

**CHAPTER 30
PREDATORY LENDING**

Authority

N.J.S.A. 17:1-8, 17:1-15e, 46:10B-22 et seq. and P.L. 2004 c.84.

Source and Effective Date

R.2006 d.298, effective August 21, 2006.
See: 37 N.J.R. 3102(a), 38 N.J.R. 3293(b).

Chapter Expiration Date

Chapter 30, Predatory Lending, expires on August 21, 2011.

Chapter Historical Note

Chapter 30, Capital, was adopted pursuant to authority delegated at N.J.S.A. 17:12B-133 and became effective March 9, 1981 as R.1981 d.90. See: 13 N.J.R. 61(c), 13 N.J.R. 185(a). Amendments became effective October 17, 1983 as R.1983 d.459. See: 15 N.J.R. 1207(b), 15 N.J.R. 1754(e). Subchapter 2, Reserve Requirements, was repealed effective April 15, 1985 by R.1985 d.172. See: 17 N.J.R. 142(a), 17 N.J.R. 904(b). Pursuant to Executive Order No. 66(1978), Chapter 30, Capital, expired on October 17, 1988.

Chapter 30, Predatory Lending, was adopted as new rules by R.2006 d.298, effective August 21, 2006. See: Source and Effective Date.

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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 coborrower, 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 Depart-