

CHAPTER 18
SECONDARY MORTGAGE LOAN ACT RULES

Authority

N.J.S.A. 17:11A-54.

Source and Effective Date

R.1993 d.55, effective December 24, 1992.
See: 24 N.J.R. 3982(a), 25 N.J.R. 463(b).

Executive Order No. 66(1978) Expiration Date

Chapter 18, Secondary Mortgage Loan Act Rules, expires on December 24, 1997.

Chapter Historical Note

Chapter 18, originally the Secondary Mortgage Loan Act of 1965 Regulations, was filed and became effective prior to September 1, 1969. The original text was adopted pursuant to N.J.S.A. 17:11A-30 and was subsequently codified as Subchapter 1, Additional Licensee Requirements; Subchapter 2, Books and Records; Subchapter 3, General; and Subchapter 4, Insurance.

Subchapter 5, Legal Fees, was adopted as R.1973 d.32, effective February 8, 1973. See: 4 N.J.R. 299(c), 5 N.J.R. 33(a). Subchapter 6, Solicitation of Business, was adopted as R.1973 d.280, effective September 26, 1973. See: 5 N.J.R. 182(c), 5 N.J.R. 364(c). Subchapter 6 was repealed by R.1977 d.221, effective June 22, 1977. See: 9 N.J.R. 304(b). A new Subchapter 6, Pledging of Receivables, was adopted as R.1978 d.41, effective January 30, 1978. See: 9 N.J.R. 555(b), 10 N.J.R. 92(b). Subchapter 7, Advertising, was adopted as R.1973 d.133, effective June 7, 1973. See: 5 N.J.R. 5(b), 5 N.J.R. 183(a). Subchapter 8, Licensed Places of Business, was adopted as R.1974 d.135, effective June 6, 1974. See: 6 N.J.R. 167(a), 6 N.J.R. 255(a). Subchapter 9, originally Interest Rate Regulation Number One, was adopted as Emergency Rule R.1974 d.199, effective July 22, 1974. See: 6 N.J.R. 298(a). Emergency amendments to Subchapter 9 were adopted as R.1975 d.53, effective March 12, 1975; R.1978 d.404, effective November 24, 1978; and R.1980 d.17, effective January 14, 1980. See: 7 N.J.R. 128(a); 11 N.J.R. 4(b); 12 N.J.R. 63(a). Subchapter 10, Licensing, was adopted as R.1988 d.36, effective January 19, 1988. See: 19 N.J.R. 1929(a), 20 N.J.R. 183(b).

Subchapters 1, 3, and 9 were repealed by R.1993 d.50 and a new Subchapter 1, General Provisions; Subchapter 3, Mortgage Loans; Subchapter 9, Disclosure of Terms; and Subchapter 11, Assignment of Secondary Mortgage Loans, were adopted effective January 19, 1993. See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a). Pursuant to Executive Order No. 66(1978), Chapter 18 was readopted as R.1993 d.55. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 3:18-1.1 Definitions
- 3:18-1.2 License requirement
- 3:18-1.3 Exceptions to license requirement

SUBCHAPTER 2. BOOKS AND RECORDS

- 3:18-2.1 Preservation of records
- 3:18-2.2 Ledger card

SUBCHAPTER 3. MORTGAGE LOANS

- 3:18-3.1 Types of mortgage loans
- 3:18-3.2 Permitted charges
- 3:18-3.3 Prepayment of secondary mortgage loan
- 3:18-3.4 Method of computing interest
- 3:18-3.5 Collateral security

SUBCHAPTER 4. INSURANCE

- 3:18-4.1 Agent or broker and company licensed or authorized by the State of New Jersey
- 3:18-4.2 Designation of particular agent or broker

SUBCHAPTER 5. LEGAL FEES

- 3:18-5.1 Affiliation between a licensee and its attorney prohibited
- 3:18-5.2 Licensee's participation in legal fees prohibited
- 3:18-5.3 Attorney's statement must be detailed
- 3:18-5.4 Prior notice to borrower; final disclosure of specific dollar amounts

SUBCHAPTER 6. PLEDGING OF RECEIVABLES

- 3:18-6.1 Pledged receivables as collateral security for commercial loan

SUBCHAPTER 7. ADVERTISING

- 3:18-7.1 Availability of advertising copy
- 3:18-7.2 Multiple office operations
- 3:18-7.3 (Reserved)
- 3:18-7.4 Insurance
- 3:18-7.5 Certain types of advertising prohibited
- 3:18-7.6 Verbal advertisement

SUBCHAPTER 8. LICENSED PLACES OF BUSINESS

- 3:18-8.1 Branch offices
- 3:18-8.2 (Reserved)

SUBCHAPTER 9. DISCLOSURE OF TERMS

- 3:18-9.1 Required disclosures
- 3:18-9.2 Compliance with Federal law

SUBCHAPTER 10. LICENSING

- 3:18-10.1 Initial license requirements
- 3:18-10.2 Application requirements
- 3:18-10.3 Examinations
- 3:18-10.4 Waiver of examination
- 3:18-10.5 Bonds
- 3:18-10.6 License renewal
- 3:18-10.7 Replacement of license
- 3:18-10.8 (Reserved)
- 3:18-10.9 Appeal procedure

SUBCHAPTER 11. ASSIGNMENT OF SECONDARY MORTGAGE LOANS

- 3:18-11.1 Definitions
- 3:18-11.2 Restraints on assignments
- 3:18-11.3 Procedure for registration
- 3:18-11.4 Review of registration filings
- 3:18-11.5 Renewal of registration
- 3:18-11.6 Registration fees

SUBCHAPTER 12. APPROVED BUSINESS ACTIVITIES; INSURANCE

- 3:18-12.1 Approved business activities
- 3:18-12.2 Approved insurance sales
- 3:18-12.3 Other business activities; approval process
- 3:18-12.4 Prohibitions
- 3:18-12.5 Books and records; separation

3:18-12.6 Annual report; fee
 3:18-12.7 Suspensions or revocation of authority

SUBCHAPTER 1. GENERAL PROVISIONS

3:18-1.1 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 Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq.

