



# **NEW JERSEY MORTGAGE FINANCE REGULATORY MANUAL**

**2008**

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## **ABOUT THE EDITORS**

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E. Robert Levy, a Partner in the law firm of Levy & Watkinson, P.C., with offices in Woodbridge and Trenton, New Jersey, is Executive Director of, and Counsel to the Mortgage Bankers Association of New Jersey/New Jersey Association of Mortgage Brokers. He is also the Legislative/Regulatory Counsel to the Mortgage Bankers Association of Pennsylvania and the Pennsylvania Association of Mortgage Brokers.

He was instrumental in the drafting and passage of the Mortgage Bankers and Brokers License Laws in both New Jersey (now the Licensed Lenders Act) and Pennsylvania, and assisted in drafting many of the mortgage banking regulations in New Jersey. Mr. Levy has been a regular speaker on the New Jersey Home Ownership Security Act and was involved with other industry representatives in lobbying the Bill that was signed into law. Mr. Levy serves on the New Jersey Licensed Lenders Advisory Board, which advises the Department of Banking and Insurance on legislative and regulatory matters.

Chair of the Advisory Council to the American Association of Mortgage Regulators (AARMR), Mr. Levy was a member of its Task Force, which drafted AARMR's Model Mortgage Bankers and Brokers License Compendium to be used as a guide by various states. He is also an instructor at the AARMR's National School for Mortgage Banking Examiners and was instrumental in establishing the school.

Mr. Levy was a member of the Strategic Planning Committee of the Mortgage Bankers Association of America and was Chairman of the National Association's State and Local Advisory Council for two one-year terms. The Council represents all of the State Mortgage Banking Associations. In 2001, Mr. Levy was elected as a member of MBAA's Board of Directors and was re-elected to a second term in 2002-2003.

Mr. Levy was Deputy Commissioner for the State of New Jersey, Department of Banking and was a State Deputy Attorney General, in which capacity he served as counsel to the Department of Banking and Insurance. A nationally recognized authority on the Real Estate Settlement Procedures Act (RESPA), he testified before Congress and HUD at RESPA hearings dealing with referral fees and is a frequent speaker and author on the subject and on licensing and regulatory matters affecting the mortgage banking industry. He is a member of the New Jersey Department of Environmental Protection's Advisory Board on the Environmental Cleanup responsibility law. He is admitted to practice before the U.S. Supreme Court, the U.S. Court of Appeals for the Second and Third Circuits, the U.S. District Court and the Supreme Court of New Jersey. Mr. Levy is a graduate of Rutgers School of Law.

## WAYNE A. WATKINSON, ESQ.

Wayne Watkinson is a Partner in the law firm of Levy & Watkinson, P.C. whose practice, since 1996, has concentrated on representing mortgage lenders and brokers in compliance, transactional, corporate and litigation matters. In addition, he assists clients in establishing mortgage companies, and in obtaining mortgage banking licenses throughout the country. In another area of concentration, Mr. Watkinson counsels clients on the proper manner of creating affiliated business arrangements with real estate brokers, title agencies and others, which comply with RESPA and other state and federal laws and regulations.

Mr. Watkinson is the instructor for the New Jersey Mortgage Bankers Association/New Jersey Association of Mortgage Brokers (“MBA/NJAMB”) licensing and compliance course, which prepares students for the New Jersey Division of Banking’s mortgage banker licensing exam. He also is the editor of the MBA/NJAMB Mortgage Finance Regulatory Manual, a compendium of state laws and regulations.

Wayne Watkinson served from 1991 to 1996 as Deputy Attorney General assigned to represent the New Jersey Banking Department. In this position, he represented the Department in appellate and administrative courts, and in regulatory and advice matters. Most significantly, he represented the Division of Banking in NJMBA v. New Jersey Real Estate Commission, 283 N.J. Super. 233 (App. Div. 1995), a complex appeal concerning the ability of real estate licensees to engage in mortgage banking, in which the court affirmed the Department of Banking’s role in regulating the lending activities of real estate licensees. In addition, he appeared on behalf of the Department as *amicus* in Trico v. Ferero, 275 N.J. Super. 91 (App. Div. 1994), certif. den 139 N.J. 186 (1994), a case in which the court affirmed the Department’s position that refinancing transactions are regulated under the Mortgage Bankers and Brokers Act, not the Secondary Mortgage Loan Act.

Mr. Watkinson also assisted the Department and Legislature in drafting the Interstate Banking and Branching Act, L. 1996, c.17, the law which permitted foreign and out-of-state banks to branch into New Jersey for the first time, and the Licensed Lenders Act L. 1996, c.157. This latter law combines the licensing of mortgage bankers, secondary lenders, consumer lenders and sales finance companies, thereby reducing regulatory burden. Mr. Watkinson served as a Regulatory Officer for the Department of Banking from 1988 to 1991, drafting Department regulations for banks, thrifts, mortgage bankers and other licensees. He was a legal assistant for Central Appellate Research, Administrative Office of the Courts, from 1986 to 1988, providing research and memoranda for the judges of the Superior Court, Appellate Division.

Mr. Watkinson is a director in J.H. Cohn Professional Mortgage Consultants, LLC. He serves as the Vice Chair of the Banking Law Section of the N.J. Bar Association, and is the former Chair of the Legislative Committee and the Consumer Finance Committee. He has lectured on various regulatory issues before the Institute for Continuing Legal Education (“ICLE”), the NJ Mortgage Bankers Association and the Banking Law Section of the New Jersey State Bar Association. Since 1993, he has participated in several ICLE Consumer Credit Regulation Forums, and he organized ICLE panels on the Consumer Fraud Act (1998) and on Mortgage Basics (1999). He received his B.A. degree in Economics from Dickinson College in Carlisle, Pennsylvania, and his J.D. law degree from Stetson University Law School in St. Petersburg, Florida.

# MBA REGULATORY MANUAL

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**NEW JERSEY LICENSED LENDERS ACT**  
**NEW JERSEY STATUTES ANNOTATED**

**17:11C-1. Short title**

Sections 1 through 49 of this act shall be known and may be cited as the "New Jersey Licensed Lenders Act."

**17:11C-2. Definitions**

As used in this act:

"Billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.

"Borrower" means any person applying for a loan from a lender licensed under this act, whether or not the loan is granted, and any person who has actually obtained such a loan.

"Closed-end loan" with respect to a secondary mortgage loan means a mortgage loan pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time, except that: (1) the amount of the final installment payment may be substantially greater than the previous installments if the term of the loan is at least 36 months, or under 36 months if the remaining term of the first mortgage loan is under 36 months; or (2) the amount of the installment payments may vary as a result of the change in the interest rate as permitted by this act. "Closed-end loan" with respect to a consumer loan means a loan which meets the requirements of section 35 of PAL. 1996, c. 157 (C.17:11C-35) and pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time.

"Consumer loan business" means the business of making loans of money, credit, goods or things in action, which are to be used primarily for personal, family or household purposes, in the amount or value of \$50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefore than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this act and without first obtaining a license from the commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of \$50,000 or less, or in the business of negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$50,000 or less, or in the business of buying, discounting or indorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$50,000 or less, shall be deemed to be engaging in the consumer loan business.

"Commissioner" means the Commissioner of Banking and Insurance.

"Consumer lender" means a person licensed, or a person who should be licensed, under this act to engage in the consumer loan business.

"Consumer loan" means a loan of \$50,000 or less made by a consumer lender, payable in one or more installments, pursuant to the terms of this act, and not a first mortgage loan or a secondary mortgage loan.

"Controlling interest" means ownership, control or interest of 25% or more of the licensee or applicant.

"Correspondent mortgage banker" means a mortgage banker who: (1) in the regular course of business, does not hold mortgage loans in its portfolio, or service mortgage loans, for more than 90 days; and (2) has shown to the department's satisfaction an ability to fund loans through warehouse agreements, table funding agreements or otherwise.

"Department" means the Department of Banking and Insurance.

"Depository institution" means a state or federally chartered bank, savings bank, savings and loan association, building and loan association or credit union, irrespective of whether the entity accepts deposits.

"First mortgage loan" means any loan secured by a first mortgage on real property on a one to six family dwelling, a portion of which may be used for nonresidential purposes.

"Licensee" means a person who is licensed under this act, or who should be so licensed.

"Mortgage banker" means any person, not exempt under section 4 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly originates, acquires or negotiates first mortgage loans in the primary market.

"Mortgage broker" means any person, not exempt under section 4 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly negotiates, places or sells for others, or offers to negotiate, place or sell for others, first mortgage loans in the primary market.

"Open-end loan" means a secondary mortgage loan made by a secondary lender or a consumer loan made by a consumer lender pursuant to a written agreement with the borrower whereby:

(1) The lender may permit the borrower to obtain advances of money from the secondary lender from time to time or the secondary lender may advance money on behalf of the borrower from time to time as directed by the borrower;

(2) The amount of each advance and permitted interest and charges are debited to the borrower's account and payments and other credits are credited to the same account;

(3) Interest is computed on the unpaid principal balance or balances of the account from time to time; and

(4) The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

"Person" means an individual, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

"Primary market" means the market wherein first mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other conduit, and shall not include the sale or acquisition of a mortgage loan after a mortgage loan is closed.

"Sales finance company" shall have the meaning ascribed to that term in section 1 of P.L.1960, c. 40 (C.17:16C-1).

"Secondary lender" means a person licensed, or a person who should be licensed, under this act to engage in the secondary mortgage loan business.

"Secondary mortgage loan" means a loan made to an individual, association, joint venture, partnership, limited partnership association, limited liability company, trust, or any other group of individuals, however organized, except a corporation, which is secured in whole or in part by a lien upon any interest in real property, including but not limited to shares of stock in a cooperative corporation, created by a security agreement, including a mortgage, indenture, or any other similar instrument or document, which real property is subject to one or more prior mortgage liens and on which there is erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, except that the following loans shall not be subject to the provisions of this act: (1) a loan which is to be repaid in 90 days or less; (2) a loan which is taken as security for a home repair contract executed in accordance with the provisions of the "Home Repair Financing Act," P.L.1960, c. 41 (C.17:16C-62 et seq.); or (3) a loan which is the result of the private sale of a dwelling, if title to the dwelling is in the name of the seller and the seller has resided in that dwelling for at least one year, if the buyer is purchasing that dwelling for his own residence and, if the buyer, as part of the purchase price, executes a secondary mortgage in favor of the seller.

"Secondary mortgage loan business" means advertising, causing to be advertised, soliciting, negotiating, offering to make or making a secondary mortgage loan in this State, whether directly or by any person acting for his benefit.

"Solicitor" means any person not licensed as a mortgage banker, correspondent mortgage banker or mortgage broker who is employed as a solicitor by one, and not more than one, licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts first mortgage loan applications, or assists borrowers in completing first mortgage loan applications, and whose compensation is in any way based on the dollar amount or volume of first mortgage loan applications, first mortgage loan closings or other first mortgage loan activity.

**17:11C-3. License required; mortgage brokers and mortgage bankers; secondary mortgage loan business; consumer loan business**

a. No person shall act as a mortgage banker or mortgage broker, engage in the secondary mortgage loan business or engage in the consumer loan business without first obtaining a license under this act, except that a person licensed as a mortgage banker may act as a mortgage broker or mortgage solicitor, and a person licensed as a mortgage broker may act as a mortgage solicitor.

b. The department shall issue licenses under this act which specify whether a licensee may act as a mortgage banker or mortgage broker, a secondary lender or a consumer lender. A licensee may not engage in a licensed activity under the act unless the license issued by the department specifies that the licensee may engage in that licensed activity.

c. No person shall act as a solicitor without first being registered with the department.

d. No corporation, partnership, association or any other entity shall be issued or hold a license as a mortgage banker or broker or secondary lender unless one officer or principal has an individual license of that same type sought or held. The commissioner may, by regulation, require a licensed mortgage banker or broker to employ additional licensed individuals to properly supervise the licensee and its branch offices. If the employed individual licensee allows his license to lapse or for some other reason is no longer affiliated with the employing licensee, the employing licensee shall notify the commissioner within 10 days, and shall appoint another licensed individual within 90 days or such longer period as permitted by the commissioner.

**17:11C-4. Exempt individuals and institutions**

The requirements of this act which apply to a mortgage banker, mortgage broker or mortgage solicitor shall not apply to:

a. Depository institutions and insurance companies; but subsidiaries and service corporations of these institutions or companies shall not be exempt.

b. A person making, acquiring or selling mortgage loans for private investment or gain and not in the regular course of business. Only a person not engaged in the financial services industry who makes one or two mortgage loans in a calendar year, or a person employed in the financial services industry who makes one or two private mortgage loans in a calendar year outside of his employment, shall qualify for this exemption.

c. An attorney at law of this State, not actively and principally engaged in the business of a mortgage banker or broker, when the attorney renders services in the course of his practice.

d. A person licensed as a real estate broker or salesperson pursuant to R.S. 45:15-1 et seq., and not engaged in the business of a mortgage banker or broker. Any person holding a license under this act as a mortgage banker or mortgage broker shall be exempt from the licensing and other requirements of R.S. 45:15-1 et seq. in the performance of those functions authorized by this act.

e. Builders who secure mortgages for their own construction or for sale of their own construction.

#### **17:11C-5. Exemptions from licensing requirements**

- a. Depository institutions and insurance companies are exempt from licensing as secondary mortgage lenders; but subsidiaries and service corporations of these institutions or companies shall not be exempt.
- b. A real estate broker or salesperson licensed in New Jersey pursuant to R.S. 45:15-1 et seq. is not required to obtain a license to negotiate a secondary mortgage loan in the normal course of business as a real estate broker or salesman.
- c. An attorney authorized to practice law in New Jersey is not required to obtain a license to negotiate a secondary mortgage loan in the normal course of business as an attorney.
- d. Any person who makes one or two secondary mortgage loans in this State during any calendar year which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest, shall not be required to obtain a license under this act.
- e. Any employer who provides secondary mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than said interest, is not required to be licensed.
- f. A municipality, its officer, employee or any agency or instrumentality thereof, which, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the "Fair Housing Act," P.L.1985, c. 222 (C. 52:27D-301 et seq.), or in fulfillment of a regional contribution agreement with a municipality that has received such certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or advances the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated, is not required to be licensed.

#### **17:11C-6. Consumer loan business exemption**

A depository institution, trust company, insurance company, or pawnbroker operating under R.S. 45:22-1 et seq., may conduct consumer loan business without obtaining a license under this act and without being subject to this act.

#### **17:11C-7. Issuance of license; qualifications; application**

The commissioner shall issue a license under this act if the following conditions are met:

- a. A written application for a new license or for a renewal of a license shall be submitted to the commissioner on the forms and in the manner, and accompanied by such evidence in support of the application, as required by this act and as may be prescribed by the commissioner, and shall be accompanied by the required fees.
- b. An individual applicant for a new license shall qualify by examination, the content and form of which shall be approved by the commissioner. The commissioner may designate an independent testing service to prepare and administer the examinations. In addition, the commissioner by regulation may establish additional requirements for licensure as an individual, including education and experience.
- c. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant for a new license or for a renewal of a license demonstrate that the business will be operated honestly, fairly, and efficiently within the purposes of this act, and if all other licensing requirements of this act and regulations promulgated by the commissioner are met, the commissioner shall issue the license of the type sought by the applicant.
- d. A person holding a license under this act or as a sales finance company pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C. 17:16C-1 et seq.), who is in full compliance with this act, the "Retail Installment Sales Act of 1960," and the regulations promulgated thereunder, as applicable, may apply to the commissioner for a license to act as a mortgage banker or mortgage broker, a

secondary lender, a consumer lender or a sales finance company, or any combination of these capacities for which the person is not already licensed, by filing with the commissioner an abbreviated application containing the information which the commissioner deems necessary when considering whether to license that person for that specific activity, an application fee, and the necessary additional license fee.

e. Any applicant for a license pursuant to this section and any officer, director, partner or owner of a controlling interest of a corporation or partnership filing for licensure shall submit to the commissioner the applicant's name, address, fingerprints and written consent for a criminal history record background check to be performed. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event a current holder of a license or prospective applicant, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed.

#### **17:11C-8. Application fees**

a. Every application for an initial license shall be accompanied by a nonrefundable application fee as set forth in subsection d. of this section. When the applicant at the same time seeks a license to engage in more than one activity, only one application fee may be charged. With respect to a license fee imposed prior to the implementation of the assessment pursuant to P.L. 2005, c.199, the license fee, as prescribed by the commissioner by regulation, shall be based on the number of the following activities in which the person is licensed to engage under this act or the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C. 17:16C-1 et seq.): a mortgage banker or mortgage broker; a secondary lender; a consumer lender; or a sales finance company. The fee for a biennial license or a renewal thereof shall be set according to the following schedule:

- (1) If the person is licensed to engage in one activity, the fee shall not be more than \$3,000;
- (2) If the person is licensed to engage in two activities, the fee shall not be more than \$4,000;
- (3) If the person is licensed to engage in three activities, the fee shall not be more than \$5,000; and
- (4) If the person is licensed to engage in all four activities, the fee shall not be more than \$6,000.

Upon implementation of the assessment pursuant to P.L. 2005, c.199 (C.17:11C-33 et al.), a license fee shall no longer be imposed or collected by the commissioner pursuant to this section. A license shall run from the date of issuance to the end of a term of not less than two years as set by the commissioner by regulation.

b. Deleted by P.L. 2007, c.81.

c. An applicant for a mortgage solicitor registration pursuant to subsection c. of section 3 of P.L. 1996, c.157 (C.17:11C-3) shall be subject to a nonrefundable mortgage solicitor registration application fee, not to exceed \$100 as established by the commissioner by regulation. A solicitor who changes his registration to a different licensee shall be required to submit a new registration application and to pay another nonrefundable application fee.

d. An applicant shall pay to the commissioner at the time of the initial application for a license a nonrefundable application fee not to exceed the amounts specified in this subsection:

- (1) For an application for one activity, an application fee not to exceed \$700;
- (2) For an application for two activities, an application fee not to exceed \$1,000;
- (3) For an application for three activities, an application fee not to exceed \$1,300; and
- (4) For an application for four activities, an application fee not to exceed \$1,600.

e. A licensee that seeks to add an additional activity to an existing license shall pay a fee not to exceed \$300 per activity.

f. Fee amounts shall be prescribed by the commissioner by regulation.

**17:11C-9. Branch office licenses**

a. A licensee may maintain a branch office or offices. The licensee shall license all branch offices in this State and all branch offices outside this State from which the licensee has direct contact with New Jersey consumers regarding origination or brokering.

b. The commissioner shall issue a branch office license if:

(1) The licensee has submitted a completed application form and a branch application fee pursuant to the schedule provided in subsection of d. of section 8 of P.L.1996, c.157 (C.17:11C-8);

(2) The application for the branch office demonstrates that the office is in a suitable location; and

(3) The application contains a certification that the office is covered by the surety bond.

c. Deleted by amendment, P.L. 2007, c.81.

**17:11C-10. Information contained on license; posting**

a. The license shall state the name of the licensee and the licensee's place of business or businesses, as applicable, and shall contain such other information as the commissioner may see fit to require.

b. The license shall be posted conspicuously in the place or places of business of the licensee.

c. A licensee or any other person shall not photocopy or otherwise reproduce the license except for legitimate business purposes.

d. Licenses issued pursuant to this act or the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C. 17:16C-1 et seq.) shall not be transferable or assignable, other than as provided by section 12 of this act.

e. No licensee shall change the name or address of the licensee's place or places of business without notice to the commissioner.

**17:11C-11. Duration of license; payment of biennial fee; renewals**

a. Each license issued pursuant to this act shall expire at the end of the license period of not less than two years as set by the commissioner by regulation..

b. Deleted by amendment, P.L. 2007, c.81.

c. The commissioner may by regulation provide for individual mortgage banker, mortgage broker and secondary lender licenses to continue in existence in an inactive status for a specified period of time.

**17:11C-12. Sale or transfer of controlling interest in licensed business; prior approval; notice; hearing**

Any sale or transfer of a controlling interest in a licensee's or applicant's business shall be approved by the commissioner prior to the transfer or sale, after the licensee or applicant has provided written notice of the proposed sale or transfer to the commissioner. The commissioner shall approve the transfer or sale unless the commissioner determines, following an opportunity for a hearing, that sufficient grounds exist to deny, revoke or suspend the license. The sale or transfer shall be deemed approved if the commissioner does not deny the application within 30 days after receipt, or 10 days when the sale or transfer is to another licensee under this act. The commissioner may charge such fee as set by regulation, not to exceed \$200, for considering an application for a sale or transfer of a controlling interest.

### **17:11C-13. Bonds required**

A licensee, prior to doing business as a mortgage banker or broker or as a secondary lender, shall obtain a bond in an amount and form prescribed by regulations of the commissioner, but not less than \$25,000. The bond shall be obtained from a surety company authorized by law to do business in this State. In lieu of individual bonds, a licensee may procure a blanket bond to cover all employees licensed under the provisions of this act in an amount as prescribed by regulations of the commissioner. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the licensee or its employees. No bond shall comply with the requirements of this section unless the bond contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is filed in the department at least 30 days before the day upon which cancellation shall take effect.

### **17:11C-14. Mortgage bankers; tangible net worth; amounts needed for licensing**

a. Each applicant for a license as a mortgage banker shall demonstrate that it has tangible net worth of \$250,000, except that an applicant for a correspondent mortgage banker license shall demonstrate that it has tangible net worth of at least \$150,000. Each applicant for a license as a mortgage broker shall demonstrate that it has tangible net worth of at least \$50,000.

b. Each licensed mortgage banker shall maintain at all times tangible net worth of at least \$250,000, except that a correspondent mortgage banker shall maintain at all times tangible net worth of at least \$150,000. Each licensed mortgage broker shall maintain at all times tangible net worth of at least \$50,000.

c. In the case of the application of an officer, partner, member, employee or other principal of a corporation, partnership, association or other entity, that individual shall not be required to demonstrate that the individual has the tangible net worth required by this section.

d. The commissioner may by regulation: define the term "tangible net worth;" provide for a phase-in period for licensees acting as mortgage bankers or mortgage brokers to comply with the tangible net worth requirements of this section; and establish standards for determining compliance with those requirements and any remedial action, including suspension of a license, for failure to comply with those requirements.

e. The net worth and liquid asset requirements of this section and of sections 15 and 16 of this act are not cumulative, and the net worth and liquid assets necessary to satisfy the requirements for one licensed activity may also be used to satisfy another licensed activity.

### **17:11C-15. Secondary lenders; liquid assets requirements**

a. Each applicant for a license as a secondary lender shall demonstrate that the applicant has liquid assets of at least \$150,000 available for the purpose of making secondary mortgage loans and a net worth of at least \$150,000 except that, in the case of the application of an officer, partner, member or other principal of a corporation, partnership, association or other entity, that individual shall not be required to demonstrate that the individual has liquid assets and a net worth of at least \$150,000.

b. Each secondary lender shall maintain a net worth and liquid assets of \$150,000.00 at all times except that, in the case of an officer, partner, member or other principal of a corporation, partnership, association or other entity, that individual shall not be required to maintain a net worth of at least \$150,000.

c. In lieu of the liquid asset requirement of this section, the commissioner may, by regulation, require that a licensee demonstrate to the satisfaction of the commissioner that it has adequate means to fund loans through lines of credit, or otherwise.

#### **17:11C-16. Consumer lenders; net worth and available liquid assets**

a. Every applicant for a license as a consumer lender shall prove in a form satisfactory to the commissioner, that the applicant has a net worth of at least \$100,000, and has available for the purpose of making consumer loans liquid assets of at least \$100,000.

b. Every consumer lender shall have at all times a net worth of at least \$100,000 and shall maintain at all times assets of at least \$100,000 in liquid form available for or actually used in the making of consumer loans.

#### **17:11C-17. Maintenance of place of business within state**

a. A licensee engaging in business as a mortgage banker or mortgage broker, a secondary lender or a consumer lender shall have and maintain a place of business in this State for the transaction of business. Nothing in this act or in the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C. 17:16C-1 et seq.), shall be construed to require an entity licensed as only a sales finance company to maintain a branch office in this State so long as it is qualified to do business here and has a registered agent for service of process.

b. If a licensee maintains a branch office or offices, one of the offices shall be designated as a principal office.

c. A licensee which changes the address of its principal office or a branch office shall file with the commissioner those documents required by regulation, and shall pay an administrative fee not in excess of \$100.

#### **17:11C-18. Refusal to issue or renew license; revocation or suspension of license; grounds**

a. The commissioner may refuse to issue and may revoke, suspend or refuse to renew a license or impose a penalty pursuant to this act, or refuse to register or rescind or revoke a solicitor registration, if the commissioner finds, after notice and an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) and any rules adopted thereunder, that any person, applicant for or holder of the license has:

(1) Violated any of the provisions of this act or any order, rule or regulation made or issued pursuant to this act;

(2) Withheld information or made a material misstatement in the application for the license;

(3) Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or had a final judgment entered against him in a civil action upon grounds of fraud, misrepresentation or deceit;

(4) Become insolvent, or failed to attain or maintain the required net worth;

(5) Demonstrated unworthiness, incompetence, bad faith or dishonesty in the transaction of business as a licensee; or

(6) Engaged in any other conduct which would be deemed by the commissioner to be the cause for denial of the license.

b. A license of a corporation, partnership, association or other entity may be suspended or revoked if any officer, director or member of the licensee has committed any act which would be cause for suspending or revoking a license issued to him as an individual.

c. If the license issued to an individual is revoked or suspended, the license issued to the partnership, association, corporation or other entity shall also be revoked or suspended by the commissioner, unless within the time fixed by the commissioner, in the case of a partnership, the connection therewith of the member whose license has been revoked shall be severed and that member's interest in the partnership and share in its activities brought to an end, or in the case of an association, corporation, or other entity, the offending officer or director shall be discharged and shall have no further participation in its activity.



Officers and directors of the corporation shall be required to fully divest themselves of all stock, bonds or other corporate holdings.

d. The department may suspend or revoke the entire license of a person whose license is suspended or revoked for only one of its authorized licensed activities.

e. Any licensee may surrender any license by delivering to the commissioner written notice that the license is surrendered, along with the license, but the surrender shall not affect the licensee's civil or criminal liability for an act committed prior to the surrender.

#### **17:11C-19. Recordkeeping requirements**

a. Every licensee shall maintain, at the place of business in this State designated in the license, those books, accounts, records and documents of the business conducted under the license as may be prescribed by the commissioner to enable the commissioner to determine whether the business of the licensee is being conducted in accordance with the provisions of this act and the orders, rules and regulations issued hereunder.

b. A licensee operating two or more licensed places of business in this State shall maintain the records of all licensed places at any one of the licensed places. Upon appropriate notice to the commissioner and if a change in location of records is made, the commissioner shall be notified in writing of the change within five business days of the change.

c. Every licensee shall preserve all books, accounts, records and documents pertaining to its business, and keep them available for examination by the commissioner, for at least three years from the date of original entry, or such longer time as prescribed by the commissioner by regulation.

d. A licensee may, upon approval of the commissioner, keep records at a location, designated by the licensee, outside this State, provided that the licensee shall make the records available in this State upon request of the commissioner, or, at its option have the records examined at its out-of-State location and shall pay the reasonable expenses of the commissioner for the examination.

