

TITLE 3

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF 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.2001 d.112, effective March 6, 2001.
See: 33 N.J.R. 213(a), 33 N.J.R. 1087(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1, General Provisions, expires on March 6, 2006.

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 by 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 by 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 by 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 by 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: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. INTEREST AND USURY

3:1-1.1 Interest rates

(a) The maximum rate of interest to be charged, or taken or received upon a loan of any money, wares, merchandise, goods and chattels shall be six percent per annum, or shall be 16 percent per annum when there is a written contract specifying a rate of interest, except as herein or otherwise provided by law. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended.

(b) The maximum rate of interest to be charged on loans secured by a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, shall be at least six percent per annum but not more than the Monthly Index of Long Term United States Government

Bond Yields, compiled by the Board of Governors of the Federal Reserve System and as published by said Board of Governors in the monthly Federal Reserve Bulletin, for the second preceding calendar month plus an additional 3.5 percent per annum rounded off to the nearest quarter of one percent per annum. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended.

(c) Contracts for the following classes or types of loans may lawfully provide for any rate of interest which the parties agree upon, and interest at any such rate may lawfully be taken:

1. Loans in the amounts of \$50,000 or more, except loans where the security given is a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes. The rate of interest stated in such contract upon the origination of such loans may be taken notwithstanding that payments thereon reduce the amount outstanding to less than \$50,000;

2. Loans or advances of credit made by savings and loans associations, banking institutions or any Department of Housing and Urban Affairs or Federal Housing Administration approved mortgagees which are subsequently purchased, in whole or in part, by the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, and any successor thereof or by any organization authorized by the Emergency Home Finance Act of 1970 to purchase such loans or by any State or Federal governmental or quasi-governmental organizations.

3. If such loan is not purchased within 395 days from the date the loan instruments are executed, the maximum rate of interest which may be charged on such loan shall not be in excess of that authorized by the commissioner under the provisions of this section and such rate of interest, if in excess of that rate, shall be reduced to the rate in effect at the date of the execution of the loan instruments. No such reduction shall change the maturity date of the loan without the written consent of the borrower nor shall such reduction affect the lien of the mortgage which secures the loan.

As amended, R.1973 d.191, eff. July 16, 1973.
 See: 5 N.J.R. 258(b).
 As amended, R.1973 d.366, eff. December 21, 1973.
 See: 6 N.J.R. 50(b).
 As amended, R.1974 d.132, eff. May 31, 1974.
 See: 6 N.J.R. 255(b).
 As amended, R.1974 d.140, eff. June 11, 1974.
 See: 6 N.J.R. 255(b).
 As amended, R.1974 d.247, eff. September 6, 1974.
 See: 6 N.J.R. 387(b).
 As amended, R.1975 d.21, eff. January 30, 1975.
 See: 7 N.J.R. 94(b).
 As amended, R.1976 d.240, eff. July 29, 1976.
 See: 8 N.J.R. 412(a).

As amended, R.1976 d.404, eff. December 15, 1976.

See: 9 N.J.R. 4(a).

As amended, R.1978 d.204, eff. June 23, 1978.

See: 10 N.J.R. 315(a).

As amended, R.1979 d.190, eff. May 11, 1979.

See: 11 N.J.R. 270(c).

As amended, R.1980 d.151, eff. April 10, 1980.

See: 12 N.J.R. 249(b).

As amended on an emergency basis, R.1981 d.429, eff. October 20, 1981, exp. December 21, 1981. See: 13 N.J.R. 753(b). Readopted, R.1981 d.511, eff. December 22, 1981. See: 13 N.J.R. 753(b), 14 N.J.R. 101(c).

(a): "October 20, 1981" was "April 10, 1980"; "Six" percent was "8" percent; and "or shall be . . . rate of interest" added.

(b): "October 20, 1981" was "April 10, 1980"; "17" percent was "14½" percent.

(c): "October 20, 1981" was "April 10, 1980".

Amended by R.1988 d.282, effective June 20, 1988.

See: 19 N.J.R. 2089(a), 20 N.J.R. 1343(b).

Change "17" to "six" percent per annum. Added text to (b) "but not more . . . 1 percent per annum".

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), deleted "made on or after October 20, 1981," following "chattels"; in (b), deleted the last sentence; deleted (d) and (e).

Case Notes

Commissioner of Banking may, by regulation, establish the rate of interest on loans secured by a first lien on property. In re Stepanski, 20 B.R. 399 (Bankr.N.J.1982).

Banking statutes reflect basic understanding that "interest" continues to be defined as specific percentage rates, rather than discrete charges, such as late fees, unrelated to borrowing money. *Sherman v. Citibank* (South Dakota), N.A., 143 N.J. 35, 668 A.2d 1036 (1995), petition for certiorari filed.