“Borrower” means an individual, association, joint venture, partnership, limited partnership, limited partnership association, or any other group of individuals however organized, except a corporation, who applies for a secondary mortgage loan, whether such loan is granted, or who has obtained such a loan.

“Branch office” means any location where, in the regular course of business, secondary mortgage loan applications are distributed to or received from consumers, mortgage records are maintained, underwriting decisions are made, mortgage commitments are issued, or any fees or charges relating to the secondary mortgage loan are received from consumers. 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 secondary mortgage loan.

“Business activities” means solicitation, negotiation and/or sale or purchase of goods or services, by licensees, their agents or employees, of, with and to secondary mortgage loan borrowers or applicants.

1. “Approved business activities” means those activities set forth in N.J.A.C. 3:18-12.1 and 12.2 and substantially similar activities as may be approved by the Commissioner pursuant to N.J.S.A. 17:11A-45p, and N.J.A.C. 3:18-12.3.

“Closed-end loan” means a secondary mortgage loan pursuant to which the licensee advances to the borrower 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 amounts of the installments may vary as a result of the change in the interest rate pursuant to N.J.S.A. 17:11A-44.7(b).

“Commissioner” means the Commissioner of the New Jersey Department of Banking.

“Compensation” means and includes money, chattels, personal services or any other tangible or intangible thing of value.

“Department” means the New Jersey Department of Banking.

“Discount point” means an amount of money equal to one percent of the principal amount of the loan and payable only at closing.

“Financial institution” means a person that is duly licensed or chartered by a state or the Federal government to provide financial services to the public, and includes the following:

1. A state or Federal bank or savings bank;
2. A state or Federal savings and loan association;
3. An insurance company; and
4. A state or Federal credit union.

“Licensed office” means a principal office or a branch office.

“Licensee” means a person licensed in this State as a secondary mortgage loan lender, or a person required to be licensed.

“Open-end loan” means a secondary mortgage loan made by a licensee pursuant to a written agreement between the licensee and the borrower whereby:

1. The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee 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, limited partnership association, corporation or any other group of individuals however organized.

“Secondary mortgage loan” means a loan made to a borrower which is secured in whole or part pursuant to a security agreement by any interest in real property which 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. The following shall not constitute secondary mortgage loans:

1. A loan to be repaid in 90 days or less;
2. A loan in which the real property is taken as security for a home repair contract executed in accordance with N.J.S.A. 17:16C-62 et seq.; and
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 said dwelling for at least one year, if the buyer is purchasing said dwelling for his own residence and, as part of the purchase price, executes a secondary mortgage in favor of the seller.

Amended by R.1995 d.14, effective January 3, 1995.
See: 26 N.J.R. 3920(a), 27 N.J.R. 89(b).

3:18-1.2 License requirement

(a) No person shall engage in the secondary mortgage loan business in this State without first obtaining a license. A person is engaged in the secondary mortgage loan business if such person:

1. Advertises, causes to be advertised, solicits, negotiates, offers to make or makes a secondary mortgage loan, whether directly or by any person acting for his benefit; or
2. Becomes the subsequent holder in this State of a promissory note or mortgage, indenture or any other similar instrument or document received in connection with a secondary mortgage loan.

3:18-1.3 Exceptions to license requirement

(a) A real estate broker or salesman licensed in New Jersey pursuant to Chapter 15 of Title 45 of the Revised Statutes 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. A real estate broker or salesman receiving separate or additional compensation for originating, brokering or acquiring a secondary mortgage loan, in addition to the real estate sales commission, shall be

deemed to be engaged in the business of a licensee and must be licensed or employed by a licensee.

(b) 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. An attorney who receives separate or additional compensation for originating, brokering or acquiring a mortgage loan shall not qualify for this exemption and must be licensed.

(c) A 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, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or fee whatsoever, other than said interest, shall not be required to obtain a license.

(d) 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.

(e) 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”, N.J.S.A. 52:27D-301 et al., 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.

(f) Nothing contained in this chapter expands or restricts the powers otherwise conferred by law upon financial institutions to engage in the secondary mortgage loan business, and no financial institution in exercising any power otherwise so conferred upon it shall be subject to any provision of this chapter.

Amended by R.1995 d.14, effective January 3, 1995.
See: 26 N.J.R. 3920(a), 27 N.J.R. 89(b).

SUBCHAPTER 2. BOOKS AND RECORDS

3:18-2.1 Preservation of records

(a) Every licensee shall preserve the books, accounts and records for at least two years after making the final entry on

any secondary mortgage loan or application. The assignment or sale of a secondary mortgage loan shall constitute the final entry for the licensee assigning the secondary mortgage loan. The denial or withdrawal of an application shall constitute the final entry on any secondary mortgage loan application which is denied or withdrawn. In the case of an open-end loan, a licensee shall preserve the books, accounts and records for at least two years after each entry.

(b) A licensee may keep its secondary mortgage loan records at either:

1. A licensed branch office in this State; or
2. An unlicensed site in or out of this State, or a licensed branch office outside of this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking. The approval of the Department will be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at such 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 the examinations, and the right of the Department to rescind the agreement.

Amended by R.1991 d.362, effective July 15, 1991.
See: 23 N.J.R. 803(a), 23 N.J.R. 2122(a).

Added (b), allowing licensees to keep records at licensed sites outside of this State or unlicensed sites inside the State if they have entered into an agreement with the Department.

Amended by R.1993 d.50, effective January 19, 1993.
See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).

