

Real Estate Finance: New Jersey

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A Q&A guide to real estate finance law for borrowers and lenders in New Jersey. This Q&A addresses state laws relating to security instruments, usury laws, limitations on personal liability, recording requirements and taxes, priority issues, mechanics' liens, landlord liens, title insurance matters, and foreclosure procedures primarily impacting lending transactions in a commercial context. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see [Real Estate Finance: State Q&A Tool](#)).

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Instrument and Execution

1. When real estate is part of the lender's collateral, is a mortgage commonly used in your jurisdiction or is a trustee appointed to hold a deed of trust (or a deed to secure debt) as security for the loan? If a deed of trust is more commonly used, who is typically designated as the trustee?

A mortgage secures a lien on real property. Deeds of trust are not used in New Jersey.

2. Describe any laws that would limit a borrower's or guarantor's personal liability for debt secured by real property.

There are no specific New Jersey laws limiting a borrower's or guarantor's personal liability for debt secured by real property. Liability can be reduced or limited contractually through express provisions of the loan documents or guaranty. Liability may also be reduced or eliminated in a bankruptcy or insolvency proceeding.

3. Are there restrictions on interest rates charged for loans secured by real property?

New Jersey has both criminal and civil usury laws. The maximum interest rate in the criminal usury laws are:

- 30% per annum for individuals and general partnerships
- 50% per annum for corporations, LLPs, and LLCs.

([N.J.S.A. 2C:21-19.](#))

The civil usury maximum interest rates are:

- 6% per annum on unwritten debt obligations.
- 16% per annum on written debt obligations.

([N.J.S.A. 31:1-1\(a\).](#))

There are no usury exemptions under New Jersey's criminal usury laws. Under the civil usury laws, loans that exceed \$50,000 are not subject to the civil usury limits unless secured by a first lien on real property containing one to six dwelling units ([N.J.S.A. 31:1-1\(e\)\(1\)](#)). Corporations, LLPs, and LLCs are barred from asserting usury as a defense ([N.J.S.A. 31:1-6](#)). The usury ceiling does not apply to public entities ([N.J.S.A. 31:1-7](#)).

As federal law preempts New Jersey usury law:

- Financial institutions may make loans at any rate of interest, permitted by applicable federal law, up to the criminal usury limits.
- Other lenders, including mortgage companies funded by federal programs, are also not subject to the New Jersey civil or criminal usury limits (12 C.F.R. § 590).

4. Are there any requirements for the execution of a mortgage or deed of trust? In particular, please consider if:

- Witnesses are required.
- Specified officers of a corporation (or members of a limited liability company) must execute the security instrument.
- The signatory's name and title must be specified on the signature page.
- A corporate seal is required.
- Signed resolutions must be presented with the security instrument for purposes of recording.
- There are any other important requirements in your state?

Witnesses

There is no requirement for witnesses to a mortgage. However, the mortgage must be properly acknowledged or proved (see [Question 5](#)).

Specified Officers

Specified officer signatures are not required for a corporation.

Signatory's Name and Title

If signing as an authorized person for an entity, the signatory's name and title must be:

- Written on the signature page.
- Included in the signature block.

Corporate Seal

A corporate seal need not be applied to the instrument.

Signed Resolutions

Signed resolutions are not required for recording.

Other Requirements

The mortgage must be acknowledged or proved. A notary public, any licensed New Jersey attorney, and any county clerk or deputy county clerk are among those authorized to take acknowledgments in New Jersey (see [Question 5](#)).

5. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

The statutory requirements for acknowledgment forms are contained in [Section 46:14-2.1 of the New Jersey Statutes Annotated](#).

Officers of New Jersey authorized to take acknowledgments in the state are:

- An attorney-at-law.
- A notary public.
- A county clerk or deputy county clerk.
- A register of deeds and mortgages or a deputy register.
- A surrogate or deputy surrogate.

A seal of the officer does not need to be affixed to the acknowledgment.

