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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.

(e): "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.

"Depository" means bank, savings bank or savings and loan association.

"Foreign bank" means a banking institution which has no branch offices in this State.

"Fully funded reserve" means the allowance for loan and lease losses as that term is defined in 12 C.F.R. § 325.2(a) or its successor section.

"Individual" means a natural person.

"Newly-chartered institution" means an institution which has been open to the public for business fewer than three years.

"Out-of-State association" means a savings and loan association or building and loan association insured by the Federal Deposit Insurance Corporation and chartered under the laws of a state other than New Jersey, but not as a bank as defined in 12 U.S.C. § 1813(a)(2).

"Out-of-State bank" means a state bank, as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(a)(2), which is chartered under the laws of a state other than New Jersey.

"Savings and loan association" means a New Jersey chartered savings and loan association, and shall include a capital stock association, and a mutual association.

"Savings bank" means a New Jersey chartered savings bank, and shall include a capital stock savings bank and a mutual savings bank.

"Sufficient compliance" means that the depository has received a currently applicable Community Reinvestment Act, 12 U.S.C. §§ 2901 et seq., (CRA) rating of "satisfactory or better" by the applicable Federal regulatory agency. A depository which has a currently applicable CRA rating by the applicable Federal regulatory agency of "needs to improve" shall be considered to be in sufficient compliance if it has entered into an agreement with the Federal agency which is intended to improve its CRA rating, and the Department has verified that the institution has taken reasonable steps to comply with the agreement.

"Well capitalized" means a depository that exceeds the required minimum level for each relevant capital measure, as that term is defined in 12 U.S.C. § 1831 or its successor section.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Deleted "executed indicia of title" as an acceptable document. Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Applications; acceptance".

Amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

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

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

Added "Accepted", "Adequately managed", "Newly-chartered institution" and "Well capitalized"; in "Sufficient compliance", inserted the U.S.C. reference; substituted "means" for "shall mean" throughout. Amended by R.2002 d.38, effective February 4, 2002.

See: 33 N.J.R. 3598(a), 34 N.J.R. 731(a).

Inserted "Fully funded reserve".

### 3:1-2.2 Charter applications

(a) Every applicant for a depository charter is required to file with the Department the following data in addition to the statutorily required certification of incorporation and affidavits required by N.J.A.C. 17:9A-9, 17:12B-14 and 17:12B-246:

1. An economic feasibility study delineating the proposed trade area to be served by the applicant, as well as yearly deposit estimates for the first five years of operation;
2. A pro forma balance sheet and profit and loss statement which shall project the financial condition and net income or loss of the depository on an annual basis for a period of five years and shall indicate the anticipated break-even date, and a business plan for the depository;
3. Departmental forms completed by each incorporator and prospective officer and director containing biographical and financial information, and authorizations by such persons for background checks;
4. The required non-refundable application filing fee;
5. An indicia of title for the proposed site;
6. A copy of an application to be filed with the Federal Deposit Insurance Corporation (F.D.I.C.) for deposit insurance, if the applicant has applied for a charter that includes the authority to accept deposits. When the final application is filed with the F.D.I.C., a copy shall be simultaneously transmitted to the Department;
7. The proposed directors' code of conduct governing activities both inside and outside the bank;
8. If the site is to be acquired or leased from an affiliated person, an application is required by N.J.A.C. 3:1-10.2;
9. All other information required of a specific applicant by the Commissioner; and
10. Any changes in (a)1 through 9 above.

(b) The Commissioner may return to the applicant any charter application which does not comply with (a) above.

(c) The Commissioner shall accept or reject a charter application within one year after the applicant submits the application. The failure of the applicant to provide all necessary information within one year shall constitute sufficient grounds to reject the application. The Commissioner may extend the one-year limitation when the applicant is not substantially at fault for the delay.

Amended by R.1991 d.48, effective February 4, 1991.

See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

Changed name to N.J. Council of Savings Institutions.

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Notice; publication".

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), inserted "required by" preceding the N.J.A.C. references in the introductory paragraph, rewrote (a)6 and added (a)10.