#### **17:11C-20. False, misleading or deceptive advertising**

a. No person or licensee shall advertise, print, display, publish, distribute, telecast or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, televised or broadcast, in any manner, any statement or representation which is false, misleading or deceptive.

b. No licensee shall transact business provided for by this act under any name other than that named in the license.

c. No licensee shall make any statement or representation that the licensee will provide "immediate approval" of a mortgage loan application or "immediate closing" of a loan or will afford unqualified access to credit.

#### **17:11C-21. Insurance obtained by license with borrower's consent; statements to be provided to borrower**

a. A borrower shall not be required to purchase credit life or accident and health insurance or credit involuntary unemployment insurance in connection with a first mortgage loan, a secondary mortgage loan or a consumer loan. If the borrower or borrowers consent thereto in writing, a licensee may obtain or provide:

(1) Insurance on the life and on the health or disability, or both, of one borrower, and on the lives, health or disability of two borrowers pursuant to the provisions of N.J.S. 17B:29-1 et seq.; and

(2) Credit involuntary unemployment insurance in accordance with forms and rates filed and approved by the commissioner pursuant to applicable regulations.

b. If a licensee obtains or provides any credit insurance for a borrower or borrowers pursuant to subsection a. of this section, a licensee may deduct from the principal of a loan and retain an amount equal to the premium lawfully charged by the insurance company. The premium may be charged monthly in the case of an open-end loan or open-end consumer loan. The amount so deducted and retained shall not be considered a prohibited charge or amount of any examination, service, brokerage, commission, expense, fee or bonus or other thing or otherwise.

c. If a borrower or borrowers obtain such insurance from or through a licensee, the licensee shall show the amount of the charge for the insurance and cause to be delivered to the borrower or borrowers a copy of the policy, certificate or other evidence of that insurance when the loan is made. Nothing in this act shall prohibit the licensee from collecting the premium or identifiable charge for insurance permitted by this section and from receiving and retaining any dividend, or any other gain or advantage resulting from that insurance.

d. A licensee may require a borrower to demonstrate that the property securing a first mortgage loan or secondary mortgage loan is insured against damage or loss due to fire and other perils, including those of extended coverage, for a term not to exceed the term of the loan and in an amount not to exceed the amount of the loan, together with the amount needed to satisfy all prior liens on that property.

The licensee shall provide the borrower with the following written statement, to be printed in at least 10-point bold type:

#### NOTICE TO THE BORROWER

YOU MAY BE REQUIRED TO PURCHASE PROPERTY INSURANCE AS A CONDITION OF RECEIVING THE LOAN.

IF PROPERTY INSURANCE IS REQUIRED, YOU MAY SECURE INSURANCE FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.

e. Incident to a consumer loan, a licensee may make available, insurance covering direct or indirect damage or loss, by fire or other perils, including those of extended coverage, to the personal property of the borrower all or part of which is security for the loan. The insurance shall be for an amount and term not to exceed the total amount of payments and term of the loan.

The licensee shall provide the borrower with the following written statement, to be printed in at least 10-point bold type:

#### NOTICE TO THE BORROWER

YOU ARE NOT REQUIRED TO PURCHASE PERSONAL PROPERTY INSURANCE AS A CONDITION OF RECEIVING THE CONSUMER LOAN. IF YOU DESIRE PERSONAL PROPERTY INSURANCE YOU MAY SECURE INSURANCE FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.

#### **17:11C-22. Prohibited acts and practices; mortgage bankers and mortgage brokers**

a. No person shall use the word "mortgage" or similar words in any advertising, signs, letterheads, cards, or like matter which tend to represent that the person arranges first mortgage loans unless that person is licensed to act as a mortgage banker or mortgage broker under this act, or is exempt from licensing under section 4 of this act. No person licensed under this act shall be granted a license in a name containing such words as "insured," "bonded," "guaranteed," "secured" and the like. Notwithstanding the provisions of section 18 of P.L.1948, c. 67 (C.17:9A-18) or any other law to the contrary, a person licensed under this act to act as a mortgage banker or mortgage broker may use the terms "mortgage banker" or "mortgage broker," respectively, as part of the licensee's name.

- b. No mortgage banker or mortgage broker shall, in connection with or incidental to the making of a first mortgage loan, require or permit the mortgage instrument or bond or note to be signed by a party to the transaction if the instrument contains any blank spaces to be filled in after it has been signed, except blank spaces relating to recording.
- c. No mortgage banker or mortgage broker shall charge or exact directly or indirectly from the mortgagor or any other person fees, commissions or charges not authorized by this act.
- d. No person shall receive any commission, bonus or fee in connection with arranging or originating a first mortgage loan for a borrower unless that person is licensed or exempt from licensure as a mortgage banker or mortgage broker, except that a registered mortgage solicitor may receive a commission, bonus, or fee from his employer.
- e. No person or licensee authorized to act as a mortgage banker or mortgage broker shall pay any commission, bonus or fee to any person not licensed or not exempt under the provisions of this act in connection with arranging for or originating a mortgage loan for a borrower, except that a registered mortgage solicitor may be paid a bonus, commission or fee by his employer.
- f. No person shall obtain or attempt to obtain a license by fraud or misrepresentation.
- g. No mortgage banker or mortgage broker shall misrepresent, circumvent, or conceal the nature of any material particular of any transaction to which the mortgage banker or broker is a party.
- h. No mortgage banker or mortgage broker shall fail to disburse funds in accordance with the mortgage banker's or broker's agreements, unless otherwise ordered by the commissioner or a court of this State or of the United States.
- i. No mortgage banker or mortgage broker shall fail without good cause to account or deliver to any person any personal property, money, fund, deposit, check, draft, mortgage, document or thing of value, which is not the mortgage banker's or broker's property, or which the mortgage banker or broker is not in law or equity entitled to retain under the circumstances, at the time which has been agreed upon, or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery.
- j. No person or licensee shall fail to place in escrow, immediately upon receipt, any money, fund, deposit, check or draft entrusted to him by any person dealing with him as a mortgage banker or mortgage broker, in a manner approved by the commissioner, or to deposit the funds in a trust or escrow account maintained by him with a financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, wherein the funds shall be kept until the disbursement thereof is properly authorized.
- k. If a mortgage banker or mortgage broker provides loan proceeds to a closing agent for the purpose of closing and settling a mortgage transaction the mortgage banker or mortgage broker shall not fail (1) to present a certified check, cashier's check, teller's check or bank check for the proceeds of the first mortgage loan; (2) to arrange an electronic fund transfer for the proceeds of the loan; or (3) to provide for payment by cash to the closing agent at a reasonable time and place prior to the time of the mortgage closing transaction. The closing agent shall deposit the loan proceeds in a trust or escrow account, which shall not be commingled with the agent's own funds, and shall disburse the loan proceeds upon the closing or settlement in accordance with the settlement documents. Nothing contained in this subsection k. shall require a mortgage banker or mortgage broker to utilize a closing agent, nor prevent the mortgage banker or mortgage broker from directly disbursing loan proceeds from the account of the mortgage banker or mortgage broker to the mortgagor and other persons entitled to receive disbursements from the settlement if a closing agent is not used. Nothing contained in this subsection k. shall prevent the person or licensee from assessing a reasonable charge as set forth by regulation by the commissioner to reflect the additional cost to the person or licensee for the issuance of a certified, cashier's, teller's or bank check or for arranging an electronic fund transfer. That reasonable charge shall be fully disclosed at application or at or prior to the issuance of the loan commitment. A "bank check" means a negotiable instrument drawn by a state or federally chartered bank, savings bank or savings and loan association on itself or on its account in another state or federally chartered bank, savings bank or savings and loan association doing business in this State. A "teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.

**17:11C-23. Fees charged by mortgage bankers and mortgage brokers**

a. Notwithstanding the provisions of any other law, a person licensed as a mortgage banker or correspondent mortgage banker, incidental to the origination, processing and closing of a mortgage loan transaction, shall have the right to charge only the following fees: (1) credit report fee; (2) appraisal fee; (3) application fee; (4) commitment fee; (5) warehouse fee; (6) fees necessary to reimburse the mortgage banker for charges imposed by third parties; and (7) discount points.

b. Notwithstanding the provisions of any other law, a person licensed as a mortgage broker, incidental to the brokering of a first mortgage loan transaction, shall have the right to charge only the following fees: (1) application fee; and (2) discount points.

c. No person licensed as a mortgage banker, correspondent mortgage banker or mortgage broker may charge any fee either not expressly authorized by this section or authorized by the commissioner by regulation.

**17:11C-24. Secondary lenders; interest rates charged on closed-end loans; statement of account**

a. Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, a person licensed as a secondary lender may make closed-end loans, and may charge, contract for and receive thereon interest at an annual percentage rate agreed to by the licensee and the borrower.

b. The note evidencing a closed-end loan may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the lender. If the note provides for a variation in the interest rate, that fact shall be clearly described in plain language, in at least eight-point bold face type on the face of the note. If the note provides for a final payment which is substantially greater than the previous installments, that fact, together with a statement that the lender is under no obligation to refinance the loan, unless the lender unconditionally obligates itself to do so, shall be clearly disclosed in plain language, in at least eight-point bold face type on the face of the note. No rate increase or decrease shall take effect during the first six months of the term of the loan. Thereafter, no rate increase or decrease shall take effect unless at least 30 days prior to the effective date of that increase or decrease, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the increase or decrease, and unless at least six months have elapsed without any increase in the rate.

c. Upon written request from the borrower, a secondary lender shall give to the borrower, without charge, within five days from the date of receipt of that request, a written statement of the borrower's account, which shall show the dates and amounts of all installment payments on a closed-end loan credited to the borrower's account, the dates, amounts and explanation of all other charges or credits to the account and the unpaid balance thereof. A secondary lender shall not be required to furnish more than two such statements in any 12-month period.

**17:11C-25. Open-end loans made by secondary lenders; terms and conditions**

Notwithstanding the provisions of R.S. 31:1-1 or any other law to the contrary, and subject to all applicable provisions of this act, a person licensed as a secondary lender shall have authority to make open-end loans as defined in section 2 of this act, upon the same terms and conditions permitted to banks, savings banks, savings and loan associations pursuant to State and federal laws and regulations promulgated thereunder, and may charge, contract for, and receive thereon, interest at an annual percentage rate agreed to by the licensee and the borrower, provided however, that with respect to fees and other charges permitted in connection with open-end loans, secondary mortgage lenders shall be subject to the provisions of this act.

**17:11C-26. Instrument evidencing secondary mortgage loan; form and contents**

An instrument evidencing a secondary mortgage loan shall:

a. Be in the form of a promissory note for a closed-end loan, and in the form of a loan agreement for an open-end loan, and shall be identifiable by the use of the words "Secondary Mortgage Loan" printed prominently, in 14-point bold type or larger, centered and at the top of the promissory note or loan agreement.

b. Provide for the payment, in full, of the total amount of the secondary mortgage loan in substantially equal payment periods, measured in terms of weeks or months, and, except as otherwise permitted, substantially equal installment payment amounts, except that the initial payment period may be deferred for 60 days, and, provided further, when appropriate for the purpose of facilitating payment in accordance with the borrower's intermittent income, a promissory note or loan agreement may provide an installment schedule which reduces or omits payments over any period or periods of time during which the borrower's income is reduced or suspended, and the final installment may be \$1 more or less than the amount of all other installment payments.

c. Contain the following notice printed prominently, in the identical form indicated below, in 10-point bold type or larger, directly above the space provided for the signature of the borrower.

**"NOTICE TO BORROWER**

Read this promissory note or loan agreement before you sign.

Do not sign this promissory note or loan agreement if it contains blank spaces.

The promissory note or loan agreement is secured by a secondary mortgage on your real property."

d. Be completed in full before it is signed by the borrower. In the event that it is unnecessary to fill in a blank space provided for in any instrument, the figure -0-, a dash, line or the word "none" shall be inserted in such blank space.

**17:11C-27. Prohibited written agreements executed in connection with secondary mortgage**

No writing of any kind executed in connection with a secondary mortgage loan shall contain:

a. A power of attorney to confess judgment;

b. An assignment of or order for the payment of any salary, wages, commissions or any other compensation for services, or any part thereof, earned or to be earned.

c. An agreement to pay any amount other than the unpaid balance of the promissory note or loan agreement or any other charge authorized by this act.

d. A provision relieving the licensee from liability for any claim, or from any legal remedy, which the borrower may have against the licensee under the terms of the promissory note or loan agreement.

e. A provision whereby the borrower waives any right of action against the licensee, a subsequent holder or any person acting on the licensee's or holder's behalf for any illegal act committed in the collection of payments under the promissory note or loan agreement.

f. An acceleration clause under which the unpaid balance of the promissory note or loan agreement not yet matured or any part thereof may be declared due and payable because the licensee or subsequent holder deems himself to be insecure.

## **17:11C-28. Secondary lenders; authorized fees, points, charges**

a. A secondary lender shall not contract for, charge, receive or collect directly or indirectly, any of the following in connection with a secondary mortgage loan: a broker's or finder's fee; commission; expense; fine; penalty; premium; or any other thing of value other than the charges authorized by this act; except the expenses incurred on actual sale of the real property in foreclosure proceedings or upon the entry of judgment, which are otherwise authorized by law; provided, however, that:

(1) A secondary lender may charge and receive no more than three discount points computed as a percentage of the principal amount of the loan and may add such discount points to the principal balance of the loan, which discount points shall be fully earned when the loan is made. The annual percentage rate charged to the borrower, including the discount points, if any, shall be subject to N.J.S.2C:21-19. As used in this paragraph, "discount point" means one percent of the principal amount of the loan, and "principal amount of the loan" means the total amount of credit extended, including all loan closing fees, expenses or costs that are financed, but excluding the discount points; and

(2) A secondary lender may require a borrower to pay a reasonable legal fee at the time of the execution of the secondary mortgage loan, provided that any legal fee shall represent a charge actually incurred in connection with the secondary mortgage loan and shall not be paid to any person other than an attorney authorized to practice law in this State; provided further that the legal fee shall be evidenced by a statement issued to the licensee from the attorney.

b. Secondary lenders shall have authority to collect fees for title examination, abstract of title, survey, title insurance, credit reports, appraisals, and recording fees when those fees are actually paid by the licensee to a third party for those services or purposes and to include those fees in the amount of the loan principal.

c. Secondary lenders shall also have the authority to charge and collect a returned check fee in an amount not to exceed \$20 which the secondary lender may charge the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account. Licensees shall also have the authority to charge and collect a late charge in any amount as may be provided in the note or loan agreement, but no late charge shall exceed 5% of the amount of payment in default. Not more than one late charge shall be assessed on any one payment in arrears.

d. A secondary lender shall not make any other charge or accept an advance deposit prior to the time a secondary mortgage loan is closed, except that a secondary lender may charge:

(1) an application fee at closing; and

(2) on an open-end loan, an annual fee of \$50 or 1% of the line of credit, whichever is less.

e. A promissory note of loan agreement may provide for the payment of attorney fees in the event it becomes necessary to refer the promissory note or loan agreement to an attorney for collection; provided, however, that any such provision shall be void and unenforceable unless:

(1) The promissory note or loan agreement is referred to an attorney authorized to practice law in this State;

(2) The attorney to whom the promissory note or loan agreement is referred is not a partner, officer, director or employee, whether salaried or commissioned, of the secondary lender; and

(3) Suit is actually filed by the attorney to whom the promissory note or loan agreement is referred and subsequently decided in favor of the secondary lender, in which event the attorney fees shall not exceed 15% of the first \$500, 10% of the next \$500 and 5% of any excess amount due and owing under the promissory note or loan agreement and, provided further that at least 15 days prior to the commencement of the suit, the secondary lender or his attorney shall send to the borrower, by certified or registered mail, return receipt requested, at the borrower's last known address, a statement of the secondary lender's intention to sue, which statement shall also specify the amount of principal, interest and any other charge due and owing to the secondary lender.

**17:11C-29. Excess interest, costs or other charges; collection of principal only; unintentional error by licensee**

a. If a secondary lender charges or collects interest, costs or other charges on a secondary mortgage loan in excess of those permitted by this act, the licensee may collect only the principal amount of the loan, and may not collect interest, costs or other charges with respect to the loan. In addition, a licensee who knowingly and willfully violates any provision of this act shall also forfeit to the borrower three times any amount of the interest, costs or other charges collected in excess of that authorized by law.

b. A secondary lender shall have no liability on a secondary mortgage loan for an unintentional error if within 90 days after discovering an error the licensee notifies the borrower of the error and makes adjustments in the account as necessary to assure that the borrower will not be required to pay any interest, costs or other charges which aggregate in excess of the charges permitted under this act for secondary mortgage loans. The discovery of an unintentional error within the meaning of this section shall include an entry of a judgment by a court of competent jurisdiction holding that a rule or regulation with which the licensee acted in conformity was invalid or in violation of this act, and a licensee shall have no liability for that unintentional error if the licensee takes the actions required upon discovery of an error pursuant to this section within the time stated therein following entry of such a judgment.

**17:11C-30. Instruments, documents, receipts to be provided to borrowers; refunds or credits**

A secondary lender shall:

a. Give to the borrower, without charge, a copy of every instrument, document or other writing the borrower signs, and written evidence of any insurance obtained from the licensee.

b. Give to the borrower, without charge, at the time a closed-end loan is made, and at the time of the first advance on an open-end loan, a closing statement which itemizes the individual amounts disbursed to or on behalf of the borrower, including, but not limited to, the premium for insurance, if any, the total amount of funds so disbursed, the amount of the interest charge, total amount of the loan, the amount, number and due date of the installment payments and the interest charge expressed as an annual percentage rate, as applicable.

c. In the event a borrower's application for a secondary mortgage loan is denied, notify the borrower, in writing, of that denial and provided further, the name of any such borrower or a list of such borrowers shall not be referred by the licensee, in any manner whatsoever, to any other lender, retail seller of personal property or services or to any other person, whether in this or any other state.

d. If a secondary mortgage loan is not consummated, return all documents executed by or belonging to the borrower.

e. When payment is made in cash on an account of a secondary mortgage loan, give to the borrower, without charge, at the time that payment is actually received, a written receipt which shall show the name and address of the licensee, the name and address of the borrower, account number or other identification mark or symbol, date and amount paid.

f. When a closed-end loan is paid in full, or when an open-end loan is paid in full and the borrower has notified the licensee in writing to discontinue his account with the licensee:

(1) Refund or credit to the borrower, in accordance with regulations promulgated by the commissioner, any unearned portion of the premium for any insurance, if a premium for such insurance was disbursed on behalf of the borrower at the time the secondary mortgage loan was originally made.

(2) Stamp or write on the face of the promissory note or loan agreement evidencing the borrower's secondary mortgage loan indebtedness "Paid in Full" or "Canceled," the date paid and the name and address of the licensee and, within 45 days, return the promissory note or loan agreement to the borrower.

(3) Release any lien on real property and cancel the same of record pursuant to P.L.1975, c. 137 (C. 46:18-11.2 et seq.), and, at the time the promissory note or loan agreement evidencing the borrower's secondary mortgage loan indebtedness is returned, deliver to the borrower such good and sufficient assignments, releases or any other certificate, instrument or document as may be necessary to vest the borrower with complete evidence of title, insofar as the applicable secondary mortgage loan is concerned, to the real property, except that the licensee may require the borrower to pay any charge imposed upon the licensee by a county recording officer to effect the cancellation or release.

#### **17:11C-31. Secondary lenders; prohibited acts and practices**

A secondary lender shall not:

a. Transact any business subject to the provisions of this act under any other name or at any other location except that designated in his license. For the purpose of this section, the transaction of business includes, but is not limited to, the signing of any instrument, document or any other form by the borrower, except that a borrower's application for a secondary mortgage loan need not be signed in the office of the licensee and a secondary mortgage loan need not be closed at the office of a licensee so long as it is closed in New Jersey at the office of an attorney admitted to practice in this State.

b. Request that a borrower incorporate in connection with a secondary mortgage loan or aid or abet such a scheme.

c. Make a secondary mortgage loan which has been referred by a retail seller, who, in connection with that referral, has required the borrower to purchase personal property or services or has indicated that such a purchase is necessary as a condition precedent for that loan.

d. Require or accept from a borrower any collateral or security for a secondary mortgage loan other than a mortgage, indenture or any other similar instrument or document which creates a lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation.

e. Solicit secondary mortgage loan business through any other person by paying, directly or indirectly, for such business referred to the licensee by any such person, except that a licensee may solicit secondary mortgage loan business on behalf of another licensee or lender expressly authorized to make secondary mortgage loans in this State if (1) that solicitation results in no additional cost or expense to the borrower; and (2) the application and all advertising in connection therewith clearly disclose the identity of the person or entity which will be making the loan. If those conditions are met, a licensee may collect a fee or a commission from the lender as consideration for the solicitation.

#### **17:11C-32. Consumer loan contracts; interest rates**

a. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, every licensee authorized to engage in the consumer loan business may loan any sum of money not exceeding \$50,000, repayable in an installment or installments, and may charge, contract for and receive thereon interest at an annual percentage rate or rates agreed to by the licensee and the borrower.

b. A closed-end consumer loan contract may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the lender. No increase during the entire loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period. The lender shall not be obligated to decrease the interest rate more than 6% over the term of the loan, nor more than 3% per annum during any 12-month period. If a rate increase is applied to the loan, the lender shall also be obligated to adopt and implement uniform standards for decreasing the rate. If the contract provides for the possibility of an increase or decrease or both in the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the contract. No rate increase shall take effect unless (1) at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such increase, and (2) unless at least 365 days have elapsed without any increase in the rate. Where the loan contract so provides for an increase or decrease in the rate of interest, the installments may vary in amount, notwithstanding any other law to the contrary, except that if the rate increases, the borrower may request, and the lender shall



provide for, either an increase in the amount of the installment payment or an extension of the term of the loan, or some combination of an increase in the amount of the installment payment and extension of the term.

c. An open-end loan agreement may provide that the lender may at any time, or from time to time, change the terms of the agreement, including the terms governing the periodic interest rate, calculation of interest or the method of computing the required amount of periodic installment payments, provided however, that:

(1) the periodic interest rate shall not be changed more than once in each billing cycle;

(2) any change in the periodic interest rate shall correspond to the movement of a market interest rate index specified in the agreement which is readily verifiable by the borrower and beyond the control of the lender;

(3) a change in any term of the agreement, including the periodic interest rate, may be permitted to apply to any then-outstanding unpaid indebtedness in the borrower's account, including any indebtedness which shall have arisen from advances obtained prior to the effective date of the change, so long as that fact is clearly and conspicuously disclosed in the agreement;

(4) if the agreement provides for the possibility of a change in any term of the agreement, including the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the written notice; and

(5) no change in any term of the agreement or of the index specified in the agreement shall be effective unless: (a) at least 30 days prior to the effective date of the change, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the change and the indebtedness to which it applies, and states that the incurrence by the borrower or another person authorized by him of any further indebtedness under the law to which the agreement relates on or after the effective date of the change specified in the notice shall constitute acceptance of the change; and (b) either the borrower agrees in writing to the change or the borrower or another person authorized by him incurs further indebtedness on or after the effective date of the change stated in that notice, which indebtedness may include outstanding balances. Any borrower who fails to use the borrower's account or so to indicate agreement to the change shall be permitted to pay the outstanding unpaid indebtedness in the borrower's account in accordance with the terms governing the open-end consumer loan agreement without giving effect to the change.

d. The consumer lender shall notify each affected borrower in a consumer loan agreement of any change in the manner set forth in the closed-end and open-end agreement governing the plan and in compliance with the requirements of the federal "Truth in Lending Act" (15 U.S.C.s.1601 et seq. ) and regulations promulgated thereunder, as in effect from time to time, if applicable.

e. The interest and periodic payments for consumer loans at these rates shall be computed from the standard tables based on the actuarial or annuity method which conforms to the so-called "United States Rule of Partial Payments," which provides that interest shall be calculated whenever a payment is made and the payment shall be first applied to the payment of interest and if it exceeds the interest due, the balance is to be applied to diminish principal. If the payment is insufficient to pay the entire amount of interest, the balance of interest due shall not be added to principal, so as to produce interest thereon.

f. No interest on a consumer loan shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances. For the purpose of computing interest, all installment payments shall be applied on the date of receipt, and interest shall be charged for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

g. No consumer lender shall induce or permit any person nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of a consumer loan at the same time for the purpose of obtaining a higher rate of interest than would otherwise be permitted by this section. This prohibition shall not apply to any loan made pursuant to any other law of this State.

### **17:11C-33. Consumer loans; unauthorized charges; violations; penalties; unintentional errors**

a. In addition to the interest herein provided for on a consumer loan, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except for any amount actually paid by a licensee to a public official for the recording of a security interest in connection with security given for the loan and (1) amounts for insurance obtained or provided by the licensee in accordance with the provisions of this act; (2) on actual sale of the security in foreclosure proceedings or upon the entry of judgment; (3) a returned check fee in an amount not to exceed \$20, which the licensee may charge the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account; and (4) an annual fee on open-end accounts which may not exceed an amount equal to one percent of the line of credit or \$50, whichever is less.

b. A consumer lender who violates or participates in the violation of any provision of section 3, 19, 20, 21, 34, 35 or 36 or subsection a., b., or c. of section 32, or subsection a. of this section, or subsection e. or f. of section 41 of this act, shall be guilty of a crime of the fourth degree. A contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, shall be void and the lender shall have no right to collect or receive any principal, interest or charges unless the act was the result of a good faith error, including a good faith error made as a result of a licensee's acting in conformity with a rule or regulation of the commissioner which is later held to be invalid or in violation of any provision of this act by a judgment of a court of competent jurisdiction, and the licensee notifies the borrower of the error within 90 days after discovering it and makes adjustments in the account necessary to assure that the borrower will not be required to pay any interest, costs, or other charges which aggregate in excess of the charges permitted under this act. If any interest, costs, consideration or charges in excess of those permitted are charged, contracted for or received, except as the result of a good faith error, the consumer lender may collect only the principal amount of the loan, and may not collect interest, costs or other charges with respect to the loan. In addition, a consumer lender who knowingly and willfully violates any provision of this act shall also forfeit to the borrower three times any amount of the interest, costs or other charges collected in excess of that authorized by law.

c. A consumer lender shall have no liability on a consumer loan for an unintentional error if within 90 days after discovering an error the licensee notifies the borrower of the error and makes adjustments in the account as necessary to assure that the borrower will not be required to pay any interest, costs or other charges which aggregate in excess of the charges permitted under this act for consumer loans. The discovery of an unintentional error within the meaning of this section shall include an entry of a judgment by a court of competent jurisdiction holding that a rule or regulation with which the consumer lender acted in conformity was invalid or in violation of this act, and a consumer lender shall have no liability for such unintentional error if the consumer lender takes the actions required by this section upon discovery of such an error within the time stated therein following entry of such a judgment.

