

## TITLE 3

## DEPARTMENT OF BANKING

## CHAPTER 1

## GENERAL PROVISIONS

## Authority

N.J.S.A. 17:1-8; 17:1-8.1; 17:1B-2; 17:2A-1 et seq.; 17:9-41; 17:9A-11D et seq.; 17:9A-24(a); 17:9A-24(b); 17:9A-25.2; 17:11A-54(a); 17:11B-5; 17:11B-13; 17:12B-20 et seq.; 17:12B-48(21); 17:16F-11; 17:16I-16; and 17:16L-2.

## Source and Effective Date

R.1991 d.48, effective January 4, 1991.  
See: 22 N.J.R. 3425(a), 23 N.J.R. 294(b).

## Executive Order No. 66(1978) Expiration Date

Chapter 1, General Provisions, expires on April 4, 1996.

## Chapter Historical Note

Chapter 1 was readopted pursuant to Executive Order No. 66(1978) by R.1991 d.48, effective January 4, 1991. See: Source and Effective Date. See, also, section annotations.

By order of Governor Christine Whitman, the "sunset" provision of Executive Order No. 66(1978) was waived, and the expiration date for Chapter 1 was extended from January 4, 1996 to April 4, 1996. See: 28 N.J.R. 815(a).

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#### SUBCHAPTER 1. INTEREST AND USURY

##### 3:1-1.1 Interest rates

(a) The maximum rate of interest to be charged, taken or received upon a loan of any money, wares, merchandise goods and chattels, made on or after October 20, 1981, 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, consummated on or after July 1, 1988, 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. Any provision in a mortgage commitment contracted prior to the effective date of this regulation providing for an increase in interest rates to be charged based on the highest lawful interest rate shall be null and void.

(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.

(d) Nothing herein shall be construed as being applicable to loans which are subject to the Federal preemption of State usury laws contained in the Depository Institutions Deregulation and Monetary Control Act of 1980, H.R. 4986, Title V.

(e) The rates established herein shall be effective at 12:01 A.M., October 20, 1981, and shall remain in force until such time as this regulation is rescinded or until said rate or rates are revised by a subsequent regulation.

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".

#### Authority

N.J.S.A. 31:1-1

#### 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).

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

(a) 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).

(b) Where in any law a rate of interest applicable to loans regulated by this section is referred to as that established by N.J.S.A. 31:1-1, the rate allowable shall be as established herein.

(c) The rate established herein shall be effective for loans made on or after 12:01 A.M., July 27, 1979.

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).

## SUBCHAPTER 2. PROCEDURAL RULES

### Authority

N.J.S.A. 17:1-8.1

### Source and Effective Date

This subchapter was originally filed as R.1980 d.97, effective August 13, 1970. See: 2 N.J.R. 70(a). Subsequent amendments to this subchapter were filed as follows:

As amended, R.1973 d.191, eff. July 16, 1973.

See: 5 N.J.R. 258(b).

As amended, R.1973 d.217, eff. August 9, 1973.

See: 5 N.J.R. 76(c), 5 N.J.R. 298(a).

As amended, R.1973 d.281, eff. September 26, 1973.

See: 5 N.J.R. 257(b), 5 N.J.R. 364(d).

As amended, R.1973 d.342, eff. December 6, 1973.

See: 5 N.J.R. 364(b), 6 N.J.R. 3(a).

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.1974 d.298, eff. October 29, 1974.

See: 6 N.J.R. 463(a).

As amended, R.1975 d.21, eff. January 30, 1975.

See: 7 N.J.R. 94(b).

As amended, R.1975 d.155, eff. June 5, 1975.

See: 7 N.J.R. 191(a), 7 N.J.R. 292(a).

As amended, R.1976 d.83, eff. May 1, 1976.

See: 8 N.J.R. 5(c), 8 N.J.R. 164(a).

As amended, R.1976 d.240, eff. July 29, 1976.

See: 8 N.J.R. 412(a).

As amended, R.1976 d.244, eff. August 3, 1976.

See: 8 N.J.R. 413(a).

As amended, R.1976 d.305, eff. October 1, 1976.

See: 8 N.J.R. 411(b), 8 N.J.R. 499(a).

As amended, R.1976 d.312, eff. October 8, 1976.

See: 8 N.J.R. 370(b), 8 N.J.R. 499(b).

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

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

As amended, R.1977 d.462, eff. December 12, 1977.

See: 9 N.J.R. 451(c), 10 N.J.R. 2(b).

As amended, R.1978 d.71, eff. February 27, 1978.

See: 10 N.J.R. 2(a), 10 N.J.R. 137(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.1979 d.290, eff. July 27, 1979.

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

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

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

As amended, R.1981 d.258, eff. July 9, 1981.

See: 13 N.J.R. 182(a), 13 N.J.R. 382(b).

### 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.

“Bank” shall mean a New Jersey chartered bank, as defined in section 1 of P.L. 1948, c.67 (N.J.S.A. 17:9A-1), and shall include a limited purpose trust company.

“Banking institution” shall mean a depository, or a similar institution chartered by the Federal government or another state.

“Branch application” shall mean an application by a depository 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” shall mean the Commissioner of the New Jersey Department of Banking.

“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” shall mean the New Jersey Department of Banking.

“Depository” shall mean a bank, savings bank or savings and loan association.

“Individual” shall mean a natural person.