### 3:1-2.3 Branch applications of depositories

(a) An application by a depository to establish a branch office or a minibranch office shall contain the following items before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and the location of the applied for branch or minibranch office;
2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application;
4. If the proposed transaction involves the acquisition of deposits from another banking institution:
  - i. Pro forma balance sheet projections reflecting the acquiring depository before and after the acquisition; and
  - ii. Projections of the ratio of Tier 1 capital to total assets of the depository before and after the acquisition;
5. If the branch site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2; and
6. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(b) An application by a depository to relocate a principal office, full branch office or minibranch office from a location in this State to another location in this State, shall contain the following items before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and both locations involved in the applied for relocation;
2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application; and
4. If the branch site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2; and
5. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(c) An application by a depository to relocate a branch office or minibranch office from a location outside this State to another location in that state shall contain the following items before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and both locations involved in the applied for relocation;
2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application;
4. If the branch site is to be acquired or leased from an affiliated person, an application as required by N.J.A.C. 3:1-10.2; and
5. All other documentation required of a specific applicant by the Commissioner, or which the applicant wishes the Department to consider.

(d) An application by a depository to interchange a branch office and a principal office shall contain the following items before it will be accepted by the Department:

1. A completed current application form, including the name of the depository and the location of each office involved in the applied for interchange;
2. The required application filing fee;
3. An original certification of a copy of the resolution authorizing the application; and
4. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

(e) The Commissioner may return to the applicant any branch application which does not comply with (a), (b), (c), or (d) above.

(f) The Commissioner shall accept or reject a branch application within one year after the applicant submits the application. The failure of the applicant to provide all necessary information within one year shall constitute sufficient grounds to reject the application. The Commissioner may extend the one-year limitation when the applicant is not substantially at fault for the delay.

(g) A depository that directly or through a predecessor bank, savings bank or State association by merger or other reorganization has been in business for at least three years, and which is well capitalized, adequately managed, and if applicable, has received in its most recent examination under the "Community Reinvestment Act of 1977," 12 U.S.C. §§ 2901 et seq., a rating of not less than "satisfactory record of meeting community credit needs," or its equivalent, may apply for expedited branch office approval for full branch, mini-branch, relocation, auxiliary and interchange applications by filing for such expedited approval with the Commissioner. The application shall contain:

1. A certification by the depository that it meets the criteria set forth in (g) above that it is entitled to request expedited processing and that it satisfies the same criteria as required for a non-expedited approval; and

2. A notice by the depository that it requests expedited processing. An application shall be deemed approved

on the 30th day after receipt by the Commissioner, unless approved or denied earlier by the Commissioner in writing, who as part of the application shall consider whether the interests of the public will be served to advantage by the establishment of such branch.



Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Substantial changes in section.

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Objection and request for oral presentation; time for filing; content".

Amended by R.1993 d.258, effective June 7, 1993.

See: 25 N.J.R. 1033(a), 25 N.J.R. 2248(a).

Deleted (a)10 and redesignated existing (a)11 to (a)10.

Amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

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), (b), (c) and (d), inserted "items" following "following"; in (b) and (c), deleted former 5 and recodified former 6 as 5; added (g).

#### Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

A hearing on a branch banking application is neither required by constitutional right nor by statute. Atty.Gen.F.O.1979, No. 6.

#### 3:1-2.4 Branch application of out-of-State banks and out-of-State associations

(a) An application by an out-of-State bank that has no branch offices in New Jersey to acquire a branch office in this State shall contain the following items:

1. A completed current application form, containing the name of the depository, the name of the depository selling the branch and the location of the applied for branch;
2. The required application filing fee;
3. An opinion of counsel that the out-of-State bank is authorized to acquire a branch in New Jersey;
4. If the out-of-State bank intends to immediately relocate the branch to a new location in this State, the exact location of the proposed relocation; and
5. A copy of the application filed with the home state regulator.

(b) An out-of-State bank or out-of-State association, that has at least one branch office in this State, may establish additional branch offices in this State by filing a notice with the Department, so long as the out-of-State bank or out-of-State association is adequately capitalized, will be adequately capitalized and managed after the branch is established and has achieved sufficient compliance with the Community Reinvestment Act. In addition, the out-of-State bank or out-of-State association shall send notice to the New Jersey Bankers Association, the New Jersey League Community and Savings Bankers, and/or their successor organizations, if any, for publication in their weekly bulletins.