Mortgage interest rate computation rule cited; purchasers entitled to recover benefit of bargain damages where vendors breached executory contract to convey real property. *Donovan v. Bachstadt*, 91 N.J. 434, 453 A.2d 160 (1982).

3:1-1.2 Interest rates; other loans

Notwithstanding any provisions of N.J.S.A. 31:1-1 or N.J.A.C. 3:1-1.1 and except as otherwise provided by law, any person may charge a rate of interest on any loan which rate does not exceed one percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank of New York on the date of the loan, at any time when that discount rate exceeds seven percent. Nothing in this subsection shall authorize any person to make any loan which is not authorized by law, nor shall anything in this subsection apply to loans secured by a first lien on real estate on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may also be used for non-residential purposes. Additionally, nothing in this subsection (a) shall be applicable to the exceptions contained in N.J.S.A. 31:1-1(e) and N.J.A.C. 3:1-1.1(c).

R.1979 d.290, eff. July 27, 1979.

See: 11 N.J.R. 429(b).

Readoption: R.1984 d.397, filed August 16, 1984.

See: 16 N.J.R. 1642(a), 16 N.J.R. 2356(a).

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.

Case Notes

Banking statutes reflect basic understanding that "interest" continues to be defined as specific percentage rates, rather than discrete charges, such as late fees, unrelated to borrowing money. *Sherman v. Citibank* (South Dakota), N.A., 143 N.J. 35, 668 A.2d 1036 (1995), petition for certiorari filed.

SUBCHAPTER 2. PROCEDURAL RULES

3:1-2.1 Definitions

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

"Accepted" means that an application has been received by the Department and it contains all necessary information required or needed by the Department for its review and the Department has acknowledged in writing that the application is ready for review.

"Adequately managed" means, unless otherwise determined in writing by the Commissioner:

1. The achievement of a composite rating of 1 or 2 under the Uniform Financial Institution Rating System or an equivalent rating system, in connection with the most recent examination or subsequent review of the bank, savings bank, or savings and loan; and

2. At least a rating of 2 for management, if such a rating is given.

"Bank" means a New Jersey chartered bank as defined in N.J.S.A. 17:9A-1 and shall include a limited purpose trust company.

"Banking institution" means a depository, or a similar institution chartered by the Federal government or another state.

"Branch application" means an application by a banking institution to establish a full branch or a minibranch office, or to relocate a principal office, full branch office or minibranch office, or to interchange a principal office and full branch office.

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

"Company" means any corporation, partnership, business trust, association or any other person except an individual.

"Controlling interest" means ownership or control of a majority of the issued and outstanding capital stock or securities of a corporation, having voting rights.

"Department" means the New Jersey Department of Banking and Insurance.

ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

2. The term "surplus" shall, in the case of a savings bank, include undivided profits, any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:

i. Exclude any specifically allocated reserves or reserves for known specific charges; and

ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

3. The term "undivided profits" shall, in the case of an association, include any reserve for contingency required by any law or regulation and any reserve for bad debts as computed for Federal income tax purposes, but shall:

i. Exclude any specifically allocated reserves or reserves for known specific charges; and

ii. Be reduced by the booked value or any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

Amended by R.1991 d.186, effective April 1, 1991.

See: 22 N.J.R. 1809(a), 23 N.J.R. 997(a).

Required that "surplus" and "undivided profits" be reduced by the booked value or any intangible assets set up on the balance sheet which represent non-material values over and above physical assets.

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

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

Rewrote (a)3.

3:1-4.8 Substitution of collateral

Public depositories shall have the right to make substitutions of eligible collateral between valuation dates without notification to and approval by the Commissioner; provided, that any substituted collateral have a market value as of the date of substitution which is at least equal to the market value of the collateral so replaced as reported on the last valuation date. Any withdrawal of pledged collateral without replacement as mentioned aforesaid requires the prior approval of the Commissioner. A letter to the Commissioner requesting such withdrawal of collateral shall indicate the collateral to be withdrawn and the reason or reasons for such withdrawal. The Commissioner shall transmit to the public depository in writing his or her approval or disapproval of such withdrawal.

Amended by R.1974 d.119, effective May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

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 last sentence.

3:1-4.9 Agreement or resolution; custodial depository and Commissioner

(a) The depositories specified in N.J.S.A. 17:9-44(c) and the Federal Reserve Bank of the Federal Reserve district where the depository institution's principal office is located shall be known as custodial depositories. A public depository shall not deposit collateral in a custodial depository which is a parent or subsidiary of the public depository, or is otherwise related to the public depository.

(b) A custodial depository shall be required to have a written agreement with the Commissioner authorizing such depository to hold securities as collateral for public funds under the terms and conditions enumerated therein.

