

3:1-16.2 Fees

(a) No lender shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise authorized by State or Federal law, either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda.

1. Application fee: Defined as a fee imposed by a lender or broker for accepting or processing a mortgage loan application. The application fee shall not be based upon a percentage of the principal amount of the loan or the amount financed;

2. Credit report fee, which shall not exceed the amount paid, or to be paid to the credit reporting agency by the party who receives the credit report directly from the credit reporting agency. The initial charge to the borrower may be based on a reasonable estimate provided that any amount in excess of the amount paid to the party providing the credit report is refunded to the borrower at or prior to closing;

3. Appraisal fee: If the appraisal is performed and delivered by a third party appraiser, the fee shall not exceed the amount paid, or to be paid, directly to the party performing and delivering the appraisal. If the appraisal is performed and delivered in-house, the fee shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers based on a survey of such fees charged by lenders to be conducted annually by the Department and published in the New Jersey Register. If the appraisal is performed by a third party appraiser and delivered by an appraisal management company, the fee charged by the lender shall not exceed the amount charged by the appraisal management company and shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers based on a survey of such fees charged by lenders to be conducted annually by the Department and published in the New Jersey Register. The initial charge to the borrower may be based on a reasonable estimate, provided that any amount in excess of the amount authorized above in this paragraph is refunded to the borrower at or prior to closing;

4. Commitment fee: Defined as a fee, exclusive of third-party fees, imposed by a lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its commitment and payable on or after acceptance of the commitment, except a lock-in fee charged pursuant to (a)5 below. The amount of any commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan or the amount financed;

5. Lock-in fee: Defined as that portion of the commitment fee charged by a lender as the consideration for execution and fulfillment of the terms of the lock-in agreement. A lock-in fee may comprise all of the commitment fee. No lock-in fee shall be received by a lender prior to inception of the lock-in period;

6. Warehouse fee: Defined as a fee charged by a lender not to exceed the cost associated with holding the particular mortgage loan pending sale to a permanent investor and payable at closing. The fee shall be based on the actual holding period and warehouse rate and the initial coupon rate on the mortgage loan. No profit shall accrue to the lender from the fee;

7. Third party fees: Limited to the following fees paid or actually incurred by a lender on behalf of a borrower:

i. Overnight delivery, messenger, fax, and other special delivery fees, provided that the type of service is authorized by the borrower in advance in writing or the specific service is authorized by the borrower in writing;

ii. Flood certification fees;

iii. Pest inspection or certification fees;

iv. Final inspection fee, not to exceed the amount of the fee paid or actually incurred to a third party or, if the final inspection is done in-house, not to exceed the going charge for such inspections by third parties;

v. Outside counsels' fees as permitted by N.J.S.A. 46:10A-6;

vi. Certified check fees, not to exceed the amount of the fee paid or actually incurred by the lender to the issuer of the certified check or, if the lender issues the certified check, not to exceed its usual fee for providing this service to its customers;

vii. Update fees to update the borrower's credit report and appraisal, not to exceed the amount of the fee paid or actually incurred by the lender to the credit reporting agency or appraiser or, if the appraisal is done in-house, not to exceed the going charge for such updates by third parties;

viii. One-time mortgage insurance premiums or, if the premiums are not collected on a one-time basis, not more than one-year of premiums;

ix. Survey fees;

x. Recording fees which shall not exceed the statutory amount for recording the deed, mortgage, and note, and which shall not include any amount for recording an assignment of the mortgage;

xi. Title and title search fees, including title insurance premiums;

xii. Taxes;

xiii. Tax service fees;

xiv. Radon test fees; and

xv. Fees not included among the above third party fees may be charged provided that prior written approval is obtained from the Department. The Department will only approve third party fees which are of benefit to the borrower and represent a cost not associated with the

lender's overhead. Accordingly, the Department will not approve fees for document preparation, processing, underwriting, file updates, lender reviews, copying, funding, and miscellaneous.

8. Discount points or fractions thereof: A discount point is defined as an amount of money equal to one percent of the principal amount of the loan and payable only at closing.

