

CHAPTER 38
MORTGAGE BANKERS AND
MORTGAGE BROKERS

Authority

N.J.S.A. 17:1-8 and 8.1; 17:11B-5 and 13.

Source and Effective Date

R.1992 d.387, effective September 11, 1992.
See: 24 N.J.R. 2653(a), 24 N.J.R. 3514(a).

Executive Order No. 66(1978) Expiration Date

Chapter 38, Mortgage Bankers and Mortgage Brokers, expires on September 11, 1997.

Chapter Historical Note

Chapter 38, Mortgage Bankers and Mortgage Brokers, became effective July 9, 1981 with Subchapter 1, License Fees, adopted as R.1981 d.260. See: 13 N.J.R. 256(c), 13 N.J.R. 384(b). Subsequently, Subchapter 1 was revised and redesignated "General Provisions" by Emergency Rule R.1982 d.165, effective May 10, 1982, to expire July 9, 1982. See: 14 N.J.R. 571(a). The provisions of R.1982 d.165 were readopted with changes, by R.1982 d.302, effective September 7, 1982. See: 14 N.J.R. 977(a). Subchapter 2, Books and Records; Subchapter 3, Examinations; Subchapter 4, Fees and Charges; Subchapter 5, Obligation of Licensees; and Subchapter 6, Appeal Procedure, were adopted as R.1982 d.303, effective September 7, 1982. See: 14 N.J.R. 493(a), 14 N.J.R. 977(b). Pursuant to Executive Order No. 66(1978), Chapter 38 expired on September 7, 1987 and was adopted as new rules by R.1987 d.396, effective October 5, 1987. See: 19 N.J.R. 1261(a), 19 N.J.R. 1791(a). Subchapter 5 was repealed by R.1989 d.191, effective April 17, 1989, but operative July 16, 1989. See: 20 N.J.R. 1021(b), 21 N.J.R. 981(c). Pursuant to the findings in *Mortgage Bankers Ass'n of New Jersey v. New Jersey Real Estate Comm'n, et al.*, 102 N.J. 176 (1986) (on remand—OAL Docket No. BRE-228-87), a new Subchapter 5, Persons Licensed, was adopted as R.1992 d.226, effective June 1, 1992, but with N.J.A.C. 3:38-5.3 operative January 1, 1993. See: 23 N.J.R. 3406(b), 23 N.J.R. 3686(c), 24 N.J.R. 2048(b). Pursuant to Executive Order No. 66(1978), Chapter 38 was readopted as R.1992 d.387. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS

3:38-1.1 Definitions

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

"Act" means the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq.

"Branch office" means any location where, in the regular course of business, mortgage loan applications are distributed to or received from consumers, mortgage records are maintained, underwriting decisions are made, mortgage commitments or lock-in agreements are issued, or any fees or charges relating to the mortgage loan are received from consumers. A home or place of business of a consumer shall not be considered a branch office. A location shall not be considered a branch office merely because any or all of the following activities are conducted at the location:

1. Consumers receive information concerning available loan products from a computer terminal;
2. Consumers are prequalified for a mortgage loan, so long as no additional fee is charged for this service; and
3. Advertising materials are distributed to consumers so long as the materials do not in any way resemble an application for a mortgage loan.

"Broker" means to place for others a mortgage loan in the primary market. "Financial services industry" means the businesses that are engaged in the granting of credit or the making of investments.

"Lender" means a bank, savings bank, savings and loan association, credit union, mortgage banker or any other person who originates mortgage loans in this State.

"Licensee" means a mortgage banker or mortgage broker licensed with the Department of Banking.

"Mortgage banker" means any person other than those exempted, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly originates, acquires or negotiates mortgage loans in the primary market.

"Mortgage banker non-servicing" means a mortgage banker which:

1. Does not hold mortgage loans in its portfolio for more than 90 days in the regular course of business or service mortgage loans for more than 90 days in the regular course of business; and

2. Has shown to the Department's satisfaction an ability to fund loans through warehouse agreements, table funding agreements or otherwise.

"Mortgage broker" means any person, other than those exempted, 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, a mortgage loan in the primary market.

"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.

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

"Prequalification" is the process whereby a licensee prior to application advises a person whether he or she qualifies for a mortgage loan product, subject to satisfactory appraisal and other contingencies.

"Primary market" means the market wherein 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.

"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.

"Solicitor" means any person not licensed as a 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 mortgage loan applications, or assists borrowers in completing mortgage loan applications, and whose compensation is in any way based on the dollar amount or volume of mortgage loan applications, mortgage loan closings or other mortgage loan activity.

"Table fund 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 loans with funds of the investor.

"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.

New Rule, R.1992 d.226, effective June 1, 1992.

See: 23 N.J.R. 3406(b), 23 N.J.R. 3686(c), 24 N.J.R. 2048(b).

Old section 3:38-1.1, "License requirements" recodified to 3:38-1.2. Amended by R.1993 d.295, effective June 21, 1993 (operative August 1, 1993).

See: 25 N.J.R. 1035(a), 25 N.J.R. 2687(a).

Amended by R.1994 d.629, effective December 19, 1994.

See: 26 N.J.R. 4124(b), 26 N.J.R. 4999(a).

3:38-1.2 License requirements

(a) The "license period" shall run from July 1 in all odd numbered years to the second June 30 thereafter or any part of that two-year period.

(b) Regardless of the date of issuance, all licenses shall expire on June 30 in the odd numbered year following the date of issuance, the first expiration date for all licenses being June 30, 1983.

(c) The license fee is \$1,000 for each mortgage banker or mortgage broker for each biennial license period, or any part thereof provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee shall be \$500.00.

Emergency amendment, R.1989 d.409, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2401(a).

License fee raised in (c); licensing period changed to biennial.

Adopted concurrent proposal, R.1989 d.509, effective August 31, 1989.

See: 21 N.J.R. 2401(a), 21 N.J.R. 3083(a).

Provisions of emergency amendment R.1989 d.409 readopted without change.

Amended by R.1991 d.195, effective April 15, 1991.

See: 23 N.J.R. 254(a), 23 N.J.R. 1125(a).

Fees increased in (c).

Recodified from 3:38-1.1 by R.1992 d.226, effective June 1, 1992.

See: 23 N.J.R. 3406(b), 23 N.J.R. 3686(c), 24 N.J.R. 2048(b).

Section was "Applications".

3:38-1.3 Applications

(a) Each applicant for a mortgage banker or mortgage broker license must submit to the Department of Banking a completed application in a form prescribed by the Commissioner together with the required license fee and a non-refundable application fee of \$200.00.