(c) A public depository who pledges mortgage loans, student loans or Small Business Administration loans insured or guaranteed by the United States of America or an instrumentality thereof or by the State of New Jersey or an instrumentality thereof as to the payment of principal and interest shall file with the Commissioner at the time each certification statement is filed a report of the current status of each mortgage, student loan or Small Business Administration loan pledged as collateral on forms subject to the approval of the Commissioner:

1. The bond or note and mortgage collateral instruments shall be deposited with a custodial depository.

2. The underlying mortgage collateral security shall be homes containing not more than four dwelling units.

3. The market value of the mortgage loan, student loan or Small Business Administration loan shall be 80 per cent of the book value of the loan at the date of filing, until the next semiannual valuation date.

4. Mortgage loans, student loans or Small Business Administration loans contractually delinquent more than three months shall not be considered eligible collateral.

5. Individual ledger cards or comparable records shall be marked to indicate items pledged.

(d) If a public depository fails to meet its minimum regulatory capital requirements as established by the appropriate supervising Federal agency or meets the criteria set forth in N.J.S.A. 17:16J-2(a), the Commissioner may:

1. Require that the public depository pledge readily marketable investment grade securities only, and pledge such securities to the extent of 120 percent of the amount of public funds on deposit not insured by the appropriate Federal insurance fund; and/or

2. Issue a limited certificate which prohibits the public depository from accepting public deposits not insured by the appropriate Federal insurance fund.

As amended, R.1974 d.119, eff. May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

Amended by R.1991 d.186, effective April 1, 1991 (operative June 1, 1991).

See: 22 N.J.R. 1809(a), 23 N.J.R. 997(a).

New (d) established those provisions which the Commissioner could enforce if a public depository fails to meet its minimum capital requirement.

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

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

Rewrote (a).

3:1-4.10 Agreement or resolution; public depository and custodial depository

(a) Each public depository which is a State bank, national bank or savings bank shall be required to have a written agreement with a custodial depository. Said agreement shall indicate that the collateral pledged is to be held subject to the order of the Commissioner or his or her authorized deputy and is held as security for public funds as required under the Act.

(b) Each public depository that pledges insured or guaranteed mortgages, student loans or Small Business Administration loans as security for public funds shall file with the Commissioner a resolution of the board of the depository at the time of the initial pledge. The resolution must authorize the pledging of such mortgages, student loans or Small Business Administration loans in a custodial depository, together with other documentation which may be required by the Commissioner.

(c) The aforesaid written agreement or resolution shall indicate that collateral pledged is to be held in a custodial depository subject to the order of the Commissioner or his or her authorized deputy and is held as security for public funds as required by the Act.

As amended, R.1974 d.119, eff. May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

Amended by R.1991 d.186, effective April 1, 1991 (operative June 1, 1991).

See: 22 N.J.R. 1809(a), 23 N.J.R. 997(a).

(b) deleted referencing requirements for "associations".

3:1-4.11 Security; State and other public deposits

The securing of public deposits as required under the Act shall not preclude any public depository from securing State or other public deposits which are otherwise required to be secured by law. The deposits which are otherwise required to be secured shall be excluded from the computation of the average balance of public funds as required in this Subchapter.

As amended, R.1974 d.119, eff. May 16, 1974.

See: 6 N.J.R. 130(b), 6 N.J.R. 218(b).

3:1-4.12 Records maintained by Commissioner; eligibility

The Commissioner shall maintain such records as he or she shall deem necessary in order to determine which public depositories have complied with the provision of the Act. After receipt of the periodic certified statement, the Commissioner shall give written notification to each reporting public depository of its eligibility to act as a depository for public funds.

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

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

Neutralized gender reference.

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. FEES

3:1-6.1 Definitions

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

"Discretionary trust assets" means the discretionary trust assets reported to the Department in the report of trust assets.

"Holding company" means a bank holding company or a savings and loan holding company under the supervision of the Department.

"Licensee" means a person other than a bank, savings bank, savings and loan association or credit union that is regulated or supervised by the Division of Banking.

"Non-discretionary trust assets" means the non-discretionary trust assets reported to the Department in the report of trust assets.

"Trust assets" means assets held in trust, as reported to the Department in the report of trust assets.

"Trust company" means a New Jersey bank whose powers are limited by its certificate of incorporation to fiduciary and trust activities, or which has represented to the Department that it will restrict its powers to fiduciary and trust activities.

New Rule, R.1991 d.195, effective April 15, 1991.

See: 23 N.J.R. 245(a), 23 N.J.R. 1125(a).

Section 6.1 was recodified to 6.2.

Amended by R.1991 d.350, effective July 1, 1991.

See: 23 N.J.R. 1073(b), 23 N.J.R. 2028(a).

Added definitions for "discretionary trust assets" and "non-discretionary trust assets".

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

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

In "Licensee", substituted "that" for "which" and "Division of Banking" for "Department".

3:1-6.2 Assessments

(a) Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of 0.44 of one cent per \$100.00 of total assets, except that trust assets shall be assessed a yearly fee in accordance with the following schedule: