



# TitleNews Online Archive

## The Docket: Recorded Life Estate Equitably Subordinated to Mortgage

*July 20, 2017*

*The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee, which reviews significant court rulings and other legal developments, and explains the relevance to the title insurance industry.*

Lance Pomerantz reviews a recent New Jersey case holding a recorded life estate can be equitably subordinated to a new mortgage, even if the life tenant did not consent to the new loan. Pomerantz is a New York sole practitioner who provides expert testimony, litigation consulting and strategic advice in land title disputes. He can be reached at [lance@landtitlelaw.com](mailto:lance@landtitlelaw.com).

**Citation:** *OCWEN Loan Services, LLC, v. Quinn, et al.*, Docket No. A-2668-14T3 (N.J. Super. Ct. App. Div., *cert. den.* Feb. 7, 2017, *published* July 10, 2017).

**Facts:** In 2004, defendants David and Louisa Wuebbens conveyed their home to their daughter, Marla Wuebbens Quinn, while retaining life estates in the property. In 2005, Quinn and her parents executed a \$260,000 mortgage on the property in favor of IndyMac Bank, F.S.B. (the 2005 mortgage). In 2007, Quinn refinanced the mortgage loan for \$380,000 with IndyMac (the 2007 mortgage) and used the proceeds, in part, to satisfy the 2005 mortgage.

IndyMac's 2007 title commitment failed to disclose the parents' recorded life estate interests in the property. As a result, the parents did not execute the 2007 mortgage. In 2009, IndyMac filed an action to foreclose the 2007 mortgage after Quinn defaulted. The mortgage was subsequently assigned to OCWEN.

The issue presented was whether OCWEN's 2007 mortgage lien took priority over the parents' earlier recorded life estate interests in the property.

**Holding:** Applying principles of replacement and modification recognized in the Restatement (Third) of Property – Mortgages (1997), the trial court granted OCWEN's mortgage limited priority over the parents' life estates. The trial court and Appellate Division both categorically rejected the parents' argument that a life estate is a prior property interest not subject to principles of equitable subrogation. The reasoning was:

1. The parents had signed the 2005 mortgage.

2. A portion of the 2007 loan proceeds was used to satisfy the 2005 mortgage.
3. The parents' interests were not prejudiced (partly because the terms of the 2007 loan were actually more favorable than those of the 2005 loan), the 2007 mortgage could rightfully be subrogated to the priority of the 2005 mortgage over the parents' life estates.

The trial court, however, "capped" OCWEN's mortgage priority at \$260,000 (the original principal amount of the 2005 mortgage), and preserved the priority of the parents' life estates over the portion of the 2007 mortgage loan that exceeded that amount. The Appellate Division approved the "cap."

**Relevance to the Title Industry:** Equitable subrogation helps insurers avoid potential exposure that frequently arises from mistakes in the searching and/or underwriting processes. It should not, however, be seen as a panacea. While the life estates' status does not insulate them from equitable subrogation, they also cannot be completely "cut-off" by foreclosure, as could a junior mortgage. The continuing life estates might complicate enforcement of the foreclosure decree, depending, of course, on the overall property value and the life expectancies of Mr. and Mrs. Wuebbens.

Read the full opinion **here**.

*Full disclosure: OCWEN's case was briefed and argued by Rajan Patel of the Law Office of Rajan Patel in Nanuet, N.Y. Patel has been and continues to be a client of Pomerantz, although he had no involvement in this case.*

Contact ALTA at 202-296-3671 or **[communications@alta.org](mailto:communications@alta.org)**.

Copyright © 2004-2017 American Land Title Association. All rights reserved. Reprinted by permission.