### **17:11C-34. Duties of lender incident to closed-end consumer loan**

Every consumer lender, incident to a closed-end consumer loan, shall:

a. Deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, the payment schedule, the amount of interest charges, and the annual percentage rate of interest;

b. Give to any borrower who makes a payment in cash a plain and complete receipt for all payments made on account of the loan at the time payments are made, specifying the amount applied to interest and the amount, if any, applied to principal, and stating the unpaid balance, if any of the loan;

c. Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply the payment first to all interest in full at the agreed rate up to the date of payment;

d. Upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower, or a copy thereof, with the word "paid" or "canceled," and release, or give the borrower evidence to release any mortgage, or security interest which no longer secures an obligation to the licensee, restore any pledge, cancel and return any note or a copy thereof, and cancel and return any assignment or a copy thereof given to the licensee by the borrower.

No consumer lender shall take any confession of judgment incident to a closed- end consumer loan. No consumer lender shall, incident to a closed-end consumer loan take any note, promise to pay, or security that does not accurately disclose the amount of the loan, the date of the loan, the payment schedule, the amount of interest charges, and the annual percentage rate of interest, nor any instrument in which blanks are left to be filled in after the loan is made.

**17:11C-35. Maximum time periods for closed-end consumer loans**

a. No closed-end consumer loan in an amount of \$1,000 or less shall be made for a greater period of time than 36 months and 15 days.

b. No closed-end consumer loan in an amount in excess of \$1,000, but not exceeding \$2,500, shall be made for a greater period of time than 48 months and 15 days.

c. No closed-end consumer loan in an amount in excess of \$2,500, but not exceeding \$5,000, shall be made for a greater period of time than 60 months and 15 days.

d. No closed-end consumer loan in an amount in excess of \$5,000, but not exceeding \$10,000, shall be made for a greater period of time than 84 months and 15 days.

e. No closed-end consumer loan in an amount in excess of \$10,000 shall be made for a greater period of time than 120 months and 15 days.

**17:11C-36. Interest on open-end consumer loans; minimum payments; charges; security interests**

a. A licensee authorized to engage in the consumer loan business may make open-end consumer loans and may contract for and receive thereon interest at an annual percentage rate or rates agreed to by the licensee and the borrower.

b. A consumer lender shall not compound interest on an open-end consumer loan by adding any unpaid interest authorized by this act to the principal balance of the borrower's account but the unpaid principal balance may include other charges permitted by this act.

c. Interest on an open-end consumer loan shall be computed in each billing cycle by one of the following methods:

(1) By converting each yearly rate to a daily rate and multiplying that daily rate by the applicable portion of the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing each yearly rate by 365; or

(2) By multiplying one-twelfth of each yearly rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(3) By converting each yearly rate to a daily rate and multiplying that daily rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case each daily rate is determined by dividing each yearly rate by 365, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

d. For all of the above methods of computation, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

e. In an open-end consumer loan, the borrower may at any time pay all or any part of the unpaid balance in his account; or, if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to the following minimum payment requirements. Minimum monthly payments shall be in an amount which would result in the full repayment of the initial loan advance, exclusive of any interest, within the maximum term set forth for other loans of the same amount in section 35 of this act, except that the minimum payment for any initial advance not exceeding \$2,500 shall be in an amount which would result in full repayment of the initial loan advance within the maximum term of 48 months and 15 days. This minimum payment shall continue at that amount until such time as an additional advance to the borrower is made, other than for permitted charges, at which time the minimum monthly payment shall be determined and shall be in that amount which would result in the full repayment of the unpaid principal balance of the loan, after the advance and including the advance, within the maximum term set forth for the other loans of the same amount, except that if the principal balance of the loan, after the advance and including the advance, does not exceed \$2,500, the minimum payment shall be in that amount which would result in full repayment of the principal balance of the loan within the maximum term of 48 months and 15 days. Minimum payments after each subsequent advance shall be determined in the same manner. No minimum payment shall exceed the amount required to pay the balance in full, including unpaid interest and charges to date.

f. In addition to interest, a licensee may contract for and receive on an open-end consumer loan the charges permitted under this act for other consumer loans, subject to all the conditions and restrictions on those charges, with the following variations:

(1) If credit life, disability or involuntary unemployment insurance is provided and if the insured dies or becomes disabled or involuntarily unemployed when there is an outstanding open-end loan indebtedness, the insurance shall be sufficient to pay the total balance of the loan due on the date of the borrower's death in the case of credit life insurance, all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance or all covered minimum payments which become due on the loan during the covered period of involuntary unemployment in the case of involuntary unemployment insurance. The additional charge for credit life insurance, credit disability insurance or credit involuntary unemployment insurance shall be calculated in each billing cycle by applying the current monthly premium rate for that insurance, as determined by the commissioner, to the unpaid balances in the borrower's account, using any of the methods specified in subsection c. of this section for the calculation of interest;

(2) No credit life, disability or involuntary unemployment insurance written in connection with an open-end loan shall be canceled by the licensee because of delinquency of the borrower in the making of the required minimum payments on the loan unless one or more of the payments is past due for a period of 90 days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

g. A consumer lender may take a security interest in personal property to secure an open-end consumer loan. Any security may be retained until the open-end account is terminated, except that if the security interest covers consumer goods, then within one month, or within 10 days following written demand by the borrower, after there is no outstanding balance in the account and no commitment by the licensee to make advances, the licensee shall release the security interest. If a security interest is taken, the open-end consumer loan agreement shall state the nature and extent of that security interest.

h. No licensee in connection with an open-end consumer loan shall take any confession of judgment or power of attorney, or take any instrument in which blanks are left to be filled in after the loan is made.

### **17:11C-37. Amount of charges limited**

No licensee authorized to engage in the consumer loan business shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than he would be permitted by law to charge if he were not a licensee under this act upon the loan, use, or sale of credit, of the amount or value of more than \$50,000. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as indorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both under one or more loan contracts to the licensee at any time the sum of more than \$50,000 for principal.

### **17:11C-38. Payment in consideration of assignment**

The payment of \$50,000 or less in money, credit, goods or things in action, as consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall, for the purposes of this act, be deemed a loan secured by the assignment. The transaction shall be governed by and subject to the provisions of this act and any such sale, assignment or order hereafter made shall, for the purposes of this act, be void and of no effect.

### **17:11C-39. Chattel mortgage on or security interest on borrower's household furniture; requirements**

No chattel mortgage or security interest, as defined in N.J.S. 12A:1-201, in, or other lien on, household furniture then in the possession and use of the borrower, taken in connection with a consumer loan, shall be valid unless that chattel mortgage and the financing statement and the security agreement are in writing, signed in person by the borrower, and if the borrower is married, unless it is signed in person by both husband and wife. The written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of the mortgage or lien or security interest.

### **17:11C-40. Payment in certain cases deemed a loan**

The payment of \$50,000 or less in money, credit, goods or things in action as consideration for any sale of personal property which is made on condition that the property be sold back at a greater price shall, for the purposes of this act, be deemed to be a loan secured by the property and the amount by which the repurchase price exceeds the original payment actually paid shall be deemed interest or charges upon the loan from the date the original payment is made until the date the repurchase price is paid. The transaction shall be governed by and be subject to the provisions of this act as if it were a consumer loan.

### **17:11C-41. Consumer lenders; prohibited acts and practices**

a. No consumer lender shall make any loan upon security of any assignment of or order for the payment of any salary, wages, commissions or other compensation for services earned, or to be earned, nor shall any such assignment or order be taken by a licensee at any time in connection with any consumer loan, or for the enforcement or repayment thereof, and any such assignment or order hereafter so taken or given to secure any loan made by any licensee under this act shall be void and of no effect.

b. No consumer lender shall take a lien upon real estate as security for any consumer loan, except a lien created by law upon the recording of a judgment.

c. No licensee shall conduct the consumer loan business within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner.

d. Every multiple installment consumer loan contract, other than an open-end consumer loan contract or a variable rate closed-end consumer loan contract under subsection b. of section 32 of this act, shall provide for repayment of principal and interest combined in installments which shall be payable at approximately equal periodic intervals of time and which shall be so arranged that no installment is substantially greater in amount than any preceding installment, except that the repayment schedule may reduce or omit installments when necessary because of the seasonal nature of the borrower's income.

e. No person, except as authorized by this act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount of \$50,000 or less. This prohibition shall apply to any person who, by any device, subterfuge, or pretense, shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

f. No consumer loans of the amount or value of \$50,000 or less for which a greater rate of interest, consideration, or charge than is permitted by this act has been charged, contracted for, or received, whenever made, shall be enforced in this State and any person, partnership, association or corporation in any way participating therein in this State shall be subject to the provisions of this act. The foregoing shall not apply to loans legally made in any state which then has in effect a regulatory small loan law similar in principle to this act, but an action to enforce any loan made in any state to a person then residing in this State may be maintained in this State only if the amount of interest, discount, consideration or other charge for that loan, demanded to be paid in the action, does not exceed that permitted to a licensee authorized to engage in the consumer loan business by this act for a loan of the same amount repayable in the same manner.

#### **17:11C-42. Investigation by commissioner; examination of books, records, documents**

a. The commissioner may make such investigations and examinations of any licensee or other person as the commissioner deems necessary to determine compliance with this act and the orders, rules and regulations issued hereunder. For these purposes, the commissioner may examine the books, accounts, records and other documents or matters of any licensee or other person. Each licensee shall be subject to an examination by the commissioner, not more than once in any 18 month period, unless the commissioner has reason to believe that the licensee is not complying with the provisions of this act or any rule or regulation promulgated thereunder, or is not transacting business in accordance with law, at which time the commissioner may conduct an examination at any time. The commissioner shall have the power to compel by subpoena the production of all relevant books, records and other documents and materials relative to an examination or investigation. Examinations conducted under the provisions of this act shall be confidential except as required in the administration, enforcement and prosecution of violations under this act or pursuant to court order. The cost of the investigations and examinations shall be borne by the licensee.

b. The commissioner or the commissioner's designee shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction pursuant to this act, and to administer oaths and affirmations to any person.

c. If any person shall refuse to obey a subpoena, or to give testimony or to produce evidence as required thereby, the commissioner may apply ex parte to any court having jurisdiction over that person for an order compelling the appearance of the witness before the commissioner to give testimony or to produce evidence as required thereby, or both.

#### **17:11C-43. Annual report**

A licensee shall annually file a report with the commissioner which shall set forth such information as the commissioner shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be under oath and in a form and within the time specified by the commissioner by regulation. A licensee that fails to make and file its annual report shall be subject to a penalty of not more than \$100 for each day's failure, and the commissioner may revoke or suspend its authority to do business in this State. The penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). A warrant may issue in lieu of a summons.

#### **17:11C-44. Waiver agreements void and unenforceable**

Any agreement to waive any provision of this act shall be unenforceable and void.

#### **17:11C-45. Mortgage loans to which act applicable**

The provisions of this act shall apply to any first mortgage loan or secondary mortgage loan:

- a. Advertised, caused to be advertised, solicited, negotiated, offered, or otherwise transacted within this State, in whole or in part, whether by the ultimate lender or any other person;
- b. Made or executed within this State; or
- c. Which is secured by real property located in this State, notwithstanding the place of execution..

#### **17:11C-46. Compliance with § 17:11C-1 et seq.; validity or enforceability of mortgage loan unaffected**

The failure of any person to comply with the provisions of this act shall not affect the validity or enforceability of any mortgage loan or secondary mortgage loan, and no person acquiring such a loan shall be required to ascertain if a licensee has made such a loan in compliance with the provisions of this act.

#### **17:11C-47. Injunction**

If the commissioner has reason to believe that any person or licensee has engaged, is engaged, or is about to engage in any practice or transaction prohibited by this act, the commissioner may, in addition to any other remedies he may have, bring a summary action in the name and on behalf of the State against the person or licensee and any other person concerned or in any way participating in or about to participate in those practices or those actions in violation of this act, to enjoin the person or licensee from continuing the practices or transactions or engaging therein or doing any act in furtherance thereof or in violation of this act.

#### **17:11C-48. Violations; Penalties**

a. Any person or licensee who engages in any conduct or practice prohibited by this act may be liable to a penalty not exceeding \$5,000 to be recovered in a summary proceeding under the "penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Each violation shall constitute a separate offense, and the penalty under this section shall be in addition to any suspension or revocation of license. In addition, the commissioner may order any licensee to refund any fee taken illegally or in violation of this act or rules, regulations or orders issued pursuant hereto. Willful violations of this act shall be considered a crime of the third degree.

b. After notice and an opportunity for a hearing, the commissioner may order that any person who has purposely and knowingly violated any provision of this act, or of the rules and regulations issued pursuant hereto, and has thereby caused financial harm to consumers, be barred for a term not exceeding 10 years from acting as a licensee, a stockholder, a partner or other owner, or an employee of a licensee, an officer of a licensee, a director of a licensee or in any other capacity pursuant to this act. Violations of such a final order shall be considered a crime of the third degree.

#### **17:11C-49. Rules and regulations**

The commissioner may issue and promulgate rules and regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), necessary to effectuate the provisions of this act.

**17:11C-50. Continuation of existing licenses until July 1, 1997; renewable; administrative fee**

a. A person licensed as a mortgage banker or mortgage broker pursuant to the provisions of P.L.1981, c. 18 (C. 17:11B-1 et seq.), a secondary mortgage lender licensed pursuant to the "Secondary Mortgage Loan Act," P.L.1970, c. 205 (C. 17:11A-34 et seq.), a consumer loan lender licensed pursuant to the "Consumer Loan Act," R.S. 17:10-1 et seq., or a sales finance company, licensed pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c. 40 (C. 17:16C-1 et seq.), shall continue as a licensee under this act until July 1, 1997, at which time, if the licensee intends to continue to engage in activities regulated by this act, the licensee shall renew the license as a licensee under the provisions of this act.

b. Any licensee to whom the provisions of subsection a. of this section apply, shall be subject to a one-time administrative fee for each license the licensee seeks to renew, provided however, that a licensee seeking to renew a license to engage in one activity under this act shall not be subject to this one-time administrative fee. The administrative fee shall be set by the commissioner by regulation in an amount not to exceed \$200 for each license a licensee seeks to renew.



# NEW JERSEY LICENSED LENDERS REGULATIONS

## NEW JERSEY ADMINISTRATIVE CODE

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# NEW JERSEY LICENSED LENDERS REGULATIONS

## NEW JERSEY ADMINISTRATIVE CODE

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 3:15-1.1 Purpose and scope

(a) This chapter implements the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.

(b) This chapter shall apply to all licensed lenders with mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender and/or sales finance company authority or authorities and registered mortgage solicitors and those whose activities require they be licensed or registered.

#### 3:15-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise.

1. "Accrual basis of accounting" means the accounting method by which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether received or not received.

"Act" means the "New Jersey Licensed Lenders Act," N.J.S.A. 17:11C-1 et seq.

"Advertisement" means any announcement, statement, assertion, or representation that is placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station, by means of the internet or by other electronic means of distributing information, or in any other way.

"Alternate name" means an alternate name registered pursuant to N.J.S.A. 14A:2-2.1(2) or 42:2B-4b.

"Application" means the document or documents or information, including the payment of any fees, that a particular lender or broker requires a borrower to submit for the purpose of having the lender or broker begin to process the loan document or documents to determine whether to grant or deny a loan.

"Application fee" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"Appraisal fee" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"Authority" means one of the activities permitted for a licensee pursuant to the Act: either mortgage banker, correspondent mortgage banker or mortgage broker; secondary lender; consumer lender; or sales finance business.

"Biennial period" means the two-year period beginning on July 1 of an odd- numbered year.

"Billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.

"Borrower" means any person applying for a loan from a lender licensed under the Act, whether or not the loan is granted, and any person who has actually obtained such a loan.

"Branch office" means any location where, in the regular course of business, applications for first mortgage loans, second mortgage loans, consumer loans or sales finance contracts are distributed to or received from consumers, loan records are maintained, underwriting decisions are made, commitments or lock-in agreements are issued, or any fees or charges relating to the loan are received from consumers.

1. A home or place of business of a consumer shall not be considered a branch office.  
2. A location shall not be considered a branch office merely because any or all of the following activities are conducted at the location:

- i. Consumers receive information concerning available loan products from a computer terminal;
- ii. Consumers are pre-qualified for a loan, so long as no additional fee is charged for this service; and
- iii. Advertising materials are distributed to consumers so long as the materials do not in any way resemble an application for a loan.

3. A branch office of a licensee under the Act does not also constitute a branch office of another licensee merely because the first licensee distributes or receives applications of that other licensee at the branch office.

4. A principal or branch office of a bank, savings bank, savings and loan association or credit union shall not also constitute a branch office of a licensee merely because the bank, savings bank, savings and loan association or credit union distributes or receives applications of the licensee at the principal or branch office.

5. A licensed real estate office of a person licensed as a real estate broker or salesman pursuant to N.J.S.A. 45:15-1 et seq., does not constitute a branch of an entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker under the Act merely because the real estate broker or salesman distributes or receives an application of the entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker at that office, or because an entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker under the Act or a solicitor of that licensee who does not hold himself out to the public as performing mortgage banking, correspondent mortgage banking, or mortgage brokering there and does not maintain an office or desk there meets at the office of the real estate broker as a convenience to the borrower and distributes or receives applications or fees there.

"Closed-end loan" with respect to a secondary mortgage loan means a loan pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time, except that: the amount of the final installment payment may be substantially greater than the previous installments if the term of the loan is at least 36 months, or under 36 months if the remaining term of the first mortgage loan is under 36 months; or the amount of the installment payments may vary as a result of the change in the interest rate as permitted by the Act. "Closed-end loan" with respect to a consumer loan means a loan pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time and which meets the requirements of N.J.S.A. 17:11C-35.

"Commissioner" means the Commissioner of the Department of Banking and Insurance.

"Commitment" means a signed statement issued by a lender in which the lender promises to make a loan of specified terms to a specified borrower, and which is based on a satisfactory underwriting analysis of the appraisal, if an appraisal is required in connection with the loan, and satisfactory underwriting analysis of the credit report, if a credit report is required in connection with the loan, except that any document indicating approval of a loan application that is contingent on the approval of a party to whom the lender seeks to sell the loan shall not be deemed a commitment.

"Commitment fee" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"Consumer lender" means a person licensed, or a person who should be licensed, under the Act to engage in the consumer loan business.

"Consumer loan" means a loan of \$50,000 or less made by a consumer lender pursuant to the terms of the Act, and not a first mortgage loan or a secondary mortgage loan.

"Consumer loan business" means the business of making loans of money, credit, goods or things in action in the amount of value of \$50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefore than the lender would be permitted by law to charge if he or she were not a licensee hereunder, except as authorized by the Act and without first obtaining a license from the Commissioner. Any person directly or indirectly engaging in the business of soliciting or

taking applications for such loans of \$50,000 or less, or in the business or negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$50,000 or less, or in the business of buying, discounting or indorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$50,000 or less, shall be deemed to be engaging in the consumer loan business.

"Controlling interest" means ownership, control or interest of 25 percent or more of the licensee or applicant.

"Correspondent mortgage banker" means a mortgage banker who:

1. In the regular course of business, does not hold mortgage loans in its portfolio, or service mortgage loans, for more than 90 days; and
2. Has shown to the Department's satisfaction an ability to fund loans through warehouse agreements, table funding agreements or otherwise.

"Credit report fee" shall have the meaning of that term in N.J.A.C. 3:1- 16.2.

"Department" means the Department of Banking and Insurance.

"Depository institution" means any entity holding a state or Federal charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

"Direct contact" means in-person contact, and contact by means of a telephone, computer terminal, internet or other electronic means during which contact, in the regular course of business, applications for first mortgage loans, second mortgage loans, consumer loans or sales finance contracts are distributed to or received from consumers, underwriting decisions are made, commitments or lock- in agreements are issued, or any fees or charges relating to the loan are authorized.

"Discount point" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"First mortgage loan" means any loan secured by a first mortgage on real property on a one to six family dwelling, a portion of which may be used for nonresidential purposes.

"Insolvent" means having negative tangible net worth, or being unable to pay debts when due.

"Lender" means a bank, savings bank, savings and loan association, credit union, mortgage banker, correspondent mortgage banker, secondary lender, consumer lender, sales finance company or any other person who originates loans in this State.

"License name" means any name listed on the license issued by the Department including the true name and any alternate or trade names.

"Licensed lender" or "licensee" means a person who is licensed pursuant to the Act with one or more authorities.

"Liquid assets" means cash, marketable securities, and accounts receivable.

"Lock-in agreement" means an agreement between the lender and the borrower whereby the lender guarantees until a specified date the availability of a specified rate of interest or time price differential or specified formula by which the rate of interest or time price differential will be determined and/or specific number discount points, provided the loan is approved and closed by the specified date. If a specified date is not determinable, the lender may fulfill the requirement of this provision by setting forth with specificity the method by which the duration of the lock-in period will be determined. The term "lock-in agreement" does not include an agreement to fix the rate executed three or fewer calendar days before closing where appropriate disclosures have been made under the provisions of this chapter.

"Lock-in fee" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"Mortgage banker" means any person, not exempt under section 4 of the Act and licensed pursuant to the provisions of the Act, and any person who should be licensed pursuant to the provisions of the Act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly originates, acquires or negotiates first mortgage loans in the primary market.

"Mortgage broker" means any person, not exempt under section 4 of the Act and licensed pursuant to the provisions of the Act, and any person who should be licensed pursuant to the provisions of the Act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly negotiates, places or sells for others or offers to negotiate, place or sell for others, first mortgage loans in the primary market.

"Mortgage loan" means any loan secured by a mortgage on real property on a one- to six-family dwelling, a portion of which structure may be used for nonresidential purposes.

"Mortgage solicitor" means any person not licensed as a mortgage banker, correspondent mortgage banker, or mortgage broker who is employed as a solicitor by one, and not more than one, licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts first mortgage loan applications, or assists borrowers in completing first mortgage loan applications, and whose compensation is in any way based on the dollar amount or volume of first mortgage loan applications, first mortgage closings or other first mortgage loan activity.

"Open-end loan" means a secondary mortgage loan made by a secondary lender or a consumer loan made by a consumer lender pursuant to a written agreement with the borrower whereby:

1. The secondary lender or consumer lender may permit the borrower to obtain advances of money from the secondary lender or consumer lender from time to time or the secondary lender or consumer lender may advance money on behalf of the borrower from time to time as directed by the borrower;

2. The amount of each advance and permitted interest and charges are debited to the borrower's account and payments and other credits are credited to the same account;

3. Interest is computed on the unpaid principal balance or balances of the account from time to time; and

4. The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

"Originate" means to commit to make a mortgage loan, or to close a mortgage loan in the name of the licensee.

"Person" means an individual, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

"Prequalification" means the process whereby a licensee prior to application advises a person whether or not he or she qualifies for a loan product, subject to satisfactory appraisal and other contingencies.

"Primary market" means the market wherein first mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other conduit, and shall not include the sale or acquisition of a mortgage loan after closing of the mortgage loan.

"RESPA" means the Federal Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, regulations implementing RESPA, and any opinion regarding RESPA issued by the Department of Housing and Urban Development.

"Sales finance company" shall have the meaning ascribed to that term in N.J.S.A. 17:16C-1.

"Secondary lender" means a person licensed, or a person who should be licensed, under the Act to engage in the secondary mortgage loan business.

"Secondary mortgage loan" means a loan made to an individual, association, joint venture, partnership, limited partnership association, limited liability company, trust, or any other group of individuals, however organized, except a corporation, which is secured in whole or in part by a lien upon any interest in real property, including, but not limited to, shares of stock in a cooperative corporation, created by a security agreement, including a mortgage, indenture, or any other similar instrument or document, which real property is subject to one or more prior liens and on which there is erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, except that the following shall not be subject to the provisions of this chapter:

1. A loan that is to be repaid in 90 days or less;
2. A loan that is taken as security for a home repair contract executed in accordance with the provisions of the Home Repair Financing Act, N.J.S.A. 17:16C-62 et seq.; or
3. A loan that is the result of the private sale of a dwelling, if title to the dwelling is in the name of the seller and the seller has resided in the dwelling for at least one year, if the buyer is purchasing that dwelling for his or her own residence and, if the buyer, as a part of the purchase price, executes a secondary mortgage in favor of the seller.

"Secondary mortgage loan business" means advertising, causing to be advertised, soliciting, negotiating, offering to negotiate, offering to make or making a secondary mortgage loan in this State, whether directly or by any person acting for his or her benefit.

"Settlement service" means any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, and the handling of the processing, and closing or settlement.

"Substantial stockholder" means a person or entity owning 10 percent or more of the stock of a licensee.  
"Table funding agreement" means an agreement between an investor and a licensee whereby the investor agrees to purchase specified mortgage loans from a licensee immediately after the closing of the mortgage loans, and which permits the licensee to close with funds of the investor.

"Tangible net worth" means net worth less the following assets:

1. That portion of any assets pledged to secure obligations of any person or entity other than that of the applicant;
2. Any asset (except construction loan receivables secured by first mortgages from related companies) due from officers or stockholders of the applicant or related companies in which the applicant's officers and/or stockholders have an interest;
3. That portion of the value of any marketable security (listed or unlisted) not shown at lower of cost or market, except for any shares of FNMA stock required to be held under a servicing agreement, which should be carried at cost;
4. Any amount in excess of the lower of the cost or market value of mortgages in foreclosures, construction loans, or foreclosed property acquired by the applicant through foreclosure;
5. Any investment shown on the balance sheet in the applicant's joint ventures, subsidiaries, affiliates and/or related companies that is greater than the value of said assets at equity;
6. Goodwill;
7. The value placed on insurance renewals or property management contract renewals or other similar intangibles of the applicant;
8. Organization costs of the applicant;



9. The value of any servicing contracts held by the applicant not determined in accordance with FASB Statement No. 65, "Accounting for Certain Mortgage Banking Activities," dated September 1982, as amended by FASB No. 122, "Accounting for Mortgage Servicing Rights," dated May 1995, or subsequent revisions thereto;

10. Any real estate held for investment where development will not start within two years from the date of its initial acquisition;

11. Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease; and

12. Any commitment fees paid/collected that are not recoverable through the closing or selling of loans.

"Time price differential" shall have the meaning of that term in N.J.S.A. 17:16C-1(l) and shall be computed as provided in N.J.S.A. 17:16C-41.

"Third party charges" shall have the meaning of that term in N.J.A.C. 3:1- 16.2.

"Trade name" means an assumed name filed pursuant to N.J.S.A. 56:1-2.

"True name" means the legal name of the licensed entity and shall not include any alternate or trade name.

"Warehouse agreement" means an agreement to provide credit to a licensee to enable the licensee to have funds to close mortgage loans and hold those mortgage loans pending sale to permanent investors.

"Warehouse fee" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

### **3:15-1.3 Office requirement**

(a) A licensee, except a licensee engaging solely in the sales finance company business, shall maintain a place of business in this State. A licensee shall maintain a place of business in a suitable location as determined by the Commissioner. The Commissioner shall consider the following factors in determining whether a location is suitable:

1. The location shall conform to all local ordinances and zoning requirements;

2. The location shall be reasonably accessible to the public;

3. Any signage proposed for the location shall clearly identify the licensee;

4. The location shall be reasonably free of noise and other distractions so as to permit customers to give appropriate consideration to the loan transaction; and

5. A residence shall not be considered a suitable location unless the applicant submits acceptable proof that the office would be separate from the residential area and conveniently accessible to all consumers through a separate business entrance. Acceptable proof shall include at a minimum, a floor plan and related photographs depicting the necessary criteria set forth in (a) 1 through 4 above.

