

CHAPTER 15

LICENSED LENDERS: MORTGAGE BANKERS; CORRESPONDENT MORTGAGE BANKERS; MORTGAGE BROKERS; SECONDARY LENDERS; CONSUMER LENDERS AND SALES FINANCE COMPANIES

Authority

N.J.S.A. 17:1-8.1 and 15e, 17:1C-33 et seq. and 17:11C-1.

Source and Effective Date

R.2002 d.353, effective October 10, 2002.
See: 34 N.J.R. 1775(a), 34 N.J.R. 3795(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 15, Licensed Lenders: Mortgage Bankers; Correspondent Mortgage Bankers; Mortgage Brokers; Secondary Lenders; Consumer Lenders and Sales Finance Companies, expires on April 7, 2008. See: 39 N.J.R. 4361(a).

Chapter Historical Note

Chapter 15, Licensed Lenders: Mortgage Bankers; Correspondent Mortgage Bankers; Mortgage Brokers; Secondary Lenders; Consumer Lenders and Sales Finance Companies was adopted by R.1997 d.183 effective April 21, 1997. See: 29 N.J.R. 525(a), 29 N.J.R. 1509(a).

Subchapter 5, Tangible Net Worth, Net Worth, Liquid Assets, Insolvency, Subchapter 6, Books and Records; Examinations; Annual Reports, Subchapter 7, Insurance, Subchapter 8, Advertising, Subchapter 9, Permissible Fees, Subchapter 10, Characteristics of Loans, Subchapter 11, Other Permissible Lines of Business for Consumer Lenders and Subchapter 12, Imposition of Administrative Penalties, were adopted as R.1997 d.257, effective June 16, 1997. See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

Chapter 15, Licensed Lenders: Mortgage Bankers; Correspondent Mortgage Bankers; Mortgage Brokers; Secondary Lenders; Consumer Lenders and Sales Finance Companies was readopted as R.2002 d.353 effective October 10, 2002. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**3:15-1.1 Purpose and scope**

(a) This chapter implements the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq.

(b) This chapter shall apply to all licensed lenders with mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender and/or sales finance company authority or authorities and registered mortgage solicitors and those whose activities require they be licensed or registered.

Amended by R.1999 d.191, effective June 21, 1999 (operative July 21, 1999).

See: 30 N.J.R. 1658(a), 31 N.J.R. 1609(a).

In (a), changed New Jersey Licensed Lenders Act reference.

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.

3:15-1.2 Definitions

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

“Accrual basis of accounting” means the accounting method by which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether received or not received.

“Act” means the “New Jersey Licensed Lenders Act,” N.J.S.A. 17:11C-1 et seq.

“Advertisement” means any announcement, statement, assertion, or representation that is placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station, by means of the internet or by other electronic means of distributing information, or in any other way.

“Alternate name” means an alternate name registered pursuant to N.J.S.A. 14A:2-2.1(2) or 42:2B-4b.

“Application” means the document or documents or information, including the payment of any fees, that a particular lender or broker requires a borrower to submit for the purpose of having the lender or broker begin to process the loan document or documents to determine whether to grant or deny a loan.

“Application fee” shall have the meaning of that term in N.J.A.C. 3:1-16.2.

“Appraisal fee” shall have the meaning of that term in N.J.A.C. 3:1-16.2.

“Authority” means one of the activities permitted for a licensee pursuant to the Act: either mortgage banker, correspondent mortgage banker or mortgage broker; secondary lender; consumer lender; or sales finance business.

“Biennial period” means the two-year period beginning on July 1 of an odd-numbered year.

“Billing cycle” means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.

“Borrower” means any person applying for a loan from a lender licensed under the Act, whether or not the loan is granted, and any person who has actually obtained such a loan.

“Branch office” means any location where, in the regular course of business, applications for first mortgage loans, second mortgage loans, consumer loans or sales finance contracts are distributed to or received from consumers, loan records are maintained, underwriting decisions are made, commitments or lock-in agreements are issued, or any fees or charges relating to the loan are received from consumers.

1. A home or place of business of a consumer shall not be considered a branch office.

2. A location shall not be considered a branch office merely because any or all of the following activities are conducted at the location:

- i. Consumers receive information concerning available loan products from a computer terminal;
- ii. Consumers are prequalified for a loan, so long as no additional fee is charged for this service; and
- iii. Advertising materials are distributed to consumers so long as the materials do not in any way resemble an application for a loan.

