

TITLE 3

BANKING

CHAPTER 1

GENERAL PROVISIONS

Authority

N.J.S.A. 17:1-8, 17:1-8.1, 17:2A-1 et seq., 17:9-41, 17:9A-1 et seq., 17:9A-9, 17:9A-24a, 17:9A-25.2, 17:9A-316, 17:11C-49, 17:12B-1 et seq., 17:16F-11, 17:16L-1 et seq., 17:16L-1 et seq. and 17:16N-1 et seq.

Source and Effective Date

R.2006 d.246, effective June 8, 2006.
See: 38 N.J.R. 1493(a), 38 N.J.R. 2795(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 1, General Provisions, expires on December 5, 2013. See: 43 N.J.R. 1294(a).

Chapter Historical Note

Subchapter 3, Mortgage Loans in Disaster Areas, was adopted and became effective prior to September 1, 1969.

Subchapter 2, Procedural Rules, was adopted as R.1970 d.97, effective August 13, 1970. See: 2 N.J.R. 70(a).

Subchapter 4, Governmental Unit Deposit Protection, was adopted as R.1971 d.9, effective January 15, 1971. See: 2 N.J.R. 97(d), 3 N.J.R. 19(c).

Subchapter 5, Mortgage Applicant's Birth Control Practices, was adopted as R.1973 d.166, effective June 21, 1973. See: 5 N.J.R. 136(a), 5 N.J.R. 216(b).

Subchapter 6, Fees, was adopted as new rules by R.1974 d.221, effective August 9, 1974. See: 6 N.J.R. 254(c), 6 N.J.R. 342(a).

Subchapter 7, Miscellaneous Fees, was adopted as new rules by R.1975 d.120, effective May 14, 1975. See: 7 N.J.R. 126(c), 7 N.J.R. 247(c).

Subchapter 9, Home Mortgage Disclosure, was adopted as new rules by R.1977 d.308, effective August 22, 1977. See: 9 N.J.R. 303(c), 9 N.J.R. 405(c).

Subchapter 11, Restrictions on Loans Involving Affiliated Persons, was adopted as new rules by R.1977 d.471, effective December 15, 1977. See: 9 N.J.R. 404(b), 10 N.J.R. 3(c).

Subchapter 10, Restrictions on Real Property Transactions, was adopted as new rules by R.1978 d.55, effective February 21, 1978. See: 9 N.J.R. 404(c), 10 N.J.R. 92(c).

Subchapter 12, Multiple Party Deposit Accounts, was adopted as new rules by R.1980 d.480, effective November 1, 1980. See: 12 N.J.R. 378(c), 12 N.J.R. 686(d).

Subchapter 14, Revolving Credit Equity Loans, was adopted as R.1983 d.378, effective September 19, 1983. See: 15 N.J.R. 1147(a), 15 N.J.R. 1575(b).

Pursuant to Executive Order No. 66(1978), Subchapter 9, Home Mortgage Disclosure, was readopted effective August 26, 1983 as R.1983 d.379. See: 15 N.J.R. 1146(a), 15 N.J.R. 1575(a).

Subchapter 13, Insurance Activities, was adopted as R.1983 d.566, effective December 5, 1983. See: 15 N.J.R. 820(a), 15 N.J.R. 2033(a).

Pursuant to Executive Order No. 66(1978), Subchapter 10, Restrictions on Real Property Transactions, was readopted as R.1984 d.63, effective March 19, 1984. See: 16 N.J.R. 2(a), 16 N.J.R. 520(a).

Pursuant to Executive Order No. 66(1978), Subchapter 12, Multiple Party Deposit Accounts, was readopted as R.1985 d.660, effective January 6, 1986. See: 17 N.J.R. 2488(a), 18 N.J.R. 77(b).

Subchapter 15, Availability of Funds, was adopted as R.1986 d.73, effective March 17, 1986. See: 18 N.J.R. 13(a), 18 N.J.R. 553(a).

Subchapter 16 was adopted as R.1989 d.191, effective April 17, 1989, operative July 16, 1989. See: 20 N.J.R. 1021(b), 21 N.J.R. 981(c).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Provisions, was readopted as R.1991 d.48, effective January 4, 1991. See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Subchapter 17, Automated Teller Machines (ATM), was adopted as R.1991 d.244, effective May 6, 1991. See: 23 N.J.R. 642(a), 23 N.J.R. 1408(b).