(b) A licensee may maintain more than one place of business and shall secure a license for each such branch office as required by N.J.A.C. 3:15-2.3.

(c) Each licensee that maintains more than one licensed office shall designate one licensed office as the principal office. The designation of the principal office shall be filed with the Commissioner. Any change in the designation shall be filed within 10 days of the effective date of the change. If the filing is complete, the Commissioner shall issue a new license reflecting the new designation.

(d) A licensee changing its name or changing the address of the principal office or any branch office shall comply with N.J.A.C. 3:1-7.1 and 7.4, as applicable.

(e) A person licensed as a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender shall notify the Department of every location, other than a principal or branch office, where the licensee distributes to the public advertising materials regarding available mortgage loan products in person to consumers on a regular basis.

### **3:15-1.4 License name**

(a) A licensee may use alternate or trade names, and may change such name or names, in connection with business under the Act, following approval by the Commissioner and subject to the provisions of N.J.A.C. 3:15-1.5 and 1.6 and N.J.S.A. 17:11C-22(a).

(b) The true name and all alternate or trade names shall appear on the license issued by the Department.

(c) A licensee may use its true name, any or all of its alternate or trade names, or any combination of them, in its advertising.

(d) In closing documents, a licensee shall use its true name plus the alternate or trade name that it used in its contacts with the consumer involved in the transaction.

### **3:15-1.5 License names permitted**

(a) The number of alternate or trade names that may be used by a licensee in this State shall not exceed three, unless:

1. The licensee is exercising four authorities under the Licensed Lenders Act and applies for a fourth alternate or trade name so that it may use one for each of the authorities;

2. The licensee provides evidence to the Commissioner that prohibiting it from using a fourth or subsequent alternate or trade name would produce a substantial and unreasonable hardship on the licensee beyond the mere ability to market under the new name, and the licensee can satisfy the Department that procedures have been established to assure that consumers will not be misled about the true identity of the licensee. The Commissioner shall not grant an exception to the limitation of three alternate or trade names under this paragraph except in extraordinary circumstances; or

3. The licensee has, prior to November 4, 2002, been approved to use four or more alternate or trade names, in which case, the licensee may continue to use those names, but shall not be approved to use an additional alternate or trade name until the total number of alternate or trade names being used by that licensee is two or fewer, unless a larger number is permitted pursuant to (a) 1 or 2 above.

### **3:15-1.6 Grounds for denying use of alternate or trade names**

(a) The Commissioner may deny an application to use an alternate or trade name if:

1. The name is lewd, offensive or otherwise inappropriate for the conduct of the licensed activity; or

2. The name would create a substantial risk of misleading or confusing consumers.

### **3:15-1.7 Display of license**

Each sole proprietor, supervisory individual licensee, partnership, corporation or limited liability company shall conspicuously display its license at the principal New Jersey place of business. Each branch office license shall be displayed at the branch office designated thereon. All other individual licensees shall so display their licenses at the licensed office open to the public with which they are affiliated.

## SUBCHAPTER 2. LICENSING

### 3:15-2.1 Requirement to be licensed

(a) No person shall act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender, or sales finance company without holding, in good standing, a license under the Act, unless that person is exempt from licensure pursuant to N.J.S.A. 17:11C-4, 5 or 6. No corporation, partnership, limited liability company, association or any other entity shall be issued or hold a license as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender unless one officer, partner, member or principal has an individual license of that same type sought or held.

(b) With regard to the exemption set forth at N.J.S.A. 17:11C-4d, a real estate broker or salesperson shall not be deemed to be engaged in the business of a mortgage banker, correspondent mortgage banker or mortgage broker if:

1. The real estate broker receives \$250.00 or less at the closing of the mortgage loan for reimbursement of expenses incurred in providing specific mortgage related services in connection with a particular real estate sale or real estate brokerage service;

2. The real estate broker itemizes in writing the specific services provided by the real estate broker or by the salesperson licensed with the broker and submits that itemized list to the mortgage lender prior to closing; and

3. The real estate broker or salesperson receives a real estate commission in connection with the transaction.

(c) For the purposes of (b) above, expenses are deemed to be incurred in providing the specific mortgage related services only if the expenses are exclusively attributed to, and allocated to, those services and are not used to defer the general overhead expenses of the real estate broker, salesperson or office or to defer any cost attributable to the real estate business or any non-mortgage related business conducted by the real estate broker, salesperson or other office personnel. Expenses that are general overhead, and therefore not reimbursable, shall include, but not be limited to: mortgage or lease expenses, rent, utilities, insurance, depreciation and advertising; office equipment and supplies used for any purpose other than mortgage related services, and telephone expenses attributed to any purpose other than mortgage related services. Expenses for office equipment, supplies and telephone usage that are exclusively attributed to mortgage related services are not general overhead and are reimbursable within the \$250.00 limit.

(d) For purposes of (b) above, the time spent by a real estate broker, real estate salesperson or a salaried employee of a real estate broker providing specific mortgage-related services is reimbursable provided that:

1. The reimbursement shall be paid by the mortgage lender directly to the real estate broker;

2. The reimbursement shall be in the amount itemized in the statement of reimbursable expenses submitted to the mortgage lender prior to closing;

3. The rate used to determine the amount of the reimbursement for mortgage-related services personally provided by the real estate broker, or provided by a non-salaried salesperson employed or retained by the real estate broker, shall not substantially exceed the average rate of regular (non-overtime) compensation of the real estate broker's support staff;

4. The rate used to determine the reimbursement for mortgage-related services provided by a salaried employee of the real estate broker shall not exceed that employee's regular (non-overtime) rate of compensation;

5. Any reimbursement paid to the real estate broker for mortgage-related services provided by a non-salaried real estate salesperson shall be passed through in the full amount itemized on the statement of reimbursable expenses submitted to the mortgage lender prior to closing; and

6. Any reimbursement passed through by the real estate broker to a non-salaried salesperson shall be in addition to any real estate commission generated by the sales transaction to which the specific mortgage services related and was paid to the salesperson.

(e) The mortgage lender shall give a copy of the itemized list of reimbursable services, that was received from the real estate broker pursuant to (b) 2 above, to the borrower prior to closing and shall retain a copy on file for at least three years following the closing of the loan.

(f) If a licensee files a complete application for renewal of his or her license on or before the expiration date of any licensing period, the licensee may continue to transact business without interruption until such time as he or she is notified that his or her application for renewal has been denied or that his or her license has been suspended or revoked. An application is complete if it is in proper form and includes all required documentation.

### **3:15-2.2 Application for a license**

(a) A person applying for a license pursuant to the Act shall submit the following:

1. A completed application form as prescribed by the Commissioner which shall include the following:

i. The true name of the applicant conforming to N.J.S.A. 17:11C-22(a) and no more than three trade names or alternate names conforming to N.J.A.C. 3:15-1.4 and 1.5 to be utilized;

ii. The location of the principal New Jersey place of business, except for a sales finance company that shall notify the Department of its principal New Jersey place of business if it has an office in this State, or shall notify the Department of its principal place of business in another state if it does not have an office in this State;

iii. Information regarding officers and stockholders;

iv. The name and address of the applicant's registered agent in this State;

v. Information regarding incorporation, registration, and authorization to do business in this State; and

vi. The applicant's Federal Tax Identification Number or Social Security Number, as applicable;

2. Certified consent certificates permitting the Department to make inquiries to the New Jersey State Police as to any information it may have on file with respect to the applicant, that is, the person, sole proprietor, partners, members and managers of a limited liability company, corporate officers, directors and shareholders owning 10 percent or more of the shares of the corporation. The Department may make such inquiries on the basis of answers to questions in the application or on the basis of any other information which the Department receives that would make such an inquiry relevant to the decision on the application;

3. All applications for a mortgage banker license, correspondent mortgage banker license, mortgage broker license or a secondary lender license shall be accompanied by:

i. An original executed bond, on bond forms issued by the Department, from a surety company authorized to do business in this State, which bond meets the requirements of N.J.A.C. 3:15-3.1; or

ii. A letter from a surety company authorized to do business in this State stating that the applicant has satisfied all the requirements for the issuance of a surety bond, which meets the requirements of N.J.A.C. 3:15-3.1.

4. All applications for a corporate, partnership, limited liability company or sole proprietorship license as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender shall include an unqualified audited financial statement prepared by a certified public accountant or a public accountant, in good standing, demonstrating proof of net worth as specified in N.J.S.A. 17:11C-14 (mortgage bankers, correspondent mortgage bankers and mortgage brokers), N.J.S.A. 17:11C-15 (secondary lenders), and N.J.S.A. 17:11C-16 (consumer lenders);

5. An application for a corporate license by a corporation organized under the laws of this State shall be accompanied by a copy of the applicant's Certificate of Incorporation as filed with the New Jersey Department of Treasury, Division of Revenue. A foreign corporation shall submit a copy of its Certificate

of Incorporation from the state where it is incorporated, and a copy of its Certificate of Authority to do business in this State approved by the New Jersey Department of Treasury, Division of Revenue. If an alternate name is to be utilized, a copy of the registration of that name with the New Jersey Department of Treasury, Division of Revenue shall be provided;

6. An application for a sole proprietorship or partnership license where a trade name is to be used shall be accompanied by a trade name certificate filed with the County Clerk's office in the county in which the licensee is to be located, and any filing made with the New Jersey Department of Treasury, Division of Revenue. An application for a limited liability company license shall be accompanied by a copy of the applicant's Certificate of Formation as filed with the New Jersey Department of Treasury, Division of Revenue. A foreign limited liability company shall submit a copy of its formation document from the state where it was established. If an alternate name is to be utilized, a copy of the registration of that name with the New Jersey Department of Treasury, Division of Revenue shall be provided;

7. In the case of a person seeking an initial license as a secondary lender or consumer lender, an unqualified audited financial statement prepared by a certified public accountant or a public accountant, in good standing, demonstrating proof of liquid assets as specified by N.J.S.A. 17:11C-15 and 17:11C-16, as applicable;

8. A copy of the deed, lease or rental agreement for the principal place of business, or a letter of intent for such a document. If a letter of intent is submitted, an executed copy of the document shall be provided within 60 days of approval of the application;

9. The application fee as specified in N.J.A.C. 3:15-4.2; and

10. A completed branch office application as specified in N.J.A.C. 3:15- 2.3, if applicable.

(b) Prior to being licensed, each applicant for an individual or sole proprietor license as a mortgage banker, correspondent mortgage banker, mortgage broker or a secondary lender shall pass an examination administered in accordance with N.J.A.C. 3:15-2.9.

(c) Prior to being licensed, each applicant for a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender license shall provide the Department with an original executed bond, on bond forms issued by the Department, from a surety company authorized to do business in this State, which meets the requirements of N.J.A.C. 3:15-3.1.

(d) Application fees are nonrefundable.

### **3:15-2.3 Branch offices; branch licensing requirement; initial branch licensing application**

(a) Prior to conducting activities as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender or sales finance company from a branch office in this State, or from a branch office outside this State from which the licensee has direct contact with New Jersey consumers regarding origination or brokering, the licensee shall obtain a license for the branch office from the Department.

(b) The application for a branch office license shall include the following:

1. The true name of the licensed entity and no more than three trade names or alternate names conforming to N.J.A.C. 3:15-1.4 and 1.5;

2. The address of the principal New Jersey place of business; and

3. The addresses of all branches to be licensed and a copy of the deed, lease or rental agreement for each, or a letter of intent for such a document. If a letter of intent is submitted, an executed copy of the document shall be provided within 60 days of approval of the application.

(c) A licensee does not need to obtain a branch office license for an attorney's office merely because loans are closed there and fees are received there incident to the loan closing.

(d) The Commissioner shall determine whether the proposed branch is in a suitable location in determining whether to approve a branch application. The Commissioner shall consider the following

factors in determining whether a location is suitable:

1. The location shall conform to all local ordinances and zoning requirements;
2. The location shall be reasonably accessible to the public;
3. Any signage proposed for the location shall clearly identify the licensee;
4. The location shall be reasonably free of noise and other distractions so as to permit customers to give appropriate consideration to the loan transaction; and
5. A residence shall not be considered a suitable location unless the applicant submits acceptable proof (which shall include at a minimum, a floor plan and related photographs) that the office would be separate from the residential area and conveniently accessible to all consumers through a separate business entrance.

(e) If an applicant for a branch license meets the requirements of this section and N.J.S.A. 17:11C-9, the Commissioner shall issue the branch license within 30 days of the receipt of the application.

(f) Branch office arrangements shall be restricted as follows:

1. A branch office shall not be a separate business entity. If an office of another entity is purchased by or merged into a licensed lender, the licensed lender shall file for a branch office license. The filing shall include documentation evidencing the acquisition and/or merger of that entity into the surviving licensed entity;
2. A branch office shall not pay its own operating expenses. Operating expenses shall include, but are not limited to, compensation of branch office employees, and payments for equipment, furniture, office rent, and other similar expenses incurred in operating a mortgage lending business;
3. A branch office shall not maintain a banking account or accounts for the payment of expenses of that branch that is separate from the account or accounts of the licensee;
4. A branch office shall not maintain contractual relationships with vendors for items such as leases, telephones, utilities, and advertising in the name of the branch office;
5. A branch office shall not maintain lines of credit, warehouse agreements, or other investor agreements that are separate from those of the licensee; and
6. A branch office shall not indemnify the licensed lender against damages incurred from any apparent, express, or implied agency representation by or through the branch office's actions.

(g) Application fees are nonrefundable.

### **3:15-2.4 Application for renewal of a license**

(a) A person who holds in good standing a license as a licensed lender with authority to act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary mortgage lender, consumer lender or sales finance company who seeks to renew a license pursuant to this section shall submit the following in connection with the renewal application:

1. A completed renewal application form as prescribed by the Commissioner which shall include the following:
  - i. The name of the applicant;
  - ii. The location of the principal place of business of the applicant; and
  - iii. A certification that the applicant has bond coverage as specified in N.J.A.C. 3:15-3.1, and net worth as specified by N.J.S.A. 17:11C-14 of the Act, in the case of a mortgage banker, correspondent mortgage banker, mortgage broker; or a certification that the applicant has bond coverage as specified in N.J.A.C. 3:15-3.1, and net worth and liquid assets as specified in N.J.S.A. 17:11C-15, in the case of a secondary

mortgage lender; or a certification that the applicant has net worth and liquid assets as specified in N.J.S.A. 17:11C-16, in the case of a consumer lender.

(b) No license shall be renewed unless all assessments due and owing as of the expiration date of the current license have been paid.

### **3:15-2.5 Branch offices; renewal of branch licenses**

(a) A licensee in good standing who holds a license for a branch or branches with authority for the conduct of the business of a mortgage banker, correspondent mortgage banker, mortgage broker, secondary mortgage lender, consumer lender or sales finance company who wishes to renew a branch license pursuant to this section shall submit the following in connection with the renewal application:

1. A completed renewal application form as prescribed by the Commissioner which shall include the following for each branch to be renewed:

i. The true name of the licensed entity and all trade names or alternate names conforming to N.J.A.C. 3:15-1.4 or 1.5 to be utilized;

ii. The address of the principal New Jersey place of business; and

iii. The address of each branch whose license is being renewed.

### **3:15-2.6 Late renewal of licenses; late filing fees; reinstatement fees**

(a) A person who submits a renewal application after the expiration of the license, but no later than 45 calendar days after such expiration, may renew by paying a penalty for late filing of \$500.00.

(b) A person who submits a renewal application later than 45 but no more than 90 calendar days following the expiration of the license shall be required to submit an application for reinstatement of the license. Such application for reinstatement shall be on a form as prescribed by the Commissioner and shall be accompanied by a penalty for late filing of \$700.00 per license.

(c) A person who submits a renewal application later than 90 days following the expiration of the license shall be treated as a new licensee and be required to submit an application with a fee as specified in N.J.A.C. 3:15-4.

(d) Payment of the fees or penalties under (a), (b) and (c) above shall be submitted in the form of a check made payable to "Treasurer--State of New Jersey."

(e) The date of submission for this section shall be the date the application is stamped received by the Department. If the licensee has proof of mailing issued by the post office or a pick-up receipt from a delivery service, that date shall be considered the date of submission.

(f) The fact that a person submits an application for renewal of a license following the expiration of the licensing period does not authorize that person to engage in any activity subject to licensure without having a properly renewed license. The Department may take administrative action against anyone who engages in a licensed activity without being properly licensed.

(g) Application fees are nonrefundable.

### **3:15-2.7 Inactive license status; application fee**

(a) A person holding an individual license in good standing with authority as a mortgage banker or correspondent mortgage banker or mortgage broker and/or as a secondary lender may apply to the Department, either at the time of license renewal or at any time during a licensing period during which the individual license is active, to place that license in inactive status by completing an inactive license status request form as prescribed by the Commissioner.

(b) A person holding a sole proprietorship license with authority as a mortgage banker or correspondent mortgage banker or mortgage broker and/or secondary lender in good standing may apply to the Department, either at the time of license renewal or at any time during a licensing period during which the sole proprietorship license is active, to place his individual right to licensure, but not the right of the sole

proprietorship entity, in inactive status by completing an inactive status request form as prescribed by the Commissioner.

(c) A person may keep his or her individual license and a person licensed as a sole proprietorship may keep his or her personal right to licensure but not the sole proprietorship licensure in inactive status for a period not to exceed three license periods without becoming subject to re-examination, provided that:

1. A new application fee as set forth in (d) below is paid on reactivation; and
2. The person is employed without significant break by another licensee in the mortgage banking business; correspondent mortgage banking business, mortgage brokering business or secondary lending business, or by a depository institution in this state provided that he or she works primarily in residential mortgage lending. For the purposes of this subsection, a significant break shall not exceed 120 days in any licensing period.

(d) A person who holds an inactive individual license may reactivate the individual license by submitting an individual license reactivation form as prescribed by the Commissioner to the Department, including the payment of the appropriate license application fee as set forth in N.J.A.C. 3:15-4.3 and proof of continuous employment as defined in (c) above.

(e) Application fees are nonrefundable.

### **3:15-2.8 Conversion of mortgage banking, correspondent mortgage banking, and mortgage brokering licenses**

(a) A person licensed, in good standing, as a mortgage banker shall submit the following to convert from a mortgage banker to a correspondent mortgage banker, and a person licensed, in good standing, as a correspondent mortgage banker shall submit the following to convert from a correspondent mortgage banker to a mortgage banker:

1. The original license, the licenses of all branch offices, the licenses of all licensed individuals and the certificates of all registered mortgage solicitors;
2. A completed conversion form, which shall include the name and address of the licensee, the requested date of conversion and a copy of the licensee's most recent annual report of tangible net worth filed pursuant to N.J.A.C. 3:15-6.16; and
3. For a conversion to a correspondent mortgage banker, a signed affidavit from the president or other principal who owns, controls or votes 25 percent or more of the stock of the licensee, a general partner, a managing member or the sole proprietor stating that the licensee will not hold or service mortgage loans for more than 90 days in the regular course of business.

(b) A licensee shall submit the following to convert from a mortgage banker or a correspondent mortgage banker to a mortgage broker, or from a mortgage broker to a mortgage banker or a correspondent mortgage banker:

1. The original license, the licenses of all branch offices, the licenses of all licensed individuals and the certificates of all registered mortgage solicitors.
2. A completed conversion form, which shall include the name and address of the licensee, the requested date of conversion and a copy of the licensee's most recent annual report of tangible net worth filed pursuant to N.J.A.C. 3:15-6.16; and
3. For a conversion to a mortgage broker, a signed affidavit from the president or other principal who owns, controls or votes 25 percent or more of the stock of the licensee, a general partner, a managing member or the sole proprietor stating that the licensee will not issue commitments or lock-ins in its name, will not close mortgage loans in its name, and will only charge borrowers application fees and discount points.



(c) The Department shall approve an application for conversion of a license that complies with (a) or (b) above so long as the licensee satisfies the tangible net worth requirement for the license sought, or the license sought has the same or a lesser tangible net worth requirement as the tangible net worth requirement of the license held by the licensee.

**3:15-2.9 Examination for licensure as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender**

(a) An applicant for an individual license with authority as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender in affiliation with an entity similarly licensed or applying for such licensure and an applicant for a sole proprietorship license with any of these authorities must take and pass a written examination as a condition for licensure.

(b) The examination shall be prepared by the Department and/or an entity designated by the Department and shall cover the following topics:

1. The contents of Federal and State legislation and regulations on mortgage banking, correspondent mortgage banking, mortgage brokering and secondary mortgage lending, as applicable;

2. New Jersey real estate laws;

3. Basic knowledge of mortgage documents; and

4. Related State and Federal legislation such as the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and Regulation Z.

**3:15-2.10 No waiver of examination**

The Department shall not grant a waiver of the examination for licensure as a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender except for those whose license is in an inactive status as provided in N.J.A.C. 3:15-2.8.

**3:15-2.11 Failure to pass the examination**

(a) An applicant who fails to pass the examination for licensure required by N.J.A.C. 3:15-2.9 within 180 days of the receipt of the application shall be deemed to have withdrawn his or her application. An applicant who passes the examination but does not complete all of the requirements for the license within 180 days of passing the examination shall be deemed to have withdrawn his or her application. An applicant who fails the examination twice shall be prohibited from taking the examination for 180 days from the date of the second examination. An applicant who fails the examination a third or subsequent time shall be prohibited from taking the examination for 365 days from the date of the third or subsequent examination.

**3:15-2.12 Responsibilities and replacement of the entity's licensed natural person**

(a) If a natural person upon whom a corporation, partnership, association, limited liability company or other entity relies for its license pursuant to N.J.S.A. 17:11C-3 discontinues his or her affiliation or employment with such entity for any reason whatsoever, the entity may continue to operate under its license for a period of 90 calendar days or for such other extended period as the Commissioner determines necessary for the entity to replace that natural person with another licensed natural person provided that the entity notifies the Department within 10 days following the date that the natural person discontinues his or her affiliation or employment with the entity.

(b) The individual licensee upon whom a licensed lender entity license is dependent shall be fully qualified by passing the written examination required by N.J.A.C. 3:15-2.9 and shall be responsible to perform the following:

1. Supervise the operations of the licensed office(s) to ensure that the business is being conducted in compliance with all applicable State and Federal laws and regulations;

2. Supervise the prompt review and response to Department communications relating to consumer complaints and inquiries regarding the licensee's licensed activities;
3. Supervise the prompt review and response to Department communications relating to on-site examinations, including, but not limited to, requests for scheduling, responses to examination findings and responses to directives arising from examinations;
4. Ensure the proper completion and timely submission of the required licensee annual report filing as well as any other special reports or surveys that may, from time to time, be requested by the Department;
5. Ensure that license renewals and other licensing matters such as new branch office applications, changes of address, changes of name, change of control, change of business style, and requests for additional license authorities are submitted to the Department on the appropriate forms and accompanied by the required documentation;
6. Have and maintain sufficient knowledge of all applicable Federal and State statutes and rules; and
7. Ensure that all employees required to be registered as mortgage solicitors are properly registered with the Department and that copies of the certificates issued for each solicitor are maintained at the licensed office(s).

### **3:15-2.13 Registration of mortgage solicitors**

(a) Before an individual may act as a mortgage solicitor for a person licensed as a mortgage banker, correspondent mortgage banker or mortgage broker, that individual shall be registered with the Department in affiliation with that licensee. A mortgage solicitor shall not be registered in affiliation with more than one licensee at the same time.

(b) To register a mortgage solicitor, the prospective employing mortgage banker, correspondent mortgage banker or mortgage broker shall submit the following to the Department:

1. A completed registration form, which shall include the mortgage solicitor's name, birth date, social security number, residence address, the name of the employing licensee; and

2. A \$100.00 registration fee. A mortgage solicitor who changes his or her employing mortgage banker, correspondent mortgage banker or mortgage broker within the two-year registration period shall be re-registered by the new employing licensee by filing a new registration form with the \$100.00 fee.

3. Any additional information requested of a specific applicant by the Department.

(c) The Department shall provide all employing licensees with a mortgage solicitor registration certificate for each solicitor that shall be renewable every two years. The registration shall run from July 1, 2007 to June 30, 2009 and for two-year intervals thereafter.

(d) The registration certificate shall contain the name of the mortgage solicitor, the name of the employing licensee, and the address of the principal office of the employing licensee. The employing licensee shall either:

1. Display the registration certificate at the office or work station of the mortgage solicitor; or

2. Maintain the registration certificates in a binder or similar device provided that the licensee posts a sign at the office or work station of the mortgage solicitor indicating that the registration certificates are available for public inspection upon request.

(e) Within 30 calendar days after a mortgage solicitor ceases his or her affiliation with a licensee, the licensee shall return the registration certificate to the Department. It is not necessary for a licensee to return the registration certificate of a mortgage solicitor who changes from one branch location of the licensee to another branch office of that licensee.

(f) The Commissioner shall refuse to register any person who changes affiliation two or more times in the calendar year, if the Commissioner determines that the change is for the purpose of evading the licensing requirements of the Act.

(g) Registration fees are nonrefundable.

### **3:15-2.14 Change of control**

(a) A licensee shall file a request for approval whenever a change of control of direct ownership of 25 percent or more of the licensee is planned. The change of control request shall be submitted at least 60 days prior to the anticipated sale date and shall include:

1. A fully executed change of control form as prescribed by the Commissioner;
2. A copy of the executed stock purchase agreement or other agreement evidencing the proposed sale;
3. A copy of the corporate resolution providing that existing officers and/or directors cease to hold positions and that new officers or directors are appointed, if applicable; and
4. Certified consent certificates as set forth in N.J.A.C. 3:15-2.2(a) 2 for each new officer, director, partner, member or stockholder resulting from the change of control.

### **3:15-2.15 Discontinuation of licensed lender business activity**

(a) When a licensed lender with authority to act as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary mortgage lender discontinues its licensed business operations in New Jersey, the licensed lender shall:

1. Surrender the entity's current principal office license as well as the license of each affiliated supervisory individual, branch office, and the certificates of all registered mortgage solicitors, if any;
2. Identify, in writing, if there are any New Jersey residential mortgage loans being processed and provide the total number of any such loans together with the consumer's names and addresses and the property address for each loan;
3. Identify, in writing, the number of New Jersey residential mortgage loans being processed that have scheduled closing dates and such dates and provide the consumers' names and addresses and the property address for each loan;
4. Identify, in writing, the location of the loan files of pending New Jersey residential loan applications;
5. Identify, in writing, the location of other loan files required to be maintained under New Jersey law and regulations;
6. Identify, in writing, any arrangements that have been made to have other entities take over loan files together with complete information on the name, address, telephone number, and contact person of entities involved in such arrangements;
7. Identify, in writing, the name and telephone number of person(s) within the licensee's operation designated to handle consumer problems that may arise;
8. Satisfy all outstanding obligations owed to the Department;
9. Satisfy all filing requirements including the final annual report which report shall be for the year in which the licensed lender discontinues its licensed business operations in New Jersey;
10. Pay all assessments due and owing and prepay the base assessment for the year of the discontinuance by paying the amount of the most recently billed base assessment within 15 days after ceasing business or upon being acquired. Adjustments to the base assessment, if any, and the final volume assessment for the year of discontinuance will be billed in the year following the discontinuance. In the event of an acquisition, the amount carried forward shall be paid by the acquiring entity; and

11. Identify, in writing, the name, address and phone number of the person within the licensee's operation responsible for the payment of assessments.