(c) An application by an out-of-State bank or out-of-State association to relocate a branch office from a location in this

State to another location in this State shall contain the following items:

1. A copy of the application filed with the home state regulator and with the appropriate Federal regulator;
2. The required filing fee; and
3. All other documentation required of a specific applicant by the Commissioner or which the applicant wishes the Department to consider.

New Rule, R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.4, "Charter applications; notice and publication", recodified to 3:1-2.5.

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

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

Substituted "that" for "which" throughout; in (a) and (c), inserted "items" following "following"; in (b), inserted "League" preceding "Community and Savings Bankers" and substituted ", and/or their successor organizations, if any," for "and the New Jersey Savings League".

#### 3:1-2.5 Charter applications; notice and publication

(a) When a charter application is complete, the Department shall send notice to the applicant setting forth a hearing date. In addition, the Department shall send notice to the New Jersey Bankers Association, the New Jersey League Community and Savings Bankers, and/or their successor organizations, if any, for publication in their weekly bulletins.

(b) Within 10 calendar days after notification of the formal hearing date for any charter application, the applicant shall publish notice of the application once a week for four successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said charter is proposed to be established, or if there be no such newspaper, then in a newspaper of general circulation in the municipality.

(c) The notice shall contain the following:

1. The names of the incorporators;
2. The name and mailing address of the applicant;
3. The proposed location of the principal office;
4. The amount of capital stock and surplus, or the amount of capital deposits, whichever is applicable; and
5. The hearing dates.

(d) The incorporators shall cause a copy of the notice in the form prescribed in (b) above to be forwarded to the chief executive officer of every banking institution having an office within five miles of the proposed location, and to such other offices as the Commissioner shall designate, not more than 10 calendar days after formal notification of the formal hearing date and at least three weeks before the scheduled hearing. Regarding applications of savings and loan associations, the incorporators shall also cause a copy of the notice in the form prescribed by (b) above to be forwarded

to the chief executive officer of every savings and loan association having an office within the county where the principal office of the State association is to be located, if not within five miles.

Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Deleted "Or Limited Facility Branch" and inserted "application".  
Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Objections to Minibranch applications".

Recodified from 3:1-2.4 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.5, "Branch applications; notice and publication", recodified to 3:1-2.6.

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), inserted "League" preceding "Community and Savings Bankers" and substituted ", and/or their successor organizations, if any," for "and the New Jersey Savings League".

### 3:1-2.6 Branch applications; notice and publication

(a) When a branch application is accepted, the Department shall send notice to the applicant and to the New Jersey Bankers Association, the New Jersey League Community and Savings Bankers, and/or their successor organizations, if any, for publication. Each notice shall contain the following:

1. The name and mailing address of the applicant;
2. A brief statement of the nature of the application;
3. The precise location of the site involved in the particular application; and
4. The date the Department accepted the application.

(b) Notice prescribed by (a) above shall be published in the weekly bulletins of the New Jersey Bankers Association, the New Jersey's League Community and Savings Bankers, and/or their successor organizations, if any, in the week following acceptance thereof. The publication of notice shall also include the following statement:

"You are hereby advised that an individual, bank, savings bank or savings and loan association may object to any full branch or relocation application, and may request that an oral presentation be conducted if so requested in writing and if filed within 10 calendar days of the date of this bulletin. Individuals or financial institutions interested in perfecting an objection or request for oral presentation should immediately consult the Department's procedural rules for guidance."

Amended by R.1984 d.301, eff. July 16, 1984.

See: 16 N.J.R. 946(a), 16 N.J.R. 1966(a).

Deleted "a section 25 association branch".

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Oral presentation granted or denied".

Amended by R.1993 d.258, effective June 7, 1993.

See: 25 N.J.R. 1033(a), 25 N.J.R. 2248(a).

Revised (c).

Recodified from 3:1-2.5 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.6, "Charter applications; objections and oral presentations", recodified to 3:1-2.7.

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) and (b), inserted "League" preceding "Community and Savings Bankers" and substituted ", and/or their successor organizations, if any" for "and the New Jersey Savings League"; deleted former (c).

### Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

### 3:1-2.7 Charter applications; objections and hearings

(a) An objection to a new charter application of a depository must be filed in the Department within five business days from the last day of publication or notice of application, or within 10 business days after receiving mailed notice from the applicant as provided in these rules, whichever is later.