Additionally, other authorized officers include:

- Any officer of the United States or of a state, territory, or district of the United States.
- Any officer of a foreign nation authorized at the time and place of acknowledgment to take acknowledgments or proofs.
- A foreign commissioner of deeds for New Jersey within the jurisdiction of the commission.
- A foreign service or consular officer or other United States representative to a foreign nation, within that foreign nation's territory.

[\(N.J.S.A. 46:14-6.1.\)](#)

If an instrument cannot be acknowledged, the instrument may be proved in Superior Court by proof of handwriting or otherwise, to the satisfaction of the court. All parties whose interests may be affected must receive notice of the application ([N.J.S.A. 46:14-4.1](#)). A signature in this context includes any mark made on a document:

- By a person who intends to give legal effect to the document.
- On behalf of a person, with that person's authority and to effectuate that person's intent.

[\(N.J.S.A. 46:14-4.2.\)](#)

Individual

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that [he/she]:

- Is named in and personally signed the attached instrument.
- Signed this instrument as [his/her] own act.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Corporation

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and [he/she] acknowledged under oath, to my satisfaction, that [he/she]:

- Signed the attached instrument as [TITLE] of [CORPORATION NAME], a corporation named in this instrument.
- Is authorized to execute the attached instrument on behalf of such corporation.
- Executed the attached instrument as the act of such corporation.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Corporation – Proof by Attesting Witness

STATE OF NEW JERSEY)

)ss:

COUNTY OF [COUNTY])

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and this person acknowledged under oath, to my satisfaction, that:

- This person is the [Secretary/Assistant Secretary] of [CORPORATION NAME], a corporation of the State of [STATE], named in the attached instrument.
- This person signed the attached instrument as the attesting witness for the proper corporate officer who is [NAME] the [President/Vice President] of such corporation.
- The said [President/Vice President] was authorized to execute the attached instrument on behalf of such corporation.
- This person witnessed the said [President/Vice President] execute the attached instrument as the act of such corporation.
- This person signed this acknowledgment to attest to the truth of these facts.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Liability Company – Individual Member

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that [he/she] is the managing member of [NAME] L.L.C, a [STATE OF FORMATION] limited liability company, and that [he/she] is authorized to execute the attached instrument on behalf of [NAME] L.L.C., and that [he/she] executed the attached instrument as the act of [NAME] L.L.C.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Liability Company – LLC Member

STATE OF NEW JERSEY)

)ss:

COUNTY OF [COUNTY])

I CERTIFY that on [MONTH] [DAY], [YEAR], before me personally appeared [NAME], who I am satisfied is the individual who executed this instrument and, who being duly sworn by me, did depose and say that:

- [He/she] is the [TITLE] of [NAME] L.L.C., the sole managing member of [NAME] L.L.C., a [STATE OF FORMATION] limited liability company.
- [He/she] is authorized to execute this instrument on behalf of [NAME] L.L.C., the sole managing member of [NAME] L.L.C.
- [He/she] executed this instrument as the act of [NAME] L.L.C, on behalf of [NAME] L.L.C.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Partnership – Individual General Partner

STATE OF NEW JERSEY)

COUNTY OF [COUNTY])ss:

)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that this person (or, if more than one, each person):

- Is a general partner of the limited partnership named in the attached instrument.
- Personally signed the attached instrument.
- Signed the instrument as his or her own act as such general partner on behalf of, and as the act of, such limited partnership.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Partnership – Corporate General Partner

STATE OF NEW JERSEY)

)ss:

COUNTY OF [COUNTY])

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and this person acknowledged under oath, to my satisfaction, that this person:

- Signed the attached instrument as [OFFICE] of [NAME OF GENERAL PARTNER], a corporation of the State of [STATE], which is a general partner of the limited partnership named in this instrument.
- Was authorized to execute the attached instrument on behalf of such corporation.
- Executed the attached instrument as the act of such corporation on behalf of, and as the act of, such limited partnership.