Statutory References

N.J.S.A. 17:11A-18

3:18-2.2 Ledger card

(a) Every licensee shall maintain an individual record or ledger card for each secondary mortgage loan, which shall include the following information:

1. Account number;
2. Name and address of borrower (mortgagor);
3. Address and physical description of mortgaged property;
4. Date of loan;
5. Amount of loan;
6. Appraisal or inspection fee;
7. Credit investigation fee;
8. Search fee;
9. Legal fees;
10. Recording and filing fees;
11. Insurance premiums and types of coverage;

12. Interest charge;
13. Full amount of the secondary mortgage loan;
14. The terms by which the loan is to be repaid;
15. Amount and to whom any commissions, finder's fees or points, if any, were paid by the licensee and the form of disbursement (cash—check);
16. Record of the computation of any rebate upon prepayment of a loan in full before maturity;
17. Record of the computation of any refund of unearned insurance premium charge upon prepayment of a loan in full before maturity;
18. Name and address of any subsequent holder of a secondary loan obligation if it is sold, assigned, negotiated or transferred.

Statutory References

N.J.S.A. 17:11A-19

SUBCHAPTER 3. MORTGAGE LOANS

3:18-3.1 Types of mortgage loans

(a) A licensee may make closed-end or open-end loans, and may charge, contract and receive thereon interest at an annual percentage rate agreed to by the licensee and the borrower.

(b) Nothing contained in (a) above shall be construed to permit a licensee to charge a rate of interest in excess of that permitted by N.J.S.A. 2C:21-19.

3:18-3.2 Permitted charges

(a) A licensee may charge a borrower only the following fees incident to a secondary mortgage loan, in addition to interest:

1. Third party charges actually incurred by a licensee on behalf of a borrower incident to the processing of a secondary mortgage loan application or the closing of the loan. The licensee may collect third party charges only after they have been incurred by the licensee, and the licensee may not charge the borrower more than the amount the borrower is charged by the third party for the service. The licensee may not collect any third party charges except the following:
 - i. Fees for title examination, abstract of title, survey, recording or title insurance;
 - ii. Appraisal fees;
 - iii. Credit report fees; and
 - iv. Reasonable attorney fees paid to an attorney authorized to practice law in New Jersey.

2. Charges for late payment by the borrower as may be provided in the note or loan agreement, provided that no late charge shall exceed five percent of the amount of payment in default. A licensee shall not charge more than one late charge on any one payment in arrears;

3. A returned check fee in an amount not to exceed \$20.00 which the licensee may charge to the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account;

4. No more than three discount points; and

5. 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 licensee, and providing further that if the licensee collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the licensee must refund the service fee to the borrower.

(b) A licensee shall not charge interest in advance of it being earned, other than as discount points.

(c) Nothing contained in this section shall limit a licensee's ability to impose charges upon foreclosure.

Amended by R.1993 d.218, effective May 17, 1993.
See: 25 N.J.R. 1033(b), 25 N.J.R. 1965(a).

Revised (a).

Amended by R.1995 d.14, effective January 3, 1995.
See: 26 N.J.R. 3920(a), 27 N.J.R. 89(b).

3:18-3.3 Prepayment of secondary mortgage loan

A borrower may prepay a secondary mortgage loan at any time without penalty.

Case Notes

Illegal action under the Secondary Mortgage Loan Act. In re Stepanski, 20 B.R. 399 (Bankr.N.J.1982).

3:18-3.4 Method of computing interest

A licensee may only compute interest using the 365/365 method or the 360/360 method.

Case Notes

Illegal action under the Secondary Mortgage Loan Act. In re Stepanski, 20 B.R. 399 (Bankr.N.J.1982).

3:18-3.5 Collateral security

(a) A licensee 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 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.

(b) For purposes of this section, 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 licensee 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.

SUBCHAPTER 4. INSURANCE

3:18-4.1 Agent or broker and company licensed or authorized by the State of New Jersey

(a) When a licensee requires fire or casualty insurance in connection with a secondary mortgage loan, such insurance shall be written by or through a duly licensed insurance agent or broker of the State of New Jersey, with an insurance company authorized to do business in this State.

(b) 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 property of the borrower all or part of which is the security for the loan, which insurance shall be 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 an amount needed to satisfy all prior liens on such property.

Amended by R.1993 d.50, effective January 19, 1993.

See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).

Revised (a); added new (b).

Statutory References

N.J.S.A. 17:11A-22(c)

3:18-4.2 Designation of particular agent or broker

(a) No licensee shall require a borrower, as a condition to obtaining a secondary mortgage loan, to negotiate for or obtain a policy of insurance or renewal thereof, covering the property involved in the transaction, from or through a particularly designated insurance agent or broker.

(b) No licensee shall compel a borrower to purchase credit life or accident and health insurance, or credit involuntary unemployment insurance, in connection with a secondary mortgage loan.

Amended by R.1993 d.50, effective January 19, 1993.
See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).
Revised (a); added new (b).

Statutory References

N.J.S.A. 17:11A-22(c)

SUBCHAPTER 5. LEGAL FEES

3:18-5.1 Affiliation between a licensee and its attorney prohibited

(a) A licensee 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.

(b) For purposes of this subchapter, "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.

Amended by R.1993 d.50, effective January 19, 1993.
See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).
Amended by R.1993 d.218, effective May 17, 1993.
See: 25 N.J.R. 1033(b), 25 N.J.R. 1965(a).
Revised (a).

3:18-5.2 Licensee's participation in legal fees prohibited

(a) The following persons shall not receive compensation from an attorney who is providing legal service in accordance with N.J.S.A. 17:11A-46(g) for the preparation of documents or for any other services performed for and on behalf of the attorney:

1. A licensee;
2. An employee, partner, officer, director or stockholder of a licensee; or
3. Any other person in which a licensee is an employee, partner, officer, director or stockholder.