3. 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.

4. A principal or branch office of a bank, savings bank, savings and loan association or credit union shall not also constitute a branch office of a licensee merely because the bank, savings bank, savings and loan association or credit union distributes or receives applications of the licensee at the principal or branch office.

5. A licensed real estate office of a person licensed as a real estate broker or salesman pursuant to N.J.S.A. 45:15-1 et seq., does not constitute a branch of an entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker under the Act merely because the real estate broker or salesman distributes or receives an application of the entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker at that office, or because an entity licensed as a mortgage banker, correspondent mortgage banker or mortgage broker under the Act or a solicitor of that licensee who does not hold himself out to the public as performing mortgage banking, correspondent mortgage banking, or mortgage brokering there and does not maintain an office or desk there meets at the office of the real estate broker as a convenience to the borrower and distributes or receives applications or fees there.

“Closed-end loan” with respect to a secondary mortgage loan means a loan pursuant to which the licensee advances 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: 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 the amount of the installment payments may vary as a result of the change in the interest rate as permitted by the Act. “Closed-end loan” with respect to a consumer loan means a loan pursuant to which the licensee advances 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 and which meets the requirements of N.J.S.A. 17:11C-35.

“Commissioner” means the Commissioner of the Department of Banking and Insurance.

“Commitment” means a signed statement issued by a lender in which the lender promises to make a loan of specified terms to a specified borrower, and which is based on a satisfactory underwriting analysis of the appraisal, if an appraisal is required in connection with the loan, and satisfactory underwriting analysis of the credit report, if a credit report is required in connection with the loan, except that any document indicating approval of a loan application that is contingent on the approval of a party to whom the lender seeks to sell the loan shall not be deemed a commitment.

“Commitment fee” shall have the meaning of that term in N.J.A.C. 3:1-16.2.

“Consumer lender” means a person licensed, or a person who should be licensed, under the Act to engage in the consumer loan business.

“Consumer loan” means a loan of \$50,000 or less made by a consumer lender pursuant to the terms of the Act, and not a first mortgage loan or a secondary mortgage loan.

“Consumer loan business” means the business of making loans of money, credit, goods or things in action in the amount of value of \$50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefore than the lender would be permitted by law to charge if he or she were not a licensee hereunder, except as authorized by the Act and without first obtaining a license from the Commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of \$50,000 or less, or in the business or negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$50,000 or less, or in the business of buying, discounting or indorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$50,000 or less, shall be deemed to be engaging in the consumer loan business.

“Controlling interest” means ownership, control or interest of 25 percent or more of the licensee or applicant.

“Correspondent mortgage banker” means a mortgage banker who:

- 1. In the regular course of business, does not hold mortgage loans in its portfolio, or service mortgage loans, for more than 90 days; and

2. Has shown to the Department's satisfaction an ability to fund loans through warehouse agreements, table funding agreements or otherwise.

"Credit report fee" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"Department" means the Department of Banking and Insurance.

"Depository institution" means any entity holding a state or Federal charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

"Direct contact" means in-person contact, and contact by means of a telephone, computer terminal, internet or other electronic means during which contact, in the regular course of business, applications for first mortgage loans, second mortgage loans, consumer loans or sales finance contracts are distributed to or received from consumers, underwriting decisions are made, commitments or lock-in agreements are issued, or any fees or charges relating to the loan are authorized.

"Discount point" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"First mortgage loan" means any loan secured by a first mortgage on real property on a one to six family dwelling, a portion of which may be used for nonresidential purposes.

"Insolvent" means having negative tangible net worth, or being unable to pay debts when due.

"Lender" means a bank, savings bank, savings and loan association, credit union, mortgage banker, correspondent mortgage banker, secondary lender, consumer lender, sales finance company or any other person who originates loans in this State.

"License name" means any name listed on the license issued by the Department including the true name and any alternate or trade names.

"Licensed lender" or "licensee" means a person who is licensed pursuant to the Act with one or more authorities.

"Liquid assets" means cash, marketable securities, and accounts receivable.