Subchapter 18, Foreign Banks and Associations; Registration of Service Facilities, was adopted as R.1991 d.347, effective July 1, 1991. See: 23 N.J.R. 1233(a), 23 N.J.R. 2029(a).

Subchapter 19, New Jersey Consumer Checking Accounts, was adopted as R.1992 d.303, effective August 3, 1992. See: 24 N.J.R. 1667(a), 24 N.J.R. 2710(a).

The Executive Order No. 66(1978) expiration date for Chapter 1, General Provisions, was extended by gubernatorial directive from January 4, 1996 to April 4, 1996. See: 28 N.J.R. 815(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Provisions, was readopted as R.1996 d.168, effective March 6, 1996. See: 28 N.J.R. 3(a), 28 N.J.R. 1830(a).

Pursuant to Executive Order No. 66(1978), Subchapter 5, Mortgage Applicant's Birth Control Practices, expired on April 4, 1996.

Subchapter 20, Requests for Disclosure of Social Security Numbers, was adopted as new rules by R.1997 d.185, effective May 5, 1997. See: 29 N.J.R. 284(a), 29 N.J.R. 1691(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Provisions, was readopted as R.2001 d.112, effective March 6, 2001, and Subchapter 8, Credit or Loan Applications, was repealed by R.2001 d.112, effective April 2, 2001. See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Subchapter 7, Miscellaneous Fees, was renamed Miscellaneous by R.2006 d.233, effective June 19, 2006. See: 38 N.J.R. 5(a), 38 N.J.R. 2671(a).

Chapter 1, General Provisions, was readopted as R.2006 d.246, effective June 8, 2006. See: Source and Effective Date. See, also, section annotations.

Subchapter 4, Governmental Unit Deposit Protection, was repealed by R.2010 d.253, effective November 1, 2010. See: 42 N.J.R. 1447(a), 42 N.J.R. 2605(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, General Provisions, was scheduled to expire on June 8, 2013. See: 43 N.J.R. 1203(a).

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. INTEREST AND USURY**

- 3:1-1.1 Interest rates
- 3:1-1.2 Interest rates; other loans

SUBCHAPTER 2. PROCEDURAL RULES

- 3:1-2.1 Definitions
- 3:1-2.2 Charter applications
- 3:1-2.3 Branch applications of depositories
- 3:1-2.4 Branch application of out-of-State banks and out-of-State associations

- 3:1-2.5 Charter applications; notice and publication
- 3:1-2.6 Branch applications; notice and publication
- 3:1-2.7 Charter applications; objections and hearings
- 3:1-2.8 Branch applications; objections and oral presentations
- 3:1-2.9 Insufficiency of data in support of application; hearing
- 3:1-2.10 Oral presentations
- 3:1-2.11 Failure of party requesting oral presentation to appear
- 3:1-2.12 Minibranches; space limitation
- 3:1-2.13 Prehearing conference
- 3:1-2.14 Procedure for oral presentation
- 3:1-2.15 Closing of branch offices
- 3:1-2.16 Officially recognized data sources
- 3:1-2.17 Applications; copies
- 3:1-2.18 Charter applications; conditions for approval
- 3:1-2.19 Minimum and maximum stock subscriptions
- 3:1-2.20 Criteria for branch approval: Public interest
- 3:1-2.21 Criteria for branch approval: Compliance with Community Reinvestment Act
- 3:1-2.22 Charter conversions
- 3:1-2.23 Fees; banks and savings banks
- 3:1-2.24 Fees; State associations
- 3:1-2.25 Relaxation or dispensation of requirements of subchapter
- 3:1-2.26 (Reserved)

SUBCHAPTER 3. MORTGAGE LOANS IN DISASTER AREAS

- 3:1-3.1 Definitions
- 3:1-3.2 Duties of Commissioner
- 3:1-3.3 Emergency mortgage powers exercisable by financial institutions
- 3:1-3.4 Preliminary requirements
- 3:1-3.5 Limitations

SUBCHAPTERS 4 THROUGH 5. (RESERVED)

SUBCHAPTER 6. FEES

- 3:1-6.1 through 3:1-6.4 (Reserved)
- 3:1-6.5 Annual review
- 3:1-6.6 Examination charge and per diem rate
- 3:1-6.7 Failure to pay fees or examination charges

