

CHAPTER 1

DEFINITIONS; INTRODUCTION AND FUNDAMENTALS; PRIORITIES; OFFICE OF FORECLOSURE

§ 1.01 Terminology

Set forth below are common terms and definitions used in mortgage law and transactions.¹

“Mortgagee” - the lender; the person taking or receiving the mortgage - *e.g.*, the person loaning the money.

“Mortgagor” - the borrower - the person pledging property as security for the debt; generally, the person signing (or making) the mortgage.

“Mortgage” - a pledge or security of particular real estate for the payment of a debt or performance of some other obligation.

“Mortgaged premises” - the particular real estate pledged as security for the payment of a debt or performance of some other obligation.

“Promissory note” - a written promise signed by the maker to pay a certain sum of money, at a future time, unconditionally.

“Demand note” - a note payable in full on demand, at sight or on presentation, as opposed to a note payable on a future set date.

“Bond” - primarily a contract to pay; a written obligation; evidence of the debt. Most often under seal. Contrasted with a mortgage, which is a separate contract to secure payment.

“Covenant to pay the debt” - a customary promise or agreement in a mortgage making the signer of the mortgage personally liable for payment of the mortgage debt. However, the FNMA/FHLMC Uniform Mortgage Instrument provides that a person signing the mortgage but not the note is not personally obligated to pay the mortgage debt.

“Foreclosure” (mortgage) - the means by which the mortgagor and other interested persons are deprived of their right to redeem through a public sale of the mortgaged premises; and where the purchaser at the sale acquires all the right, title and interest of all persons properly joined or bound by the judgment subordinate to the mortgage being foreclosed.

“Strict foreclosure” - foreclosure without sale.

“Optional procedure” - a statutory strict foreclosure process under the *Fair Foreclosure Act*.

“Assuming Grantee” - a new owner who assumes personal liability for payment of the mortgage debt, expressly in the deed or by other written instrument. There are no longer implied assumptions in New Jersey.

“Subject to” - a new owner who does not assume personal responsibility to pay the mortgage debt but takes the mortgaged property subject to the lien of mortgage.

“Obligation” - a written promise to pay money or perform a certain act; *e.g.*, a note or bond.

¹ Definitions in this section, in part, were taken from *Black's Law Dictionary*, 4th Ed. (1957) and 7th Ed. (1999).

DEFINITIONS; INTRODUCTION AND FUNDAMENTALS

“Obligor” - the person obligated to perform the obligation; more specifically, the person executing a bond.

“Obligee” - the person in whose favor the obligation is contracted; more specifically, the holder of the bond; the person to whom a bond is given.

“Maker” - the person making or executing a promissory note.

“Modification” - a change or alteration which introduces new elements or deletes some of them but leaves the general purpose and effect of the subject matter intact; for example, a mortgage modification agreement changing the principal, due date, rate of interest or other particulars under the mortgage.

“Redemption” - payment of the mortgage debt in full.

“Clogging” - clogging the equity of redemption. An agreement or condition which prevents a defaulting mortgagor from exercising its equity of redemption.

“Cure” - payment of arrearages and other lawful charges due under the mortgage; contrasted with redemption, which is payment in full.

“Maturity” - the date by which the obligation is due and payable in full - the maturity date. A “matured” debt is a debt which has become due. To “mature” a debt is to render it due by means of acceleration or otherwise.

“Surety” - a person bound by the same instrument as the principal to be answerable for payment of the debt of the principal.

“Guarantor” - a person bound by a collateral agreement to be answerable for payment of the debt of another. A guarantor is ordinarily secondarily liable and has contingent liability.

“Endorser” - a person who signs a document that runs to the person’s order; *e.g.*, a person signing his or her name on the back of a negotiable instrument.

“Co-signer” - a person signing an instrument with another (and assuming obligations) to provide credit support to be shared by other obligor(s).

“Accommodation maker” - the person signing a note (without consideration) to lend his or her credit to the accommodated party.

“Without recourse” - a qualified endorsement on a negotiable instrument where the endorser means to save himself from liability to subsequent endorsers. An assignment of the note and mortgage where the assignor has no liability - *i.e.*, assumes no liability for payment.

“Acceleration” - a provision in a mortgage, note or other instrument requiring the mortgagor to pay the full balance due sooner than the date specified for payment, upon the occurrence of some event or circumstance.

“Due-on-sale clause” - a clause in a mortgage which permits the lender to accelerate the due date of the secured obligation and mortgage if the borrower transfers or conveys any part of the mortgaged premises without the lender’s written consent.

“Deficiency action” - a suit on the personal obligation - *e.g.*, the note or bond - for the balance of the debt due.

“Deficiency action statutes” - *N.J.S.A. 2A:50-2 et seq.* Statutes generally requiring foreclosure

first and/or other requirements and limitations, with respect to certain residential property, before a money judgment action in the Law Division can be brought and maintained on the secured note or bond.

“Foreclose (or foreclosure) first” - the procedure whereby the holder of the mortgage obligation must first foreclose the mortgage before suing the mortgagor and others for the balance of the debt due under the note or bond.

“*Fair Foreclosure Act*” - *N.J.S.A. 2A:50-53 et seq.*, which, along with other rights, gives residential mortgage debtors in New Jersey the right to cure a mortgage default ordinarily by payment of arrearages and other lawful charges, thereby preventing acceleration and institution of foreclosure, or defeating acceleration and reinstating the loan once acceleration has occurred before entry of a conventional mortgage foreclosure judgment, or entry of the redemption order under the optional foreclosure procedure without sale.

“Notice of intention to foreclose” - the statutory notice that must be given to a residential mortgage debtor by certified mail under the *Fair Foreclosure Act* at least 30 days prior to acceleration of the mortgage debt and filing of the foreclosure complaint.

“Negotiable instrument” - a written instrument that (a) is signed by the maker or drawer, (b) contains an unconditional promise or order to pay a specified sum of money, (c) is payable on demand or at a definite time, and (d) is payable to order or bearer; *e.g.*, a negotiable note. *UCC* § 3-104(a), *N.J.S.A. 12A:3-104(a)*.

“14-day Notice of Entry of Judgment” - the statutory notice (commonly called the “notice to cure”) which must be given to a debtor through certified mail under the *Fair Foreclosure Act* prior to submission of final judgment papers to the court (or prior to submission of redemption order papers under the optional procedure) and which, among other things, advises that the debtor’s right to cure will terminate on entry of the judgment or redemption order as the case may be.

“Independent suit on the note or bond” - a money judgment action at law not controlled by the deficiency action statutes, *N.J.S.A. 2A:50-2 et seq.*

“Uniform Instruments” - the Fannie Mae/Freddie Mac approved mortgage documents - *e.g.*, uniform secured note, uniform mortgage, *etc.* - widely used in residential mortgage transactions in the United States.

“Uniform Covenants” - covenants appearing in the Fannie Mae (FNMA)/Freddie Mac (FHLMC) Uniform Mortgage instrument applicable to all jurisdictions.

“Non-Uniform Covenants” - covenants appearing in the Fannie Mae (FNMA)/Freddie Mac (FHLMC) Uniform Mortgage instrument applicable and tailor-made to the particular jurisdiction in which the mortgage is used.

“Upset price” - the lowest amount a lender is willing to accept for property sold at a sheriff’s sale - normally the full debt, interest and costs.

“Natural person” - a non-corporate, non-partnership or non-business entity, *i.e.*, a human person.