Amended by R.1993 d.50, effective January 19, 1993.
See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).
Revised text.

3:18-5.3 Attorney's statement must be detailed

To obtain reimbursement from the borrower at closing for attorney fees charged to the licensee in connection with a secondary mortgage loan, the licensee 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 licensee and the charge to the licensee for each such service.

Amended by R.1993 d.50, effective January 19, 1993.
See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).
Revised text.

Amended by R.1993 d.218, effective May 17, 1993.
See: 25 N.J.R. 1033(b), 25 N.J.R. 1965(a).
Revised text.

Statutory References

N.J.S.A. 17:11A-46(h)

3:18-5.4 Prior notice to borrower; final disclosure of specific dollar amounts

(a) Any licensee who requires any or all of its borrowers to pay a legal fee shall, at least four days prior to the closing of the loan, inform the borrower in writing of such requirement.

(b) A statement by the licensee of all legal and other expenses to be paid by the borrower must be provided at the closing.

(c) Each separate expense item, including an itemized statement of legal expenses, shall be followed by the corresponding dollar amount charged for the performance of said service when the total fee exceeds \$100.00.

(d) Proof of compliance with this section must be included in the licensee's loan file.

New Rule, R.1973 d.343, effective December 6, 1973.
See: 5 N.J.R. 363(c), 6 N.J.R. 3(b).

Statutory References

N.J.S.A. 17:11A-46(h)

SUBCHAPTER 6. PLEDGING OF RECEIVABLES

3:18-6.1 Pledged receivables as collateral security for commercial loan

A licensee may pledge any portion or all of its secondary mortgage loan receivables as collateral security for a bona fide commercial loan provided the licensee continues to service all such pledged accounts in its own licensed name at its own licensed location and in so doing maintains the individual borrower's documents, accounts, books and records as required by N.J.S.A. 17:11A-45e.

SUBCHAPTER 7. ADVERTISING

3:18-7.1 Availability of advertising copy

One copy of all advertising material, including radio and television scripts, shall be kept on file in the licensee's office for at least one year after the last date on which any such advertisement was utilized, said date to be noted on any such advertisement.

3:18-7.2 Multiple office operations

Licensees having multiple office operations under the same management or control whose advertisements embody more than one corporate title may omit the portion of the title which distinguishes the several corporations participating in such multiple advertising.

3:18-7.3 (Reserved)

Repealed by R.1973 d.343, effective December 6, 1973.
See: 5 N.J.R. 363(c), 6 N.J.R. 3(b).
Section was "Legal fees".

3:18-7.4 Insurance

Any licensee who advertises the availability of any of the types of insurance permitted by these rules, shall specifically state that such insurance is optional.

Amended by R.1993 d.50, effective January 19, 1993.
See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).
Amended by R.1995 d.14, effective January 3, 1995.
See: 26 N.J.R. 3920(a), 27 N.J.R. 89(b).

3:18-7.5 Certain types of advertising prohibited

(a) The use of any of the following types of advertising shall be deemed to be misleading or deceptive, and as such, in violation of N.J.S.A. 17:11A-46K(5):

1. A form which has the appearance of a check, money order, draft or other instrument which is normally used for the transfer of funds;
2. Reference to terms such as savings, thrift, share passbook, account, deposit, certificate or any other word or phrase of similar meaning, used individually or collectively.

Amended by R.1993 d.50, effective January 19, 1993.
See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).

3:18-7.6 Verbal advertisement

A verbal advertisement by radio, television or otherwise shall include a statement to the effect that the type of loan involved is a secondary mortgage loan. The term "statement" as used herein shall mean and include any verbal or visual communication, provided that if visual communication is employed, it must appear for the total time said advertisement is broadcast.

New Rule, R.1973 d.282, effective September 26, 1973.
See: 5 N.J.R. 256(c), 5 N.J.R. 365(a).

SUBCHAPTER 8. LICENSED PLACES OF BUSINESS

3:18-8.1 Branch offices

(a) Before operating a branch office, a licensee shall obtain a branch office license from the Commissioner. A

licensee shall apply to the Commissioner for permission to establish a branch office or offices on a form prescribed by the Commissioner. The application form requires basic information about the licensee and the proposed site, such as the name and address of the licensee and a description of the proposed branch office. An applicant shall submit with the application the required fees.

(b) A licensee may conduct its secondary mortgage loan business in the same office in which it conducts other licensed activities, unless otherwise prohibited. However, a licensee may not establish a branch office within an establishment which is primarily devoted to social or recreational activities, or which impairs the ability of the public to gain access to the licensee.

(c) Each licensee which maintains more than one office shall designate one 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. The Commissioner shall endorse the change of address on the license.

(d) Each licensee shall submit any change of address for the principal office or any branch office or any change in the licensed supervisory individual within 10 days of the change. The Commissioner shall issue confirmation of the change in address. In addition, a licensee shall notify the Commissioner prior to closing a principal or branch office.

(e) Each licensee shall display the license so that it is easily observable by the general public. The address and name on the license must be the same as the address of the place of business and the name of the licensee where the license is on display.

(f) 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.

(g) 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.

New Rule, R.1993 d.50, effective January 19, 1993.
See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).

Old section "Banking institution or savings and loan association location prohibited", recodified to 8.2.

Amended by R.1993 d.218, effective May 17, 1993.

See: 25 N.J.R. 1033(b), 25 N.J.R. 1965(a).

Added new (g).

Amended by R.1995 d.14, effective January 3, 1995.

See: 26 N.J.R. 3920(a), 27 N.J.R. 89(b).