"Lock-in agreement" means an agreement between the lender and the borrower whereby the lender guarantees until a specified date the availability of a specified rate of interest or time price differential or specified formula by which the rate of interest or time price differential will be determined and/or specific number discount points, provided the loan is approved and closed by the specified date. If a specified date is not determinable, the lender may fulfill the requirement of this provision by setting forth with *specificity the method* by which the duration of the lock-in period will be determined. The term "lock-in agreement"

does not include as agreement to fix the rate executed three or fewer calendar days before closing where appropriate disclosures have been made under the provisions of this chapter.

"Lock-in fee" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"Mortgage banker" means any person, not exempt under section 4 of the Act and licensed pursuant to the provisions of the Act, and any person who should be licensed pursuant to the provisions of the Act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly originates, acquires or negotiates first mortgage loans in the primary market.

"Mortgage broker" means any person, not exempt under section 4 of the Act and licensed pursuant to the provisions of the Act, and any person who should be licensed pursuant to the provisions of the Act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly negotiates, places or sells for others or offers to negotiate, place or sell for others, first mortgage loans in the primary market.

"Mortgage loan" means any loan secured by a mortgage on real property on a one- to six-family dwelling, a portion of which structure may be used for nonresidential purposes.

"Mortgage solicitor" means any person not licensed as a mortgage banker, correspondent mortgage banker, or mortgage broker who is employed as a solicitor by one, and not more than one, licensee, who is subject to the direct supervision and control of that licensee, and who solicits, provides or accepts first mortgage loan applications, or assists borrowers in completing first mortgage loan applications, and whose compensation is in any way based on the dollar amount or volume of first mortgage loan applications, first mortgage closings or other first mortgage loan activity.

"Open-end loan" means a secondary mortgage loan made by a secondary lender or a consumer loan made by a consumer lender pursuant to a written agreement with the borrower whereby:

1. The secondary lender or consumer lender may permit the borrower to obtain advances of money from the secondary lender or consumer lender from time to time or the secondary lender or consumer lender 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.

“Originate” means to commit to make a mortgage loan, or to close a mortgage loan in the name of the licensee.

“Person” means an individual, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

“Prequalification” means the process whereby a licensee prior to application advises a person whether or not he or she qualifies for a loan product, subject to satisfactory appraisal and other contingencies.

“Primary market” means the market wherein first mortgage loans are originated between a lender and a borrower, whether or not through a mortgage broker or other conduit, and shall not include the sale or acquisition of a mortgage loan after closing of the mortgage loan.

“RESPA” means the Federal Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, regulations implementing RESPA, and any opinion regarding RESPA issued by the Department of Housing and Urban Development.

“Sales finance company” shall have the meaning ascribed to that term in N.J.S.A. 17:16C-1.

“Secondary lender” means a person licensed, or a person who should be licensed, under the Act to engage in the secondary mortgage loan business.

“Secondary mortgage loan” means a loan made to an individual, association, joint venture, partnership, limited partnership association, limited liability company, trust, or any other group of individuals, however organized, except a corporation, which is secured in whole or in part by a lien upon any interest in real property, including, but not limited to, shares of stock in a cooperative corporation, created by a security agreement, including a mortgage, indenture, or any other similar instrument or document, which real property is subject to one or more prior 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, except that the following shall not be subject to the provisions of this chapter:

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

“Secondary mortgage loan business” means advertising, causing to be advertised, soliciting, negotiating, offering to negotiate, offering to make or making a secondary mortgage loan in this State, whether directly or by any person acting for his or her benefit.

“Settlement service” means any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, and the handling of the processing, and closing or settlement.

“Substantial stockholder” means a person or entity owning 10 percent or more of the stock of a licensee.

“Table funding agreement” means an agreement between an investor and a licensee whereby the investor agrees to purchase specified mortgage loans from a licensee immediately after the closing of the mortgage loans, and which permits the licensee to close with funds of the investor.

