

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.

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. Correspondent 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 shall refund the service fee to the borrower.

(b) 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.

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

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

Deleted (a); recodified former (b) as (a) and former (c) as (b).

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

(c) 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, con-

SUBCHAPTER 9. PERMISSIBLE FEES

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

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

trols or has power to vote 10 percent or more of any class of voting securities of a corporate licensee.

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 (c)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 (c)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.

Amended by R.2002 d.353, effective November 4, 2002.
See: 34 N.J.R. 1775(a), 34 N.J.R. 3795(a).
Rewrote the section.

SUBCHAPTER 10. CHARACTERISTICS OF LOANS

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.