SUBCHAPTER 7. MISCELLANEOUS

- 3:1-7.1 Name change
- 3:1-7.2 Duplicate licenses and certificates
- 3:1-7.3 Requests for certificate of standing, licensee verification, licensing statutes and licensee listings
- 3:1-7.4 Address and official e-mail address change
- 3:1-7.5 Fees subject to review
- 3:1-7.6 Penalty for late filing of annual reports and/or late payment of assessments

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. HOME MORTGAGE DISCLOSURE

- 3:1-9.1 Authority; scope; enforcement
- 3:1-9.2 Definitions
- 3:1-9.3 through 3:1-9.6 (Reserved)
- 3:1-9.7 Violations of the Act
- 3:1-9.8 Powers of the Commissioner; investigations and hearings
- 3:1-9.9 Orders; grounds; content; hearing; service
- 3:1-9.10 Investigatory hearings; presiding officer
- 3:1-9.11 Presiding officer's powers
- 3:1-9.12 Investigatory hearing procedure
- 3:1-9.13 Report of presiding officer

- 3:1-9.14 Exceptions to report of presiding officer
- 3:1-9.15 Decision by the Commissioner
- 3:1-9.16 Continued violation of Act; penalty
- 3:1-9.17 Notice of charges; continued violation of Act
- 3:1-9.18 through 3:1-9.19 (Reserved)

SUBCHAPTER 10. RESTRICTIONS ON REAL PROPERTY TRANSACTIONS

- 3:1-10.1 Definitions
- 3:1-10.2 Application required on real property transactions
- 3:1-10.3 Approval of denial of real estate applications
- 3:1-10.4 Objectors and hearings

SUBCHAPTER 11. RESTRICTIONS ON LOANS INVOLVING AFFILIATED PERSONS

- 3:1-11.1 Definitions
- 3:1-11.2 Prohibition

SUBCHAPTER 12. MULTIPLE PARTY DEPOSIT ACCOUNTS

- 3:1-12.1 Definitions
- 3:1-12.2 Types of contracts
- 3:1-12.3 Type of accounts
- 3:1-12.4 Specific content of deposit contract
- 3:1-12.5 Additional provisions
- 3:1-12.6 Change in contract
- 3:1-12.7 Copy of contract
- 3:1-12.8 Limitation of subchapter
- 3:1-12.9 Effective dates

SUBCHAPTER 13. INSURANCE ACTIVITIES

- 3:1-13.1 Insurance tie-in prohibition
- 3:1-13.2 (Reserved)

SUBCHAPTER 14. REVOLVING CREDIT EQUITY LOANS

- 3:1-14.1 Authorization
- 3:1-14.2 Revolving credit equity loan agreement
- 3:1-14.3 Terms of agreement
- 3:1-14.4 Notification of changes
- 3:1-14.5 Interest
- 3:1-14.6 Methods of computing interest

SUBCHAPTER 15. AVAILABILITY OF FUNDS

- 3:1-15.1 Definitions
- 3:1-15.2 Compliance with Federal law
- 3:1-15.3 through 3:1-15.8 (Reserved)

SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

- 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
- 3:1-16.11 through 3:1-16.12 (Reserved)

Amended by R.2001 d.112, effective April 2, 2001.
See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote the section.

Amended by R.2006 d.235, effective June 19, 2006.
See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

In the first sentence, substituted "referenced" for "reference", deleted "in Schedule A or 3:1-7.2(c)1 in Schedule B" following "N.J.A.C. 3:1-7.1(a)1", inserted "and" preceding "surrender", deleted "and pay to the Department an address change fee of \$75.00" following "affected license or licenses" and substituted "cashers" for "cashiers"; deleted "and fees" following "documentation" in the second sentence; and in the third sentence, substituted "With the exception of check cashers, while" for "While"; deleted "new" preceding "license or licenses" and inserted "reflecting the new address"; substituted "is" for "and fees are"; deleted "biennial" preceding "licensing period" and inserted "if any".

Amended by R.2008 d.178, effective July 7, 2008.

See: 40 N.J.R. 1399(a), 40 N.J.R. 3989(a).

Section was "Address change". Inserted designation (a); in (a), substituted "Licensed lenders and each" for "Every" and updated the N.J.A.C. references; and added (b).

Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).

See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).

In (a) and (b), substituted "Each" for "Licensed lenders and each" and deleted "(b)" following "3:23-2.1".

3:1-7.5 Fees subject to review

The fees in the schedules of this subchapter shall be subject to periodic review and shall be increased or decreased in accordance with the cost of the services performed by the Department.

Recodified from N.J.A.C. 3:1-7.4 by R.1989 d.407, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2398(a).

Adopted concurrent proposal R.1989 d.510, effective August 31, 1989.

See: 21 N.J.R. 2398(a), 21 N.J.R. 3082(a).

Provisions of emergency amendment R.1989 d.407 readopted without change.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Inserted "cost of the" preceding "services performed".

3:1-7.6 Penalty for late filing of annual reports and/or late payment of assessments

(a) Business licensees under the New Jersey Residential Mortgage Lending Act, N.J.S.A. 17:11C-51 et seq. (RMLA), licensees under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to 43 (CFLA), motor vehicle installment sellers, home repair contractors, home financing agencies, check cashers, money transmitters, debt adjusters, foreign money transmitters, pawnbrokers, insurance premium finance companies, or any other licensees who fail to file an annual report on a timely basis as specified below shall be subject to a penalty as specified in (c) below. With the exception of licensees under RMLA and CFLA, all licensees who file applications to renew their license after the license expiration date shall be subject to a penalty of \$50.00. Business licensees under RMLA and licensees under CFLA who file renewal license applications after the expiration of their licenses shall be subject to N.J.A.C. 3:15-2.7 and 3:17-2.6, respectively, including any penalties specified therein. Individual licensees under RMLA who file renewal license applications after the expiration of their license shall be subject to N.J.A.C. 3:15-2.15.

1. Annual reports filed electronically will be deemed late if received after the date set in N.J.A.C. 3:23-4.1 of the year following the calendar year covered by the annual report.

2. Annual reports filed by hard copy shall be considered late if mailed or shipped with an overnight delivery service after March 1 of the year following the calendar year covered by the annual report. Hard copy reports may only be filed by licensees who have received an exemption from the Department pursuant to N.J.A.C. 3:23-4.2 prior to filing.

3. Annual reports found by the Department to be incomplete shall be deemed not filed.

4. Any report not filed by the date due, including those deemed not filed, shall be considered late and will be subject to penalty.

(b) A business licensee under the RMLA, a licensee under the CFLA, motor vehicle installment seller, home repair contractor, home financing agency, check casher, money transmitter, debt adjuster, foreign money transmitter, pawnbroker, insurance premium finance company, and any other licensee that submits payment of the assessment imposed upon them pursuant to N.J.S.A. 17:1C-33 et seq. and N.J.A.C. 3:5 after the due date indicated on their assessment statement shall be subject to a penalty.

1. Assessments paid with a dishonored or returned check shall be considered unpaid until a replacement check is received by the Department.

2. Assessments not paid because a replacement check has not been received by the due date as required by (b)1 above shall be subject to a penalty.

(c) Unless otherwise prescribed by a statute applicable to a particular license type, a licensee who files an annual report after the date due as set forth in (a) above and/or whose assessment payment is unpaid as set forth in N.J.S.A. 17:1C-36, shall be subject to a penalty in accordance with the following:

1. For late filing of the annual report, the penalty shall be not more than \$100.00 per day.

2. For late payment of the assessment, the penalty shall be \$150.00 per day up to a maximum of 20 percent of the total assessment due.

(d) In addition to any monetary penalties, a license shall be subject to revocation for an assessment that remains unpaid after the due date indicated on the assessment statement and/or for failing to file an annual report by the due date.

(e) The imposition of penalties shall not prevent the Department from imposing further penalties on the licensee for transacting business without a license.

New Rule, R.1991 d.195, effective April 5, 1991.
See: 23 N.J.R. 245(a), 23 N.J.R. 1125(a).

Amended by R.1997 d.257, effective June 16, 1997.

See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

In first sentence deleted reference to sales finance companies and inserted additional categories subject to penalty; and inserted second sentence.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Rewrote the section.

Amended by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Section was "Penalty for late filing". Rewrote the section.

Amended by R.2007 d.306, effective October 1, 2007.

See: 39 N.J.R. 2299(a), 39 N.J.R. 4111(a).