(b) When a licensed lender with authority to act as a consumer lender or sales finance company discontinues its licensed business operations in New Jersey, the licensed lender shall:

1. Surrender the entity's current principal office license as well as the license of each branch office;
2. Identify, in writing, if there are any New Jersey consumer loan installment sales contracts or charge account agreements being processed and provide the total number of any such transaction together with the consumers' names and addresses for each transaction;
3. Identify, in writing, the location of loan or agreement files required to be maintained under New Jersey law and regulations;
4. Identify, in writing, any arrangements that have been made to have other entities take over loan or agreement files together with complete information on the name, address, telephone number, and contact person of entities involved in such arrangements;
5. Identify, in writing, the name and telephone number of person(s) within the licensee's operation designated to handle any consumer problems that may arise;
6. Satisfy all outstanding obligations owed to the Department including all assessments due and owing and prepay the base assessment for the year of the discontinuance by paying the amount of the most recently billed base assessment within 15 days after ceasing business or upon being acquired. Adjustments to the base assessment, if any, and the final volume assessment for the year of discontinuance will be billed in the year following the discontinuance;
7. Satisfy all filing requirements including the final annual report which report shall be for the year in which the licensed lender discontinues its licensed business operations in New Jersey; and
8. Identify, in writing, the name, address and phone number of the person within the licensee's operation responsible for the payment of the assessments.

### **3:15-2.16 Licensee notification requirements**

(a) A licensee shall notify the Department in writing within 15 days of the occurrence of any of the following:

1. Upon each arrest, indictment or conviction of the licensee, or of any officer, director, partner, member, owner or substantial stockholder of the licensee in this State, in another state, or in any Federal jurisdiction for any offense, crime or misdemeanor, except for a motor vehicle violation;
2. Upon each revocation, denial, suspension or restraint of a business or professional license, registration, certificate or other right to engage in business issued to the licensee, or to any officer, director, partner, member, owner or substantial stockholder of the licensee, or to any affiliate thereof, by this State, by another state, by the Federal government, or by any agency or instrumentality thereof;
3. Upon filing a petition of bankruptcy or reorganization by the licensee, or by any officer, director, partner, member, owner or substantial stockholder of the licensee, or by any affiliate thereof;
4. Upon the fining, penalizing or disciplining of the licensee, or any affiliates, by this State, by another state, by the Federal government, or by any agency or instrumentality thereof; and
5. Upon the involvement of the licensee, or any officer, director, partner, member, owner or substantial stockholder of the licensee, or any affiliate thereof, in any activity that may have a substantial impact on the ability of a licensee to engage in the licensed activity in a prudent or worthy manner.

## SUBCHAPTER 3. BONDING

### 3:15-3.1 Bond requirements

(a) A person who seeks an initial licensed lender license with authority as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender shall obtain a surety bond in the following initial amount:

1. One authority-- \$100,000;
2. Two authorities--\$150,000.

(b) Following the submission of each annual report, licensed lenders with authority as a mortgage banker, correspondent mortgage banker or secondary lender shall increase the amount of the surety bond based on the following closed loan volumes and provide proof thereof to the Department within 30 days of the submission of the report.

1. One authority:

- |                          |                               |            |
|--------------------------|-------------------------------|------------|
| i. Closed loan volume:   | \$0 to \$50,000,000           | \$100,000; |
| ii. Closed loan volume:  | \$50,000,001 to \$75,000,000  | \$150,000; |
| iii. Closed loan volume: | \$75,000,001 to \$100,000,000 | \$200,000; |
| iv. Closed loan volume:  | \$100,000,001 and over        | \$250,000. |

2. Two authorities:

- |                          |                               |            |
|--------------------------|-------------------------------|------------|
| i. Closed loan volume:   | \$0 to \$50,000,000           | \$150,000; |
| ii. Closed loan volume:  | \$50,000,001 to \$75,000,000  | \$200,000; |
| iii. Closed loan volume: | \$75,000,001 to \$100,000,000 | \$250,000; |
| iv. Closed loan volume:  | \$100,000,001 and over        | \$300,000. |

(c) Following the submission of each annual report, licensed lenders with authority only as a mortgage broker shall be required to increase the amount of the surety bond based on the following schedule relating to the number of mortgage loan applications taken and provide proof thereof to the Department within 30 days of the submission of the report.

- |                        |              |            |
|------------------------|--------------|------------|
| 1. Applications taken: | 0 to 100     | \$100,000; |
| 2. Applications taken: | 101 to 300   | \$150,000; |
| 3. Applications taken: | 301 to 500   | \$200,000; |
| 4. Applications taken: | 501 and over | \$250,000. |

### 3:15-3.2 Beneficiaries of bond coverage

The bond shall run to the State, pro rata, for the benefit of consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the mortgage banker, correspondent mortgage banker, mortgage broker, mortgage solicitor or secondary lender in the course of activity authorized by the license, and for the benefit of the Department for unpaid examination bills, unpaid penalties and any other unpaid obligation of the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender to the Department, including, but not limited to, returned items submitted to the Department in payment of bills, penalties, charges or fees.

### 3:15-3.3 Coverage of the bond; compensable claims

(a) The surety company shall pay consumers claims based on the damages directly incurred by the wrongful act, default, fraud or misrepresentation of the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender.

(b) If a mortgage banker, correspondent mortgage banker, or mortgage broker is authorized to act as a

secondary lender, or vice versa, the bond shall provide that the entire amount of the bond is available to the Department for claims related to either authorized activity.

(c) Attorney's fees, pre- or post-judgment interest, court costs and similar charges are not recoverable through the bond, unless such charges are included in a final judgment against the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender and the surety company was given prior notice of the court action and an opportunity to respond.

(d) A consumer may not recover third party charges for services that are necessary and transferable for future mortgage loan applications.

(e) The bond shall not be payable for claims made by business creditors.

(f) The bond shall not be payable for treble damage claims pursuant to the Consumer Fraud Act or any other State or Federal law.

### **3:15-3.4 Original bond or rider required; changes in surety companies or bonds**

A mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender shall submit to the Department the original executed surety bond or the original rider to the original executed surety bond. If the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender changes its surety company or the bond is otherwise amended, the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender shall immediately provide the Department with the amended original executed surety bond or the amended original rider to the original executed surety bond.

### **3:15-3.5 Notice to Department required before canceling bond coverage**

A surety company shall not cancel a bond for any cause unless written notice of its intention to cancel is filed with the Department at least 30 days before the day upon which cancellation shall take effect, and cancellation without such notice shall not be effective.

### **3:15-3.6 Surety companies to notify Department of claims; claims payable only at the direction of the Department**

When a person submits a claim with a surety company against the bond of a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender, the surety company shall immediately notify the Department and shall not pay any claim unless and until it receives direction to do so from the Department.

### **3:15-3.7 Publication of notices of bond claims by the Department**

When the Department receives notice from a surety company of a claim against a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender that appears valid, a consumer is unable to obtain payment of a court judgment that was obtained against the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender conducts or conducted business advising consumers of their right to file claims against the bond. The Department is not required to publish notice when it has a claim against the bond for an examination charge or any other fee, charge or penalty if there are no consumer claims or complaints that appear valid and that may require payment from the bond. If the Department determines a notice is necessary, the notice shall be in the following form:

#### **NOTICE TO CONSUMERS TO ANY CONSUMER HAVING CLAIMS AGAINST**

(Name of Licensee), (Type of licensed activity, i.e., mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender)

TAKE NOTICE that in order to provide a procedure for the orderly resolution of claims against the bond obtained by (Name of Licensee) for the benefit of any consumer injured by the wrongful act, default, fraud or misrepresentation of (Name of Licensee), you are hereby required to present your claims against (Name of Licensee) at the following address:

N.J. Department of Banking and Insurance  
Division of Banking  
Office of Consumer Finance  
20 West State Street, PO Box 040  
Trenton, NJ 08625-0040

Each claim shall be presented in writing, specifying the amount claimed and the particulars of the claim, and shall be duly verified under oath or affirmation.

TAKE FURTHER NOTICE that each person having claims against (Name of Licensee) should file a claim no later than (one month after last notice) or risk losing the opportunity to file a claim.

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Commissioner of Banking and Insurance

### **3:15-3.8 Priority of claims against bonds**

The Department shall review all timely claims made against the bond of a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender and shall decide which claims are valid. All consumers with timely valid claims shall share pro rata in their claims against the bond. The Department shall then submit claims it has against the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender for unpaid examination charges or for other penalties, charges or fees to the surety company for payment. Consumers submitting claims after the filing date set forth in the published notice but before the expiration of the applicable statute of limitations period shall recover next against the bond in the order that the claims are submitted.

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## SUBCHAPTER 4. FEES

### 3:15-4.1 Fees--general

All fees shall be paid by a check made payable to "Treasurer--State of New Jersey."

### 3:15-4.2 Application fees

(a) A person who is applying for an individual or company or branch office license under the Act shall pay an application fee to the Department as follows:

1. On an application for any license set forth in (a) above with one authority: \$700.00;
2. On an application for any license set forth in (a) above with two authorities: \$1,000;
3. On an application for any license set forth in (a) above with three authorities: \$1,300; and
4. On an application for any license set forth in (a) above with four authorities: \$1,600.

(b) A licensee who applies for an additional authority on any currently held license shall pay an application fee for each such application of \$300.00 per additional authority for each individual or company or branch office license.

(c) Application fees are non-refundable.

### 3:15-4.3 License fees

(a) The license fees for licensed lenders are as follows:

1. One authority for an individual, company and/or branch: biennial fee-- \$1,400; annual fee \$700.00;
2. Two authorities for an individual, company and/or branch: biennial fee-- \$2,800; annual fee \$1,400;
3. Three authorities for a company and/or branch: biennial fee--\$4,200; annual fee \$2,100;
4. Four authorities for a company and/or branch: biennial fee--\$5,600; annual fee \$2,800.

(b) Applicants shall pay the biennial fee if they apply for an initial license or to renew an existing license at renewal or during the first year of the biennial period. Applicants shall pay the annual fee if they apply for an initial license during the second year of the biennial period.

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## SUBCHAPTER 5. TANGIBLE NET WORTH, NET WORTH, LIQUID ASSETS, INSOLVENCY

### **3:15-5.1 Applicability of provisions**

The requirements of this subchapter shall apply to each corporation, partnership, limited liability company, or sole proprietorship that is licensed, or that is an applicant for a license, as a mortgage banker, correspondent mortgage banker, or mortgage broker and shall not apply to supervisory individuals or individuals other than sole proprietors. The subchapter shall also apply to a person who is licensed, or who is an applicant for a license, as a secondary lender or a consumer lender.

### **3:15-5.2 Accounting method for determining tangible net worth**

Tangible net worth and net worth shall be computed on the accrual basis of accounting.

### **3:15-5.3 Requirement to achieve and maintain tangible net worth, net worth and liquid assets**

Each applicant for a license with authority as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender shall achieve and maintain the tangible net worth, net worth, and liquid assets as required by N.J.S.A. 17:11C-14, 15 and 16.

### **3:15-5.4 Failure to maintain tangible net worth, net worth or liquid assets; action by the Department**

(a) If the tangible net worth of a mortgage banker, correspondent mortgage banker, or mortgage broker, or if the net worth or liquid assets of a secondary lender or consumer lender falls below the amounts required by N.J.S.A. 17:11C-14, 15 and 16, or if the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender is insolvent, the Department may take such action as it deems appropriate and necessary to protect the public. The action may include requiring the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender to operate pursuant to a Memorandum of Understanding, or directing the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender to submit and comply with a capital plan within a time frame established by the Department to attain the tangible net worth, net worth or liquid assets required by the Act.

(b) When considering whether to suspend, revoke or refuse to renew the license of a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender who does not have the tangible net worth, net worth or liquid assets required by the Act, the Commissioner shall consider the following factors:

1. How far the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender is below the level of tangible net worth, net worth or liquid assets required by the Act;

2. The size of any warehouse line or table funding agreement, the institution(s) providing this credit, and any correspondent relationship that a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender may have with another financial institution;

3. The number and amount of loans typically made or brokered by the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender;

4. The history of consumer complaints received by the Department concerning the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender;

5. Whether the mortgage banker, correspondent mortgage banker, secondary lender or consumer lender has committed to make loans that it has been unable to fund; and

6. Any other factors reflecting on the ability and fitness of the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender to transact business in its licensed capacity.

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## SUBCHAPTER 6. BOOKS AND RECORDS; EXAMINATIONS; ANNUAL REPORTS

### 3:15-6.1 Methods and accounting

- (a) Each licensee shall maintain books and records in accordance with recognized accounting principles.
- (b) If a person licensed to act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender maintains books and records on a basis other than the accrual method of accounting, that licensee shall also maintain books and records on the accrual basis of accounting which states the tangible net worth or net worth of the licensee, as applicable.

### 3:15-6.2 Reproduction of documents

A licensee may reproduce documents and records relating to the operation of its business for the purpose of complying with this subchapter and may substitute the copy for the original.

### 3:15-6.3 Location of books and records

(a) Each licensee shall notify the Department of the office in which the books and records are kept. If the licensee moves the books and records, the licensee shall notify the Department prior to the move.

(b) A licensee may keep its records at:

1. A licensed principal or branch office in this State;
2. An unlicensed site in or out of this State, provided that the licensee secures the prior approval of the Department pursuant to (c) below;
3. A licensed branch office outside of this State, provided that the licensee secures the prior approval of the Department pursuant to (c) below; or
4. In the case of a sales finance company, a licensed principal office outside of this State.

(c) The approval of the Department to keep records at a site or office specified in (b) 2 and 3 above shall be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at the site. The provisions of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations and investigations, if any, and the right of the Department to rescind the agreement.

(d) Licensees operating more than one licensed office may maintain the general ledger at their principal New Jersey office, except that a sales finance company that has no office in this State may keep the general ledger at its principal office out of state. The trial balance or balance sheet and profit and loss statement of the licensed office shall be made available upon request to the examiner or investigator at the office where the general ledger is kept.

(e) The books, accounts and records which pertain to each business activity conducted by a licensee under the Act shall be maintained separate and apart from the books, accounts and records of all non-licensed lines of business conducted by the licensee and shall be maintained so that an examiner or investigator can efficiently examine the various types of licensed activities.

**3:15-6.4 Loan application recordkeeping requirements for mortgage bankers, correspondent mortgage bankers and mortgage brokers**

(a) Each person licensed as a mortgage banker, correspondent mortgage banker or mortgage broker shall maintain a loan application system containing the following information for each application for a first mortgage loan:

1. The case number;
2. The application date;
3. The applicant's name;
4. The property address;
5. The disposition;
6. The type of loan; and
7. The amount of the loan.

**3:15-6.5 Loan documentation file requirements for mortgage bankers, mortgage bankers and mortgage brokers**

(a) Each person licensed as a mortgage banker, correspondent mortgage banker or mortgage broker shall maintain for each first mortgage loan application the following data, if utilized by the licensee in connection with the first mortgage loan application:

1. The loan application;
2. The loan commitment;
3. The Truth-in-Lending disclosure statement;
4. All disclosures required by RESPA;
5. All other written disclosures required in connection with the loan transaction by State or Federal law;
6. The loan closing statement;
7. A copy of mortgage note or bond;
8. The adverse action or rejection of application letter;
9. The appraisal report; and
10. The credit report.

**3:15-6.6 Documentation requirement related to the charging of certain fees by mortgage bankers, correspondent mortgage bankers and mortgage brokers**

(a) Each person licensed as a mortgage banker, correspondent mortgage banker, or mortgage broker shall maintain a recordkeeping system that shall document each of the following fees if charged to first mortgage loan applicants by the licensee:

1. Appraisal fees;
2. Credit report fees;
3. Application fees;
4. Commitment fees;
5. Warehouse fees; and
6. Third party charges.

### **3:15-6.7 Ledger card and document retention requirement for secondary lenders**

(a) Each person licensed as a secondary lender shall maintain an individual record or ledger card for each secondary mortgage loan, which shall include the following information:

1. The account number;
2. The name and address of borrower (mortgagor);
3. The address and physical description of mortgaged property;
4. The date of the secondary mortgage loan;
5. The amount of the secondary mortgage loan;
6. The appraisal or inspection fee;
7. The credit investigation fee;
8. The title search fee;
9. Legal fees;
10. Recording and filing fees;
11. Insurance premiums and types of coverage;
12. The interest charge;
13. The full amount of the secondary mortgage loan;
14. The terms by which the secondary mortgage loan is to be repaid;
15. The amount and to whom any commissions, fees or points, if any, were paid by the licensee and the form of disbursement (for example, cash or check);
16. A record of the computation of any rebate upon prepayment of the secondary mortgage loan in full before maturity;
17. A record of the computation of any refund of unearned insurance premium charge upon prepayment of the secondary mortgage loan in full before maturity; and
18. The name and address of any subsequent holder of the secondary mortgage loan obligation if it is sold or assigned.

(b) Each person licensed as a secondary lender shall maintain at his place of business in this State an original or true copy of the following instruments, documents, accounts, books and records:

1. Promissory note evidencing each borrower's secondary mortgage loan indebtedness;
2. Mortgage indenture or any other similar instrument or document that creates a lien on the real property that is taken as security for a secondary mortgage loan;
3. Credit life and accident and health insurance policy or a certificate of insurance when such insurance is obtained in accordance with N.J.S.A. 17:11C-21;
4. Closing statement for each secondary mortgage loan;
5. Appraisal or search, where utilized;
6. Individual ledger card or any other form or record which shows all installment payments made by the borrower and all other charges or credits to the borrower's account;

7. Individual file in which the borrower's application for a loan and any correspondence, including collection letters, memorandums, notes or any other written information pertaining to the borrower's account, shall be kept; and

8. General ledger cash receipts and disbursements register, checkbook canceled checks and such other accounts, books or records as shall be required by the Commissioner in order to ascertain whether the licensee has been conducting his secondary mortgage loan business in full compliance with the provisions of N.J.S.A. 17:11C-1 et seq.

**3:15-6.8      Loan numbering, original document envelope, and index requirement for consumer lenders**

(a) Each consumer loan made shall have its proper consecutive or individual number and all instruments evidencing or securing any consumer loan shall bear the respective loan number.

(b) Each consumer lender shall maintain an alphabetical index of all borrowers, comakers, endorsers, guarantors and sureties that shall show the name of the borrower, loan number, date of loan and amount of loan.

(c) Each consumer lender shall maintain an envelope or other file for each loan in which shall be kept all the original notes, security agreements or other evidences of indebtedness or security, which have been signed by the borrower.

**3:15-6.9      Documentation**

(a) The borrower, or an agent applying on behalf of a borrower, shall sign each loan application. If more than one borrower applies, each borrower and each agent applying on behalf of a borrower shall sign the application.

(b) Each credit report for which an applicant is charged a separate fee shall be memorialized in a written memorandum or other written documentation. The memorandum or documentation shall indicate that the credit history of the applicant was investigated and by whom.

(c) Each appraisal report for which an applicant for a first mortgage loan or a second mortgage loan is charged a separate fee shall be memorialized in a written memorandum or other written documentation. The memorandum or documentation shall indicate that the value of the property was evaluated and by whom.

(d) Each person licensed as a mortgage banker, correspondent mortgage banker, or secondary lender shall maintain a trustee account and ledger detailing receipts and disbursement of all funds deposited by the borrower or seller with the licensee in connection with the origination or closing of any loan. The funds shall be held in accordance with the terms of a written agreement between the mortgage banker, correspondent mortgage banker or secondary lender and such borrower or seller, which provides that upon the occurrence of a specific condition or event, the funds or a portion thereof shall be disbursed to the borrower or seller. All such trust accounts shall be reconciled at least quarterly. This subsection shall not apply to escrows collected or held by the mortgage banker, correspondent mortgage banker or secondary lender for taxes or insurance.



### **3:15-6.10 Judgment records requirement for consumer lenders and sales finance companies**

(a) When a consumer lender or sales finance company has reduced a note to judgment, the licensee shall maintain a file containing the following information:

1. The date of judgment;
2. The judgment debtor's name and address;
3. The date suit was filed;
4. The nature of the suit;
5. The name and location of the court;
6. The amount of judgment, showing the separate items comprised in the judgment as follows:
  - i. Principal;
  - ii. Interest;
  - iii. Attorney's fees;
  - iv. Court cost (itemized); and
  - v. Total amount of judgment; and
7. A description of the legal procedures followed to enforce the judgment.

(b) Consumer lenders shall maintain records of nonjudicial foreclosures of security, such as repossession pursuant to the terms of the contract.

### **3:15-6.11 Motor vehicle lien requirement for consumer lenders**

Whenever a consumer loan or retail installment contract is secured by a lien on a motor vehicle, it shall be the responsibility of the consumer lender or sales finance company to see that the title to the motor vehicle is in the name of the borrower. If the motor vehicle used as security is the property of a comaker, surety or guarantor, then the title of such motor vehicle shall be in the name of the comaker, surety or guarantor.

### **3:15-6.12 Retention of advertisements**

One copy of each advertisement, including radio and television scripts, and any materials disseminated over the internet or by any other electronic means, shall be kept on file in the licensee's office for at least two years after the last date on which any such advertisement was utilized, said date to be noted on each such advertisement.

### **3:15-6.13 Records retention**

(a) Each licensee shall preserve the books, accounts and records for at least three years after making the final entry on any application or loan.

(b) The denial or withdrawal of an application shall constitute the final entry for an application which is denied or withdrawn.

(c) The assignment or sale of a loan shall constitute the final entry for a loan which is sold or assigned.

(d) In the case of an open-end loan, the licensee shall preserve the books, accounts and records for at least three years after each entry.

### **3:15-6.14 Copy of examination reports to licensee**

The official report of examination shall be submitted to the licensee or to a representative of the licensee which has been designated by the licensee for such purpose.

### **3:15-6.15 Charges for investigations**

For any person not licensed or registered by the Department, the Department may charge for investigations at the same rate as provided for examinations in N.J.A.C. 3:1-6.6. For the purposes of this section, investigations shall include investigations by the enforcement or examinations units of the Department and special investigations by the consumer services unit but shall not include routine efforts by the consumer services unit to research or resolve consumer complaints.

### **3:15-6.16 Reports to the Department**

Each mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender and sales finance company shall file a report with the Department annually on or before April 1 of each year. The report shall be submitted on forms provided by the Department and shall indicate the tangible net worth, net worth and liquid assets of the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender and consumer lender, as required. For mortgage banker, correspondent mortgage banker, mortgage broker and secondary lenders, the report shall indicate the warehousing lines available and outstanding. In accordance with N.J.A.C. 3:1-7.6, the Department shall assess a penalty against any mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender or sales finance company for each annual report filed late.

## SUBCHAPTER 7. INSURANCE

### **3:15-7.1 Insurance matters for mortgage bankers, correspondent mortgage bankers, secondary lenders and consumer lenders**

(a) Mortgage bankers, correspondent mortgage bankers, secondary lenders and consumer lenders are subject to the provisions concerning insurance set forth in N.J.S.A. 17:11C-21.

(b) If insurance is lawfully required or obtained in connection with a loan, the insurance shall be written or obtained by or through an insurance producer who is licensed in good standing in this State, and written by an insurance company authorized to do business in this State.

(c) It shall be the responsibility of the mortgage banker, correspondent mortgage banker, secondary lender or consumer lender to explain clearly to each borrower the benefits and limitations of any credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance which the borrower contemplates getting in connection with a loan.

(d) Each mortgage banker, correspondent mortgage banker, secondary lender or consumer lender shall keep a record of all policies for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance sold to a borrower in connection with a loan, all premiums collected in connections with such loans, all refunds of unearned premiums caused by payment in full of an amount or by renewal, and a detailed record of all claims paid by the insurer.

(e) If a mortgage banker, correspondent mortgage banker, secondary lender or consumer lender collects a premium from a borrower for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance, and such insurance does not become effective, the mortgage banker, correspondent mortgage banker, secondary lender or consumer lender shall immediately give written notice to the borrower and shall promptly refund to or credit to the account of the borrower the amount collected from him or charged to him for such insurance.

(f) If a credit life policy issued in connection with a loan contains no provision for designation of a second beneficiary, it shall be handled under the usual procedure contained in a facility of payment clause authorizing the insurance company to pay any insurance in excess of the unpaid balance of the indebtedness to the estate, wife, husband, children or other blood relative or person equitably entitled thereto as determined by the insurance company.

### **3:15-7.2 Insurance provisions applicable to secondary lenders and consumer lenders**

(a) When a secondary mortgage loan or a consumer loan is repaid in full or renewed, or if the insurance is terminated prior to the scheduled maturity date of a secondary mortgage loan or a consumer loan, the secondary lender or consumer lender shall refund to the borrower any unearned insurance premiums.

(b) If a borrower has repaid a secondary mortgage loan or a consumer loan in full, or if a beneficiary named in a policy under a claim is due a refund of unearned premiums and the secondary lender or consumer lender is unable to locate the borrower or beneficiary after due diligence, but in no event longer than 180 days, the licensee shall return all unearned premiums to the insurer, stating the reason therefor. The secondary lender or consumer lender shall file evidence in the borrower's file of his or her efforts to locate the borrower.

(c) All refunds and credits made by secondary lenders and consumer lenders pursuant to this section shall be computed by the "Sum of Digits Method" commonly known as the "Rule of 78ths." These are rules for computing refunds of unearned finance charges on early payment of a loan so that the refund is proportional to the monthly unpaid balance. Tables for calculating refunds and credits according to this methodology can be obtained from Financial Publishing Company, 82 Brookline Drive, Brookline, MA 02212. When the refund or credit of the unearned insurance premium is less than \$1.00, no refund is required.

(d) If a borrower has credit life insurance, interest charges shall cease accruing on the account at the death of the insured.

(e) If a secondary mortgage loan contract or consumer loan contract contains credit life insurance, the secondary lender or consumer lender, as the case may be, shall file a death claim with the insurer upon receipt of notice of the death of the insured. The death claim filed by a secondary lender or consumer lender with an insurer shall be made for the full amount of the coverage held at death by the insured.

(f) A policy for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance may provide for the insurance of more than one person. If the policy is silent regarding whether the insurance covers more than one person, the person whose signature appears on the first line of the lines provided for the signatures on the loan contract shall be considered as the only borrower insured by the policy and the secondary lender or consumer lender shall disclose to the borrower in writing the effect of the order of signing the loan contract.