(b) To be considered by the Commissioner, an objection shall be in writing and contain:

1. A summary of the reasons for protest;
2. Facts supporting the protest, including relevant economic or financial data;
3. Any adverse effects on the objector which may result from the approval of the application;
4. An indication as to whether the objector will object at the charter hearing. A fee of \$750.00 shall accompany a notice of intent to appear at a charter hearing, except that a non-profit public interest objector shall instead include a \$100.00 fee; and
5. Proof that the objection and a request for a copy of the application were mailed to the applicant.

(c) Upon receipt of notice that an objection has been filed, an applicant shall within five calendar days forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Commissioner proof of delivery to and receipt by the objector of this data. Within seven days after receiving this data, the objector may then file additional comments with the Department regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) The Commissioner may dismiss the objection of any objector not complying with this section, and may consider noncompliance by an applicant when considering the charter application.



(e) The Commissioner may extend any time period set forth in this section to allow for an objection and/or for consideration of an objection by the applicant or the Department.

(f) A formal hearing, pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., shall be held on all charter applications. Only those objectors which comply with this section shall be permitted to appear at the hearing.

Repeal and New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Section was "Charter applications; publication of hearing dates".

Recodified from 3:1-2.6 and amended by R.1996 d.483, effective October 7, 1996

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.7, "Branch applications; objections and oral presentations", recodified to 3:1-2.8.

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

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

In (a), substituted "from" for "of" following "five business days".

### **3:1-2.8 Branch applications; objections and oral presentations**

(a) An objection to a branch application must be filed with the Department within 10 days of the last day of publication of notice, or 30 days after that day if an extension is requested in writing within the 10-day period. An objection to a minibranch application must be filed within 20 days after publication.

(b) An objection shall be in writing and contain:

1. A summary of the reasons for protest;
2. Facts supporting the protest, including relevant economic or financial data;
3. Any adverse effects on the objector which may result from approval of the application;
4. An indication as to whether the objector applies to have a branch hearing. A fee of \$750.00 shall accompany an application for a branch hearing, except that a non-profit public interest objector shall instead include a \$100.00 fee. If it is later determined that an oral presentation will not be held, the fee will be returned to each of the objectors requesting an oral presentation; and
5. Proof that the objection and a request for a copy of the application were mailed to the applicant.

(c) Upon receiving notice from the objector that an objection has been filed, an applicant shall within seven calendar days forward and deliver to the objector copies of the application and all supportive data submitted relative to the application. The applicant shall file with the Department proof of delivery to and receipt by the objector of this data. Within 14 calendar days after receiving data from the applicant, the objector may file additional comments with the Commissioner regarding matters contained in the application, and shall send copies of all comments to the applicant.

(d) Within 10 days after receiving final comments from an objector, the Commissioner shall notify the objector and the applicant as to whether the objection is substantial and will therefore be considered. An objection is substantial only if:

1. It is in writing and filed on time;
2. It contains a summary of the reasons for protest, a statement of the specific matters in the application to which the protestant objects and the reason for the objection, facts supporting the protest including relevant economic or financial data, and a summary of any adverse effects on the objector which may result from the approval of the application; and
3. It pertains to at least one of the criteria for approval.

(e) The applying depository may file an answer to any substantial objection until 15 days after receipt of written notice from the Commissioner that such protest is considered substantial by furnishing four copies of the answer to the Commissioner.

(f) The Department may grant a request for oral presentation on applications for branch application only if:

1. The objector requesting the oral presentation has filed and perfected an objection and oral presentation request; and
2. The objector requesting the oral presentation has presented sufficient reasons indicating that it is necessary and warranted and that the matter cannot be resolved on the papers.

(g) Notwithstanding (f) above, the Department may schedule a hearing or oral presentation on any application if deemed necessary or warranted under the circumstances.

(h) There shall ordinarily be no oral presentations on minibranch, communication terminal branch, auxiliary or limited facility branch office applications.

New Rule, R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Old section "Insufficiency of data in support of application; hearing" recodified to 2.8.

Recodified from 3:1-2.7 and amended by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.8, "Insufficiency of data in support of application; hearing", recodified to 3:1-2.9.

### **3:1-2.9 Insufficiency of data in support of application; hearing**

(a) In any matter where the Department shall find that the applicant or objector has not filed sufficient data, information or material in support of or in opposition to a branch application or a charter application, the applicant or objector may be required to file supplementary data, infor-

mation or material, or be subject to dismissal of the application or objection.