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Limited Partnership – Corporate General Partner – Proof by Attesting Witness

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss:
)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and this person acknowledged under oath, to my satisfaction, that:

- This person is the [Secretary/Assistant Secretary] of [NAME], a corporation of the State of [STATE], which is a general partner of the limited partnership named in the attached instrument.
- This person signed the attached instrument as the attesting witness for the proper corporate officer who is [NAME] the [President/Vice President] of such corporation.
- The said [President/Vice President] was authorized to execute the attached instrument on behalf of such corporation.
- This person witnessed the said [President/Vice President] execute the attached instrument as the act of such corporation on behalf of, and as the act of, such limited partnership.
- This person signed the acknowledgment to attest to the truth of these facts.

[SIGNATURE]

(Attesting Witness)

Signed and sworn to before me on

[MONTH] [DAY], [YEAR].

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Trustee

STATE OF NEW JERSEY)
COUNTY OF [COUNTY])ss:
)

I CERTIFY that on [MONTH] [DAY], [YEAR], [NAME] personally appeared before me and acknowledged under oath, to my satisfaction, that this person (or, if more than one, each person):

- Is the trustee of [NAME OF TRUST] named in the attached instrument.
- Personally signed the attached instrument.
- Signed this instrument as his or her own act as said trustee on behalf of, and as the act of [NAME OF TRUST.]

[SIGNATURE]

Name: [AUTHORIZED OFFICER NAME]

Title: [AUTHORIZED OFFICER TITLE]

Priority

6. Describe the relevant statutes granting priority to mechanics' liens.

The Construction Lien Law ([N.J.S.A. 2A:44A-1 to 2A:44A-38](#)) provides lien rights to contractors, subcontractors or suppliers who provide work, services, material, or equipment in accordance with a contract ([N.J.S.A. 2A:44A-3](#)).

A properly recorded construction lien attaches to the interest of the owner when it is filed. A construction lien does not attach to a [bona fide purchaser's](#) interest if the transfer of property can be proven by a document recorded before the date of filing of the lien claim.

In New Jersey, construction liens do not "reach back" in time. A construction lien does not have priority over any previously recorded:

- Mortgage.
- Judgment.
- Other lien or interest in real estate.

([N.J.S.A. 2A:44A-10.](#))

A lien claim is subject to the effect of a Notice of Settlement filed under [Section 2A:44A-10 of the New Jersey Statutes Annotated](#) (see Question 13).

7. Are there liens which can supersede the priority of a lender's recorded lien?

Liens for property taxes and certain other governmental liens and assessments supersede the priority of a lender's recorded lien. Liens of common charges filed by condominium associations also supersede the priority of a lender's recorded lien to the extent provided by statute ([N.J.S.A. 46:8B-21](#)).

8. How do lenders maintain the priority of their real property liens over superseding liens, such as real property tax liens and mechanics' liens? In particular, please consider:

- Permanent loans.
- Construction loans with future advances.
- Credit facilities with future advances under revolving lines of credit.

Lien waivers are against public policy and unenforceable unless given in exchange for payment, and are only enforceable to the extent that the payment is actually received ([N.J.S.A. 2A:44A-38](#)).

Most lenders rely on title insurance protection, but as a condition of any loan, a lender should require that the borrower obtain signed subordination agreements from any:

- Design professionals.
- Laborers.
- Suppliers.

The enforceability of these subordination agreements is open to question. These agreements, however, would likely be evidence of payment to the extent that they provide amounts paid to date. For the same reason, the owner should present the lender with lien waivers for all work performed to the date of the loan.

The lender should also require that the owner obtain payment and performance bonds. The contract between the owner and contractor should require the contractor to satisfy or "bond off" all mechanics' liens and indemnify the owner and lender from any claims based on non-payment.

Permanent Loans

Lenders cannot maintain priority of their real property liens over real property tax liens and certain other governmental liens and assessments, which always have priority. Lenders typically either:

- Escrow for real property taxes and assessments and arrange for their payment from such escrow.
- Require periodic proof of timely payment of property taxes and assessments, from either the borrower or a tax reporting service.

Construction Loans

New Jersey law gives priority to periodic construction advances from the date of the recording of the mortgage ([N.J.S.A. 2A:44A-22\(a\)\(1\)](#)). However, to protect its mortgage lien, a lender should obtain mechanics' lien waivers and title endorsements (including bring-down searches) as a condition of disbursements under a construction loan.

