

## WFG Underwriting Bulletin



To: All New Jersey Policy Issuing Agents of WFG National Title Insurance Company  
From: Underwriting Department  
Date: August 5, 2016  
Bulletin No. NJ 2016-04  
Subject: New Jersey Supreme Court Decision Regarding Future Advance Mortgage Priority

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In a recent decision our state's highest court ruled that when a lender holds a mortgage that secures optional future advances (as opposed to "obligatory"), that prior-recorded mortgage lien loses priority for all those advances made after actual notice of an intervening mortgage. The actual notice in this case was an email message.

Although the law in this state generally rewards the first party to record (i.e. Race-Notice), this decision does demonstrate that is not always the case. This is also not a new concept as this court's holding has been the general rule in this state for over 150 years. However, this case does call to mind the risks involved in insuring those type of mortgages wherein the lender has the option or discretion to make future disbursements to the borrower and is not obligated to do so.

Therefore, before insuring any type of Future Advance Mortgage (i.e. any mortgage in which the total amount secured by the loan is not advanced at closing) or issuing any of the ALTA 14 series of Endorsements (i.e. ALTA 14-06; 14.1-06; 14.2-06 or 14.3-06) please consider the holding in this recent case and contact your underwriter should you have any questions.

Here's a link to the case.

<http://www.judiciary.state.nj.us/opinions/supreme/A615RvV.pdf>

Please contact your local WFG Underwriter, James F. Clarke, Esq., with any questions.

**NOTE:** The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

**The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.**