

CHAPTER 15

**LICENSED LENDERS: MORTGAGE BANKERS;
CORRESPONDENT MORTGAGE BANKERS;
MORTGAGE BROKERS; SECONDARY LEND-
ERS; CONSUMER LENDERS AND SALES FI-
NANCE COMPANIES**

Authority

N.J.S.A. 17:1-15e and 17:11C-49.

Source and Effective Date

R.1997 d.183, effective April 21, 1997.
See: 29 N.J.R. 525(a), 29 N.J.R. 1509(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 October 18, 2002. See: 34 N.J.R. 1775(a).

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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., which combines under one licensing authority activities that previously required separate licenses.

(b) This chapter shall apply to all licenses issued or renewed under the Act with an effective date of July 1, 1997 or later.

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.

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.

"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.

"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 that the lender premises 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 \$15,000 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 \$15,000 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 \$15,000 or less, or in the business or negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$15,000 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 \$15,000 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 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.

"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 an 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 make or making a secondary mortgage loan in this State, whether directly or by any person acting for his or her benefit, or becoming the subsequent holder of a promissory note or mortgage, indenture or any other similar instrument or document received in connection with a secondary mortgage loan.

"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.

"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.

"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.

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.

(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. 3:15-2.4.

(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. 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).

3:15-1.4 Display of license

Each sole proprietor, supervisory individual licensee, partnership, corporation or limited liability company shall conspicuously display its license at the principal New Jersey place of business. Each branch office license shall be displayed at the branch office designated thereon. All other individual licensees shall so display their licenses at the licensed office open to the public with which they are affiliated.

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

SUBCHAPTER 2. LICENSING**3:15-2.1 Requirement to be licensed**

(a) After June 30, 1997, no person shall act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender, or sales finance company without holding, in good standing, a license under the Act, unless that person is exempt from licensure pursuant to N.J.S.A. 17:11C-4, 5 or 6.

(b) With regard to the exemption set forth at N.J.S.A. 17:11C-4d, a real estate broker or salesperson shall not be deemed to be engaged in the business of a mortgage banker, correspondent mortgage banker or mortgage broker if:

1. The real estate broker receives \$250.00 or less at the closing of the mortgage loan for reimbursement of expenses incurred in providing specific mortgage related services in connection with a particular real estate sale or real estate brokerage service;

2. The real estate broker itemizes in writing the specific services provided by the real estate broker or by the salesperson licensed with the broker and submits that itemized list to the mortgage lender prior to closing; and

3. The real estate broker or salesperson receives a real estate commission in connection with the transaction.

(c) For the purposes of (b) above, expenses are deemed to be incurred in providing the specific mortgage related services only if the expenses are exclusively attributed to, and allocated to, those services and are not used to defer the general overhead expenses of the real estate broker, salesperson or office or to defer any cost attributable to the real estate business or any non-mortgage related business conducted by the real estate broker, salesperson or other office personnel. Expenses that are general overhead, and therefore not reimbursable, shall include, but not be limited to: mortgage or lease expenses, rent, utilities, insurance, depreciation and advertising; office equipment and supplies used for any purpose other than mortgage related services, and telephone expenses attributed to any purpose other than mortgage related services. Expenses for office equipment, supplies and telephone usage that are exclusively attributed to mortgage related services are not general overhead and are reimbursable within the \$250.00 limit.

(d) The mortgage lender shall give a copy of the itemized list of reimbursable services, that was received from the real estate broker pursuant to (b)2 above, to the borrower prior to closing and shall retain a copy on file for at least three years following the closing of the loan.

(e) If a licensee files an application for renewal of his or her license on or before June 30, 1997, or on or before the expiration date of any subsequent biennial licensing period, the applicant or licensee may continue to transact business without interruption until such time as he or she is notified that his or her application for renewal has been denied or that his or her license has been suspended or revoked.

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; inserted new (b) through (d); and recodified former (b) as (e).

3:15-2.2 Application for an initial license

(a) A person applying for an initial license pursuant to the Act shall submit the following:

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

- i. The name of the applicant, including any trade name or "doing business as" name to be utilized;
- ii. The location of the principal New Jersey place of business, except for a sales finance company that shall notify the Department of its principal New Jersey place of business if it has an office in this State, or shall notify the Department of its principal place of business in another state if it does not have an office in this State;
- iii. Information regarding officers and stockholders;
- iv. The name and address of the applicant's registered agent in this State;
- v. Information regarding incorporation, registration, and authorization to do business in this State; and
- vi. The applicant's Federal Tax Identification Number or Social Security Number, as applicable;

2. Certified consent certificates permitting the Department to make inquiries to the Department of Law and Public Safety, Division of Criminal Justice, as to any information it may have on file with respect to the applicant, that is, the person, sole proprietor, partners, corporate officers, directors and shareholders owning 10 percent or more of the shares of the corporation. The Department may make such inquiries on the basis of 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 Secretary of State's Office. 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 Secretary of State;

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 Secretary of State;

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. The biennial license fee as specified in N.J.A.C. 3:15-4.4;

9. The application fee as specified in N.J.A.C. 3:15-4.3; and

10. A completed branch office application as specified in N.J.A.C. 3:15-2.4, 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.

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.

3:15-2.3 Application for renewal of a license

(a) A person who holds in good standing a license to act as a mortgage banker, correspondent mortgage banker or mortgage broker that has an expiration date of June 30, 1997 and who wishes to continue to act in that line of business after June 30, 1997, shall renew that license pursuant to this subchapter by July 1, 1997. Such renewal license shall be issued for the biennial period July 1, 1997 through June 30, 1999 and shall be renewable for subsequent biennial licensing periods. A person renewing 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. In the case of the renewal for the period July 1, 1997 through June 30, 1999, the original executed bond or original rider to the original executed bond meeting the requirements of N.J.A.C. 3:15-3.1 and 3.2;

iv. In the case of renewals for July 1, 1999 and after, 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;

v. The biennial license fee as specified by N.J.A.C. 3:15-4.4; and

vi. The one-time administrative fee as required by N.J.A.C. 3:15-4.2.