Credit Facilities

Lines of credit secured by a mortgage are secured up to the maximum amount specified in the mortgage. Priority for advances relates back to the date and time of recording of the mortgage, to the extent that such advances do not cause the principal balance to exceed the maximum amount specified in the mortgage ([N.J.S.A. 46:9-8.1](#) and [46:9-8.2](#)).

9. What are a landlord's legal rights to a tenant's personal property located in the leased premises? Are these rights governed by statute, common law or contract?

New Jersey provides landlords with a statutory lien against a tenant's goods and chattels located on the leased premises in an amount up to one year's rental arrearages. If a tenant is in default of its rent obligations then the tenant's creditors may not remove any of the tenant's goods or chattels from the leased premises, unless the creditors pay the landlord for rental arrears, limited to one year's rent. ([N.J.S.A. 2A:42-1](#).)

New Jersey also provides for a landlord's lien in cases where a tenant operates commercial premises for manufacturing purposes ([N.J.S.A. 2A:44-165](#) to [2A:44-168](#)). In this case, the landlord's lien is limited to six months of rental arrears ([N.J.S.A. 2A:44-166](#)).

New Jersey case law states that this landlord's lien is a statutory right to preference in payment over other creditors (*Hartwell v. Hartwell Co.*, 400 A.2d 529, 532 (N.J. Super. Ct. Ch. Div. 1979)).

Mortgage Recording Taxes

10. Is there a mortgage recording tax (or similar tax)? If so:

- What is the rate and how is the tax calculated?
- Can a loan or refinance be structured to reduce the tax?
- Is the tax payable on making a loan secured by real property or perfecting a lien on real property?
- Is there any type of real property or transaction that is exempt from a mortgage recording tax (or similar tax)?
- Are there any other state or local taxes or fees imposed on the grant, perfection or enforcement of a security interest in real property? Are there any exceptions?

There is no mortgage recording tax in New Jersey. There are, however, per-page recording fees. Since these fees vary among the local jurisdictions, it is best to confirm these fees with the county recorder's office. For examples, see [Sussex County Clerk's Office: Recording Fees](#) and [Office of the Morris County Clerk: Fee Schedule](#).

Title Insurance

11. Are title insurance premiums or service charges for lenders' title insurance policies regulated? Are the costs of title insurance negotiable within a specified range of rates? Are there any discounts available for reissued policies?

Title insurance premiums and service charges for lenders' title insurance policies are regulated ([N.J.S.A. 17:46B-1](#) to [17:46B-62](#)). The cost of title insurance is not negotiable. Title insurance companies offer discounted reissue rates.

12. Provide a list and brief description of the title insurance endorsements available to lenders?

Title insurance endorsements available to owners include:

- Survey.
- Street Assessments.
- Zoning.
- Zoning – Completed Structure.
- Commercial Environmental Protection Lien.
- Restrictions, Encroachments and Minerals.
- Restrictions, Encroachments and Minerals (Owner's Policy-Unimproved Land).
- Restrictions, Encroachments and Minerals (Owner's Policy-Improved Land).
- Aggregation.
- Leasehold Owners.
- Nonimputation – Full Equity Transfer.
- Nonimputation – Additional Insured.
- Nonimputation – Partial Equity Transfer.
- Access and Entry.
- Indirect Access and Entry.
- Utility Access.
- Single Tax Parcel.
- Multiple Tax Parcels.
- Contiguity – Single Parcel.
- Location.
- Co-insurance.
- Same as Survey.
- Same as Portion of Survey.
- Subdivision.
- Easement – Damage or Enforced Removal.

Additional premium costs may be applicable for some endorsements.

13. How is gap coverage (the time between closing the loan and actually recording the lien) typically handled by the title insurance companies?

Title insurance companies insure the gap period in New Jersey between the closing date and the recording of the insured lien document. The parties must file a Notice of Settlement, an instrument that provides protection for bona fide purchasers and mortgage lenders (without actual notice) from liens or other adverse interests recorded or filed during the gap period. It is effective for 60 days from the date of filing. (N.J.S.A. 46:26A-11(a) to (d).)