## SUBCHAPTER 8. ADVERTISING

### 3:15-8.1 Advertising and insurance costs

If a mortgage banker, correspondent mortgage banker, secondary lender or consumer lender requires a borrower to insure the collateral assigned as security for a loan, the licensee shall not advertise that there are "no other costs," or use words of similar meaning, unless the terms represented in the advertisement include the cost of the insurance or unless the advertisement states that an additional charge for insurance is required.

### 3:15-8.2 Verbal advertisements

Each verbal advertisement for a loan, which a licensee makes or authorizes to be broadcast or disseminated by radio, television, internet or other electronic means, shall include a statement indicating whether the advertisement is for a first mortgage loan, second mortgage loan, consumer loan, retail installment contract, or retail charge account. The statement may be made by either verbal or visual means, provided that, if visual means are used, the statement shall appear for the entire time the advertisement is broadcast or disseminated.

### 3:15-8.3 Prohibited types of advertising

(a) The use of any of the following types of advertising shall be deemed to be misleading or deceptive:

1. A form which has the appearance of a check, money order, draft or other instrument that is normally used for the transfer of funds, except that a consumer lender may use such an instrument if:

i. The consumer lender sends this type of solicitation only to current or prior customers of the consumer lender, including customers of consumer credit affiliates of the consumer lender;

ii. Each such solicitation allows the customer an option not to receive future solicitations of this type;

iii. The instrument is negotiable for not more than six months, and the consumer is advised to destroy the instrument if it is not going to be negotiated; and

iv. The solicitation contains the following statement in a prominent place in a 10-point print: "THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!"

2. Reference to loans by terms such as savings, thrift, share passbook, account, deposit, certificate or any other word or phrase of similar meaning, used individually or collectively.

3. No mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, or consumer lender shall permit a supply of blank notes, chattel mortgages, security agreements, applications or other similar forms to be placed in any place other than a licensed office.

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## SUBCHAPTER 9. PERMISSIBLE FEES

### **3:15-9.1 Fees permitted to be charged by mortgage bankers, correspondent mortgage bankers, and mortgage brokers**

(a) Mortgage bankers, correspondent mortgage bankers and mortgage brokers may charge the following fees:

1. The fees specified in N.J.S.A. 17:11C-23 and in N.J.A.C. 3:1-16.2 and 16.10, as applicable. Correspondent mortgage bankers may charge any fee that may be charged by mortgage bankers; and

2. Pursuant to N.J.S.A. 17:11C-30 and 46:18-11.2, the fee charged by the county recording officer to cancel the mortgage, plus an additional service fee not to exceed \$25.00, providing that the borrower has received prior notice of the fees required by the mortgage banker or correspondent mortgage banker, and providing further that if the mortgage banker or correspondent mortgage banker collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the mortgage banker shall refund the service fee to the borrower.

(b) No mortgage banker, correspondent mortgage banker or mortgage broker shall give, authorize the giving of, or accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a mortgage loan shall be referred to any person, except as otherwise permitted by State or Federal law.

### **3:15-9.2 Fees permitted to be charged by secondary lenders**

(a) A secondary lender may charge a borrower, incident to a secondary mortgage loan, only the following:

1. The fees specified in N.J.S.A. 17:11C-28; and

2. Pursuant to N.J.S.A. 17:11C-30 and 46:18-11.2, the fee charged by the county recording officer to cancel the mortgage, plus an additional service fee not to exceed \$25.00, providing that the borrower has received prior notice of the fees required by the secondary lender, and providing further that if the secondary lender collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the secondary lender shall refund the service fee to the borrower.

(b) Nothing contained in this section shall limit a secondary lender's ability to impose reasonable charges upon foreclosure.

(c) The following provisions shall govern the charging of attorney fees by secondary lenders:

1. A secondary lender shall not charge a borrower attorney fees if the attorney to whom the fee is to be paid is an employee, partner, officer, director or stockholder of the licensee. For purposes of this subsection, "stockholder" means and includes a person who directly, indirectly or acting through one or more other persons owns, controls or has power to vote 10 percent or more of any class of voting securities of a corporate licensee.

2. An attorney, who is providing legal service in accordance with N.J.S.A. 17:11C-28, shall not compensate any of the following persons for the preparation of documents or for any other services performed for on or behalf of the attorney:

i. A secondary lender;

ii. An employee, partner, officer, director or stockholder of a secondary lender; or

iii. Any other person in which a secondary lender is an employee, partner, officer, director or stockholder.

3. No person listed in (c)2 above shall receive compensation for the preparation of documents or for any other services performed for or on behalf of an attorney who is providing legal service in accordance with N.J.S.A. 17:11C-28.

4. Any secondary lender who requires a borrower to pay an attorney fee shall, at least four days prior to the closing of the loan, inform the borrower in writing of such requirement.

5. In order to receive reimbursement from the borrower at closing for attorney fees charged to the secondary lender in connection with a secondary mortgage loan, the secondary lender shall issue to the borrower at or before the closing of a secondary mortgage loan an itemized listing, prepared by the attorney, of the specific legal services performed by the attorney for and on behalf of the secondary lender and the charge to the secondary lender for each such service. All services charged by the attorney shall be listed irrespective of whether they are less than \$100.00.

6. A secondary lender shall provide the following to the borrower at or before closing:

i. A copy of the itemized listing of attorney fees prepared by the attorney pursuant to (c)5 above;

ii. A closing statement by the secondary lender of all legal and other expenses to be paid by the borrower setting forth the net proceeds of the loan, itemized fees incurred or disbursed, interest charges, full amount of the loan and the terms by which the loan is to be repaid. Each expense item shall be separately listed with the corresponding dollar amount if the amount charged for that item exceeds \$100.00.

7. Proof of compliance with this subsection shall be included in the licensee's loan file.



## SUBCHAPTER 10. CHARACTERISTICS OF LOANS

### 3:15-10.1 Provisions applicable to all licensees

- (a) No licensee shall charge an interest rate that is in excess of the rate permitted by N.J.S.A. 2C:21-19.
- (b) A borrower may repay a first mortgage loan, second mortgage loan or consumer loan at any time without penalty.
- (c) A licensee may only compute interest accrued between monthly payments using the 365/365 method (actual number of days between payments) or the 360/360 method (each month assumed to be 30 days). Sales finance companies charge a time price differential on retail charge accounts rather than interest.
- (d) A borrower shall be given a copy of every document he or she is required to sign.
- (e) Where any disclosure is required pursuant to this chapter that is also required by any Federal law or regulation, compliance with such Federal law or regulation shall be deemed to be compliance with this subchapter.
- (f) No licensee shall require, as a precondition for the granting of credit, or for any other benefit or consideration from the licensee in connection with a loan, that the borrower engage in any other business activity with the licensee. Nothing in this subsection shall prohibit a licensee from offering to a borrower other services or products in connection with a loan.
- (g) A licensee shall not require, nor receive, from a borrower a rebate of any portion of the proceeds of a loan that is not a permissible fee.

### 3:15-10.2 Secondary mortgage loans

- (a) A secondary lender shall not require or accept from a borrower any collateral or security for a secondary mortgage loan other than a mortgage, indenture or any other similar instrument or document that creates a lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation.
- (b) For purposes of (a) above, the co-signature of a person, other than a spouse or other person having an interest in the real property used as security for the loan, shall constitute prohibited collateral or security unless the co-signer is a joint borrower.
- (c) A person not having an interest in the real property used as security for the loan shall be considered a joint borrower if:
  - 1. The borrowers sign an affidavit affirming their agreement to be jointly liable and to share in the proceeds of the secondary mortgage loan; and
  - 2. The secondary lender issues the proceeds check or checks in all borrowers' names. If borrowers may access a line of credit by writing checks or otherwise, this requirement will be satisfied if all borrowers have the authority to draw against the account.
- (d) A secondary lender shall not be made a beneficiary of an insurance policy purchased by the borrower from the secondary lender except as otherwise permitted by law.
- (e) A secondary lender is prohibited from engaging in the secondary mortgage loan business at a location that is utilized by a banking institution or savings and loan association as a main branch or any other office, except that no secondary lender shall be prohibited from engaging in the secondary mortgage loan business at a location utilized by a banking institution or savings and loan association, if the office and operations of the secondary lender are separate and apart and distinct from the offices and operations of the banking institution or the savings and loan association, and when employees of the banking institution or the savings and loan association are not employed by or soliciting for the secondary lender.

### **3:15-10.3 Consumer loans**

(a) All consumer loans, except variable rate loans permitted pursuant to N.J.S.A. 17:11C-32, shall be repaid in substantially equal monthly installments of principal and interest computed on unpaid balances sufficient to liquidate the principal thereof, except as provided in subsection (b) below.

(b) In fixing the date of the first installment beyond one month, the number of days in excess of one month, but not in excess of 15 days, shall be counted after the expiration of one month from the date of the loan. The amount of the first installment may be increased by the amount of interest for the number of days in excess of one month.

(c) A consumer lender shall not knowingly grant a loan in one office to any borrower who already has a loan in another office operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or complete.

(d) When a consumer lender knows or has reason to know that the proceeds of loan of \$50,000 or less are to be delivered by the borrower to an individual already indebted to such consumer lender on a loan of \$50,000 or less, then such loans shall be construed as a single loan to such individual for the purpose of interest computations. If the aggregate of such loans ever exceeds \$50,000 or less interest on such accounts earned from the date such excess occurred shall be restricted to the rate on unpaid balances authorized by the Interest and Usury Law, N.J.S.A. 31:1-1 et seq. and its implementing rule set forth at N.J.A.C. 3:1-1.1.

(e) Whenever a consumer lender has placed an account in the hands of an attorney or other agent for collection, all payments thereafter received by the consumer lender or by such attorney or agent, prior to entry of judgment on such account, shall be credited by the consumer lender to the account as of the date of receipt of such payment to the licensee or to such attorney or agent, and any such attorney or agent shall notify the consumer lender of the day any such payment is received.

(f) All out-of-State loans purchased shall be reported as a separate item in the consumer lender's annual report to the Commissioner.

(g) The required information concerning the amount of interest payable over the term of the loan shall be given on the assumption that the contract will be paid in accordance with the terms originally agreed upon. A variance tolerance of \$1.00 in the total amount of interest set forth in the loan contract is hereby authorized.

### **3:15-10.4 First mortgage loans**

A first mortgage lender shall not require or accept from a borrower any collateral or security for a first mortgage loan other than a mortgage, indenture or any other similar instrument or document that creates a first lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation.

## SUBCHAPTER 11. OTHER PERMISSIBLE LINES OF BUSINESS FOR CONSUMER LENDERS

### 3:15-11.1 All activities prohibited except as authorized by this subchapter

No consumer lender shall conduct any business activities in its office except for activities authorized under the consumer lending license, activities specified in N.J.A.C. 3:15-11.2, and activities for which the consumer lender has obtained specific approval from the Commissioner as provided in N.J.A.C. 3:15-11.2.

### 3:15-11.2 Approved business activities for consumer lenders

(a) A consumer lender may engage in the activities listed below without securing specific approval from the Commissioner. The activities may be conducted in the same office, room or place of business where the consumer lender conducts the business of making consumer loans.

1. Any licensed activity permitted under the Act provided that the consumer lender secures proper licensing from the Department;

2. The home financing agency business. Any such business shall be conducted in accordance with the provisions of N.J.S.A. 17:16C-62 et seq., the Home Repair Financing Act;

3. The insurance premium finance company business. Any such business shall be conducted in accordance with the provisions of N.J.S.A. 17:16D-1 et seq., the Insurance Premium Finance Company Act;

4. The making of business or commercial loans;

5. The financing of installment contracts involving the time sale of goods or services that are to be utilized by the buyer for business or commercial purposes;

6. The leasing of personal property for business or commercial purposes;

7. Income tax preparation service;

8. First lien loans on non-residential real property provided that such business is conducted in accordance with the provisions of N.J.S.A. 31:1-1 et seq., N.J.A.C. 3:1 or Section 501 et seq., of the Federal Depository Institutions Deregulation and Monetary Control Act of 1980; and

9. Purchase of owner originated second mortgages under such reasonable terms and conditions as may be agreed to between the consumer lender and the mortgagee.

(b) A consumer lender who wishes to engage in the same office, room or place of business in an activity related to the financial services business not authorized by the consumer lending license nor specified in (a) above, may apply to the Commissioner for approval to engage in such activity. Such application:

1. Shall be in writing;

2. Shall identify that it is an application by a consumer lender to engage in an activity pursuant to N.J.A.C. 3:15-11.2;

3. Shall describe in detail how the activity in which the consumer lender wishes to engage is related to the financial services business;

4. Shall include a statement that the consumer lender will not require that a borrower engage in the activity as a precondition for granting a consumer loan; and

5. Shall include a statement that the consumer lender will conduct the activity in conformity with all applicable law and regulations.

(c) The Commissioner shall approve or deny an application submitted pursuant to (b) above within 90 days of receipt. If the Commissioner does not, within 90 days of receipt, deny a consumer lender's

application submitted pursuant to (b) above, the activity shall be deemed approved.

(d) Consumer lenders who obtained, prior to July 1, 1997, approval from the Commissioner to engage in an activity not specified in N.J.A.C. 3:15-11.2 shall be deemed to be approved to engage in that activity under the Act.

### **3:15-11.3 Suspensions or revocations of approved business activities**

The Commissioner may, by written directive and after the licensee has had an opportunity to be heard, suspend or revoke a licensee's approval to engage in any of the business activities specified in N.J.A.C. 3:15-11.2 if it is determined that the licensee has violated the Act or these regulations.

## SUBCHAPTER 12. IMPOSITION OF ADMINISTRATIVE PENALTIES

### 3:15-12.1 Initiation of action

(a) Before an administrative penalty is imposed, the Department shall direct a notice by certified mail and regular mail, or by personal delivery, to the last known business or mailing address of the alleged violator. The notice shall include.

1. A reference to the statute, rule and/or administrative order alleged to be violated;
2. A concise statement of the facts on which the violation is based;
3. A statement of the administrative penalty, penalties or other relief sought to be imposed; and
4. A statement advising the alleged violator of the right to a hearing and the procedure for requesting a hearing.

(b) The notice may describe more than one violation, or more than one specific penalty or other relief for each violation. A single form of notice may be used to notify several alleged violators, so long as all are named and served with a copy of the notice in conformity with the provisions of (c) below.

(c) The notice shall be served by personal delivery, or by certified mail and regular mail to the alleged violator's last known business or mailing address, according to the files maintained by the Department. Service in this manner shall be considered lawful service on the alleged violator.

### 3:15-12.2 Failure to respond to notice

(a) The alleged violator's failure to respond, as required by the notice, within the time provided in the notice, shall be deemed to be an admission of all of the allegations, charges and conclusions contained in the notice, and no further proceeding shall be required prior to the execution of a final order that imposes the administrative penalty, penalties or other relief described in the notice.

(b) If no response is received within the time provided in any notice to suspend or revoke a license or authority to conduct any activity regulated by N.J.S.A. 17:1-1 et seq., the Department shall prepare a final order suspending or revoking the license or authority to conduct such activity, and mail a copy of the order to the violator at his or her last known business address on file with the Department.

(c) If the notice issued pursuant to this section provided for the payment of any fine, restitution or reimbursement to the Department for investigative or examination cost, and payment or proof of payment has not been received, the Department may proceed without further notice to suspend or revoke the license or authority of the violator as provided in N.J.S.A. 17:11C-53.

### 3:15-12.3 Consent to an administrative penalty

(a) In order for matters set forth in a notice to be deemed concluded by means of a consent by the alleged violator to the imposition of the administrative penalty or other relief described in the notice, the Department may require any or all of the following:

1. That the licensee return his or her license to the Department for cancellation;
2. The payment of a monetary penalty;
3. The reimbursement to the Department of the costs of investigation and examination;
4. The restitution of moneys owed any person; and
5. The execution of an administrative order that may include admissions of material facts, conclusions of law, and such other terms and conditions as the Commissioner, or his or her authorized designee may deem to be necessary and appropriate under the circumstances.

### **3:15-12.4 Request for a hearing**

(a) An alleged violator shall have 20 calendar days from service of the notice of intent to impose an administrative penalty within which to deliver a written request for a hearing to: Chief of Investigations, Enforcement Bureau, New Jersey Department of Banking and Insurance, PO Box 040, Trenton, New Jersey 08625-0040.

(b) A request for a hearing shall include:

1. The name, address and daytime telephone number of the alleged violator;
2. A copy of the notice;
3. A statement requesting a hearing;
4. A specific admission, denial or explanation of each fact alleged in the notice, or a statement that the person is without knowledge thereof; and
5. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense.

(c) If a hearing request fails to include a specific admission, denial or explanation of each fact alleged, or a statement that the person is without knowledge thereof, the facts alleged in the notice shall be deemed to have been admitted.

(d) If a hearing request lacks any of the elements in (b) above, the Department shall, by certified mail and regular mail, or by personal delivery, advise the person of the deficiencies and provide an additional 10 calendar days from the issuance of the deficiency letter to correct them. If no reply correcting the deficiencies is received by the Department within 10 calendar days, the Department may issue a final order without granting a hearing.

(e) Upon receipt of a properly completed request for a hearing, the Chief of Enforcement or such other Department personnel as may be designated by the Commissioner, shall examine the request and may conduct or direct such further proceedings as may be appropriate, including, but not limited to, an interview with the alleged violator.

(f) Not later than 60 days after the receipt of a properly completed request for a hearing, the Chief of Enforcement, or such other Department personnel as may be designated by the Commissioner, shall advise the alleged violator of the manner of disposition, which may be as follows:

1. Terminated with or without prejudice;
2. Resolved by consent order, which may provide for a lesser or different administrative penalty; or
3. A finding that the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In such a case, the Department shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Practice Rules, N.J.A.C. 1:1.

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# MORTGAGE PROCESSING STATUTES

## CHAPTER 16F. MORTGAGE LOANS

### NEW JERSEY STATUTES ANNOTATED

#### **17:16F-12. Legislative findings and declaration; mortgage loan application, commitment and closing process**

The Legislature finds and declares that:

a. The decision by a person to assume a mortgage loan in order to buy a home is one of the most significant decisions that person will make, the impact of which will last over the person's lifetime.

b. In the 1980s the mortgage loan application, commitment and closing process has become very complex: in most cases it is no longer a simple transaction between a local a lender and a borrower, but often involves several parties on the lending side, a wide variety of settlement activities to be performed and paid for, considerable disclosure requirements on the part of the lender, and detailed information requirements on the part of the borrower, which together often create confusion on the part of the borrower, misunderstanding between the borrower and the lender and borrower frustration with the whole process.

c. In addition to becoming more complex, the mortgage loan application, commitment and closing process and the interest rates associated with mortgage loans are constantly changing, requiring lenders to respond quickly to these changes.

d. Given the complexity of and the constant changes to interest rates and the mortgage loan application, commitment and closing process, it is appropriate that any requirements regarding this process be provided by rules and regulations promulgated by the Commissioner of Banking.

#### **17:16F-13. Rules and regulations; mortgage loan application and commitment process**

The Commissioner of Banking shall, in addition to other regulatory powers, have the authority to promulgate rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), applicable to the mortgage loan application and commitment process of lenders making mortgage loans to borrowers secured by properties located in New Jersey, including the regulation of lock-in agreements and fees associated therewith, to assure that borrowers are treated fairly in the process and are afforded adequate protection from arbitrary changes in the commitment terms or interest rates on their mortgage loans.

#### **17:16F-14. Annual report to legislative committees**

The Commissioner of Banking shall report annually to the appropriate committees of the Legislature regarding existing and suggested regulations which assure that borrowers are treated fairly and are afforded adequate protection from arbitrary changes in commitment terms, interest rates, lock-in agreements and fees related to their mortgage loans.

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# MORTGAGE PROCESSING REGULATIONS

## SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

### NEW JERSEY ADMINISTRATIVE CODE

3:1-16.1	Definitions
3:1-16.2	Fees
3:1-16.3	Application process
3:1-16.4	Lock-in agreements
3:1-16.5	Commitment process
3:1-16.6	Expiration of lock-in or commitment
3:1-16.7	Closing
3:1-16.8	Trust funds
3:1-16.9	No private right of action
3:1-16.10	Special rules for brokers

#### **3:1-16.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Application" means the document(s) or information, including the payment of any fees, that a particular lender or broker requires a borrower to submit for the purpose of having the lender or broker begin to process the loan document(s) to determine whether to grant or deny a mortgage loan.

"Borrower" means a natural person or persons who applies for credit or to whom credit is offered or extended primarily for personal, family or household purposes, and shall mean all co-borrowers, except that the lender may require the co-borrowers to designate one of the co-borrowers as the borrower for the purposes of these rules or, at the election of such natural person or persons, shall mean the attorney for the natural person or persons, but shall not mean other agents of the borrower.

"Borrower's agent" means a person or entity hired, contracted or requested by the borrower to supply information or documentation to the lender. A borrower's agents may include the seller, the borrower's attorney, depository institutions, title insurance companies, employer, spouse, surveyor, etc. A borrower's agents shall not include any person or entity hired, contracted or selected by the lender to perform a service or provide information or documentation to the lender, such as an appraiser, a credit reporting agency, the lender's attorney, the investor, etc.

"Broker" means any mortgage broker as that term is defined in N.J.S.A. 17:11C-2, or any lender when accepting and processing a mortgage loan application on behalf of a lender which will issue the commitment or loan denial.

"Business day" means any day on which the office or offices of the lender or broker are open to the public to provide financial services. A day shall not be regarded as a business day solely because the lender or broker conducts some transactions by appointment for particular customers on that day. A day may be a business day even though the lender or broker does not make entries into the books of the business on that day.

"Commitment" means a signed statement issued by a lender in which the lender promises to make a loan of specified terms to a specified borrower, and which is based on a satisfactory underwriting analysis of the appraisal, if an appraisal is required in connection with the loan, and a satisfactory underwriting analysis of the credit report, if a credit report is required in connection with the loan, except that any document indicating approval of a loan application which is contingent on the approval of a party to whom the lender seeks to sell the loan shall not be deemed a commitment.

"Current market yield" means:

1. In the case of a mortgage loan originated under a special program of, or committed for sale before

expiration of the lock-in agreement to, a particular secondary market purchaser, the yield being sought by that purchaser for that loan; or

2. In the case of a mortgage loan not originated or committed as described in paragraph 1 above and not to be held in the lender's portfolio, the yield being sought, for the type of mortgage loan applied for, by the secondary market purchaser which purchased the highest dollar volume of such mortgage loans from the lender during the preceding 12-month period; or

3. In the case of a mortgage loan to be held in the lender's portfolio, the average commitment rate offered by the lender, for the type of mortgage loan applied for, during the preceding 30-day period.

"Lender" means a State or Federally-chartered bank, savings bank, savings and loan association, credit union, or a mortgage banker or correspondent mortgage banker as defined in N.J.S.A. 17:11C-2.

"Lock-in agreement" means an agreement between the lender and the borrower whereby the lender guarantees until a specified date the availability of a specified rate of interest or specified formula by which the rate of interest will be determined and/or specific number of discount points, provided the loan is approved and closed by the specified date. If a specified date is not determinable, the lender may fulfill the requirement of this provision by setting forth with specificity the method by which the duration of the lock-in period will be determined. The term "lock-in agreement" does not include an agreement to fix the rate executed three or fewer calendar days before closing where appropriate disclosures have been made under the provisions of this subchapter.

"Mortgage loan" means any closed-end loan to a borrower which is secured by a first mortgage on real property located in New Jersey on which there is a one to six family dwelling, a portion of which may be used for nonresidential purposes.

"Promptly refund" or "return" means to refund or return to the borrower within seven calendar days following receipt of a written request for same from the borrower.

"Receipt" (or "received") means:

1. In the case of the lender, actual receipt (or actually received) at the office or by the person designated by the lender or broker as the place where or the person to whom the application or documentation must be submitted or, if no such place or person is designated, at the lender's or broker's principal office or any of its branch offices; or

2. In the case of a borrower:

i. Actual receipt (or actually received) where the document or correspondence is personally delivered to the borrower or sent to the borrower by registered or certified mail or by means of a commercial delivery service; or

ii. The third calendar day following deposit in the regular U.S. mail.

"Substantial fault of the borrower" means that the borrower or the borrower's agent:

1. Failed to provide in a timely manner information or documentation required by the lender;

2. Provided or omitted any information, in the application or subsequently, which upon verification proves to be significantly inaccurate causing the need for review or further investigation by the lender;

3. Failed to produce on or before the date specified by the lender all of the documentation specified in the commitment or closing instructions as being required for closing, which date may be less than seven calendar days following the date of receipt of the commitment or closing instructions; or

4. Failed to be ready, willing and able to close the loan or before the date specified by the lender.

5. For purposes of this section:

i. A person provides information or documentation "in a timely manner" if such information and documentation is received by the lender within seven calendar days after the person receives a request

for same or within the time frame established by the lender if that time frame extends beyond seven calendar days after receipt of the request; and

ii. Information is "significantly inaccurate" if the correct information would, in the reasonable opinion of the lender, cause the borrower to be disqualified for the type of loan for which the borrower has applied or cause the secondary market source for which the loan is being originated to refuse to purchase the loan.

"Trust funds" means funds which are held in accordance with the terms of a written agreement between the lender and the borrower or seller, which provides that upon the occurrence of a specific condition or event the funds or a portion thereof shall be disbursed to the borrower or seller. Trust funds do not include escrows collected or held by the lender for taxes and insurance.

### **3:1-16.2 Fees**

(a) No lender shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise authorized by State or Federal law, either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda.

