

the Federal government, or by any agency or instrumentality thereof;

5. Upon the involvement of the licensee, or any officer, director, partner, member, owner or substantial stockholder of the licensee, or any affiliate thereof, in any activity that may have a substantial impact on the ability of a licensee to engage in the licensed activity in a prudent or worthy manner;

6. The entry of any final judgment in a civil or administrative action against the licensee upon the grounds of fraud, misrepresentation or deceit; and

7. Failure to demonstrate financial responsibility through disregard in the management of the licensee's own financial condition. Occurrences which indicate a disregard in the management of the licensee's financial condition shall include, but not be limited to:

i. The entry of any civil judgment against the licensee which is not appealed and remains unsatisfied except judgments solely as a result of medical expenses;

ii. The issuance to the licensee of a tax lien or other government lien;

iii. The entry against the licensee of a judgment of foreclosure; or

iv. The receipt of notifications within a six-month period that two or more of the licensee's accounts with creditors are 90 or more days in arrears.

New Rule, R.2002 d.353, effective November 4, 2002.
 See: 34 N.J.R. 1775(a), 34 N.J.R. 3795(a).
 Recodified from N.J.A.C. 3:15-2.16 and amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).
 See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).
 In (a)4, deleted "and" from the end; in (a)5, substituted a semicolon for a period at the end; and added (a)6 and (a)7.

SUBCHAPTER 3. BONDING

3:15-3.1 Bond requirements

(a) A person who seeks an initial license as a mortgage lender or mortgage broker shall obtain a surety bond in the amount of \$150,000, which shall be applicable to the first \$50,000,000 of closed loan volume.

(b) Following the submission of each annual report, a mortgage lender or mortgage broker shall, if necessary, increase the amount of the surety bond based on the following closed loan volumes and provide proof thereof to the Department within 30 days of the submission of the report.

- | | |
|--|------------|
| 1. Closed loan volume: \$0 to \$50,000,000 | \$150,000; |
| 2. Closed loan volume: \$50,000,001 to \$75,000,000 | \$200,000; |
| 3. Closed loan volume: \$75,000,001 to \$100,000,000 | \$250,000; |
| 4. Closed loan volume: \$100,000,001 and over | \$300,000. |

Amended by R.2002 d.353, effective November 4, 2002.
 See: 34 N.J.R. 1775(a), 34 N.J.R. 3795(a).
 Rewrote the section.
 Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).
 See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).
 Rewrote the introductory paragraph of (a); deleted (a)1 and (a)2; in the introductory paragraph of (b), substituted "a mortgage lender or mortgage broker" for "licensed lenders with authority as a mortgage banker, correspondent mortgage banker or secondary lender" and inserted ", if necessary,"; rewrote the table in (b); and deleted (c).
 Petition for Rulemaking.
 See: 46 N.J.R. 1719(a).

3:15-3.2 Beneficiaries of bond coverage

The bond shall run to the State, pro rata, for the benefit of consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the mortgage lender, mortgage broker, qualified individual licensee or mortgage loan originator in the course of activity authorized by the license, and for the benefit of the Department for unpaid examination bills, unpaid penalties, unpaid assessments and any other unpaid obligations of the mortgage lender or mortgage broker to the Department, including, but not limited to, returned items submitted to the Department in payment of bills, penalties, charges, assessments or fees.

New Rule, R.1997 d.257, effective June 16, 1997.
 See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).
 Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).
 See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).
 Rewrote the section.

3:15-3.3 Coverage of the bond; compensable claims

(a) The surety company shall pay consumers claims based on the damages directly incurred by the wrongful act, default, fraud or misrepresentation of the business licensee or any employee of such licensee.

(b) 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.

(c) A consumer may not recover third party charges for services that are necessary and transferable for future mortgage loan applications.

(d) The bond shall not be payable for claims made by business creditors.

(e) The bond shall not be payable for treble damage claims pursuant to the Consumer Fraud Act or any other State or Federal law.

New Rule, R.1997 d.257, effective June 16, 1997.
 See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).
 Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).
 See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).

In (a), substituted "business licensee or any employee of such licensee" for "mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender"; deleted former (b); recodified former (c) through (f) as (b) through (e); and in (b), substituted "licensee" for "mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender".

3:15-3.4 Original bond or rider required; changes in surety companies or bonds

A mortgage lender or broker shall submit to the Department the original executed surety bond or the original rider to the original executed surety bond. If the business licensee changes its surety company or the bond is otherwise amended, the business licensee shall immediately provide the Department with the amended original executed surety bond or the amended original rider to the original executed surety bond.

New Rule, R.1997 d.257, effective June 16, 1997.

See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).

See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).

Deleted "banker, correspondent mortgage banker, mortgage broker or secondary" following the first occurrence of "mortgage", inserted "or broker", and substituted "business licensee" for "mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender" twice.

3:15-3.5 Notice to Department required before cancelling bond coverage

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.

New Rule, R.1997 d.257, effective June 16, 1997.

See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

3:15-3.6 Surety companies to notify Department of claims; claims payable only at the direction of the Department

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

New Rule, R.1997 d.257, effective June 16, 1997.

See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).

See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).

Substituted "business licensee" for "mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender".

3:15-3.7 Publication of notices of bond claims by the Department

When the Department receives notice from a surety company of a claim against a business licensee that appears valid, a consumer is unable to obtain payment of a court judgement

that was obtained against the 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 business licensee conducts or conducted business advising consumers 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, assessment or any other fee, charge or penalty if there are no consumer claims or complaints that appear valid and that 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), (Type of licensed activity, i.e., residential mortgage lender, residential mortgage broker, qualified individual licensee, mortgage loan originator)

TAKE NOTICE that in order to provide a procedure for the orderly resolution of claims against the bond obtained by (Name of Business Licensee) for the benefit of any consumer injured by the wrongful act, 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 and Insurance
Division of Banking
Office of Consumer Finance
20 West State Street, PO Box 040
Trenton, NJ 08625-0040

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 and Insurance

New Rule, R.1997 d.257, effective June 16, 1997.

See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

Amended by R.2002 d.353, effective November 4, 2002.

See: 34 N.J.R. 1775(a), 34 N.J.R. 3795(a).

Amended by R.2010 d.129, effective June 21, 2010 (operative July 31, 2010).

See: 41 N.J.R. 2829(a), 42 N.J.R. 1139(b).

Substituted "business licensee" for "mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender" twice, deleted "mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender for activities undertaken as a" preceding the second occurrence of "licensee" and inserted ", assessment"; and in "Type of licensed activity" parenthetical of the notice, substituted "residential mortgage lender, residential mortgage broker, qualified individual licensee, mortgage loan originator" for "mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender"; and in the "TAKE NOTICE" paragraph of the notice, inserted "Business" preceding the first occurrence of "Licensee".