The Notice of Settlement can be filed by any party, or the party's legal representative, when there is a settlement that either:

- Conveys legal or equitable title to real estate or any interest in real estate.
- Creates any lien on the interest of real estate by means of a mortgage.

The Notice of Settlement is filed in a book entitled "Notices of Settlement," maintained by the county recording office where the real estate is located. Immediately after filing, the Notice of Settlement is indexed by the recording officer in an index book entitled "Index of Notices of Settlement." The index provides third parties with notice of the following information related to the Notice of Settlement:

- Date of filing.
- Place of record.
- Names of the parties.

The county recording officer may charge a fee, which may not exceed the fee charged for the recording of notices of federal tax liens ([N.J.S.A. 46:26A-11\(a\)](#)).

Foreclosure

14. Describe the foreclosure process available and the typical timing for the process. Are there any significant costs of or impediments to foreclosing a lien on real property?

Foreclosure is an equitable process where the lienholder seeks to foreclose the debtor's equity of redemption.

After a borrower defaults on a mortgage and once delinquency requirements are met (as provided in the loan documents), the foreclosure process begins with the filing of a complaint with the Clerk of the Superior Court (see [New Jersey Courts, Frequently Asked Questions: Foreclosure](#)). Simultaneously, a lis pendens is filed with the county clerk or register ([N.J.S.A. 2A:15-6](#)). The lis pendens is effective for five years after filing ([N.J.S.A. 2A:15-11](#)). There is no one-action rule in New Jersey, but the only remedy available under a mortgage is foreclosure. Lenders may bring suit under the note or guaranty to obtain a money judgment or under the assignment of leases and rents to obtain the appointment of a rent receiver.

A summons and complaint must be served on the borrower and all parties with interests in the real property. The respondents have 35 days to answer (see [New Jersey Courts, Frequently Asked Questions: Foreclosure](#)).

If unopposed, the action typically requires nine to twelve months to complete. If opposed, the process usually takes at least six months to complete through the summary judgment stage. If opposed with defenses, the matter may require one to two years of litigation.

Once judgment is entered, a writ of execution is issued and transmitted to the county sheriff. After advertisement, a public auction is conducted. The successful bidder receives a sheriff's deed. The sheriff receives a commission based on the selling price. The sheriff's sale process requires approximately six to eight weeks to complete, depending on the county's backlog.

The lender is entitled to possession immediately after default, including by self-help, if possible without breach of the peace (*King v. S. Jersey Nat. Bank*, 330 A.2d 1, 12-13 (N.J. 1974)).

Although the timing can vary depending on whether the foreclosure is contested, a typical uncontested foreclosure takes nine to twelve months to conclude.

15. Describe any significant costs of or impediments to foreclosing a lien on real property.

There are no significant costs or impediments to foreclosing a lien on real property, except the delay that may arise from the workload of the court of the sheriff's office at any given time.

Foreign Entities

16. Are there any permissions, approvals, or licenses specifically required for foreign banks (or other foreign lenders) to make loans secured by real property?

New Jersey law makes a distinction between bank and non-bank, out-of-state lenders.

Generally, there are no prohibitions against non-bank, out-of-state lenders making either:

- Loans to New Jersey borrowers.
- Loans secured by New Jersey real or personal property.

New Jersey law requires foreign banks to obtain a certificate of authority from the New Jersey Department of Banking & Insurance before transacting business in New Jersey. However, closing a loan through an agent and enforcing a debt obligation acquired in an out-of-state transaction do not constitute transacting business for purposes of this requirement. (*N.J.S.A. 17:9A-316*)

The New Jersey Consumer Finance Licensing Act ([N.J.S.A. 17:11C-1](#) to [17:11C-89](#)) may require an out-of-state lender that is not a depository institution, trust company, or insurance company to obtain a New Jersey license before engaging in either the:

- Consumer loan business.
- Sales finance business in New Jersey.

([N.J.S.A. 17:11C-3\(a\)](#).)