Case Notes

Rule valid on its face as within the general purpose of the Secondary Mortgage Loan Act and the scope of powers granted the Commissioner thereunder; hearing warranted to determine claim that the separation

required by the rule artificially inflated the cost of doing business for savings and loan association service corporations, thereby lessening the ability of the corporations to charge a lesser second mortgage interest rate than the usual licensee. *City Consumer Services, Inc. v. Dep't of Banking*, 134 N.J.Super. 588, 342 A.2d 540 (App.Div.1975), certification granted 69 N.J. 73 (1975) 342 A.2d 540.

3:18-8.2 (Reserved)

Amended by R.1993 d.50, effective January 19, 1993.

See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).

Recodified from 8.1; deleted (b).

Repealed by R.1995 d.14, effective January 3, 1995.

See: 26 N.J.R. 3920(a), 27 N.J.R. 89(b).

Section was "Banking institution or savings and loan association location prohibited".

Statutory References

N.J.S.A. 17:11A-54a

SUBCHAPTER 9. DISCLOSURE OF TERMS

3:18-9.1 Required disclosures

(a) At or before the time a secondary mortgage loan is made, the licensee shall deliver a closing statement to 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.

(b) The licensee shall provide the borrower with a copy of every paper he is called upon to sign.

Case Notes

Illegal action under the Secondary Mortgage Loan Act. In re *Stepanski*, 20 B.R. 399 (Bankr.N.J.1982).

3:18-9.2 Compliance with Federal law

Where any disclosure is required pursuant to this subchapter which 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.

SUBCHAPTER 10. LICENSING

3:18-10.1 Initial license requirements

(a) The "license period" for a secondary mortgage loan license shall run from January 1 in all even numbered years to the second December 31 thereafter or any part of that two-year period.

(b) Regardless of the date of issuance, all licenses shall expire on December 31 in the odd numbered year following the date of issuance, the first expiration date for all licenses being December 31, 1989.

(c) The individual secondary mortgage loan licensee upon whom a corporation, partnership, association or other entity is dependent for its licensure pursuant to the requirements of P.L. 1987, c.230, § 2 (N.J.S.A. 17:11A-36(b)) must maintain his or her license at the principal New Jersey office of the licensee.

(d) Additional individual secondary mortgage loan licensees may be licensed at the principal office or at any licensed branch office of the employing secondary mortgage loan licensee. The application of the individual secondary mortgage loan licensee shall indicate the office address of the employing licensee at which he or she is to be located.

(e) License and application fees are as follows:

1. The license fee is \$1,000 for each new corporate, partnership or sole proprietorship secondary mortgage loan licensee applicant for the initial 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 is \$500.00. There shall also be a \$200.00 non-refundable processing fee due for each applicant at the time of application.

2. The license fee is \$1,000 for each new individual secondary mortgage loan licensee applicant for the initial 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 is \$500.00.

3. Each applicant for an initial individual secondary mortgage loan license shall submit a \$200.00 non-refundable application fee at the time of application.

4. The license fee is \$1,000 for each new branch secondary mortgage loan license applicant for the initial 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 is \$500.00. There shall also be a \$200.00 non-refundable processing fee due for each new applicant at the time of application.

5. The license fee for renewal applications shall be the same as for new applications except that it shall not include the non-refundable processing fee.

Emergency Amendment, R.1989 d.409, effective July 3, 1989 (expired September 1, 1989).

See: 21 N.J.R. 1985(a), 21 N.J.R. 2401(a).

License fees changed in (e)4 from \$600 to \$800, \$300 to \$400, and from \$100 to \$200.

Adopted Concurrent Proposal, R.1989 d.509, effective August 31, 1989.

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

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).

License fees increased from \$800.00 to \$1,000 and \$400.00 to \$500.00.

3:18-10.2 Application requirements

(a) Each applicant for a secondary mortgage loan license must submit to the Department of Banking a completed application in a form prescribed by the Commissioner together with the required fee.

(b) In addition to the application form, the applicant shall file certified consent certificates with the Department permitting the Department to make inquiries to the Department of Law and Public Safety, Division of Criminal Justice, as to any information it may have on file with respect to the applicant, that is, the person, sole proprietor, partners, corporate officers, directors and shareholders owning more than 10 percent of the shares of the corporation.

(c) Each individual and each sole proprietorship applicant must qualify by passing an examination administered under the direction of the Department of Banking unless the examination requirement is waived pursuant to N.J.S.A. 17:11A-56 and N.J.A.C. 3:18-10.4.

(d) All applications must be accompanied by a letter of inquiry from the applicant to a surety company authorized to do business in the State of New Jersey regarding the issuance of a bond in the amounts required by N.J.A.C. 3:18-10.5(c) upon completion of all requirements for the issuance of a license.

(e) All applications for a corporate, partnership or sole proprietorship license shall include a financial statement for the applicant and such additional information as shall be required by the Commissioner for a newly-organized corporation.

(f) An application for a corporate license must be accompanied by a copy of the applicant's Certificate of Incorporation as filed with the New Jersey Secretary of State's Office. A foreign corporation must submit a copy of its Certificate of Authority to do business in New Jersey approved by the New Jersey Secretary of State.

(g) An application for a sole proprietorship or partnership license where a trade name is to be used must 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.

3:18-10.3 Examinations

(a) Upon acceptance of an application for an individual or sole proprietorship, the Department will notify the applicant of the date of the next scheduled examination, which shall not be more than 90 days from the date of acceptance of the application.

(b) An applicant who fails the examination twice shall be prohibited from taking the examination for six months 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 one year from the date of the third or subsequent examination. The failure of an applicant to take or pass the examination within one year of the acceptance of the application shall void the application. Any applicant who passes the exam but does not perfect his license by the posting of a bond within one year from the date of passage of the exam must be re-examined.