(b) All papers required to be filed must be received in the Department by close of business on the date due. If the due date falls on a weekend or holiday then the filing must be effected by close of business on the very next business day. Upon good cause shown, extensions of time within which to file must be considered if requested in writing with notice to all parties at least five days prior to due date.

(c) Only that data required by rules or required by the Department will be considered.

Recodified from 3:1-2.8 and Amended by R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Revised (a); prior 2.8 "Notice of oral presentation" repealed.

Recodified from 3:1-2.8 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.9, "Oral presentations", recodified to 3:1-2.10.

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

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

#### Case Notes

Appeal of Commissioner's denial of branch banking application held required to be conducted as a "contested case" hearing under the Administrative Procedure Act, where Commissioner had decided to hold a formal hearing; objector banks held parties to administrative proceeding. In re Orange Savings Bank, 172 N.J.Super. 275, 411 A.2d 1150 (App.Div.1980), appeal dismissed 84 N.J. 433, 420 A.2d 339.

Charter hearings for a capital stock association should be conducted by an administrative law judge, unless the commissioner of banking deems it appropriate to himself act as the hearing officer. Atty.Gen. F.O.1979, No. 15.

### 3:1-2.10 Oral presentations

(a) If there is to be oral presentation, the Department shall notify the applicant and objector, if any, of the date, time, place and nature of the proceeding.

(b) Any oral presentation pursuant to the subchapter may be held before the Commissioner, or his or her designee, as presiding officer.

(c) Every oral presentation shall be open to the public unless the Commissioner shall determine that a private presentation would be in the public interest.

(d) Oral presentations on all applications, shall be strictly limited to a total of seven hours. The applicant shall be limited to three hours to present information in support of its application. The objectors shall be limited to two hours for the presentation of affirmative and rebuttal information. A shorter or longer time may be prescribed by the Department with prior notice to all parties.

(e) When multiple objectors appear through separate counsel, each shall be afforded a pro rata portion of the time allotted to objectors, unless otherwise agreed upon by all objectors.

Amended by R.1992 d.483, effective December 7, 1992.

See: 24 N.J.R. 3034(a), 24 N.J.R. 4341(a).

Added new (a); redesignated existing (a)-(d) as (b)-(e).

Recodified from 3:1-2.9 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.10, "Failure of party requesting oral presentation to appear", recodified to 3:1-2.11.

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

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

In (b), substituted "his or her designee, as presiding officer" for "before any deputy commissioner, regulatory officer or any employee of the Department authorized by the Commissioner".

#### Case Notes

A hearing on a branch banking application is neither required by constitutional right nor by statute. Atty.Gen.F.O.1979, No. 6.

### 3:1-2.11 Failure of party requesting oral presentation to appear

When the party requesting the oral presentation or having notified the Department of an intent to appear at a charter hearing fails to appear at a scheduled proceeding without sufficient reason therefor, such failure to appear shall be treated as a withdrawal of the objection and/or the request for an oral presentation. In the event that a party fails to appear at an oral presentation, any fees paid shall be retained by the State.

Recodified from 3:1-2.10 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.11, "Minibranches; space limitation", recodified to 3:1-2.12.

### 3:1-2.12 Minibranches; space limitation

(a) For the purpose of N.J.S.A. 17:9A-1(16), a bank shall be deemed to occupy the sum of the enclosed areas which it has leased or purchased in conjunction with an application to establish a minibranch, subject to the exceptions in (c) below.

(b) Occupied space shall include all enclosed customer, teller, work, storage, platform and employee lounge areas.

(c) Occupied space shall not include outside facilities such as drive-up or walk-up windows, apparatus or space; common entrance ways or areas which are shared with one or more other business entities; or restroom facilities.

(d) Applications for minibranches which occupy in excess of 500 square feet will be denied. The applicant for a minibranch shall have the burden of establishing that 500 or less square feet will be occupied.

Recodified from 3:1-2.11 by R.1996 d.483, effective October 7, 1996.

See: 28 N.J.R. 2661(a), 28 N.J.R. 4417(b).

Former N.J.A.C. 3:1-2.12, "Prehearing conference", recodified to 3:1-2.13.