



Let the Lender Beware, New Jersey Law Journal

By Iram P. Valentin, Esq.
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U.S. Bank v. Hough, 416 N.J. Super. 286 (App. Div. 2010), is the first published decision in New Jersey to address the issue of "whether a commercial lender, which makes a loan secured by a mortgage on an affordable housing unit in excess of the amount permitted by N.J.A.C. 5:80-26.8(b), is prohibited from seeking to foreclose the mortgage." The Appellate Division ruled affirmatively, holding that although the commercial lender could pursue the borrower for the debt under the note, the mortgage itself was void as against public policy, resulting in a loss of the secured status enjoyed by the lender.

The decision in *U.S. Bank* is important for two main reasons. First, it highlights an easily avoidable area of liability for commercial lenders, title professionals and attorneys. Second, aside from any legal challenges that may exist to the regulations themselves or legislative action taken as a result of appropriate lobbying efforts, the decision leaves open the possibility for...