9. A service fee not to exceed \$25.00 to cancel the mortgage, providing that the borrower has received prior written notice of the fee required by the lender, and providing further that if the lender collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the lender shall refund the service fee to the borrower.

(b) If a lender or broker uses a term for a fee which is different than a term listed in (a) above, the lender or broker shall be able to document to the Department that the fee fits the definition and description of a permissible fee listed above, and that the fee functions accordingly.

(c) This section does not restrict the imposition of fees after the closing of a mortgage loan, such as late fees and variable-to-fixed rate conversion fees.

(d) The Commissioner is authorized to order any person to make restitution for fees charged which are impermissible or improperly charged, or to make refunds when required, under these rules. Nothing in this subsection is deemed to set a limit on the amount of fees a lender may charge on a mortgage loan.

Amended by R.1992 d.149, effective April 6, 1992 (Operative for Federally-chartered financial institutions is June 5, 1992).

See: 23 N.J.R. 2613(b), 24 N.J.R. 3(a), 24 N.J.R. 1380(a).

Amended by R.1993 d.423, effective September 7, 1993.

See: 25 N.J.R. 2625(b), 25 N.J.R. 4063(b).

Amended by R.1994 d.559, effective November 7, 1994.

See: 26 N.J.R. 3234(a), 26 N.J.R. 4347(b).

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

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

Rewrote (a).

Amended by R.2002 d.394, effective December 16, 2002.

See: 34 N.J.R. 814(a), 34 N.J.R. 4429(a).

Rewrote (a)3.

Public Notice: Appraisal Fee Survey.

See: 36 N.J.R. 2559(a).

Public Notice: Appraisal Fee Survey.

See: 37 N.J.R. 907(a).

Public Notice: Appraisal Fee Survey.

See: 38 N.J.R. 845(a).

Public Notice: Appraisal Fee Survey.

See: 41 N.J.R. 815(a), 3850(a).

Public Notice: Appraisal Fee Survey.

See: 42 N.J.R. 2991(a).

Case Notes

Licenses of mortgage bankers revoked. N.J. Dept. of Banking v. Whitestone Mortgage, 92 N.J.A.R.2d (BKG) 1.

3:1-16.3 Application process

(a) Before a lender or broker accepts any application fee in whole or in part, any credit report fee, appraisal fee or any fee charges as reimbursement for third party fees, the lender or broker shall make written disclosure to the borrower (which disclosure may be contained in the application) as required by this section or N.J.A.C. 3:1-16.10, respectively, setting forth:

1. A description and the amount of each such fee;

2. Whether all or any part of such fees are refundable;

3. The terms and conditions for the refund, if all or any part of the fees are refundable, provided that, where applicable, the terms and conditions may be disclosed by making reference to these rules with proper citation;

4. A realistic estimate of the number of calendar days required to issue a commitment following receipt of such fees by the lender. If the lender subsequently determines that the estimate is unrealistic, it may return the application and all fees paid and offer the borrower the opportunity to reapply subject to a new estimate;

5. The name or title of a person within the lender's organization to whom the borrower may address written questions, comments, or complaints and who will be required to promptly respond to such inquiries; and

6. For correspondent mortgage lenders, a statement indicating that the licensee is a correspondent mortgage lender and as such does not hold mortgage loans or service mortgage loans for more than 90 days in the regular course of business.

(b) The disclosures required in (a) above shall be acknowledged in writing by the borrower and maintained by the lender or broker and a copy of such acknowledgment shall be given to the borrower.

(c) Except where explicitly authorized to return an application, or for other reasons consistent with due diligence, a lender is obligated to process an application submitted to it and to exert conscientious effort to either grant or deny the application within the realistic estimate disclosed as required in (a) above.

(d) Not later than three business days after the lender receives the borrower's application, or before closing of the loan, whichever is earlier, the lender shall provide the borrower with a good faith estimate as a dollar amount or range of each fee for a settlement service which the borrower is likely to incur.

1. For the purpose of this subsection, "settlement service" shall mean a service related to the origination, processing, or closing of a mortgage loan, and for which the lender anticipates the borrower will pay a fee at or before settlement based upon the lender's general experience.