(b) A person who holds in good standing a license to engage in the secondary mortgage loan business, engage in the consumer loan business, or engage in the sales finance company business that has an expiration date of December 31, 1997 and who wishes to remain in business after June 30, 1997, shall by July 1, 1997 renew that license or licenses pursuant to this subchapter. Such renewal licenses shall be for the biennial period July 1, 1997 through June 30, 1999 and shall be renewable for biennial periods subsequent to June 30, 1999. A licensee renewing 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; and

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

2. In the case of a person renewing a secondary lender license, a certification that the applicant has bond coverage as specified in N.J.A.C. 3:15-3.1, and has net worth and liquid assets as specified in N.J.S.A. 17:11C-15;

3. In the case of a consumer lender, a certification that the applicant has net worth and liquid assets as specified in N.J.S.A. 17:11C-16;

4. In the case of the renewal by a secondary lender for the period July 1, 1997 through June 30, 1999, the original executed bond or original rider to the original executed bond meeting the requirements of N.J.A.C. 3:15-3.1;

5. A biennial license fee in the amount set forth in N.J.A.C. 3:15-4.4; and

6. The one-time administrative fee as required by N.J.A.C. 3:15-4.2.

(c) A secondary lender, consumer lender or sales finance company who renews pursuant to (b) above for the period July 1, 1997 through June 30, 1999 shall receive a credit of \$250.00 toward the biennial license fee for that renewal for each of those lines of business for which the secondary lender, consumer lender or sales finance company was licensed on June 30, 1997.

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

3:15-2.4 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 name of the licensed entity, including any trade name or "doing business as" name to be utilized;
2. The address of the principal New Jersey place of business;
3. The addresses of all branches to be licensed;
4. A branch application fee as required by N.J.A.C. 3:15-4.3; and
5. The branch license fee as specified in N.J.A.C. 3:15-4.4.

(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.

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

3:15-2.5 Branch offices; renewal of branch licenses

(a) A licensee in good standing who holds a license for a branch or branches for the conduct of the business of a mortgage banker, correspondent mortgage banker or mortgage broker that has an expiration date of June 30, 1997 and who wishes to continue to conduct mortgage banking, correspondent mortgage banking or mortgage brokering business at such branch or branches after June 30, 1997, shall renew that license pursuant to this subchapter by July 1, 1997. Such renewal license shall be issued for the biennial period July 1, 1997 through June 30, 1999 and shall be renewable for subsequent biennial periods. A person renewing a branch 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 license entity, including any trade name to be utilized;
 - ii. The address of the principal New Jersey place of business; and
 - iii. The addresses of all branches whose licenses are being renewed;
2. The branch licensing fee as specified in N.J.A.C. 3:15-4.4; and
3. The one-time administrative fee as required by N.J.A.C. 3:15-4.2.

(b) A licensee in good standing who holds a license for a branch or branches for the conduct of the business of a secondary lender, consumer lender or sales finance company that has an expiration date of December 31, 1997 and who wishes to continue to conduct secondary lending business or consumer loan business at that branch or branches after June 30, 1997 shall, by July 1, 1997, renew that branch license or licenses pursuant to this subchapter. Such renewal licenses shall be for the biennial period July 1, 1997 through June 30, 1999 and shall be renewable for subsequent biennial periods. A licensee renewing a branch license pursuant to this section shall submit the following in connection with the renewal application:

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

- i. The name of the licensed entity, including any trade name or "doing business as" name;
- ii. The address of the principal New Jersey place of business; and
- iii. The addresses of all branches whose licenses are being renewed; and

2. The branch licensing fee as specified in N.J.A.C. 3:15-4.4.

(c) A secondary lender, consumer lender or sales finance company who renews a branch license pursuant to (b) above for the period July 1, 1997 through June 30, 1999 shall receive a credit of \$250.00 toward the biennial license fee for that renewal for each of those lines of business for which the secondary lender, consumer lender or sales finance company was licensed on June 30, 1997.

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

3:15-2.6 Late renewal of licenses; refiling fees

(a) A person who submits a renewal application after the expiration of the license, but no later than 30 calendar days after such expiration, may renew by paying a refiling fee of \$50.00. A person who submits a renewal application between 31 calendar days after the expiration of the license but no later than 60 calendar days after such expiration, may renew by paying a refiling fee of \$150.00. A person who submits a renewal application between 61 calendar days after the expiration of the license but no later than 90 calendar days after such expiration, may renew by paying a refiling fee of \$300.00. A person who submits a renewal application later than 90 calendar days following the expiration of the license shall be required to submit an application as if that person were applying for an initial license.

(b) The refiling fees set forth in this section shall be as specified in (a) above regardless of the number of authorities of the licensee.

(c) Payment of the refiling fees under (a) above shall be submitted in the form of a check made payable to "Treasurer—State of New Jersey."

(d) The fact that a person submits an application for renewal of a license following the expiration of the licensing period does not authorize that person to engage in any activity subject to licensure without having a properly renewed license. The Department may take administrative action against anyone who engages in a licensed activity without being properly licensed.

Recodified from 3:15-2.2 by R.1997 d.257, effective June 16, 1997.
See: 29 N.J.R. 1489(a), 29 N.J.R. 2641(a).

3:15-2.7 Inactive license status; fee

(a) A person holding an individual license in good standing to engage in the mortgage banking business, correspondent mortgage banking business, mortgage brokering business or secondary lending business may apply to the Department to place that license in inactive status by paying the appropriate fee.