“Tangible net worth” means net worth less the following assets:

1. That portion of any assets pledged to secure obligations of any person or entity other than that of the applicant;
2. Any asset (except construction loan receivables secured by first mortgages from related companies) due from officers or stockholders of the applicant or related companies in which the applicant's officers and/or stockholders have an interest;
3. That portion of the value of any marketable security (listed or unlisted) not shown at lower of cost or market, except for any shares of FNMA stock required to be held under a servicing agreement, which should be carried at cost;
4. Any amount in excess of the lower of the cost or market value of mortgages in foreclosures, construction loans, or foreclosed property acquired by the applicant through foreclosure;
5. Any investment shown on the balance sheet in the applicant's joint ventures, subsidiaries, affiliates and/or related companies that is greater than the value of said assets at equity;
6. Goodwill;
7. The value placed on insurance renewals or property management contract renewals or other similar intangibles of the applicant;
8. Organization costs of the applicant;

9. The value of any servicing contracts held by the applicant not determined in accordance with FASB Statement No. 65, "Accounting for Certain Mortgage Banking Activities," dated September 1982, as amended by FASB No. 122, "Accounting for Mortgage Servicing Rights," dated May 1995, or subsequent revisions thereto;

10. Any real estate held for investment where development will not start within two years from the date of its initial acquisition;

11. Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease; and

12. Any commitment fees paid/collected that are not recoverable through the closing or selling of loans.

"Time price differential" shall have the meaning of that term in N.J.S.A. 17:16C-1(l) and shall be computed as provided in N.J.S.A. 17:16C-41.

"Third party charges" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

"Trade name" means an assumed name filed pursuant to N.J.S.A. 56:1-2.

"True name" means the legal name of the licensed entity and shall not include any alternate or trade name.

"Warehouse agreement" means an agreement to provide credit to a licensee to enable the licensee to have funds to close mortgage loans and hold those mortgage loans pending sale to permanent investors.

"Warehouse fee" shall have the meaning of that term in N.J.A.C. 3:1-16.2.

Amended by R.1997 d.257, effective June 16, 1997.

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

Added "Accrual basis of accounting", "Advertisement", "Application fee", "Appraisal fee", "Billing cycle", "Closed-end loan", "Commitment fee", "Controlling interest", "Credit report fee", "Depository institution", "Discount point", "Insolvent", "Lender", "Lock-in fee", "Mortgage loan", "Mortgage solicitor", "Open-end loan", "RESPA", "Settlement service", "Table funding agreement", "Tangible net worth", "Third party charges", "Time price differential", "Warehouse agreement", and "Warehouse fee".

Amended by R.1999 d.191, effective June 21, 1999 (operative July 21, 1999).

See: 30 N.J.R. 1658(a), 31 N.J.R. 1609(a).

In "Act", changed New Jersey Licensed Lenders Act reference; and in "Secondary mortgage loan", changed Home Repair Financing Act reference in 2.

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

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

Added "Alternate name", "Biennial period", "License name", "Substantial stockholder", "Trade name", and "True name"; amended "Branch office", "Commitment", "Consumer loan", "Consumer loan business", "Direct contact", and "Secondary mortgage loan business".

3:15-1.3 Office requirement

(a) A licensee, except a licensee engaging solely in the sales finance company business, shall maintain a place of business in this State. A licensee shall maintain a place of business in a suitable location as determined by the Commissioner. The Commissioner shall consider the following factors in determining whether a location is suitable:

1. The location shall conform to all local ordinances and zoning requirements;

2. The location shall be reasonably accessible to the public;

3. Any signage proposed for the location shall clearly identify the licensee;

4. The location shall be reasonably free of noise and other distractions so as to permit customers to give appropriate consideration to the loan transaction; and

5. A residence shall not be considered a suitable location unless the applicant submits acceptable proof that the office would be separate from the residential area and conveniently accessible to all consumers through a separate business entrance. Acceptable proof shall include at a minimum, a floor plan and related photographs depicting the necessary criteria set forth in (a)1 through 4 above.

(b) A licensee may maintain more than one place of business and shall secure a license for each such branch office as required by N.J.A.C. 3:15-2.3.

(c) Each licensee that maintains more than one licensed office shall designate one licensed 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. If the filing is complete, the Commissioner shall issue a new license reflecting the new designation.

(d) A licensee changing its name or changing the address of the principal office or any branch office shall comply with N.J.A.C. 3:1-7.1 and 7.4, as applicable.

(e) A person licensed as a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender shall notify the Department of every location, other than a principal or branch office, where the licensee distributes to the public advertising materials regarding available mortgage loan products in person to consumers on a regular basis.

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).

