingly, under this set of facts, where we know that there are one or more residential tenants in possession of the premises, we would be willing to amend the parties in possession exception to read

Rights of tenants under unrecorded leases, as tenants only.

Any requests for additional affirmative language should be referred to a member of our underwriting staff.