(b) A person may keep his or her license or inactive status for a period not to exceed five renewal periods without becoming subject to re-examination, provided that:

1. A fee of \$200.00 per biennial licensing period is paid; and
2. The person is employed without significant break by another licensee in the mortgage banking business; correspondent mortgage banking business, mortgage brokering business or secondary lending business, or by a depository institution in this state provided that he or she works primarily in residential mortgage lending. For the purposes of this subsection, a significant break shall not exceed 120 days in any biennial licensing period.

(c) A person who holds an inactive license may reactivate the license by submitting a license renewal application to the Department as set forth in N.J.A.C. 3:15-2.3, including the payment of the appropriate license fee as set forth in N.J.A.C. 3:15-4.4 and proof of continuous employment as defined in (b) above to the Department as a part of the application to reactivate the license.

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

3:15-2.8 Conversion of mortgage banking, correspondent mortgage banking, and mortgage brokering licenses

(a) A person licensed, in good standing, as a mortgage banker shall submit the following to convert from a mortgage banker to a correspondent mortgage banker, and a person licensed, in good standing, as a correspondent mortgage banker shall submit the following to convert from a correspondent mortgage banker to a mortgage banker:

1. The original license, and the licenses of all branch offices, and the licenses of all licensed individuals;
2. A completed conversion form, which shall include the name and address of the licensee, the requested date of conversion and a copy of the licensee's most recent annual report of tangible net worth filed pursuant to N.J.A.C. 3:15-6.15;
3. For a conversion to a correspondent mortgage banker, a signed affidavit from the president or other principal who owns, controls or votes 25 percent or more of the stock of the licensee, a general partner or the sole proprietor stating that the licensee will not hold or service mortgage loans for more than 90 days in the regular course of business; and

4. A conversion fee of \$200.00 plus \$25.00 for each branch license and \$25.00 for each licensed individual.

(b) A licensee shall submit the following to convert from a mortgage banker or a correspondent mortgage banker to a mortgage broker, or from a mortgage broker to a mortgage banker or a correspondent mortgage banker:

1. The original license, the licenses of all branch offices and the licenses of all licensed individuals;

2. A completed conversion form, which shall include the name and address of the licensee, the requested date of conversion and a copy of the licensee's most recent annual report of tangible net worth filed pursuant to N.J.A.C. 3:15-6.15;

3. For a conversion to a mortgage broker, a signed affidavit from the president or principal who owns, controls or votes 25 percent or more of the stock of the licensee, a general partner or the sole proprietor stating that the licensee will not issue commitments or lock-ins in its name, will not close mortgage loans in its name, and will only charge borrowers application fees and discount points; and

4. A conversion fee of \$200.00, plus \$25.00 for each additional branch office and for each licensed individual.

(c) The Department shall approve an application for conversion of a license that complies with (a) or (b) above so long as the licensee satisfies the tangible net worth requirement for the license sought, or the license sought has the same or a lesser tangible net worth requirement as the tangible net worth requirement of the license held by the licensee.

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

3:15-2.9 Examination for licensure as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender

(a) Upon receipt of an application for an individual license as a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender, the Department shall notify the applicant of the date of the next scheduled examination, which shall not be more than 90 days from the date of receipt of the application.

(b) The examination shall be prepared 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).

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 Replacement of the entity's licensed natural person

If a natural person upon whom a corporation, partnership, association, 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 affiliation or employment with the entity.

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

3:15-2.13 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 for that licensee.

(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 and the name of the employing licensee; and

2. A \$50.00 registration fee that is payable every two years upon renewal. A mortgage solicitor who changes 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 \$50.00 fee. The employing licensee may obtain a duplicate certificate for \$10.00 in the event the original certificate is lost or destroyed.

(c) The Department shall provide all licensees with a mortgage solicitor registration certificate that shall be renewable every two years. The registration shall run from July 1, 1997 to June 30, 1999, 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 any person who changes affiliation two or more times in the calendar year, if the Commissioner determines that the change is for the purpose of evading the licensing requirements of the Act.

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

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

SUBCHAPTER 3. BONDING

3:15-3.1 Bond requirements

(a) A person who seeks an initial license to engage in the mortgage banking, correspondent mortgage banking business, mortgage brokering business or secondary mortgage loan business shall obtain a bond for the initial licensing period prior to submitting the first annual report as follows:

1. One authority—\$50,000;
2. Two authorities—\$75,000.

(b) All persons renewing a license for the biennial period beginning July 1, 1997 through June 30, 1999 to engage in the mortgage banking, correspondent mortgage banking business, mortgage brokering business or secondary mortgage loan business shall obtain a bond as follows:

1. One authority—\$50,000;
2. Two authorities—\$75,000.

(c) Upon submission of an annual report, licensees shall increase the amount of the bond based on the following closed loan volumes and provide proof thereof to the Department within 60 days.

1. One authority:
 - i. Closed loan volume: \$0 to \$50,000,000 \$50,000;
 - ii. Closed loan volume: \$50,000,001 to \$75,000,000 \$75,000;
 - iii. Closed loan volume: \$75,000,001 to \$100,000,000 \$100,000;
 - iv. Closed loan volume: \$100,000,001 and over \$125,000.
2. Two authorities:
 - i. Closed loan volume: \$0 to \$50,000,000 \$75,000;
 - ii. Closed loan volume: \$50,000,001 to \$75,000,000 \$100,000;
 - iii. Closed loan volume: \$75,000,001 to \$100,000,000 \$125,000;
 - iv. Closed loan volume: \$100,000,001 and over \$150,000.

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 banker, correspondent mortgage banker, mortgage broker, mortgage solicitor or secondary lender in the course of activity authorized by the license, and for the benefit of the Department for unpaid examination bills, unpaid penalties and any other unpaid obligation of the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender to the Department, including, but not limited to, returned items submitted to the Department in payment of bills, penalties, charges 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).

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 mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender.

(b) If a mortgage banker, correspondent mortgage banker, or mortgage broker is authorized to act as a secondary lender, or vice versa, the bond shall provide that the entire amount of the bond is available to the Department for claims related to either authorized activity.