(c) The examination shall be prepared by the Department of Banking and may cover, but is not limited to, the following topics:

1. The contents of Federal and State legislation and regulations on second mortgage lending;
2. New Jersey real estate laws;
3. Basic knowledge of mortgage documents; and
4. Related State and Federal legislation and regulations such as the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act and Regulation Z.

Amended by R.1991 d.524, effective October 21, 1991.
See: 23 N.J.R. 2210(a), 23 N.J.R. 3134(a).

In (b), added provision that applicants who fail to pass the licensing exam successive times shall be prohibited from taking the exam for specified periods of time.

3:18-10.4 Waiver of examination

(a) An individual or sole proprietorship applicant shall notify the Department of Banking whether he requests a waiver of the examination requirement. The request for a waiver shall be made at the time of application and in a manner prescribed by the Commissioner.

(b) If an applicant seeks a waiver based upon a claim that he has been principally engaged in the business of secondary mortgage lending in this State for at least two years prior to the filing of the application, he shall provide with his application a list of all employers and places of employment during that period, including addresses, names of immediate supervisors and a description of the duties of the employment.

(c) If an applicant seeks a waiver based upon a claim that he has been principally engaged in the business of secondary mortgage lending in this State for less than two years and is otherwise qualified, he shall provide with his application a list of all employers and places of employment for the preceding 10 years, including addresses, names of immediate supervisors and a detailed description of the duties involved, as well as a detailed outline of the qualifications on which the request is based.

(d) All requests for waivers from the examination requirement shall be acted upon by the Commissioner within 60 days of receipt of the application by the Department of Banking or of such additional information as may be requested by the Department.

3:18-10.5 Bonds

(a) No license will be issued unless and until the applicant has posted with the Department of Banking a bond in the amount required by this subchapter in a form prescribed by the Commissioner by a surety company authorized to do business in the State of New Jersey. A person employed by a licensee which already has an adequate surety bond, as defined by this section, does not need to obtain an additional surety bond to become licensed.

(b) Every licensee shall obtain and maintain a surety bond in the following minimum amounts:

1. For a sole proprietorship with one licensed office: \$25,000;
2. For a licensee other than a sole proprietorship with one licensed office: \$35,000;
3. For a licensee with two to five licensed offices: \$60,000;
4. For a licensee with six to ten licensed offices: \$75,000;
5. For a licensee with 11 to 15 licensed offices: \$100,000;
6. For a licensee with 16 or more licensed offices: \$125,000.

(c) The bond shall run to the State, pro rata, for the benefit of the Department and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of a licensee, or a person acting on behalf of the licensee, in the course of activity as a licensee. The bond shall not be payable for claims made by business creditors.

(d) A licensee shall provide the Department with the original copy of a surety bond. If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Department with the amended original copy of the surety bond. 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.

(e) When a person submits a claim with a surety company against the bond of a licensee, the surety company shall immediately notify the Department and shall not pay any claim unless and until it receives notice to do so from the Department.

(f) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee 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 licensee conducts or conducted business advising consumer 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 which appear valid and which 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), A SECONDARY MORTGAGE
LOAN LICENSEE

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, omission, 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
20 West State Street
CN 040
Trenton, NJ 08625
Attn.: Regulatory Affairs Division

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.

Commissioner of Banking

(g) The Department shall review all timely claims made against the bond of a licensee 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 licensee 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.

(h) The surety company shall pay consumers' claims based on the damages directly incurred by the wrongful act, omission, default, fraud or misrepresentation of the licensee. 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 licensee and the surety company was given prior notice of the court action and an opportunity to respond. A consumer may not recover third party charges for services which are necessary and transferable for future mortgage loan applications.

Amended by R.1990 d.603, effective December 3, 1990.
See: 22 N.J.R. 2868(a), 22 N.J.R. 3619(b).

Added new (c), defining that bonds pertain to consumer claims, not to business claims.

Amended by R.1991 d.272, effective May 20, 1991.

See: 23 N.J.R. 802(a), 23 N.J.R. 1661(a).

Added (d) through (h), regarding surety bonds, filing original copy, notification of claims, determining of validity of claims and payment of claims.

Amended by R.1993 d.50, effective January 19, 1993.

See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).

Revised (a) and (b).

Amended by R.1995 d.208, effective April 17, 1995.

See: 27 N.J.R. 20(b), 27 N.J.R. 1576(a).

3:18-10.6 License renewal

(a) A licensee may apply for renewal of his license by filing with the Department of Banking a completed application for that purpose in a form to be prescribed by the Commissioner along with the required fees.

1. The Department shall notify all licensees at least 60 days prior to the expiration date of the license.

2. The completed renewal form must be received by the Department of Banking no fewer than 30 days prior to the expiration of the license.

(b) If a renewal application is filed in a timely fashion and the Commissioner does not approve or disapprove it on or before the expiration date of the license, the applicant or licensee may continue to transact business without interruption until such time as the applicant or licensee is notified that the renewal application has been disapproved.

3:18-10.7 Replacement of license

If a natural person upon whom a corporation, partnership, association, or other entity relies for its license pursuant to N.J.S.A. 17:11A-36(b), or a natural person otherwise supervising an office or offices pursuant to N.J.A.C. 3:18-8.1, 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 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 so notifies the Department of Banking within 10 days following that natural person's discontinuance of affiliation or employment with the licensed entity.

Amended by R.1993 d.50, effective January 19, 1993.

See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).

Revised text.

3:18-10.8 (Reserved)

Repealed by R.1993 d.50, effective January 19, 1993.

See: 24 N.J.R. 2760(a), 25 N.J.R. 285(a).

Section was "Office requirement".

3:18-10.9 Appeal procedure

(a) Before any license is denied, suspended or revoked, or before any penalties are assessed against a licensee, the Commissioner shall afford the aggrieved party a hearing, if requested in writing and received by the Department within 20 days of receipt by the aggrieved party of an order to

show cause asking why the denial, suspension, revocation or penalty should not be taken or assessed. The order to show cause shall clearly set forth the ground or grounds upon which the contemplated action is based.