Rewrote (a); amended the N.J.A.C. reference in (b); and inserted "If the filing is complete, the" in the beginning of the last sentence in (c).

answers to questions in the application or on the basis of any other information which the Department receives that would make such an inquiry relevant to the decision on the application;

3. All applications for a mortgage banker license, correspondent mortgage banker license, mortgage broker license or a secondary lender license shall be accompanied by:

i. An original executed bond, on bond forms issued by the Department, from a surety company authorized to do business in this State, which bond meets the requirements of N.J.A.C. 3:15-3.1; or

ii. A letter from a surety company authorized to do business in this State stating that the applicant has satisfied all the requirements for the issuance of a surety bond, which meets the requirements of N.J.A.C. 3:15-3.1.

4. All applications for a corporate, partnership, limited liability company or sole proprietorship license as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender shall include an unqualified audited financial statement prepared by a certified public accountant or a public accountant, in good standing, demonstrating proof of net worth as specified in N.J.S.A. 17:11C-14 (mortgage bankers, correspondent mortgage bankers and mortgage brokers), N.J.S.A. 17:11C-15 (secondary lenders), and N.J.S.A. 17:11C-16 (consumer lenders);

5. An application for a corporate license by a corporation organized under the laws of this State shall be accompanied by a copy of the applicant's Certificate of Incorporation as filed with the New Jersey Department of Treasury, Division of Revenue. A foreign corporation shall submit a copy of its Certificate of Incorporation from the state where it is incorporated, and a copy of its Certificate of Authority to do business in this State approved by the New Jersey Department of Treasury, Division of Revenue. If an alternate name is to be utilized, a copy of the registration of that name with the New Jersey Department of Treasury, Division of Revenue shall be provided;

6. An application for a sole proprietorship or partnership license where a trade name is to be used shall 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, and any filing made with the New Jersey Department of Treasury, Division of Revenue. An application for a limited liability company license shall be accompanied by a copy of the applicant's Certificate of Formation as filed with the New Jersey Department of Treasury, Division of Revenue. A foreign limited liability company shall submit a copy of its formation document from the state where it was established. If an alternate name is to be utilized, a copy of the registration of that

name with the New Jersey Department of Treasury, Division of Revenue shall be provided;

7. In the case of a person seeking an initial license as a secondary lender or consumer lender, an unqualified audited financial statement prepared by a certified public accountant or a public accountant, in good standing, demonstrating proof of liquid assets as specified by N.J.S.A. 17:11C-15 and 17:11C-16, as applicable;

8. A copy of the deed, lease or rental agreement for the principal place of business, or a letter of intent for such a document. If a letter of intent is submitted, an executed copy of the document shall be provided within 60 days of approval of the application;

9. The application fee as specified in N.J.A.C. 3:15-4.2; and

10. A completed branch office application as specified in N.J.A.C. 3:15-2.3, if applicable.

(b) Prior to being licensed, each applicant for an individual or sole proprietor license as a mortgage banker, correspondent mortgage banker, mortgage broker or a secondary lender shall pass an examination administered in accordance with N.J.A.C. 3:15-2.9.

(c) Prior to being licensed, each applicant for a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender license shall provide the Department with an original executed bond, on bond forms issued by the Department, from a surety company authorized to do business in this State, which meets the requirements of N.J.A.C. 3:15-3.1.

(d) Application fees are nonrefundable.

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

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

Former section recodified to N.J.A.C. 3:15-2.6.

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.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Section was "Application for an initial license". Substituted "a" for "an initial" in the introductory sentence in (a), deleted (a)9 and recodified (a)10 and (a)11 as (a)9 and (a)10; and added (d).

3:15-2.3 Branch offices; branch licensing requirement; initial branch licensing application

(a) Prior to conducting activities as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender or sales finance company from a branch office in this State, or from a branch office outside this State from which the licensee has direct contact with New Jersey consumers regarding origination or brokering, the licensee shall obtain a license for the branch office from the Department.

(b) The application for a branch office license shall include the following:

1. The true name of the licensed entity and no more than three trade names or alternate names conforming to N.J.A.C. 3:15-1.4 and 1.5;

2. The address of the principal New Jersey place of business; and

3. The addresses of all branches to be licensed and a copy of the deed, lease or rental agreement for each, or a letter of intent for such a document. If a letter of intent is submitted, an executed copy of the document shall be provided within 60 days of approval of the application.

(c) 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.