(c) 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 mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender and the surety company was given prior notice of the court action and an opportunity to respond.

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

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

(f) 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).

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

A mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender shall submit to the Department the original executed surety bond or the original rider to the original executed surety bond. If the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender changes its surety company or the bond is otherwise amended, the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender 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).

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 mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender, 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).

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 mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender that appears valid, a consumer is unable to obtain payment of a court judgment that was obtained against the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender 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 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., mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender)

TAKE NOTICE that in order to provide a procedure for the orderly resolution of claims against the bond obtained by (Name of Licensee) for the benefit of any consumer injured by the wrongful act, 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
20 West State Street, CN 040
Trenton, NJ 08625
Attn: Office of Consumer Finance

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).

3:15-3.8 Priority of claims against bonds

The Department shall review all timely claims made against the bond of a mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender and shall decide which claims are valid. All consumers with timely valid claims shall share pro rata in their claims against the bond. The Department shall then submit claims it has against the mortgage banker, correspondent mortgage banker, mortgage broker or secondary lender for unpaid examination charges or for other penalties, charges or fees to the surety company for payment. Consumers submitting claims after the filing date set forth in the published notice but before the expiration of the applicable statute of limitations period shall recover next against the bond in the order that the claims are submitted.

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

SUBCHAPTER 4. FEES

3:15-4.1 Fees—general

All fees shall be paid by a check made payable to "Treasurer—State of New Jersey."

3:15-4.2 One-time administrative fee

(a) A person who holds a license in good standing to engage in the mortgage banking business, correspondent mortgage banking business, mortgage brokering business, secondary mortgage loan business, consumer loan business, or sales finance company business and who seeks to continue in activities regulated by the Act shall be subject to a one-time, nonrefundable, administrative fee set forth below for each license authority renewed.

1. One authority—No fee;
2. Two authorities—\$100.00;
3. Three authorities—\$300.00;
4. Four authorities—\$400.00.

3:15-4.3 Application fee for an initial license

(a) A person who is applying for an initial license for a principal office under the Act shall pay an application fee to the Department in the amount of \$300.00 regardless of the number of authorities requested in the application.

(b) A person who is applying for an initial branch office license under the Act shall pay an application fee to the Department in the amount of \$200.00.

(c) A licensee who subsequently applies for an additional authority shall pay an application fee for each such application.

(d) Application fees are non-refundable.

3:15-4.4 License fees

(a) The license fees for licensed lenders are as follows:

1. One authority for an individual, company and/or branch: biennial fee—\$1,200; annual fee \$600.00;
2. Two authorities for an individual, company and/or branch: biennial fee—\$2,400; annual fee \$1,200;
3. Three authorities for a company and/or branch: biennial fee—\$3,600; annual fee \$1,800;
4. Four authorities for a company and/or branch: biennial fee—\$4,800; annual fee \$2,400.

(b) Applicants shall pay the biennial fee if they apply for an initial license or to renew an existing license at renewal or during the first year of the biennial period. Applicants shall pay the annual fee if they apply for an initial license during the second year of the biennial period.

SUBCHAPTER 5. TANGIBLE NET WORTH, NET WORTH, LIQUID ASSETS, INSOLVENCY

Authority

N.J.S.A. 17:11C-49 and 17:1-15e.

Source and Effective Date

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

3:15-5.1 Applicability of provisions

The requirements of this subchapter shall apply to each corporation, partnership, limited liability company, or sole proprietorship that is licensed, or that is an applicant for a license, as a mortgage banker, correspondent mortgage banker, or mortgage broker and shall not apply to supervisory individuals or individuals other than sole proprietors. The subchapter shall also apply to a person who is licensed, or who is an applicant for a license, as a secondary lender or a consumer lender.

3:15-5.2 Accounting method for determining tangible net worth

Tangible net worth and net worth shall be computed on the accrual basis of accounting.

3:15-5.3 Requirement to achieve and maintain tangible net worth, net worth and liquid assets

Each applicant for a license as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender shall achieve and maintain the tangible net worth, net worth, and liquid assets as required by N.J.S.A. 17:11C-14, 15 and 16, except that a correspondent mortgage banker who is licensed as a mortgage banker non-servicing on June 30, 1997 shall have and maintain a tangible net worth equal to or greater than \$125,000 until December 31, 1997 when the correspondent mortgage banker shall have and maintain a net worth of \$150,000.

3:15-5.4 Failure to maintain tangible net worth, net worth or liquid assets; action by the Department

(a) If the tangible net worth of a mortgage banker, correspondent mortgage banker, or mortgage broker, or if the net worth of a secondary lender or consumer lender falls below the amounts required by N.J.S.A. 17:11C-14, 15 and 16, or if the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender is insolvent, the Department may take such action as it deems appropriate and necessary to protect the public including, but not limited to, requiring the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender to operate pursuant to a Memorandum of Understanding, or directing the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender to submit and comply with a capital plan until the tangible net worth, net worth or liquid assets required by the Act are attained.

(b) When considering whether to suspend, revoke or refuse to renew the license of a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender who does not have the tangible net worth, net worth or liquid assets required by the Act, the Commissioner shall consider the following factors:

1. How far the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender is below the level of tangible net worth, net worth or liquid assets required by the Act;

2. The size of any warehouse line or table funding agreement, the institution(s) providing this credit, and any correspondent relationship that a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender may have with another financial institution;

3. The number and amount of loans typically made or brokered by the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender;

4. The history of consumer complaints received by the Department concerning the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender;

5. Whether the mortgage banker, correspondent mortgage banker, secondary lender or consumer lender has committed to make loans that it has been unable to fund; and

6. Any other factors reflecting on the ability and fitness of the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender to transact business in its licensed capacity.

SUBCHAPTER 6. BOOKS AND RECORDS; EXAMINATIONS; ANNUAL REPORTS**Authority**

N.J.S.A. 17:11C-49 and 17:1-15e.

Source and Effective Date

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

3:15-6.1 Methods and accounting

(a) Each licensee shall maintain books and records in accordance with recognized accounting principles.

(b) If a person licensed to act as a mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender or consumer lender maintains books and records on a basis other than the accrual method of accounting, that licensee shall also maintain books and records on the accrual basis of accounting which states the tangible net worth or net worth of the licensee, as applicable.

3:15-6.2 Reproduction of documents

A licensee may reproduce documents and records relating to the operation of its business for the purpose of complying with this subchapter and may substitute the copy for the original.

3:15-6.3 Location of books and records

(a) Each licensee shall notify the Department of the office in which the books and records are kept. If the licensee moves the books and records, the licensee shall notify the Department prior to the move.

(b) A licensee may keep its records at:

3:15-6.10 Judgment records requirement for consumer lenders and sales finance companies

(a) When a consumer lender or sales finance company has reduced a note to judgment, the licensee shall maintain a file containing the following information:

1. The date of judgment;
2. The judgment debtor's name and address;
3. The date suit was filed;
4. The nature of the suit;
5. The name and location of the court;
6. The amount of judgment, showing the separate items comprised in the judgment as follows:

- i. Principal;
- ii. Interest;
- iii. Attorney's fees;
- iv. Court cost (itemized); and
- v. Total amount of judgment; and

7. A description of the legal procedures followed to enforce the judgment.

(b) Consumer lenders shall maintain records of nonjudicial foreclosures of security, such as repossession pursuant to the terms of the contract.

3:15-6.11 Motor vehicle lien requirement for consumer lenders

Whenever a consumer loan or retail installment contract is secured by a lien on a motor vehicle, it shall be the responsibility of the consumer lender or sales finance company to see that the title to the motor vehicle is in the name of the borrower. If the motor vehicle used as security is the property of a comaker, surety or guarantor, then the title of such motor vehicle shall be in the name of the comaker, surety or guarantor.

3:15-6.12 Retention of advertisements

One copy of each advertisement, including radio and television scripts, and any materials disseminated over the internet or by any other electronic means, shall be kept on file in the licensee's office for at least two years after the last date on which any such advertisement was utilized, said date to be noted on each such advertisement.

3:15-6.13 Records retention

(a) Each licensee shall preserve the books, accounts and records for at least three years after making the final entry on any application or loan.

(b) The denial or withdrawal of an application shall constitute the final entry for an application which is denied or withdrawn.

(c) The assignment or sale of a loan shall constitute the final entry for a loan which is sold or assigned.

(d) In the case of an open-end loan, the licensee shall preserve the books, accounts and records for at least three years after each entry.

3:15-6.14 Copy of examination reports to licensee

The official report of examination shall be submitted to the licensee or to a representative of the licensee which has been designated by the licensee for such purpose.

3:15-6.15 Charges for investigations

The Department shall charge for investigations at the same rate as provided for examinations of licensees in N.J.A.C. 3:1-6.6. For the purposes of this section, investigations shall include investigations by the enforcement or examinations units of the Department and special investigations by the consumer services unit but shall not include routine efforts by the consumer services unit to research or resolve consumer complaints.

3:15-6.16 Reports to the Department

Each mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender and sales finance company shall file a report with the Department annually on or before April 1 of each year. The report shall be submitted on forms provided by the Department

and shall indicate the tangible net worth, net worth and liquid assets of the mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender and consumer lender, as required. For mortgage banker, correspondent mortgage banker, mortgage broker and secondary lenders, the report shall indicate the warehousing lines available and outstanding. The mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender or sales finance company shall remit with each such report a \$100.00 filing fee. The Department shall assess a \$50.00 penalty against any mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, consumer lender or sales finance company for each annual report filed late.

SUBCHAPTER 7. INSURANCE

Authority

N.J.S.A. 17:11C-49 and 17:1-15e.

Source and Effective Date

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

3:15-7.1 Insurance matters for mortgage bankers, correspondent mortgage bankers, secondary lenders and consumer lenders

(a) Mortgage bankers, correspondent mortgage bankers, secondary lenders and consumer lenders are subject to the provisions concerning insurance set forth in N.J.S.A. 17:11C-21.

(b) If insurance is lawfully required or obtained in connection with a loan, the insurance shall be written or obtained by or through an insurance producer who is licensed in good standing in this State, and written by an insurance company authorized to do business in this State.

(c) It shall be the responsibility of the mortgage banker, correspondent mortgage banker, secondary lender or consumer lender to explain clearly to each borrower the benefits and limitations of any credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance which the borrower contemplates getting in connection with a loan.

(d) Each mortgage banker, correspondent mortgage banker, secondary lender or consumer lender shall keep a record of all policies for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance sold to a borrower in connection with a loan, all premiums collected in connections with such loans, all refunds of unearned premiums caused by payment in full of an amount or by renewal, and a detailed record of all claims paid by the insurer.

(e) If a mortgage banker, correspondent mortgage banker, secondary lender or consumer lender collects a premium from a borrower for credit life insurance, credit health or disability insurance, or credit involuntary unemployment insurance, and such insurance does not become effective, the mortgage banker, correspondent mortgage banker, secondary lender or consumer lender shall immediately give written notice to the borrower and shall promptly refund to or credit to the account 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

Authority

N.J.S.A. 17:11C-49 and 17:1-15e.

Source and Effective Date

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

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.

3:15-8.2 Verbal advertisements

Each verbal advertisement for a loan, which a licensee makes or authorizes to be broadcast or disseminated by radio, television, internet or other electronic means, shall include a statement indicating whether the advertisement is for a first mortgage loan, second mortgage loan, consumer loan, retail installment contract, or retail charge account. The statement may be made by either verbal or visual means, provided that, if visual means are used, the statement shall appear for the entire time the advertisement is broadcast or disseminated.

3:15-8.3 Prohibited types of advertising

(a) The use of any of the following types of advertising shall be deemed to be misleading or deceptive:

1. A form which has the appearance of a check, money order, draft or other instrument that is normally used for the transfer of funds, except that a consumer lender may use such an instrument if:

i. The consumer lender sends this type of solicitation only to current or prior customers of the consumer lender, including customers of consumer credit affiliates of the consumer lender;

ii. Each such solicitation allows the customer an option not to receive future solicitations of this type;

iii. The instrument is negotiable for not more than six months, and the consumer is advised to destroy the instrument if it is not going to be negotiated; and

iv. The solicitation contains the following statement in a prominent place in a 10-point print: "THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!"

2. Reference to loans by terms such as savings, thrift, share passbook, account, deposit, certificate or any other word or phrase of similar meaning, used individually or collectively.

3. No mortgage banker, correspondent mortgage banker, mortgage broker, secondary lender, or consumer lender shall permit a supply of blank notes, chattel mortgages, security agreements, applications or other similar forms to be placed in any place other than a licensed office.

dent mortgage bankers may charge any fee that may be charged by mortgage bankers; and

2. Pursuant to N.J.S.A. 17:11C-30 and 46:18-11.2, the fee charged by the county recording officer to cancel the mortgage, plus an additional service fee not to exceed \$25.00, providing that the borrower has received prior notice of the fees required by the mortgage banker or correspondent mortgage banker, and providing further that if the mortgage banker or correspondent mortgage banker/collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the mortgage banker or correspondent mortgage banker shall refund the service fee to the borrower.

(c) No mortgage banker, correspondent mortgage banker or mortgage broker shall give, authorize the giving of, or accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a mortgage loan shall be referred to any person, except as otherwise permitted by State or Federal law.

3:15-9.2 Fees permitted to be charged by secondary lenders

(a) A secondary lender may charge a borrower, incident to a secondary mortgage loan, only the following:

1. The fees specified in N.J.S.A. 17:11C-28; and

2. Pursuant to N.J.S.A. 17:11C-30 and 46:18-11.2, the fee charged by the county recording officer to cancel the mortgage, plus an additional service fee not to exceed \$25.00, providing that the borrower has received prior notice of the fees required by the secondary lender, and providing further that if the secondary lender collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the secondary lender shall refund the service fee to the borrower.

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

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

(d) The following provisions shall govern the charging of attorney fees by secondary lenders:

1. A secondary lender shall not charge a borrower attorney fees if the attorney to whom the fee is to be paid is an employee, partner, officer, director or stockholder of the licensee. For purposes of this subsection, "stockholder" means and includes a person who directly, indirectly or acting through one or more other persons owns, controls or has power to vote 10 percent or more of any class of voting securities of a corporate licensee.

SUBCHAPTER 9. PERMISSIBLE FEES

Authority

N.J.S.A. 17:11C-49 and 17:1-15e.

Source and Effective Date

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

3:15-9.1 Fees permitted to be charged by mortgage bankers, correspondent mortgage bankers, and mortgage brokers

(a) Fees permitted to be charged by mortgage bankers, correspondent mortgage bankers, and mortgage brokers are set forth in N.J.S.A. 17:11C-23 and in N.J.A.C. 3:1-16.2 and 3:1-16.10, as applicable. Correspondent mortgage bankers may charge any fee that may be charged by mortgage bankers.

(b) Mortgage bankers, correspondent mortgage bankers and mortgage brokers may charge the following fees:

1. The fees specified in N.J.S.A. 17:11C-23 and in N.J.A.C. 3:1-16.2 and 16.10, as applicable. Correspon-

2. An attorney, who is providing legal service in accordance with N.J.S.A. 17:11C-28, shall not compensate any of the following persons for the preparation of documents or for any other services performed for on or behalf of the attorney:

- i. A secondary lender;
- ii. An employee, partner, officer, director or stockholder of a secondary lender; or
- iii. Any other person in which a secondary lender is an employee, partner, officer, director or stockholder.

3. No person listed in (d)2 above shall receive compensation for the preparation of documents or for any other services performed for or on behalf of an attorney who is providing legal service in accordance with N.J.S.A. 17:11C-28.

4. Any secondary lender who requires a borrower to pay an attorney fee shall, at least four days prior to the closing of the loan, inform the borrower in writing of such requirement.

5. In order to receive reimbursement from the borrower at closing for attorney fees charged to the secondary lender in connection with a secondary mortgage loan, the secondary lender shall issue to the borrower at or before the closing of a secondary mortgage loan an itemized listing, prepared by the attorney, of the specific legal services performed by the attorney for and on behalf of the secondary lender and the charge to the secondary lender for each such service. All services charged by the attorney shall be listed irrespective of whether they are less than \$100.00.

6. A secondary lender shall provide the following to the borrower at or before closing:

- i. A copy of the itemized listing of attorney fees prepared by the attorney pursuant to (d)5 above;
- ii. A closing statement by the secondary lender of all legal and other expenses to be paid by the borrower setting forth the net proceeds of the loan, itemized fees incurred or disbursed, interest charges, full amount of the loan and the terms by which the loan is to be repaid. Each expense item shall be separately listed with the corresponding dollar amount if the amount charged for that item exceeds \$100.00.

7. Proof of compliance with this subsection shall be included in the licensee's loan file.

Source and Effective Date

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

3:15-10.1 Provisions applicable to all licensees

(a) No licensee shall charge an interest rate that is in excess of the rate permitted by N.J.S.A. 2C:21-19.

(b) A borrower may repay a first mortgage loan, second mortgage loan or consumer loan at any time without penalty.

(c) A licensee may only compute interest accrued between monthly payments using the $\frac{365}{365}$ method (actual number of days between payments) or the $\frac{360}{360}$ method (each month assumed to be 30 days). Sales finance companies charge a time price differential on retail charge accounts rather than interest.

(d) A borrower shall be given a copy of every document he or she is required to sign.

(e) Where any disclosure is required pursuant to this chapter that is also required by any Federal law or regulation, compliance with such Federal law or regulation shall be deemed to be compliance with this subchapter.

(f) No licensee shall require, as a precondition for the granting of credit, or for any other benefit or consideration from the licensee in connection with a loan, that the borrower engage in any other business activity with the licensee. Nothing in this subsection shall prohibit a licensee from offering to a borrower other services or products in connection with a loan.

(g) A licensee shall not require, nor receive, from a borrower a rebate of any portion of the proceeds of a loan that is not a permissible fee.

Law Review and Journal Commentaries

Will Your Clients Pay More Interest Than They Expect in 2000?
Harris Ominsky, 159 N.J.L.J. 20 (2000).

3:15-10.2 Secondary mortgage loans

(a) A secondary lender shall not require or accept from a borrower any collateral or security for a secondary mortgage loan other than a mortgage, indenture or any other similar instrument or document that creates a lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation.

(b) For purposes of (a) above, the co-signature of a person, other than a spouse or other person having an interest in the real property used as security for the loan, shall constitute prohibited collateral or security unless the co-signer is a joint borrower.

SUBCHAPTER 10. CHARACTERISTICS OF LOANS

Authority

N.J.S.A. 17:11C-49 and 17:1-15e.

(c) A person not having an interest in the real property used as security for the loan shall be considered a joint borrower if:

1. The borrowers sign an affidavit affirming their agreement to be jointly liable and to share in the proceeds of the secondary mortgage loan; and

2. The secondary lender issues the proceeds check or checks in all borrowers' names. If borrowers may access a line of credit by writing checks or otherwise, this requirement will be satisfied if all borrowers have the authority to draw against the account.

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

(e) A secondary lender is prohibited from engaging in the secondary mortgage loan business at a location that is utilized by a banking institution or savings and loan association as a main branch or any other office, except that no secondary lender shall be prohibited from engaging in the secondary mortgage loan business at a location utilized by a banking institution or savings and loan association, if the office and operations of the secondary lender are separate and apart and distinct from the offices and operations of the banking institution or the savings and loan association, and when employees of the banking institution or the savings and loan association are not employed by or soliciting for the secondary lender.

3:15-10.3 Consumer loans

(a) All consumer loans, except variable rate loans permitted pursuant to N.J.S.A. 17:11C-32, shall be repaid in substantially equal monthly installments of principal and interest computed on unpaid balances sufficient to liquidate the principal thereof, except as provided in subsection (b) below.

(b) In fixing the date of the first installment beyond one month, the number of days in excess of one month, but not in excess of 15 days, shall be counted after the expiration of one month from the date of the loan. The amount of the first installment may be increased by the amount of interest for the number of days in excess of one month.

(c) A consumer lender shall not knowingly grant a loan in one office to any borrower who already has a loan in another office operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or complete.

(d) When a consumer lender knows or has reason to know that the proceeds of loan of \$15,000 or less are to be delivered by the borrower to an individual already indebted to such consumer lender on a loan of \$15,000 or less, then such loans shall be construed as a single loan to such individual for the purpose of interest computations. If the aggregate of such loans ever exceeds \$15,000, interest on such accounts earned from the date such excess occurred shall be restricted to the rate on unpaid balances authorized

by the Interest and Usury Law, N.J.S.A. 31:1-1 et seq. and its implementing rule set forth at N.J.A.C. 3:1-1.1.

(e) Whenever a consumer lender has placed an account in the hands of an attorney or other agent for collection, all payments thereafter received by the consumer lender or by such attorney or agent, prior to entry of judgment on such account, shall be credited by the consumer lender to the account as of the date of receipt of such payment to the licensee or to such attorney or agent, and any such attorney or agent shall notify the consumer lender of the day any such payment is received.

(f) All out-of-State loans purchased shall be reported as a separate item in the consumer lender's annual report to the Commissioner.

(g) The required information concerning the amount of interest payable over the term of the loan shall be given on the assumption that the contract will be paid in accordance with the terms originally agreed upon. A variance tolerance of \$1.00 in the total amount of interest set forth in the loan contract is hereby authorized.

SUBCHAPTER 11. OTHER PERMISSIBLE LINES OF BUSINESS FOR CONSUMER LENDERS

Authority

N.J.S.A. 17:11C-49 and 17:1-15e.

Source and Effective Date

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

3:15-11.1 All activities prohibited except as authorized by this subchapter

No consumer lender shall conduct any business activities in its office except for activities authorized under the consumer lending license, activities specified in N.J.A.C. 3:15-11.2, and activities for which the consumer lender has obtained specific approval from the Commissioner as provided in N.J.A.C. 3:15-11.2.

3:15-11.2 Approved business activities for consumer lenders

(a) A consumer lender may engage in the activities listed below without securing specific approval from the Commissioner. The activities may be conducted in the same office, room or place of business where the consumer lender conducts the business of making consumer loans.

1. Any licensed activity permitted under the Act provided that the consumer lender secures proper licensing from the Department;

2. The home financing agency business. Any such business shall be conducted in accordance with the provisions of N.J.S.A. 17:16C-62 et seq., the Home Repair Financing Act;

3. The insurance premium finance company business. Any such business shall be conducted in accordance with the provisions of N.J.S.A. 17:16D-1 et seq., the Insurance Premium Finance Company Act;

4. The making of business or commercial loans;

5. The financing of installment contracts involving the time sale of goods or services that are to be utilized by the buyer for business or commercial purposes;

6. The leasing of personal property for business or commercial purposes;

7. Income tax preparation service;

8. First lien loans on non-residential real property provided that such business is conducted in accordance with the provisions of N.J.S.A. 31:1-1 et seq., N.J.A.C. 3:1 or Section 501 et seq., of the Federal Depository Institutions Deregulation and Monetary Control Act of 1980; and

9. Purchase of owner originated second mortgages under such reasonable terms and conditions as may be agreed to between the consumer lender and the mortgagee.

(b) A consumer lender who wishes to engage in the same office, room or place of business in an activity related to the financial services business not authorized by the consumer lending license nor specified in (a) above, may apply to the Commissioner for approval to engage in such activity. Such application:

1. Shall be in writing;

2. Shall identify that it is an application by a consumer lender to engage in an activity pursuant to N.J.A.C. 3:15-11.2;

3. Shall describe in detail how the activity in which the consumer lender wishes to engage is related to the financial services business;

4. Shall include a statement that the consumer lender will not require that a borrower engage in the activity as a precondition for granting a consumer loan; and

5. Shall include a statement that the consumer lender will conduct the activity in conformity with all applicable law and regulations.

(c) The Commissioner shall approve or deny an application submitted pursuant to (b) above within 90 days of receipt. If the Commissioner does not, within 90 days of receipt, deny a consumer lender's application submitted pursuant to (b) above, the activity shall be deemed approved.

(d) Consumer lenders who obtained, prior to July 1, 1997, approval from the Commissioner to engage in an activity not specified in N.J.A.C. 3:15-11.2 shall be deemed to be approved to engage in that activity under the Act.

SUBCHAPTER 12. IMPOSITION OF ADMINISTRATIVE PENALTIES

Authority

N.J.S.A. 17:11C-49 and 17:1-15e.

Source and Effective Date

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

3:15-12.1 Initiation of action

(a) Before an administrative penalty is imposed, the Department shall direct a notice by certified mail and regular mail, or by personal delivery, to the last known business or mailing address of the alleged violator. The notice shall include.

1. A reference to the statute, rule and/or administrative order alleged to be violated;

2. A concise statement of the facts on which the violation is based;

3. A statement of the administrative penalty, penalties or other relief sought to be imposed; and

4. A statement advising the alleged violator of the right to a hearing and the procedure for requesting a hearing.

(b) The notice may describe more than one violation, or more than one specific penalty or other relief for each violation. A single form of notice may be used to notify several alleged violators, so long as all are named and served with a copy of the notice in conformity with the provisions of (c) below.

(c) The notice shall be served by personal delivery, or by certified mail and regular mail to the alleged violator's last known business or mailing address, according to the files maintained by the Department. Service in this manner shall be considered lawful service on the alleged violator.

3:15-12.2 Failure to respond to notice

(a) The alleged violator's failure to respond, as required by the notice, within the time provided in the notice, shall be deemed to be an admission of all of the allegations, charges and conclusions contained in the notice, and no further proceeding shall be required prior to the execution of a final order that imposes the administrative penalty, penalties or other relief described in the notice.

(b) If no response is received within the time provided in any notice to suspend or revoke a license or authority to conduct any activity regulated by N.J.S.A. 17:1-1 et seq., the Department shall prepare a final order suspending or revoking the license or authority to conduct such activity, and mail a copy of the order to the violator at his or her last known business address on file with the Department.

(c) If the notice issued pursuant to this section provided for the payment of any fine, restitution or reimbursement to the Department for investigative or examination cost, and payment or proof of payment has not been received, the Department may proceed without further notice to suspend or revoke the license or authority of the violator as provided in N.J.S.A. 17:11C-53.

3:15-12.3 Consent to an administrative penalty

(a) In order for matters set forth in a notice to be deemed concluded by means of a consent by the alleged violator to the imposition of the administrative penalty or other relief described in the notice, the Department may require any or all of the following:

1. That the licensee return his or her license to the Department for cancellation;
2. The payment of a monetary penalty;
3. The reimbursement to the Department of the costs of investigation and examination;
4. The restitution of moneys owed any person; and
5. The execution of an administrative order that may include admissions of material facts, conclusions of law, and such other terms and conditions as the Commissioner, or his or her authorized designee may deem to be necessary and appropriate under the circumstances.

3:15-12.4 Request for a hearing

(a) An alleged violator shall have 20 calendar days from service of the notice of intent to impose an administrative penalty within which to deliver a written request for a hearing to: Chief of Investigations, Enforcement Bureau, New Jersey Department of Banking and Insurance, PO Box 040, Trenton, New Jersey 08625-0040.

(b) A request for a hearing shall include:

1. The name, address and daytime telephone number of the alleged violator;
2. A copy of the notice;

3. A statement requesting a hearing;

4. A specific admission, denial or explanation of each fact alleged in the notice, or a statement that the person is without knowledge thereof; and

5. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense.

(c) If a hearing request fails to include a specific admission, denial or explanation of each fact alleged, or a statement that the person is without knowledge thereof, the facts alleged in the notice shall be deemed to have been admitted.

(d) If a hearing request lacks any of the elements in (b) above, the Department shall, by certified mail and regular mail, or by personal delivery, advise the person of the deficiencies and provide an additional 10 calendar days from the issuance of the deficiency letter to correct them. If no reply correcting the deficiencies is received by the Department within 10 calendar days, the Department may issue a final order without granting a hearing.

(e) Upon receipt of a properly completed request for a hearing, the Chief of Enforcement or such other Department personnel as may be designated by the Commissioner, shall examine the request and may conduct or direct such further proceedings as may be appropriate, including, but not limited to, an interview with the alleged violator.

(f) Not later than 60 days after the receipt of a properly completed request for a hearing, the Chief of Enforcement, or such other Department personnel as may be designated by the Commissioner, shall advise the alleged violator of the manner of disposition, which may be as follows:

1. Terminated with or without prejudice;
2. Resolved by consent order, which may provide for a lesser or different administrative penalty; or
3. A finding that the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In such a case, the Department shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Practice Rules, N.J.A.C. 1:1.

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).