1. Application fee: Defined as a fee imposed by a lender or broker for accepting or processing a mortgage loan application. The application fee shall not be based upon a percentage of the principal amount of the loan or the amount financed;

2. Credit report fee, which shall not exceed the amount paid, or to be paid to the credit reporting agency by the party who receives the credit report directly from the credit reporting agency. The initial charge to the borrower may be based on a reasonable estimate provided that any amount in excess of the amount paid to the party providing the credit report is refunded to the borrower at or prior to closing;

3. Appraisal fee: If the appraisal is performed and delivered by a third party appraiser, the fee shall not exceed the amount paid, or to be paid, directly to the party performing and delivering the appraisal. If the appraisal is performed and delivered in-house, the fee shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers based on a survey of such fees charged by lenders to be conducted annually by the Department and published in the New Jersey Register. If the appraisal is performed by a third party appraiser and delivered by an appraisal management company, the fee charged by the lender shall not exceed the amount charged by the appraisal management company and shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers based on a survey of such fees charged by lenders to be conducted annually by the Department and published in the New Jersey Register. The initial charge to the borrower may be based on a reasonable estimate, provided that any amount in excess of the amount authorized above in this paragraph is refunded to the borrower at or prior to closing;

4. Commitment fee: Defined as a fee, exclusive of third-party fees, imposed by a lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its commitment and payable on or after acceptance of the commitment, except a lock-in fee charged pursuant to (a)5 below. The amount of any commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan or the amount financed;

5. Lock-in fee: Defined as that portion of the commitment fee charged by a lender as the consideration for execution and fulfillment of the terms of the lock-in agreement. A lock-in fee may comprise all of the commitment fee. No lock-in fee shall be received by a lender prior to inception of the lock-in period;

6. Warehouse fee: Defined as a fee charged by a lender not to exceed the cost associated with holding the particular mortgage loan pending sale to a permanent investor and payable at closing. The fee shall be based on the actual holding period and warehouse rate and the initial coupon rate on the mortgage loan. No profit shall accrue to the lender from the fee;

7. Third party fees: Limited to the following fees paid or actually incurred by a lender on behalf of a borrower:

i. Overnight delivery, messenger, fax, and other special delivery fees, provided that the type of service is authorized by the borrower in advance in writing or the specific service is authorized by the borrower in writing;

ii. Flood certification fees;

iii. Pest inspection or certification fees;

iv. Final inspection fee, not to exceed the amount of the fee paid or actually incurred to a third party or, if the final inspection is done in-house, not to exceed the going charge for such inspections by third parties;

v. Outside counsels' fees as permitted by N.J.S.A. 46:10A-6;

vi. Certified check fees, not to exceed the amount of the fee paid or actually incurred by the lender to the issuer of the certified check or, if the lender issues the certified check, not to exceed its usual fee for providing this service to its customers;

vii. Update fees to update the borrower's credit report and appraisal, not to exceed the amount of the fee paid or actually incurred by the lender to the credit reporting agency or appraiser or, if the appraisal is done in-house, not to exceed the going charge for such updates by third parties;

viii. One-time mortgage insurance premiums or, if the premiums are not collected on a one-time basis, not more than one-year of premiums;

ix. Survey fees;

x. Recording fees which shall not exceed the statutory amount for recording the deed, mortgage, and note, and which shall not include any amount for recording an assignment of the mortgage;

xi. Title and title search fees, including title insurance premiums;

xii. Taxes;

xiii. Tax service fees;

xiv. Radon test fees; and

xv. Fees not included among the above third party fees may be charged provided that prior written approval is obtained from the Department. The Department will only approve third party fees which are of benefit to the borrower and represent a cost not associated with the lender's overhead. Accordingly, the Department will not approve fees for document preparation, processing, underwriting, file updates, lender reviews, copying, funding, and miscellaneous.

8. Discount points or fractions thereof: A discount point is defined as an amount of money equal to one percent of the principal amount of the loan and payable only at closing.

9. A service fee not to exceed \$25.00 to cancel the mortgage, providing that the borrower has received prior written notice of the fee required by the lender, and providing further that if the lender collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the lender shall refund the service fee to the borrower.

(b) If a lender or broker uses a term for a fee which is different than a term listed in (a) above, the lender or broker shall be able to document to the Department that the fee fits the definition and description of a permissible fee listed above, and that the fee functions accordingly.

(c) This section does not restrict the imposition of fees after the closing of a mortgage loan, such as late fees and variable-to-fixed rate conversion fees.

(d) The Commissioner is authorized to order any person to make restitution for fees charged which are impermissible or improperly charged, or to make refunds when required, under these rules. Nothing in this subsection is deemed to set a limit on the amount of fees a lender may charge on a mortgage loan.

### **3:1-16.3 Application process**

(a) Before a lender or broker accepts any application fee in whole or in part, any credit report fee, appraisal fee or any fee charges as reimbursement for third party fees, the lender or broker shall make written disclosure to the borrower (which disclosure may be contained in the application) as required by this section or N.J.A.C. 3:1-16.10, respectively, setting forth:

1. A description and the amount of each such fee;

2. Whether all or any part of such fees are refundable;

3. The terms and conditions for the refund, if all or any part of the fees are refundable, provided that, where applicable, the terms and conditions may be disclosed by making reference to these rules with proper citation;

4. A realistic estimate of the number of calendar days required to issue a commitment following receipt of such fees by the lender. If the lender subsequently determines that the estimate is unrealistic, it may return the application and all fees paid and offer the borrower the opportunity to reapply subject to a new estimate;

5. The name or title of a person within the lender's organization to whom the borrower may address written questions, comments, or complaints and who will be required to promptly respond to such inquiries; and

6. For correspondent mortgage bankers, a statement indicating that the licensee is a correspondent mortgage banker and as such does not hold mortgage loans or service mortgage loans for more than 90 days in the regular course of business.

(b) The disclosures required in (a) above shall be acknowledged in writing by the borrower and maintained by the lender or broker and a copy of such acknowledgment shall be given to the borrower.

(c) Except where explicitly authorized to return an application, or for other reasons consistent with due diligence, a lender is obligated to process an application submitted to it and to exert conscientious effort to either grant or deny the application within the realistic estimate disclosed as required in (a) above.

(d) Not later than three business days after the lender receives the borrower's application, or before closing of the loan, whichever is earlier, the lender shall provide the borrower with a good faith estimate as a dollar amount or range of each fee for a settlement service which the borrower is likely to incur.

1. For the purpose of this subsection, "settlement service" shall mean a service related to the origination, processing, or closing of a mortgage loan, and for which the lender anticipates the borrower will pay a fee at or before settlement based upon the lender's general experience.

2. With respect to the settlement service fees imposed on a borrower by the lender (and not by third parties), the lender shall indicate which, if any, of such fees are refundable in whole or in part and the terms and conditions for such refund.

3. Good faith estimates of fees for settlement services which are made pursuant to, and conform to, Federal Regulation X shall satisfy the disclosure requirement of this subsection, provided that the lender also makes the disclosures required by (d)2 above.

(e) The borrower may, without penalty or responsibility to pay additional fees, withdraw an application at any time prior to acceptance of a commitment. Upon such withdrawal, the lender or broker shall be responsible to refund to the borrower only those fees to which the borrower may be entitled pursuant to the terms set forth in the written disclosure required by (a) above, except that:

1. Where the lender or broker has failed to provide the borrower with the written disclosure required by (a) above, the lender or broker shall promptly refund to the borrower all funds paid to the lender or broker;

2. Where the lender has failed to issue a commitment or justifiable credit denial and its realistic estimate of the time needed to do so has expired through no substantial fault of the borrower and the borrower has withdrawn his or her application as a result, the lender shall promptly refund to the borrower all funds paid to the lender;

3. Where an application is denied, or a commitment is issued on terms and conditions substantially dissimilar to those for which the application was submitted and which are unacceptable to the borrower, for reasons (other than bona fide underwriting considerations) which the lender knew or should have known at the time of application from the facts disclosed on the face of the application, the lender shall promptly refund to the borrower all funds paid to the lender. For purposes of this paragraph, a commitment is issued on terms and conditions which are "substantially dissimilar" to those for which the application was submitted if the interest rate, discount points or commitment fee as set forth in the commitment is higher than, or the term of the loan as set forth in the commitment is different than, the corresponding terms of the loan for which application was made.

### **3:1-16.4 Lock-in agreements**

(a) All lock-in agreements shall be in writing and shall contain at least the following provisions:

1. The expiration date of the lock-in, if any;

2. The interest rate locked in, if any;

3. The discount points locked in, if any;

4. The commitment fee locked in, if any;

5. The lock-in fee, if any; and

6. A statement advising of the provisions of (b), (c) and (d) below if applicable and of the provisions of N.J.A.C. 3:1-16.6(a).

(b) The lender shall make a good faith effort to process the mortgage loan application and/or stand ready to fulfill the terms of its commitment before the expiration date of the lock-in agreement and any extension thereof.

(c) In the event a lock-in agreement is executed and the loan applied for is denied, the lender shall promptly refund any lock-in fee paid.

(d) Any lock-in agreement received by a lender by mail or through a broker must be signed by the lender before it will become effective. The borrower may rescind the lock-in agreement until receipt of a copy of the agreement signed by the lender by providing the lender with written notification of such rescission. Mailed notification of rescission shall be effective upon mailing. If a borrower elects to so rescind, the lender shall promptly refund any lock-in fee paid.



### 3:1-16.5 Commitment process

(a) At or before issuance of a commitment, the lender shall disclose in writing the following:

1. The expiration date of the commitment;
2. The amount financed, which shall have the same meaning as that term is defined in Federal Regulation Z;
3. In the event the interest rate is not subject to increase before expiration of the commitment:
  - i. The finance charge, which shall mean the dollar amount the credit will cost the borrower;
  - ii. The annual percentage rate, which shall mean the cost of the credit to the borrower as a yearly rate; and
  - iii. The payment schedule, which shall mean the number, amounts and timing of payment scheduled to repay the obligation;
4. In the event the interest rate is subject to increase before expiration of the commitment:
  - i. The basis, index or method, if any, which will be used to determine the rate at closing. Such basis, index or method shall be established and disclosed with direct reference to the movement of an interest rate index or of a national or regional index that is available to and verifiable by the borrower and beyond the control of the lender; or
  - ii. A statement in at least 10-point bold type that "The interest rate will be a rate established by the lender in its discretion" followed by a statement in the same type indicating when the prevailing rate would be set and advising the borrower of his or her right to demand re-disclosure of the rate and points pursuant to subsection (c) below once they are so set; and
  - iii. In addition to the requirements of (a)4i or ii above, the finance charge, annual percentage rate and payment schedule based on the rate at which a lender is closing or committing loans on the date the disclosure is made, together with a statement in at least the same size type as the disclosure, either immediately above or immediately below the disclosure, to the effect that:

"These figures are for illustrative purposes only. They reflect the rate now in effect, NOT necessarily the rate you will pay at closing, which will be established as indicated in this commitment."
5. The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee shall be refundable, provided that, where applicable, the latter disclosure may be made by referencing either N.J.A.C. 3:1-16.6(a) or N.J.A.C. 3:1-16.6(b) of these rules;
6. All other fees yet to be paid by the borrower, including, but not limited to, warehouse fees and discount points, except that fees previously disclosed by the lender need not be redisclosed;
7. In the event the interest rate, annual percentage rate or term may vary after closing,
  - i. An identification and specification of the terms which are variable;
  - ii. The circumstances under which the above terms may change;
  - iii. Any limitation on a change;
  - iv. The effect of a change; and
  - v. An example of the payment terms that would result from an increase;
8. The time, if any, within which the commitment must be accepted by the borrower; and
9. Whether any fees or discount points charged by the lender and set forth in the commitment are subject to change before closing and, if so, the circumstances under which such fees or discount points may change.

(b) The information required to be disclosed in this section may be contained in one or more documents, for example, in a Federal Regulation X or Federal Regulation Z form disclosure and a supplement containing the information required under this section but not required by Regulation X or Regulation Z, as the case may be.

(c) The provisions of a commitment cannot be changed prior to expiration of the specified period within which the borrower must accept it. If any information necessary for an accurate disclosure required by (a) above is unknown to the lender at the time disclosure is required, the lender shall make the disclosure based upon the best information reasonably available to it and shall state that the disclosure is an estimate.

(d) If the interest rate (or initial interest rate in the case of a variable rate loan), discount points or fees charged by the lender and set forth in the commitment are subject to increase before closing, such terms shall be fixed no later than midnight of the third business day before the date the loan closes. The borrower may demand that the lender advise him or her, either orally or in writing, of such terms once they are so fixed and the lender shall promptly comply with any such demand. The right conferred by this subsection is not permitted to be modified or waived by the borrower except for a bona fide personal financial emergency. To modify or waive the right, the borrower shall give the lender a dated written statement that describes the emergency, specifically modifies or waives this right, and bears the signatures of all borrowers. Printed forms for this purpose are prohibited.

(e) A lender who commits to make a mortgage loan may assign the commitment to another lender authorized to make mortgage loans in this State, or allow another such lender to close the loan, provided that:

1. The lender who committed to make the mortgage loan shall obtain and maintain in accordance with its record retention schedule a copy of the mortgage note and the closing statement; and

2. The lender who committed to make the mortgage loan shall remain responsible for ensuring that the ultimate lender closes the loan in accordance with the terms and conditions of the commitment and applicable New Jersey and Federal laws and regulations.

### **3:1-16.6 Expiration of lock-in or commitment**

(a) In the event a lock-in agreement has been executed, and the loan does not close before the expiration date of either the lock-in agreement or any commitment issued consistent therewith through no substantial fault of the borrower, the borrower may:

1. Withdraw the application or reject or terminate any commitment, whereupon the lender shall promptly refund to the borrower any lock-in fee and any commitment fee paid by the borrower; or

2. Have the lock-in agreement extended for no more than 14 calendar days following expiration of the commitment or, where no commitment issued before expiration of the lock-in, for no more than 14 calendar days following issuance of the commitment. If the borrower elects to extend the lock-in agreement, the lender may elect either to close the loan at or below the lock-in rate, in which case the lender may keep the lock-in fee, or may elect to close the loan above the lock-in rate but no higher than that which would provide a current market yield but no gross profit or "spread" to the lender, in which case the lender shall refund the lock-in fee to the borrower. All other terms and conditions of the loan shall be as specified in the commitment, regardless whether the loan closes before or after the expiration date of the commitment.

(b) In the event a lock-in agreement has not been executed and a commitment has been issued, and the loan does not close before the expiration date of the commitment through no substantial fault of the borrower, the borrower may:

1. Terminate the commitment, whereupon the lender shall promptly refund to the borrower any commitment fee paid by the borrower; or

2. Have the commitment extended for a reasonable period of time, not to exceed 14 calendar days, to permit closing.

### **3:1-16.7 Closing**

Provided that the conditions of its commitment have been met, and upon reasonable notice, the lender shall be ready, willing and able to meet any closing date scheduled in accordance with the terms of its commitment.

### **3:1-16.8 Trust funds**

Before accepting any trust funds, each lender shall disclose in writing to the party or parties depositing such funds the purpose for which the fund is established, the amount of the trust fund, the period for which the trust fund will be held and the conditions upon which the funds will be disbursed or released.

### **3:1-16.9 No private right of action**

A failure to comply with this subchapter shall not be deemed to provide a party to the transaction with any legal rights or remedies he or she would not otherwise enjoy pursuant to the contractual relationship between the parties.

### **3:1-16.10 Special rules for brokers**

(a) No broker shall charge or collect from a borrower on its own behalf any fees other than an application fee and discount points or fractions thereof. A broker may collect a fee on behalf of a lender provided that the entire amount of the fee is transmitted to the lender.

(b) Before accepting any loan application, the broker shall make written disclosure to the borrower in a separate service agreement setting forth:

1. The amount of the broker's application fee, if any;
2. Whether and under what circumstances all or any part of the broker's application fee may be refundable;
3. The amount of any discount points which are payable to the broker for its services;
4. A statement advising of the provisions of (c) below;
5. A detailed listing of the specific services that will be provided or performed by the broker, together with a statement that all fees which are payable to the broker will be refunded if the broker does not perform the services indicated; and
6. Whether the broker places loans exclusively with any three or fewer lenders and, if so, the name(s) of such lender(s).

(c) No broker may execute a lock-in agreement or issue a commitment on its own behalf or on behalf of any lender or guarantee acceptance into any particular loan program or promise any specific loan terms or conditions.

(d) No broker may accept a lender's lock-in agreement from a borrower or any lock-in fee in connection therewith unless the lock-in agreement contains all of the disclosures required in N.J.A.C. 3:1-16.4(a).

(e) The disclosures required in (b) above shall be acknowledged in writing by the borrower and maintained by the broker and a copy of such acknowledgement shall be given to the borrower.

### **3:15-1.2 Definitions**

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## CHAPTER 64

# N.J. Home Owners Security Act of 2002

C.46:10B-22	Short title.
C.46:10B-23	Findings, declarations relative to abusive lending practices.
C.46:10B-24	Definitions relative to abusive lending practices.
C.46:10B-25	Creditors, prohibited practices relative to home loans.
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C.46:10B-27	Affirmative claims, defenses by borrower.
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C.46:10B-29	Violations, remedies, liability.
C.46:10B-30	Rights, remedies, prohibitions declared additional, cumulative.
C.46:10B-31	Law of state of location of property applicable.
C.46:10B-32	Program of consumer counseling, awareness.
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**CHAPTER 64**  
**N.J. Home Owners Security Act of 2002**

**AN ACT** prohibiting certain abusive lending practices and supplementing Title 46 of the Revised Statutes.

**Be It Enacted** *by the Senate and General Assembly of the State of New Jersey:*

**C.46:10B-22 Short title.**

1. This act shall be known and may be cited as the "New Jersey Home Ownership Security Act of 2002."

**C.46:10B-23 Findings, declarations relative to abusive lending practices.**

2. The Legislature finds and declares that:

a. Abusive mortgage lending has become an increasing problem in this State, exacerbating the loss of equity in homes and causing an increase in the number of foreclosures in recent years. One of the most common forms of abusive lending is the making of loans that are equity-based, rather than income-based. The financing of points and fees in these loans provides immediate income to the originator and encourages the repeated refinancing of home loans. The lender's ability to sell loans reduces the incentive to ensure that the homeowner can afford the payments of the loan. As long as there is sufficient equity in the home, an abusive lender benefits even if the borrower is unable to make the payments and is forced to refinance. In addition, the financing of high points and fees causes the loss of precious equity in each refinancing and often leads to foreclosure.

b. Abusive lending has threatened the viability of many communities and caused decreases in home ownership. While the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of overreaching lenders who provide loans with unnecessarily high costs and terms that are unnecessary to secure repayment of the loan.

c. As competition and self-regulation have not eliminated the abusive terms from loans secured by a consumer's home, the consumer protection provisions of this act are necessary to encourage lending at reasonable rates with reasonable terms.

d. Pursuant to this 2004 amendatory act, the "New Jersey Home Ownership Security Act of 2002," P.L.2003, c.64 (C.46:10B-22 et seq.) was amended to delete the covered loan category and the provisions of subsection b. of section 4 of P.L.2003, c.64 (C.46:10B-25) which prohibited flipping a home loan. The deletions of the covered home loan category and the prohibition on flipping shall create no presumption that any home loan that has been refinanced is not unconscionable, and the deletions of the covered home loan category and the prohibition on flipping shall create no presumption that any home loan that is refinanced does not constitute an unlawful practice under P.L. 1960. c.39 (C.56:8-1 et seq.).

**C.46:10B-24 Definitions relative to abusive lending practices.**

3. As used in this act:

"Affiliate" means any company that controls, is controlled by, or is under the common control with any company, as set forth in 12 U.S.C. s.1841 et seq.

"Bona fide discount points" means loan discount points which are:

(1) Knowingly paid by the borrower;

(2) Paid for the express purpose of reducing, and which result in a reduction of, the interest rate or time-price differential applicable to the loan;

(3) In fact reducing the interest rate or time-price differential applicable to the loan from an interest rate which does not exceed the conventional mortgage rate for a home loan secured by a first lien, by more than two percentage points, or for a home loan secured by a junior lien, by more than three and one half percentage points; and

(4) Recouped within the first five years of the scheduled loan payments. Loan discount points will be considered to be recouped within the first five years of the scheduled loan payments if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments such that the borrower's dollar amount of savings in interest over the first five years is equal to or exceeds the dollar amount of loan discount points paid by the borrower.

"Borrower" means any natural person obligated to repay the loan, including a co borrower, cosigner, or guarantor.

"Commissioner" means the Commissioner of Banking and Insurance.

"Conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in Statistical Release H.15 or any publication that may supersede it, as of the applicable time set forth in 12 C.F.R. 226.32(a)(1)(i).

"Conventional prepayment penalty" means any prepayment penalty or fee that may be collected or charged in a home loan, and that is authorized by law other than by this act, provided the home loan (1) does not have an annual percentage rate that exceeds the conventional mortgage rate by more than two percentage points; and (2) does not permit any prepayment fees or penalties that exceed two percent of the amount prepaid.

"Creditor" means a person who extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, and to whom the obligation is payable at any time. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly solicits, processes, places, or negotiates home loans for others or who closes home loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include a person who is an attorney providing legal services to the borrower or a person or entity holding an individual or organization insurance producer license in the line of title insurance or a title insurance company, as defined by subsection c. of section 1 of P.L.1975, c. 106 (C.17:46B-1), or any officer, director or employee thereof, providing services in the closing of a home loan who is not also funding the home loan and is not an affiliate of the creditor or an assignee that is subject to the provisions of section 6 of this act.

"Department" means the Department of Banking and Insurance.

"High-cost home loan" means a home loan for which the principal amount of the loan does not exceed \$350,000, which amount shall be adjusted annually to include the last published increase of the housing component of the national Consumer Price Index, New York-Northeastern New Jersey Region, in which the terms of the loan meet or exceed one or more of the thresholds as defined in this section.

"Home loan" means an extension of credit primarily for personal, family or household purposes, including an open-end credit plan, other than a reverse mortgage transaction, in which the loan is secured by:

(1) A mortgage or deed of trust on real estate in this State upon which there is located or there is to be located a one to six family dwelling which is or will be occupied by a borrower as the borrower's principal dwelling; or

(2) A security interest in a manufactured home which is or will be occupied by a borrower as the borrower's principal dwelling.

"Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing,



heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the federal National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. s.5401 et seq. Such term does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

"Points and fees" means:

(1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except interest or the time-price differential;

(2) All charges listed in 15 U.S.C. s.1605(e);

(3) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;

(4) The cost of all premiums financed by the creditor, directly or indirectly for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor;

(5) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;

(6) All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor, except that this paragraph shall not apply to a loan which refinances a previous loan made by the same broker and funded by another creditor; and

(7) For open-end loans, the points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents if prepayment penalties are authorized by law other than by this act, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

"Points and fees" shall not include the following items: title insurance premiums and fees, charges and premiums paid to a person or entity holding an individual or organization insurance producer license in the line of title insurance or a title insurance company, as defined by subsection c. of section 1 of P.L.1975, c. 106 (C.17:46B-1); taxes, filing fees, and recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and reasonable fees paid to a person other than a creditor or an affiliate of the creditor or to the mortgage broker or an affiliate of the mortgage broker for the following, provided that the conditions in 12 C.F.R. s.226.4(c)(7) are met: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; fees for credit reports; fees for surveys; attorneys' fees; notary fees; escrow charges; and fire and flood insurance premiums, provided that the conditions in 12 C.F.R. s.226.4(d)(2) are met.

"Rate" means that annual percentage rate for the loan calculated at closing based on the points and fees set forth in this act and according to the provisions of 15 U.S.C. s. 1601 et seq. and the regulations promulgated thereunder by the Federal Reserve Board.

"Threshold" means any one of the following two items, as defined:

(1) "Rate threshold" means the annual percentage rate of the loan at the time the loan is consummated such that the loan is considered a "mortgage" under section 152 of the federal "Home Ownership and Equity Protection Act of 1994," Pub.L. 103-325 (15 U.S.C. s.1602(aa)), and the regulations promulgated by the Federal Reserve Board, including 12 C. F.R. s.226.32, without regard to whether the loan transaction is or may be a "residential mortgage transaction," as defined in 12 C.F.R. s.226.2(a)(24).

(2) "Total points and fees threshold" means that the total points and fees payable by the borrower at or before the loan closing, excluding either a conventional prepayment penalty or up to two bona fide discount points, exceed:

(a) 4.5% of the total loan amount if the total loan amount is \$40,000 or more; or

(b) the lesser of 6% of the total loan amount or \$1,000, if the total loan amount is less than \$20,000, and 6% if the total loan amount is \$20,000 or more but less than \$40,000.

"Total loan amount" means the principal of the loan minus those points and fees as defined in this section that are included in the principal amount of the loan. For open-end loans, the total loan amount shall be calculated using the total line of credit allowed under the home loan.

#### **C.46:10B-25 Creditors, prohibited practices relative to home loans.**

4. a. No creditor making a home loan shall finance, directly or indirectly, any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the creditor.

b. Deleted by amendment.

c. No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of that existing loan or debt.

d. No creditor shall charge a late payment fee in relation to a home loan except according to the following rules:

(1) The late payment fee may not be in excess of 5% of the amount of the payment past due.

(2) The fee may only be assessed by a payment past due for 15 days or more.

(3) The fee may not be charged more than once with respect to a single late payment. If a late payment fee is deducted from a payment made on the loan, and such deduction causes a subsequent default on a subsequent payment, no late payment fee may be imposed for such default. If a late payment fee has been once imposed with respect to a particular late payment, no such fee shall be imposed with respect to any future payment which would have been timely and sufficient, but for the previous default.

(4) No fee shall be charged unless the creditor notifies the borrower within 45 days following the date the payment was due that a late payment fee has been imposed for a particular late payment. No late payment fee may be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment within 45 days of receipt of the creditor's notice of the late fee.

(5) The creditor shall treat each and every payment as posted on the same date as it was received by the creditor, servicer, creditor's agent, or at the address provided to the borrower by the creditor, servicer, or the creditor's agent for making payments.

e. No home loan shall contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This provision does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

f. No creditor shall charge a fee for informing or transmitting to any person the balance due to pay off a home loan or to provide a release upon prepayment. Payoff balances shall be provided within seven business days after the request.

**C.46:10B-26 High-cost home loans, limitations, prohibited practices.**

5. A high-cost home loan shall be subject to the following additional limitations and prohibited practices:

a. No high-cost home loan shall contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

b. No high-cost home loan shall include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

c. No high-cost home loan shall contain a provision that increases the interest rate after default. This provision shall not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

d. No high-cost home loan shall include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

e. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this State if the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

f. A creditor shall not make a high-cost home loan unless the creditor has given the following notice, or substantially similar notice, in writing, to the borrower, acknowledged in writing and signed by the borrower not later than the time the notice is required under the notice provision contained in 12 C.F.R. s.226.31(c).

## NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION.

REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

g. A creditor shall not make a high-cost home loan to a borrower who finances points and fees in connection with a high-cost home loan without first receiving certification from a third-party nonprofit credit counselor, approved by the United States Department of Housing and Urban Development and the Department of Banking and Insurance, that the borrower has received counseling on the advisability of the loan transaction or completing another substantial requirement developed by the department.

h. A creditor shall not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan, unless the instrument is payable to the borrower or jointly to the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor, and the contractor prior to the disbursement.

i. A creditor shall not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

j. A creditor shall not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same creditor as note holder.

k. Notwithstanding any other law to the contrary, a creditor making a high-cost home loan that has the legal right to foreclose shall use the judicial foreclosure procedures of this State so long as the property securing the loan is located in this State.

l. No creditor making a high-cost home loan shall directly or indirectly finance points and fees in excess of 2% of the total loan amount.

**C.46:10B-27 Affirmative claims, defenses by borrower.**

6. a. Notwithstanding any other law to the contrary, if a home loan was made, arranged, or assigned by a person selling either a manufactured home, or home improvements to the dwelling of a borrower, or was made by or through a creditor to whom the borrower was referred by such seller, the borrower may assert all affirmative claims and any defenses that the borrower may have against the seller or home-improvement contractor limited to amounts required to reduce or extinguish the borrower's liability under the home loan, plus the total amount paid by the borrower in connection with the transaction, plus amounts required to recover costs, including reasonable attorney's fees against the creditor, any assignee or holder, in any capacity.

b. Notwithstanding any other provision of law, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor or broker of the loan; provided that this subsection shall not apply if the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising reasonable due diligence could not determine that the mortgage was a high-cost home loan. It shall be presumed that a purchaser or assignee has exercised such due diligence if the purchaser or assignee demonstrates by a preponderance of the evidence that it: (1) has in place at the time of the purchase or assignment of the loan, policies that expressly prohibit its purchase or acceptance of assignment of any high-cost home loan; (2) requires by contract that a seller or assignor of home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either (a) it will not sell or assign any high-cost home loan to the purchaser or assignee or (b) that the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and (3) exercises reasonable due diligence at the time of purchase or assignment of home loans or within a reasonable period of time thereafter intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost home loan.

c. Notwithstanding any other law to the contrary, but limited to amounts required to reduce or extinguish the borrower's liability under the home loan plus amounts required to recover costs including reasonable attorney's fees, a borrower acting only in an individual capacity may assert against the creditor or any subsequent holder or assignee of the home loan:

(1) within six years of the closing of a high-cost home loan, a violation of this act in connection with the loan as an original action; and

(2) at any time during the term of a high-cost home loan after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become 60 days in default, any defense, claim or counterclaim.

d. It is a violation of this act for any person, in bad faith, to attempt to avoid the application of this act by:

(1) Dividing any loan transaction into separate parts; or

(2) Any other such subterfuge, with the intent of evading the provisions of this act.

e. Nothing in this section shall be construed to limit the substantive rights, remedies or procedural rights, including, but not limited to, recoupment rights under the common law, available to a borrower against any creditor, assignee or holder under any other law. The limitations on assignee liability in subsection b. of this section shall not apply to the assignee liability in subsection a., c. and d. of this section.

**C.46:10B-28 Enforcement by department.**

7. a. The department shall conduct examinations and investigations and issue subpoenas and orders to enforce the provisions of this act with respect to a person licensed or subject to the provision of the "New Jersey Licensed Lenders Act," P.L.1996, c. 157 (C.17:11C-1 et seq.).

b. The department shall examine any instrument, document, account, book, record, or file of a person originating or brokering a high-cost home loan under this act. The department shall recover the cost of examinations from the person. A person originating or brokering high-cost home loans shall maintain its records in a manner that will facilitate the department in determining whether the person is complying with the provisions of this act and the regulations promulgated thereunder. The department shall require the submission of reports by persons originating or brokering high-cost home loans which shall set forth such information as the department shall require by regulation.

c. In the event that a person fails to comply with a subpoena for documents or testimony issued by the department, the department may request an order from a court of competent jurisdiction requiring the person to produce the requested information.

d. If the department determines that a person has violated the provisions of this act, the department may do any combination of the following that it deems appropriate:

(1) Impose a civil penalty of up to \$10,000 for each offense, 40% of which penalty shall be dedicated for and used by the department for consumer education through nonprofit organizations which can establish to the satisfaction of the department that they have sufficient experience in credit counseling and financial education. In determining the penalty to be assessed, the commissioner shall consider the following criteria: whether the violation was willful; whether the violation was part of a pattern and practice; the amount of the loan; the points and fees charged; the financial condition of the violator; and other relevant factors. The department may require the person to pay investigative costs, if any.

(2) Suspend, revoke, or refuse to renew any license issued by the department.

(3) Prohibit or permanently remove an individual responsible for a violation of this act from working in his present capacity or in any other capacity related to activities regulated by the department.

(4) Order a person to cease and desist any violation of this act and to make restitution for actual damages to borrowers.

(5) Pending completion of an investigation or any formal proceeding instituted pursuant to this act, if the commissioner finds that the interests of the public require immediate action to prevent undue harm to borrowers, the commissioner may enter an appropriate temporary order to be effective immediately and until entry of a final order. The temporary emergent order may include: a temporary suspension of the creditor's authority to make high-cost home loans under this act; a temporary cease and desist order; a temporary prohibition against a creditor transacting high-cost home loan business in this State, or such other order relating to high-cost home loans as the commissioner may deem necessary to prevent undue harm to borrowers pending completion of an investigation or formal proceeding. Orders issued pursuant to this section shall be subject to an application to vacate upon two days' notice, and a preliminary hearing on the temporary emergent order shall be held, in any event, within five days after it is issued, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.).

(6) Impose such other conditions as the department deems appropriate.

e. Any person aggrieved by a decision of the department and who has a direct interest in the decision may appeal the decision of the department to the commissioner. The appeal shall be conducted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.).

f. The department may maintain an action for an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating this act.

g. A decision of the commissioner shall be a final order of the department and shall be enforceable in a court of competent jurisdiction. The department shall publish the final adjudication issued in accordance with this section, subject to redaction or modification to preserve confidentiality.

h. The provisions of this section shall not limit the authority of the Attorney General or the Public Advocate as established pursuant to P.L.2003, c.64 (C.46:10B-22 et seq.) from instituting or maintaining any action within the scope of their respective authority with respect to the practices prohibited under this act.

#### **C.46:10B-29 Violations, remedies, liability.**

8. a. (1) Any violation of this act constitutes an unlawful practice under P.L.1960, c. 39 (C.56:8-1 et seq.). Any borrower may seek damages under the provisions of section 7 of P.L.1971, c. 247 (C.56:8-19) or subparagraph (a) of paragraph (1) of subsection b. of this section, but not both.

(2) Notwithstanding any provision of P.L.2003, c.64(C.46:10B-22 et seq.) or other law to the contrary, any borrower who asserts any defense, claim or counterclaim pursuant to subsection c. of section 6 of P.L.2003, c.64 (C.46:10B-27) may do so only in an individual capacity and may not assert that defense, claim or counterclaim in a class action.

b. Except as provided in subsection a. of this section and, where applicable, subject to any limitation on the amounts recoverable against a holder or assignee pursuant to section 6 of this act, in addition to the remedies available to a borrower under P.L.1960, c. 39 (C.56:8-1 et seq.) and without limiting those remedies:

(1) Any person found by a preponderance of the evidence to have violated this act shall be liable to the borrower for the following:

(a) For material violations, statutory damages equal to the finance charges agreed to in the home loan agreement, plus up to 10% of the amount financed;

(b) Punitive damages, when the violation was malicious or reckless in appropriate circumstances as determined by the fact-finder; and

(c) Costs and reasonable attorneys' fees.

(2) A borrower may be granted injunctive, declaratory, and such other equitable relief as the court deems appropriate in an action to enforce compliance with this act.

(3) The remedies provided in this section are not intended to be the exclusive remedies available to a borrower, nor must the borrower exhaust any administrative remedies provided under this act or any other applicable law before proceeding under this section.

c. A creditor in a home loan who, when acting in good faith, fails to comply with the provisions of this act, will not be deemed to have violated this section if the creditor establishes that either:

(1) Within 45 days of the loan closing, the creditor has made appropriate restitution to the borrower, and appropriate adjustments are made to the loan; or

(2) Within 365 days of the loan closing and prior to receiving any notice from the borrower of the compliance failure, and the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the borrower is notified of the compliance failure, appropriate restitution is made to the borrower, and appropriate adjustments are made to the loan.

Examples of bona fide errors include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

d. The remedies provided in this section are cumulative.

**C.46:10B-30 Rights, remedies, prohibitions declared additional, cumulative.**

9. The rights, remedies, and prohibitions accorded by the provisions of this act are hereby declared to be in addition to and cumulative of any other right, remedy, or prohibition accorded by the common law or statutes of the United States or of this State, and nothing herein shall be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition. Without limiting the foregoing, the rights, remedies and prohibitions accorded by the provisions of this act are hereby further declared to create no presumption that any home loan or any term in a home loan is not unconscionable, whether or not the home loan or loan term, alone or in conjunction with other terms of the loan, violates the provisions of this act.

**C.46:10B-31 Law of state of location of property applicable.**

10. The law of the state in which the property is located shall be applied to all transactions governed by this act regardless of where those transactions originated. This act shall apply to all loans made or entered into after the effective date of this act.

**C.46:10B-32 Program of consumer counseling, awareness.**

11. The Director of the Division of Banking in the Department of Banking and Insurance, in consultation with the Director of the Division of Consumer Affairs and the Division of Civil Rights in the Department of Law and Public Safety, shall develop and implement a program of consumer counseling and awareness designed to inform the public about the methods by which predatory creditors impose unconscionable and noncompetitive fees and charges as part of complex home mortgage transactions, to protect the public from incurring those fees and charges, and otherwise to encourage the informed and responsible use of credit.

**C.46:10B-33 Liability of mortgage broker.**

12. Notwithstanding any provision of this act to the contrary, a mortgage broker shall be liable under the provisions of this act only for acts performed by the mortgage broker in the course of providing mortgage brokering services. However, a mortgage broker may be held liable for acts performed by the mortgage broker outside the scope of mortgage brokering services if the acts are related to the purchasing or the making of a home loan and are otherwise prohibited under this act.

**C.46:10B-34 Preemption of local rules, regulations.**

13. No municipality, county or political subdivision thereof, shall enact an ordinance or resolution or promulgate any rules or regulations relating to this act. The provisions of any ordinance or resolution or rules or regulations of any municipality or county relative to abusive home loan lending practices are superseded by the provisions of this act.

**C.46:10B-35 Regulations.**

14. The Commissioner of Banking and Insurance, in consultation and collaboration with the Director of the Division of Consumer Affairs in the Department of Law and Public Safety, shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) necessary to effectuate the provisions of P.L. 2003, c. 64 (C46:10B-22 et seq.). (cf: P.L. 2003, c. 64, s.14).



**NEW JERSEY ADMINISTRATIVE CODE  
TITLE 3. DEPARTMENT OF BANKING AND INSURANCE DIVISION OF BANKING  
CHAPTER 30. PREDATORY LENDING**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**3:30-1.1 Purpose**

The purpose of this chapter is to implement the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq.

**3:30-1.2 Scope**

This chapter shall apply to all creditors and borrowers as defined in N.J.A.C. 3:30-1.3.

**3:30-1.3 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Affiliate" means any company that controls, is controlled by, or is under the common control with any company, as set forth in 12 U.S.C. 1841 et seq.

"Banking day" means the part of a day on which a depository institution is open to the public for carrying on substantially all of its banking functions.

"Bona fide discount points" means loan discount points that:

1. Are knowingly paid by the borrower;
2. Are paid for the express purpose of reducing, and which result in a reduction of, the interest rate or time-price differential applicable to the loan;
3. Reduce the interest rate or time-price differential applicable to the loan from an interest rate that does not exceed the conventional mortgage rate for a home loan secured by a first lien, by more than two percentage points, or for a home loan secured by a junior lien by more than three and one half percentage points; and
4. Are recouped within the first five years of the scheduled loan payments. Loan discount points will be considered to be recouped within the first five years of the scheduled loan payments if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments such that the borrower's dollar amount of savings in interest over the first five years is equal to or exceeds the dollar amount of loan discount points paid by the borrower.

"Borrower" means any natural person obligated to repay the loan, including a co borrower, cosigner, or guarantor.

"Business day" means any day on which the office or offices of the creditor are open to the public to provide financial services.

"Business hours" means the hours during which a creditor, agent or servicer processes payments of the type received from the borrower.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Construction loan" means a loan to a natural person having a term of two years or less, that is used to finance the construction of buildings or other structures and that does not automatically convert to permanent financing.

"Consumer credit" means a home loan to a borrower.

"Conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in Statistical Release H.15 or any publication that may supersede it, as of the applicable time set forth in 12 C.F.R. 226.32(a)1(i).

"Conventional prepayment penalty" means any prepayment penalty or fee that may be collected or charged in a home loan, and that is authorized by law other than by N.J.S.A. 46:10B-22 et seq., provided the home loan: 1. Does not have an annual percentage rate that exceeds the conventional mortgage rate by more than two percentage points; and 2. Does not permit any prepayment fees or penalties that exceed two percent of the amount prepaid.

"Creditor" means a person who extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, and to whom the obligation is payable at any time. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly solicits, processes, places, or negotiates home loans for others or who closes home loans that may be in the person's own name with funds provided by others and which loans are

thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include a person who is an attorney providing legal services to the borrower or a person or entity holding an individual or organization insurance producer license in the line of title insurance or a title insurance company, as defined by N.J.S.A. 17:46B-1, or any officer, director or employee thereof, providing services in the closing of a home loan who is not also funding the home loan and is not an affiliate of the creditor or an assignee that is subject to the provisions of N.J.S.A. 46:10B-27.

"Department" means the New Jersey Department of Banking and Insurance.

"Depository institution" means any bank, savings bank, savings and loan association or credit union chartered by this or another state, the Federal government or a foreign jurisdiction.

"Escrow" means monies deposited by the borrower for payment of real estate taxes and homeowner's insurance expenses in conjunction with a home loan. Escrow monies shall be passed through dollar for dollar to the tax collector or insurance company or agent and are not a point or fee for the purpose of calculating the total points and fees threshold.

"Escrow charge" means a reasonable fee for maintaining or managing an escrow paid to a person other than a creditor or an affiliate of the creditor or to the mortgage broker or an affiliate of the mortgage broker that meets the conditions set forth in 12 CFR 226.4(c)7 and 226.4(d)2.

"High-cost home loan" means a home loan for which the principal amount of the loan did not exceed \$350,000, in the first year following enactment of the Act, which amount was, pursuant to N.J.S.A. 46:10B-24, adjusted effective January 1, 2005 and shall thereafter be adjusted annually to include the last published increase of the housing component of the national Consumer Price Index, New York--Northeastern New Jersey Region, in which the terms of the loan meet or exceed one or more of the thresholds as defined in this chapter.

"Home improvements" means the remodeling, altering, painting, repairing, or modernizing of a principal dwelling or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, aluminum siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the principal dwelling.

"Home loan" means an extension of credit primarily for personal, family or household purposes, and includes an open-end credit plan, but shall not include a reverse mortgage transaction or a construction loan, in which the loan is secured by:

1. A mortgage or deed of trust on real estate in this State upon which there is located or there is to be located a one to six family dwelling which is or will be occupied by a borrower as the borrower's principal dwelling; or

2. A security interest in a manufactured home which is or will be occupied by a borrower as the borrower's principal dwelling.

"Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land, secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air-conditioning and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the Federal National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§5401 et seq. Such term does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

"Mortgage insurance premiums" or "private mortgage insurance" mean premiums for insurance protecting the lender against the borrower's default or other credit loss.

"Points and fees" means:

1. All items listed in 15 U.S.C. 1605(a)(1) through (4), except interest or the time-price differential;
2. All charges listed in 15 U.S.C. 1605(e);
3. All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;
4. The cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor directly or indirectly for any debt cancellation or suspension agreement

or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor;

5. The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents;

6. All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor, except that this paragraph shall not apply to a loan which refinances a previous loan made by the same broker and funded by another creditor; and

7. For open-end loans, the points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents if prepayment penalties are authorized by law other than by N.J.S.A. 46:10B-22 et seq., plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

"Points and fees" shall not include the following items: title insurance premiums and fees, charges and premiums paid to a person or entity holding an individual or organization insurance producer license in the line of title insurance or a title insurance company, as defined by N.J.S.A. 17:46B-1; taxes, filing fees, and recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and reasonable fees paid to a person other than a creditor or an affiliate of the creditor or to the mortgage broker or an affiliate of the mortgage broker for the following, provided that the conditions in 12 C.F.R. 226.4(c)(7) are met; fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; fees for credit reports; fees for surveys; attorneys' fees; notary fees; escrow charges; fire and flood insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met.

"Rate" means that annual percentage rate for the loan calculated at closing based on the points and fees set forth in this chapter and according to the provisions of 15 U.S.C. §§1601 et seq. and the regulations promulgated thereunder by the Federal Reserve Board.

"Received" means the actual receipt at any office designated by the creditor as a place to which the payments may be submitted or by a person designated by the creditor as a person to whom the payments may be submitted or, if no such place or person is so designated, at the creditor's principal office or any of its branch offices.

"Seller" means a seller as defined in the Federal Trade Commission (FTC) Holder Rule at 16 C.F.R. 433.1(J), incorporated herein by reference, and includes sellers, as defined therein, of manufactured homes and home improvements.

"Threshold" means any one of the following two items, as defined:

1. "Rate threshold" means the annual percentage rate of the loan at the time the loan is consummated such that the loan is considered a "mortgage" under section 152 of the federal Home Ownership and Equity Protection Act of 1994, P.L. 103-325 (15 U.S.C. §1602(aa)), and the regulations promulgated by the Federal Reserve Board, including 12 C.F.R. 226.32, without regard to whether the loan transaction is or may be a "residential mortgage transaction," as defined in 12 C.F.R. 226.2(a)(24). The definition of "points and fees" in 15 U.S.C. § 1605 shall be used for this determination. This section of Federal law shall also be used for determining the rate of interest on variable rate loans.

2. "Total points and fees threshold" means that the total points and fees payable by the borrower at or before the loan closing, excluding either a conventional prepayment penalty or up to two bona fide discount points, exceed:

- i. Four and one half percent of the total loan amount if the total loan amount is \$40,000 or more; or
- ii. The lesser of six percent of the total loan amount or \$1,000, if the total loan amount is less than \$20,000, and six percent if the total loan amount is \$20,000 or more but less than \$40,000.

"Total amount paid by the borrower in connection with the transaction" means all amounts paid by the borrower to the original creditor, including principal and interest, and all amounts paid to subsequent holders. Payments made to a seller who is not also the original creditor, such as a down payment or trade-in, are not part of the credit transaction and as such are not considered to be part of the "total amount paid in connection with the transaction." Where the seller also acts as the original creditor, down payments, deposits, periodic payments, late fees, and other payments to the seller are included in the calculation of the maximum amount a borrower may recover through a claim brought pursuant to N.J.S.A. 46:10B-27.a.

"Total loan amount" means the principal of the loan minus those points and fees as defined in this section that are included in the principal amount of the loan. For open-end loans, the total loan amount shall be calculated using the total line of credit allowed under the home loan.



## **SUBCHAPTER 5. HOME LOANS**

### **3:30-5.1 Posting payments received**

(a) When a creditor that is a depository institution receives a home loan payment, the creditor shall treat the payment as posted on the banking day that the payment is received. For purposes of the posting requirements in this section, payments received by a servicer or agent of a depository institution shall be treated as received by the depository institution.

(b) A payment received by a creditor that is not a depository institution shall, if received before the end of business hours, be posted on the business day that it is received or, if received after the end of business hours, on the next business day. For purposes of the posting requirements in this section, payments received by a servicer or agent of a non-depository entity shall be treated as received by the non-depository entity

## **SUBCHAPTERS 6 AND 7 (RESERVED)**

## **SUBCHAPTER 8. AFFIRMATIVE CLAIMS AND DEFENSES**

### **3:30-8.1 Loans in which sellers, including sellers of manufactured homes and home improvements, are involved**

(a) If a home loan was made, arranged or assigned by a seller of manufactured homes or of home improvements to the dwelling of a borrower, or was made by or through a creditor to whom the borrower was referred by such a seller, the borrower may assert against the original creditor and any person who purchases or is otherwise assigned the loan all affirmative claims and any defenses that the borrower may have against such a seller of manufactured homes or home improvements, including any claims and defenses available under N.J.S.A. 46:10B-22 et seq. against a home improvement contractor retained by the seller of home improvements to make home improvements on the borrower's dwelling. The amounts of any such affirmative claims and defenses shall be limited to amounts required to reduce or extinguish the borrower's liability under the home loan, plus the total amount paid by the borrower in connection with the transaction, plus amounts required to recover costs, including reasonable attorney's fees against the creditor, any assignee or holder, in any capacity.

(b) If a loan covered by (a) was made by the seller or assigned to a creditor by the seller, all payments made to the seller including down payments, deposits, periodic payments, late fees and other payments are considered paid in connection with the transaction.

(c) If a loan covered by (a) was made by a creditor by way of a referral or arrangement through the seller, down payments, deposits, periodic payments, late fees and other payments made to the seller are not considered paid in connection with the transaction.

### **3:30-8.2 Purchaser and assignee liability under N.J.S.A. 46:10B-27**

(a) Pursuant to N.J.S.A. 46:10B-27b, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower may assert against the original creditor or broker of the loan; except that the liability thereunder shall not arise if the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising reasonable due diligence could not determine that the loan was a high-cost home loan.

1. In any administrative action commenced under N.J.S.A. 46:10B-22 et seq. or this chapter, it shall be presumed by the Department that a purchaser or assignee of a high cost home loan has exercised such due diligence if the purchaser or assignee demonstrates by a preponderance of the evidence that it:

i. Has in place, at the time of the purchase or assignment of the loan, policies that expressly prohibit its purchase or acceptance of assignment of any high-cost loan;

ii. Requires by contract that all sellers or assignors of home loans represent and warrant to the purchaser or assignee that either: (1) It will not sell or assign any high-cost home loan to the purchaser or assignee; or (2) That the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect; and

iii. Exercises reasonable due diligence at the time of the purchase or assignment of home loans or within a reasonable period of time thereafter, which due diligence is intended by the purchaser or assignee to prevent it from purchasing or taking assignment of any high-cost loan.

(b) With respect to a claim brought under N.J.S.A. 46:10B-27.c, notwithstanding any other law to the contrary, a borrower acting only in an individual capacity may, within six years of the closing of a high-cost home loan, assert against the creditor or any subsequent holder or assignee of the home loan a violation of N.J.S.A. 46:10B-22 et seq. in connection with the loan as an original action.

(c) With respect to a claim brought under N.J.S.A. 46:10B-27.c, notwithstanding any other law to the contrary, a borrower acting only in an individual capacity may, at any time during the term of a high-cost home loan after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become 60 days in default, assert against the creditor or any subsequent holder or assignee of the high-cost home loan any defense, claim or counterclaim.

(d) Pursuant to N.J.S.A. 46:10B-27.c, the damages sought in any original action as referenced in (b) above, or in any claim or counterclaim as referenced in (c) above, shall be limited to amounts required to reduce or extinguish the borrower's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees not included in the principal amount of the loan.

(e) No person shall, in bad faith or otherwise in an attempt to avoid the application of N.J.S.A. 46:10B-22 et seq.:

1. Divide any loan transaction into separate parts; or
2. Undertake any other such subterfuge, with the intent of evading the provisions of N.J.S.A. 46:10B-22 et seq.

(f) The limitations on assignee liability with respect to high cost home loans as set forth in (a) above shall not apply to assignee liability asserted on any ground other than N.J.S.A. 46:10B-27.b.

(g) The limitations in this chapter shall apply to any assignee liability arising under N.J.S.A. 46:10B-27 regardless of whether an individual asserting assignee liability pursuant to this chapter chooses to pursue such an action under the Consumer Fraud Act, as authorized under N.J.S.A. 46:10B-29.a, or under the Act, as authorized under N.J.S.A. 46:10B-29.b. Regardless of which alternative method for seeking damages against an assignee the borrower chooses to pursue, whenever a borrower alleges assignee or holder liability pursuant to N.J.S.A. 46:10B-27, the limitations and conditions set forth in the applicable subsections of N.J.S.A. 46:10B-27 shall apply to such assignee liability.

(h) Any borrower asserting a claim under N.J.S.A. 46:10B-22 et seq. may, in appropriate circumstances, recover damages under both N.J.S.A. 46:10B-27.a and 27.c from one assignee on the basis of separate claims brought simultaneously under N.J.S.A. 46:10B-27.a and 27.c in connection with the same loan transaction. In such a case the limitations on damages set forth in N.J.S.A. 46:10B-27 would apply to the respective claims made under N.J.S.A. 46:10B-27.a and 27.c.

(i) The limitations upon and conditions for assignee liability prescribed by N.J.S.A. 46:10B-27 may not be avoided by a borrower seeking to obtain separate compensatory and punitive damages against the same assignee. The limitations on damages set forth in N.J.S.A. 46:10B-27 apply to the total of all types of damages.

(j) If a seller of home improvements or manufactured homes is not otherwise involved in the transaction as specified in N.J.S.A. 46:20B-27.a, the loan shall not give rise to assignee liability pursuant to N.J.S.A. 46:10B-27.a. This rule applies irrespective of whether the loan is secured by a first lien, or by a second or subsequent lien (sometimes referred to as a "junior lien"), whether the transaction is a cash-out refinance, and whether the proceeds of the loan are used to pay for home improvements or to purchase a manufactured home.

1. A seller of manufactured homes or home improvements who has referred a borrower to a creditor shall be deemed to be otherwise involved as set forth in N.J.S.A. 46:10B-27.
2. Where a borrower refinances without the involvement of a seller of manufactured homes or home improvements as set forth in N.J.S.A. 46:10B-27.a and subsequently uses the funds obtained in the process to pay for a manufactured home or for home improvements, the seller of manufactured homes or home improvements shall not be deemed to be otherwise involved in the transaction.

(k) The exercise of reasonable due diligence as referenced in N.J.S.A. 46:10B-27.b(3) does not, in all cases, require compliance review of one hundred percent of the loans being acquired. Depending upon the size of the loan pool being purchased or acquired by an assignee and/or the assignee being aware of information material to the determination of whether a lender engages in making high-cost home loans, including but not limited to any indication of the presence of high cost home loans in a loan pool, sampling, if properly performed, shall be considered reasonable due diligence by the Department. In order for sampling to be considered reasonable due diligence by the Department, purchasers or assignees shall, at a minimum, conduct quality control review of appropriate loan documentation at the beginning of the buyer/seller relationship, whenever a particular problem is identified, and throughout the relationship by random sampling. When a loan pool is very small or initial review has uncovered a high number of high cost loans, more extensive review is required to meet the reasonable due diligence standard.

(l) Creditors may utilize third party software packages or internally developed computer programs to comply with the requirements of N.J.S.A. 46:10B-27.b(3) or to determine whether loans are home loans or high cost home loans. Such software programs shall be calibrated and tested prior to use and periodically tested as part of an ongoing compliance review process. Periodic manual oversight and monitoring shall be done to ensure that the software is performing adequately and to evaluate matters not addressed by the software.

(m) A creditor may secure documentation from the borrower in which the borrower represents that no contractor or seller referred the borrower to the creditor, arranged the loan or was otherwise involved in facilitating the loan transaction. The Department shall consider such documentation when contemplating the exercise of its administrative authority pursuant to the Act.

## SUBCHAPTER 9. ENFORCEMENT

### 3:30-9.1 Rights, remedies, prohibitions declared additional, cumulative

(a) Pursuant to N.J.S.A. 46:10B-30, the rights, remedies, and prohibitions accorded by the provisions of this chapter are hereby declared to be in addition to and cumulative of any other right, remedy, or prohibition accorded by the common law or statutes of the United States or of this State, and nothing herein shall be construed to deny, abrogate, or impair any such common law or statutory right, remedy, or prohibition. Without limiting the foregoing, the rights, remedies and prohibitions accorded by this chapter are hereby further declared to create no presumption that any home loan or any term in a home loan is not unconscionable, whether or not the home loan or loan term, alone or in conjunction with other terms of the loan, violates the provisions of this chapter.

(b) In accordance with N.J.S.A. 46:10B-23.d, the amendments in P.L. 2004, c. 84 to the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq., deleting the covered home loan category from N.J.S.A. 46:10B-25 and the prohibition on flipping a home loan, shall create no presumption that any home loan that has been refinanced is not unconscionable. The deletions of the covered home loan category and of the prohibition on flipping from N.J.S.A. 46:10B-25 shall also create no presumption that any home loan that is refinanced does not constitute an unlawful practice under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.