(d) The Commissioner shall determine whether the proposed branch is in a suitable location in determining whether to approve a branch application. The Commissioner shall consider the following factors in determining whether a location is suitable:

1. The location shall conform to all local ordinances and zoning requirements;

2. The location shall be reasonably accessible to the public;

3. Any signage proposed for the location shall clearly identify the licensee;

4. The location shall be reasonably free of noise and other distractions so as to permit customers to give appropriate consideration to the loan transaction; and

5. A residence shall not be considered a suitable location unless the applicant submits acceptable proof (which shall include at a minimum, a floor plan and related photographs) that the office would be separate from the residential area and conveniently accessible to all consumers through a separate business entrance.

(e) If an applicant for a branch license meets the requirements of this section and N.J.S.A. 17:11C-9, the Commissioner shall issue the branch license within 30 days of the receipt of the application.

(f) Branch office arrangements shall be restricted as follows:

1. A branch office shall not be a separate business entity. If an office of another entity is purchased by or merged into a licensed lender, the licensed lender shall file for a branch office license. The filing shall include documentation evidencing the acquisition and/or merger of that entity into the surviving licensed entity;

2. A branch office shall not pay its own operating expenses. Operating expenses shall include, but are not limited to, compensation of branch office employees, and payments for equipment, furniture, office rent, and other

similar expenses incurred in operating a mortgage lending business;

3. A branch office shall not maintain a banking account or accounts for the payment of expenses of that branch that is separate from the account or accounts of the licensee;

4. A branch office shall not maintain contractual relationships with vendors for items such as leases, telephones, utilities, and advertising in the name of the branch office;

5. A branch office shall not maintain lines of credit, warehouse agreements, or other investor agreements that are separate from those of the licensee; and

6. A branch office shall not indemnify the licensed lender against damages incurred from any apparent, express, or implied agency representation by or through the branch office's actions.

(g) Application fees are nonrefundable.

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

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

Recodified from N.J.A.C. 3:15-2.4 and 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. Former N.J.A.C. 3:15-2.3, Application for renewal of a license, recodified to N.J.A.C. 3:15-2.4.

Amended by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Added “; and” at the end of (b)2, substituted a period for a semicolon at the end of (b)3 and deleted (b)4 and (b)5; and added (g).

3:15-2.4 Application for renewal of a license

(a) A person who holds in good standing a license as a licensed lender with authority to act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary mortgage lender, consumer lender or sales finance company who seeks to renew a license pursuant to this section shall submit the following in connection with the renewal application:

1. A completed renewal application form as prescribed by the Commissioner which shall include the following:

i. The name of the applicant;

ii. The location of the principal place of business of the applicant;

iii. A certification that the applicant has bond coverage as specified in N.J.A.C. 3:15-3.1, and net worth as specified by N.J.S.A. 17:11C-14 of the Act, in the case of a mortgage banker, correspondent mortgage banker, mortgage broker; or a certification that the applicant has bond coverage as specified in N.J.A.C. 3:15-3.1, and net worth and liquid assets as specified in N.J.S.A. 17:11C-15, in the case of a secondary mortgage lender; or a certification that the applicant has net worth and liquid assets as specified in N.J.S.A. 17:11C-16, in the case of a consumer lender.

(b) The examination shall be prepared by the Department and/or an entity designated by the Department and shall cover the following topics:

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

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).
 Rewrote the section.

3:15-2.10 No waiver of examination

The Department shall not grant a waiver of the examination for licensure as a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender except for those whose license is in an inactive status as provided in N.J.A.C. 3:15-2.8.

New Rule, R.1997 d.257, effective June 16, 1997.
 See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

3:15-2.11 Failure to pass the examination

(a) An applicant who fails to pass the examination for licensure required by N.J.A.C. 3:15-2.9 within 180 days of the receipt of the application shall be deemed to have withdrawn his or her application. An applicant who passes the examination but does not complete all of the requirements for the license within 180 days of passing the examination shall be deemed to have withdrawn his or her application. An applicant who fails the examination twice shall be prohibited from taking the examination for 180 days 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 365 days from the date of the third or subsequent examination.