(b) For a period not to exceed 30 days following receipt of the request for a hearing, the Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as it deems appropriate.

(c) If the efforts at settlement set forth in (b) above fail, the Department shall proceed according to the applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 11. ASSIGNMENT OF SECONDARY MORTGAGE LOANS

3:18-11.1 Definitions

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

"Applicant" means an applicant to become registered, or a licensee seeking to register a person, to receive the assignment, sale or transfer of secondary mortgage loans from a licensee.

"Banking institution" means a New Jersey chartered bank, a New Jersey chartered savings bank, a New Jersey chartered savings and loan association, a national banking association having its principal office in this State or a Federal association having its principal office in this State.

"Biennial period" means a two-year period beginning on January 1 of each odd-numbered year and ending on December 31 of the succeeding even-numbered year.

"Registrant" means a person that is registered under this subchapter to receive the assignment, sale or transfer of secondary mortgage loans from a licensee.

"Servicing rights" includes the right to receive payments directly from borrowers and to administer secondary mortgage loan accounts.

3:18-11.2 Restraints on assignments

(a) A licensee shall not assign, sell or transfer a secondary mortgage loan to a person other than the following:

1. A banking institution;
2. A person licensed under the Act;
3. The Federal National Mortgage Association;

4. The Federal Home Loan Mortgage Corporation;
or

5. Any other person located outside New Jersey that is registered with the Department to acquire secondary mortgage loans.

(b) A licensee shall not assign, sell or transfer the servicing rights of a secondary mortgage loan to a registrant unless that registrant is specifically registered with the Department to acquire servicing rights.

3:18-11.3 Procedure for registration

(a) To register to acquire secondary mortgage loans from a licensee without servicing rights, an applicant shall submit the following to the Department:

1. A registration form requiring basic information about the proposed registrant, such as its name and address;

2. A statement that the person acquiring the loans irrevocably submits itself to the jurisdiction of the Department for any administrative action brought by the Department in connection with any secondary mortgage loan secured by New Jersey real property which it purchases from a licensee under the Act;

3. A statement that the person acquiring the loans, and its successors and assigns, irrevocably designates the Commissioner as its registered agent to receive service of process in an administrative action brought by the Department regarding any matter to which jurisdiction has been submitted pursuant to (a)2 above;

4. A statement that the person acquiring the loans agrees not to obtain the servicing rights of any secondary mortgage loan from a licensee without first having been registered to receive servicing rights; and

5. The required registration fee.

(b) To register to acquire secondary mortgage loans from a licensee with servicing rights, an applicant shall submit, in addition to the items set forth in (a)1, 2 and 3 above, the following to the Department:

1. In the case of a chartered or licensed financial institution, a certificate of good standing executed by the institution's primary regulator;

2. In the case of an applicant other than a chartered or licensed financial institution, the following items;

i. A statement detailing the applicant's experience in dealing in transactions of the type for which approval is sought, including brief resumes of key personnel;

ii. Copies of balance sheets and earnings records for the last three calendar or fiscal years; and

iii. A copy of the person's latest Annual Report to Shareholders; and

3. The required registration fee.

(c) Any person that received provisional approval from the Department to acquire secondary mortgage loans prior to January 19, 1993 must file a registration form with the Department before March 1, 1993. All such provisional approvals shall expire on March 31, 1993.

3:18-11.4 Review of registration filings

(a) The Commissioner shall file the registration within 60 days of its receipt by the Department. The registration shall become effective when the applicant receives notification of the filing of the registration from the Department.

(b) The Commissioner may refuse to register, revoke a registration or suspend a registration for any of the reasons set forth in N.J.S.A. 17:11A-39.1. An opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1, shall be provided prior to such refusal to register, revocation or suspension.

3:18-11.5 Renewal of registration

(a) Registration shall be effective for the remainder of the biennial period.

(b) To renew a registration, an applicant for renewal shall file the following with the Department:

1. A renewal registration form requiring basic information about the registrant, such as its name and address;

2. A statement that the applicant agrees not to obtain the servicing rights of any secondary mortgage loan from a licensee without first having been registered to receive servicing rights;

3. In the case of a person other than a chartered or licensed financial institution for which registration is sought to receive servicing rights, copies of balance sheets and earnings records for the last two calendar or fiscal years;

4. In the case of a chartered or licensed financial institution for which registration is sought to receive servicing rights, a certificate of good standing executed by the institution's primary regulator; and

5. The required registration fee.

3:18-11.6 Registration fees

(a) The Department shall charge the following biennial fees to register or renew a registration pursuant to this subchapter:

1. The filing of a registration to receive secondary mortgage loans without servicing rights—\$100.00.

2. The filing of a registration by a chartered or licensed financial institution to receive secondary mortgage loans with servicing rights—\$100.00.

3. The filing of a registration to receive secondary mortgage loans with servicing rights by other than a chartered or licensed financial institution—\$300.00.

(b) When the initial registration is issued in the second year of the biennial period, the registration fee shall be an amount equal to one-half of the registration fee set forth in (a) above.

(c) The Department may charge an additional per diem examination charge pursuant to N.J.A.C. 3:1-6.6 to review a registration when the registration materials require additional review.

SUBCHAPTER 12. APPROVED BUSINESS ACTIVITIES; INSURANCE

Authority

N.J.S.A. 17:11A-34 et seq., specifically 17:11A-45p and 54a.

Source and Effective Date

R.1995 d.14, effective January 3, 1995.
See: 26 N.J.R. 3920(a), 27 N.J.R. 89(b).

