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Mortgage Educators
and Compliance

*4 Hour New Jersey SAFE State Law Pre-
Licensing Education Course (Course 11052)*

Mortgage Educators and Compliance

Course Provider #1400062

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Please note that the acronym N.J.A.C will be used to indicate New Jersey Administrative Code throughout this course. The shortened citation NJ Rev Stat will be used throughout the course to indicate the New Jersey Revised Statutes.

Chapter 1: Licensing Law and Regulation

Students will learn and understand New Jersey laws and regulations pertaining to the licensing process for mortgage loan originators, qualified individuals, mortgage brokers, lenders, and correspondent lenders. Students will also learn the disciplinary action procedures and the requirements for recordkeeping and reporting in New Jersey.

Objectives:

- Restate the requirements for initial licensure of mortgage loan originators, lenders, brokers, correspondent lenders, and qualified individuals
- Relate the renewal process requirements for mortgage loan originators, lenders, brokers, correspondent lenders, and qualified individuals
- Understand the disciplinary action procedures and powers of the Commissioner
- Discuss the requirements for recordkeeping and reporting in New Jersey

Exemptions from Licensure

Everyone is required to be licensed in the state of New Jersey if they plan to act as a mortgage loan originator (MLO), lender, or broker. A mortgage lender can act as a broker as long as they follow all laws pertaining to brokers (mostly concerned with disclosures required to be made by brokers that lenders are not required to make). As part of the licensing process, lenders and brokers are required to designate one qualified individual, which is a separate type of license in New Jersey. This qualified individual must be one of the officers, directors, partners, owners, or principals of the licensee, depending on how the company is organized. A qualified individual can act as an MLO without having a separate MLO license.

An MLO can only be employed by one entity at a time and is required to be directly supervised. A loan processor or underwriter can be an independent contractor, but they have to be licensed as an MLO. Think of an independent contractor as a 1099 employee versus a W-2 employee. 1099 employees are not under the direct supervision of the company they work for; they just work on contract and get paid by the entity.

There are other exemptions from licensure as a lender, broker, or MLO, including:

- Depository institutions, but subsidiaries and service corporations of these institutions are not exempt (JP Morgan Chase, Wells Fargo, and PNC are all depository institutions).
- A registered MLO who is registered under the SAFE Act. They are not required to do anything more than register with the NMLS; they do not have to apply for or meet the requirements for licensure (A loan officer in the local branch of JP Morgan Chase would be a registered MLO).
- A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, mortgage broker or MLO (Example: George has been Allen's attorney for many years. Allen is purchasing a new home and asks George to look over the mortgage documents. Allen pays George for this service. If George was paid by the lender who is originating the purchase of the new home, George would be required to be licensed, but since Allen is paying him as part of George's representation of Allen, he does not have to be licensed).
- A person licensed as a real estate broker or salesperson pursuant and not engaged in the business of a residential mortgage lender or residential mortgage broker (A real estate broker or salesperson who is not being compensated by the lender or broker would not have to be licensed).
- Any employer, other than a mortgage lender, providing mortgage loans to employees as a benefit of employment that are at an interest rate that is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with New Jersey law, and where the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest.
- The State of New Jersey or a municipality, or agency or instrumentality of the state that, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the Fair Housing Act, or in fulfillment of a regional contribution agreement with a municipality that has received a certification, employs or proposes to employ municipally generated funds, funds obtained through any State or Federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or advances, the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated (A local housing agency providing loans to provide affordable housing to local residents using State funds).
- Any individual who offers or negotiates terms of a mortgage loan:
 - With or on behalf of an immediate family member of that individual (Example: Archie negotiates the refinance of his mother, June's property).
 - Secured by a dwelling that serves as that individual's residence (Example: Lola negotiates the refinance on her own primary residence).

NJ Rev Stat 17:11C-54, 17:11C-55, N.J.A.C.3:15-2.1

Mortgage Lenders, Brokers and Correspondent Lenders

There are certain steps to obtain a license as a lender, broker or correspondent lender in New Jersey. Those steps include:

- Completing an application on the NMLS website.
- Completing a criminal history record background check (FBI and state) of all owners, principals, officers, directors, partners, members, and managers of a limited liability company, shareholders owning 10% or more of the applicant and qualified individual licensees, known as **control persons**.
- The identification of at least one of the control persons as the qualified individual.
- Submitting proof of a surety bond.
- All applications for a corporate, partnership, limited liability company, or sole proprietorship must also include an unqualified audited financial that demonstrates their net worth.
- An application for a corporate license by a corporation organized must include a copy of the applicant's Certificate of Incorporation as filed with the New Jersey Department of Treasury, Division of Revenue.
- An application for a sole proprietorship or partnership license where a trade name is to be used must be accompanied by a trade name certificate filed with the County Clerk's office in the county where the licensee is to be located, and any filing made with the New Jersey Department of Treasury, Division of Revenue. A copy of the applicant's Certificate of Formation as filed with the New Jersey Department of Treasury, Division of Revenue, must accompany an application for a limited liability company license.
- The non-refundable application fees.
- The certification that the principal office complies with New Jersey law.