New Rule, R.1997 d.257, effective June 16, 1997.
 See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

3:15-2.12 Responsibilities and replacement of the entity's licensed natural person

(a) If a natural person upon whom a corporation, partnership, association, limited liability company or other entity relies for its license pursuant to N.J.S.A. 17:11C-3 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 calendar 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 notifies the Department within 10 days following the date that the natural person discontinues his or her affiliation or employment with the entity.

(b) The individual licensee upon whom a licensed lender entity license is dependent shall be fully qualified by passing the written examination required by N.J.A.C. 3:15-2.9 and shall be responsible to perform the following:

1. Supervise the operations of the licensed office(s) to ensure that the business is being conducted in compliance with all applicable State and Federal laws and regulations;
2. Supervise the prompt review and response to Department communications relating to consumer complaints and inquiries regarding the licensee's licensed activities;
3. Supervise the prompt review and response to Department communications relating to on-site examinations, including, but not limited to, requests for scheduling, responses to examination findings and responses to directives arising from examinations;
4. Ensure the proper completion and timely submission of the required licensee annual report filing as well as any other special reports or surveys that may, from time to time, be requested by the Department;
5. Ensure that license renewals and other licensing matters such as new branch office applications, changes of address, changes of name, change of control, change of business style, and requests for additional license authorities are submitted to the Department on the appropriate forms and accompanied by the required documentation;
6. Have and maintain sufficient knowledge of all applicable Federal and State statutes and rules; and
7. Ensure that all employees required to be registered as mortgage solicitors are properly registered with the Department and that copies of the certificates issued for each solicitor are maintained at the licensed office(s).

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).

In (a), added the paragraph identifier and inserted "limited liability company" following "association"; added (b).
 Amended by R.2006 d.235, effective June 19, 2006.
 See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).
 Deleted "and fees" following "documentation" near the end of (b)5.

3:15-2.13 Registration of mortgage solicitors

(a) Before an individual may act as a mortgage solicitor for a person licensed as a mortgage banker, correspondent mortgage banker or mortgage broker, that individual shall be registered with the Department in affiliation with that

licensee. A mortgage solicitor shall not be registered in affiliation with more than one licensee at the same time.

(b) To register a mortgage solicitor, the prospective employing mortgage banker, correspondent mortgage banker or mortgage broker shall submit the following to the Department:

1. A completed registration form, which shall include the mortgage solicitor's name, birth date, social security number, residence address, the name of the employing licensee; and

2. A \$100.00 registration fee. A mortgage solicitor who changes his or her employing mortgage banker, correspondent mortgage banker or mortgage broker within the two-year registration period shall be re-registered by the new employing licensee by filing a new registration form with the \$100.00 fee.

3. Any additional information requested of a specific applicant by the Department.

(c) The Department shall provide all employing licensees with a mortgage solicitor registration certificate for each solicitor that shall be renewable every two years. The registration shall run from July 1, 2007 to June 30, 2009 and for two-year intervals thereafter.

(d) The registration certificate shall contain the name of the mortgage solicitor, the name of the employing licensee, and the address of the principal office of the employing licensee. The employing licensee shall either:

1. Display the registration certificate at the office or work station of the mortgage solicitor; or

2. Maintain the registration certificates in a binder or similar device provided that the licensee posts a sign at the office or work station of the mortgage solicitor indicating that the registration certificates are available for public inspection upon request.

(e) Within 30 calendar days after a mortgage solicitor ceases his or her affiliation with a licensee, the licensee shall return the registration certificate to the Department. It is not necessary for a licensee to return the registration certificate of a mortgage solicitor who changes from one branch location of the licensee to another branch office of that licensee.

(f) The Commissioner shall refuse to register a person who changes affiliation if the Commissioner determines that the change is for the purpose of evading the licensing requirements of the Act.

(g) Registration fees are nonrefundable.

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).

Rewrote (a); in (b)2, rewrote the first sentence, substituted "\$100.00" for "\$50.00" throughout, substituted "\$15.00" for "\$10.00" in the last

sentence, and added 3; in (c), inserted "for each solicitor" following "registration certificate" in the first sentence and inserted a third sentence.

Amended by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

In (b)2, inserted "his or her", substituted "banker" for "broker" and deleted the last sentence; in (c), substituted "2007" for "1997" and "2009" for "1999" and deleted the last sentence; and added (g).