3:18-12.1 Approved business activities

(a) A licensee may engage in certain other types of business and conduct such business in the same office, room or place of business where the licensee conducts the business of making secondary mortgage loans under the Secondary Mortgage Loan Act, as follows:

1. Automobile security plans which provide protection against automobile emergencies and which provide for full or partial reimbursement of certain costs incurred as the result of such emergencies, such as towing, lost key service, emergency transportation, stolen automobile expenses, bail bonds, emergency treatment expense, legal defense, and similar or related items, which may include extended warranties, travel discounts and service items, among other things;

2. Home security plans, which provide protection against home emergency situations and provide full or partial reimbursement of certain costs incurred because of home emergencies, such as medical costs, health insurance deductibles, pharmacy service, extended warranties, lost or stolen key protection, credit card liability coverage, and which may include life-saving training, home security training and protection services and products, among other things;

3. First mortgage lending in accordance with all applicable State and federal law and regulation;

4. Sales finance agreements pursuant to N.J.S.A. 17:16C-1 et seq.;

5. Consumer loans pursuant to N.J.S.A. 17:10-1 et seq.;

6. Income tax preparation services;

7. Commercial or business loans, including installment sales financing contracts for commercial purposes; and

8. Credit card agreements, which may include additional services or goods which are or may be offered in connection with credit cards or credit card agreements.

3:18-12.2 Approved insurance sales

(a) Upon obtaining any necessary license or authorization, a licensee may offer for sale the following types of insurance products:

1. Single premium accidental death, dismemberment or loss-of-sight insurance policies which are not loan related;

2. Life or disability insurance which is not loan related;

3. Single-premium life insurance policies which are not loan related;

4. Involuntary unemployment insurance which is not loan related;

5. Homeowners' or renters' insurance which is not loan related; and

6. Property or casualty insurance which is not loan related.

(b) Insurance products offered under this section are subject to licensing and regulation as may be required by the New Jersey Department of Insurance or other applicable law.

3:18-12.3 Other business activities; approval process

(a) Commencing March 4, 1995, no secondary loan licensee may conduct any business activity other than the business of making secondary mortgage loans, except those businesses specifically permitted by N.J.A.C. 3:18-12.1 and 12.2, without approval from the Commissioner obtained as specified in this section.

(b) Prior to commencing the conduct of any business activities other than those permitted by N.J.A.C. 3:18-12.1 and 12.2, a secondary mortgage loan licensee shall notify the Commissioner of its intention to do so. Such notice shall contain a detailed description of the proposed activity and a statement of the perceived public need for such activity.

(c) Within 30 days from the date of the Commissioner's Notice of Acceptance to the secondary mortgage loan licensee, if the Commissioner does not disapprove of that activity, the activity shall be deemed approved.

(d) The Commissioner shall approve a business activity provided:

1. It is not made a condition for the extension of credit to the borrower or customer;
2. It is conducted in conformity with all applicable law and regulations; and
3. It provides a service deemed to be in the public interest by the Commissioner.

(e) Secondary mortgage loan licensees who have obtained, prior to the effective date of this subchapter, approval from the Commissioner to conduct businesses other than those specified in N.J.A.C. 3:18-12.1 and 12.2 must, by March 4, 1995, obtain approval as specified in this section.

3:18-12.4 Prohibitions

(a) A licensee shall not require a borrower to purchase insurance or to engage in any other business activity conducted by the licensee as a condition for the extension of credit to a borrower or to any other person.

(b) A licensee shall not secure credit transactions with secondary mortgages where the primary purpose of the loan is to finance the costs of another business activity conducted by the licensee, or where a substantial majority of the proceeds of the loan is used to pay the cost of a business activity conducted by the licensee.

(c) A licensee shall not be made a beneficiary of an insurance policy purchased by the borrower from the licensee except as otherwise permitted by law.

(d) A licensee is prohibited from engaging in the secondary mortgage loan business at a location which is utilized by a banking institution or savings and loan association as a main branch or any other office, except that no licensee shall be prohibited from engaging in the secondary mortgage loan business at a location utilized by a banking institution, or savings and loan association, where the office and operations of the licensee 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 licensee.

Case Notes

Former rules prohibiting solicitation of secondary mortgage loans by one licensee on behalf of another upheld against vagueness and Supremacy Clause challenges; rules not beyond intent of the Secondary Mortgage Loan Act. *Approved Finance Co. v. Schaub*, 137 N.J. Super. 325, 349 A.2d 81 (App.Div.1975), modified 73 N.J. 193 (1977).

3:18-12.5 Books and records; separation

The books, accounts and records which pertain to each business activity conducted by the licensee shall be maintained separate and apart from the books, accounts and records of the licensee's secondary mortgage loan business. All such records shall be readily available for inspection by the Department.

3:18-12.6 Annual report; fee

Each secondary mortgage loan licensee shall file, on or before February 1, an annual report as mandated by N.J.S.A. 17:11A-45f. The licensee shall remit a fee of \$100.00 for each such report filed. The Department shall assess a \$50.00 penalty against any licensee for each report the licensee files late.

New Rule, R.1995 d.655, effective December 18, 1995.

See: 27 N.J.R. 3655(a), 27 N.J.R. 5011(a).

Former 3:18-12.6, "Suspensions or revocation of authority", recodified to 3:18-12.7.

3:18-12.7 Suspensions or revocation of authority

The Commissioner may, by written directive and after the licensee has had an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B and F and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, suspend or revoke a licensee's authority to engage in any of the business activities specified in N.J.A.C. 3:18-12.1 and 12.2 if it is determined that the licensee has violated any of the conditions heretofore set forth or has otherwise demonstrated unworthiness to be so authorized.

Recodified from 3:18-12.6 by R.1995 d.655, effective December 18, 1995.

See: 27 N.J.R. 3655(a), 27 N.J.R. 5011(a).