In the introductory paragraph of (a), deleted "\$50.00 per day" preceding the first occurrence of "penalty" and inserted "as specified in (c) below"; in the introductory paragraph of (c), substituted "an" for "a late", deleted "and/or whose assessment is unpaid" following "report", and inserted "and/or whose assessment payment is unpaid as set forth in N.J.S.A. 17:1C-36"; and in (c)1, substituted "not more than \$100.00" for "\$50.00".

Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).

See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).

Rewrote the introductory paragraph of (a); in (a)1, substituted "the date set in N.J.A.C. 3:23-4.1" for "April 1st"; and in the introductory paragraph of (b), substituted "business license under the RMLA, a licensee under the CFLA" for "licensed lender" and inserted a comma following "company".

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. HOME MORTGAGE DISCLOSURE

3:1-9.1 Authority; scope; enforcement

(a) This subchapter is promulgated pursuant to the provisions of N.J.S.A. 17:16F-11 and N.J.S.A. 17:1-8.1 et seq. This subchapter applies to depository institutions that make mortgage loans. Nothing in this subchapter is intended to, nor shall it be construed to, encourage unsound lending practices or the allocation of credit.

(b) Compliance with this subchapter and N.J.S.A. 17:16F-1 et seq. shall be enforced by the Commissioner of Banking and Insurance of the State of New Jersey.

Amended by R.2001 d.112, effective April 2, 2001.

See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

In (a), substituted "N.J.S.A. 17:16F-11" for "Chapter I, Public Laws of 1977"; in (b), substituted "N.J.S.A. 17:16F-1 et seq." for "Chapter I, Public Laws of 1977"; substituted "subchapter" for "regulation" throughout.

Case Notes

Standby letters of credit rules cited; N.J.S.A. 17:9A-25(3) held not to limit letters of credit to a one year duration, but only to limit the duration of drafts drawn on such letters. *National Surety Corp. v. Midland Bank*, 551 F.2d 21 (3rd Cir.1977).

Former N.J.A.C. 3:1-9.1 through 9.9 held valid; N.J.A.C. 3:1-9.10 through 9.22 held invalid as they pertain to national banks. *National State Bank, Elizabeth, N.J. v. Long*, 469 F.Supp. 1068 (D.N.J.1979) supplemental opinion, modified 630 F.2d 981 (3rd Cir.1980).

3:1-9.2 Definitions

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

"Act" means N.J.S.A. 17:16F-1 et seq.

"Annual percentage rate" means the annual percentage rate of finance charge as calculated in accordance with Federal Reserve Board Regulation Z and its supplements.

"Applicant" means any person who files with a depository institution a written, or oral-in-person, request containing such information as is reasonably required by the depository institution for a mortgage loan as defined in this Act.

"Application" means a signed, completed application form submitted to a depository institution containing such information as required by that depository institution for reviewing a residential mortgage loan request or a home improvement loan request.

"Branch office" means any office approved as a branch of the depository institution by that depository institution's Federal or State supervisory agency. Branch office shall not include an office of a depository institution which is fully automated and solely operated by the customer.

"Census tract" means a geographic area as defined and approved by the United States Bureau of Census for statistical purposes. The census tract definitions to be used are those which have been approved for use in the 1980 Census of Population and Housing.

"Depository institution" means any banking institution as defined in N.J.S.A. 17:9A-1, any association as defined in N.J.S.A. 17:12B-5, or any State or Federal credit union, which makes mortgage loans. Any non-depository, majority-owned subsidiary of a depository institution shall be deemed to be part of its parent depository institution for the purposes of this subchapter. No depository institution may aggregate its reports with any other depository institution, subsidiary, affiliate, or otherwise.

"Federally guaranteed mortgage loans" means FHA, FmHA, or VA loans which are insured under Title II of the National Housing Act or under Title V of the Housing Act of 1949 or which are guaranteed under Chapter 37 of Title 38, United States Code.

"Home improvement loan" means a loan unsecured or secured by collateral other than a first lien on a residential real property:

1. The proceeds of which, all or in part, are to be used for the purposes of repairing, rehabilitating, or remodeling an existing residential dwelling located in a State as stated by the borrower to the lender at the time of the loan transaction; or
2. That is recorded on the books of the depository institution as a home improvement loan; or