3:15-2.14 Change of control

(a) A licensee shall file a request for approval whenever a change of control of direct ownership of 25 percent or more of the licensee is planned. The change of control request shall be submitted at least 60 days prior to the anticipated sale date and shall include:

1. A fully executed change of control form as prescribed by the Commissioner;

2. A copy of the executed stock purchase agreement or other agreement evidencing the proposed sale;

3. A copy of the corporate resolution providing that existing officers and/or directors cease to hold positions and that new officers or directors are appointed, if applicable; and

4. Certified consent certificates as set forth in N.J.A.C. 3:15-2.2(a)2 for each new officer, director, partner, member or stockholder resulting from the change of control.

New Rule, R.2002 d.353, effective November 4, 2002.

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

Amended by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Deleted former (a)3, and recodified (a)4 and (a)5 as (a)3 and (a)4).

3:15-2.15 Discontinuation of licensed lender business activity

(a) When a licensed lender with authority to act as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary mortgage lender discontinues its licensed business operations in New Jersey, the licensed lender shall:

1. Surrender the entity's current principal office license as well as the license of each affiliated supervisory individual, branch office, and the certificates of all registered mortgage solicitors, if any;

2. Identify, in writing, if there are any New Jersey residential mortgage loans being processed and provide the total number of any such loans together with the consumer's names and addresses and the property address for each loan;

3. Identify, in writing, the number of New Jersey residential mortgage loans being processed that have scheduled closing dates and such dates and provide the consumers' names and addresses and the property address for each loan;

of the borrower the amount collected from him or charged to him for such insurance.

(f) If a credit life policy issued in connection with a loan contains no provision for designation of a second beneficiary, it shall be handled under the usual procedure contained in a facility of payment clause authorizing the insurance company to pay any insurance in excess of the unpaid balance of the indebtedness to the estate, wife, husband, children or other blood relative or person equitably entitled thereto as determined by the insurance company.

3:15-7.2 Insurance provisions applicable to secondary lenders and consumer lenders

(a) When a secondary mortgage loan or a consumer loan is repaid in full or renewed, or if the insurance is terminated prior to the scheduled maturity date of a secondary mortgage loan or a consumer loan, the secondary lender or consumer lender shall refund to the borrower any unearned insurance premiums.

(b) If a borrower has repaid a secondary mortgage loan or a consumer loan in full, or if a beneficiary named in a policy under a claim is due a refund of unearned premiums and the secondary lender or consumer lender is unable to locate the borrower or beneficiary after due diligence, but in no event longer than 180 days, the licensee shall return all unearned premiums to the insurer, stating the reason therefor. The secondary lender or consumer lender shall file evidence in the borrower's file of his or her efforts to locate the borrower.

(c) All refunds and credits made by secondary lenders and consumer lenders pursuant to this section shall be computed by the "Sum of Digits Method" commonly known as the "Rule of 78ths." These are rules for computing refunds of unearned finance charges on early payment of a loan so that the refund is proportional to the monthly unpaid balance. Tables for calculating refunds and credits according to this methodology can be obtained from Financial Publishing Company, 82 Brookline Drive, Brookline, MA 02212. When

the refund or credit of the unearned insurance premium is less than \$1.00, no refund is required.

(d) If a borrower has credit life insurance, interest charges shall cease accruing on the account at the death of the insured.

(e) If a secondary mortgage loan contract or consumer loan contract contains credit life insurance, the secondary lender or consumer lender, as the case may be, shall file a death claim with the insurer upon receipt of notice of the death of the insured. The death claim filed by a secondary lender or consumer lender with an insurer shall be made for the full amount of the coverage held at death by the insured.

(f) A policy for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance may provide for the insurance of more than one person. If the policy is silent regarding whether the insurance covers more than one person, the person whose signature appears on the first line of the lines provided for the signatures on the loan contract shall be considered as the only borrower insured by the policy and the secondary lender or consumer lender shall disclose to the borrower in writing the effect of the order of signing the loan contract.

SUBCHAPTER 8. ADVERTISING

3:15-8.1 Advertising and insurance costs

If a mortgage banker, correspondent mortgage banker, secondary lender or consumer lender requires a borrower to insure the collateral assigned as security for a loan, the licensee shall not advertise that there are "no other costs," or use words of similar meaning, unless the terms represented in the advertisement include the cost of the insurance or unless the advertisement states that an additional charge for insurance is required.