N.J.A.C.3:15-2.2, NJ Rev Stat 17:11C-56

Issuance of the License

The Commissioner will issue licenses for residential mortgage lenders or residential mortgage brokers if the following conditions are met:

- A completed application for a new license has been submitted to the Commissioner.
- The submission to the Commissioner of the name, address, fingerprints, and written consent for a criminal history record background check to be performed on any officer, director, partner, or owner of a controlling interest of the person seeking licensure.
- A finding by the Commissioner that the financial responsibility, experience, character, and general fitness of the person seeking licensure demonstrates that, as a business licensee, the person will operate honestly, fairly, and efficiently.

- A demonstration of an affiliated qualified individual licensee for the applicant, as required.
- A demonstration of coverage by a surety bond.
- A demonstration of the tangible net worth.
- The payment of any required fees.

N.J.A.C.3:15-2.2, NJ Rev Stat 17:11C-56

Surety Bond requirements

A person who seeks an initial license as a mortgage lender or mortgage broker must obtain a surety bond of \$150,000. The bond must apply to the first \$50,000,000 of closed loan volume. Following the submission of each annual report, a mortgage lender or mortgage broker must, if necessary, increase the amount of the surety bond based on the following closed loan volumes and provide proof to the Department within 30 days of the submission of the report.

Closed Loan Volume	Required Surety Bond
\$0 - \$50,000,000	\$150,000
\$50,000,001-\$75,000,000	\$200,000
\$75,000,001-\$100,000,000	\$250,000
\$100,000,001 and over	\$300,000

The bond must run to the State, for the benefit of consumers injured by the wrongful act, omission, default, fraud, or misrepresentation of the mortgage lender, mortgage broker, qualified individual licensee, or MLO in the course of the activity authorized by the license. It must also be for the benefit of the Department for unpaid examination bills, unpaid penalties, unpaid assessments, and any other unpaid obligations of the mortgage lender or mortgage broker to the Department, including returned items submitted to the Department in payment of bills, penalties, charges, assessments, or fees. The surety company must pay consumers' claims based on the damages directly incurred by the wrongful act, default, fraud, or misrepresentation of the business licensee or any employee of such licensee.

Attorney's fees, pre- or post-judgment interest, court costs, and similar charges are not recoverable through the bond, unless such charges are included in a final judgment against the licensee and the surety company was given prior notice of the court action and an opportunity to respond.

A consumer cannot recover third party charges for services that are necessary and transferable for future mortgage loan applications. The bond cannot be payable for claims made by business creditors. The bond cannot be payable for treble damage claims under

the Consumer Fraud Act or any other State or Federal law.

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

A surety company cannot 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 the cancellation will take effect, and cancellation without notice will not be effective.

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

When the Department receives notice from a surety company of a claim against a business licensee that appears valid, a consumer is unable to obtain payment of a court judgment that was obtained against the licensee or the Department, in its sole discretion, otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the business licensee conducts or conducted business advising consumers of their right to file claims against the bond.

The Department is not required to publish notice when it has a claim against the bond for an examination charge, assessment or any other fee, charge or penalty, if there are no consumer claims or complaints that appear valid and could require payment from the bond. The Department will review all timely claims made against the bond of a business licensee, and decide which claims are valid. All consumers with timely valid claims must share pro rata in their claims against the bond.

The Department will then submit claims it has against the licensee for unpaid examination charges or other unpaid penalties, charges, assessments, or fees to the surety company for payment. Consumers submitting claims after the filing date indicated in the published notice, but before the expiration of the applicable statute of limitations period, can recover next against the bond in the order that the claims are submitted.

N.J.A.C 3:15-3.1- 3:15-3.8

Tangible Net Worth Requirement

This requirement applies only to each business licensee or applicant for a business license and does not apply to qualified individual licensees or MLOs. Tangible net worth must be computed on the accrual basis of accounting.

Each applicant for a business license as a mortgage lender or mortgage broker must demonstrate tangible net worth of at least the following amounts:

- Residential mortgage lender - \$250,000
- Correspondent mortgage lender - \$150,000
- Residential mortgage broker - \$50,000

As appropriate for the type of license they hold, business licensees must maintain tangible net worth of at least the amounts set forth. Applicants for business licenses and business licensees can be required by the Department to demonstrate adequate means to fund loans through lines of credit or otherwise.

If the tangible net worth of a business licensee falls below the amounts required, or if the business licensee is insolvent, the Department can act as it deems appropriate and necessary to protect the public. The action can include requiring the business licensees to operate pursuant to a Memorandum of Understanding or directing the business licensee to submit and comply with a capital plan within a time frame established by the Department to attain the tangible net worth.

When considering whether to suspend, revoke, or refuse to renew the license of a business licensee who does not have the required tangible net worth, the Commissioner will consider the following factors:

- How far the business licensee is below the required level of tangible net worth.
- The size of any warehouse line or table funding agreement, the institution(s) providing this credit, and any correspondent relationship that a business licensee may have with another financial institution.
- The number and amount of loans typically made or brokered by the business licensee.
- The history of consumer complaints received by the Department concerning the business licensee.
- Whether the mortgage lender has committed to make loans that it has been unable to fund.
- Any other factors reflecting on the ability and fitness of the business licensee to transact business in its licensed capacity.

N.J.A.C 3:15-5.1- 3:15-5.4, NJ Rev Stat 17-11C-64

Principal Office

A licensee must maintain a principal office. The maintenance of a principal office where there will be no direct contact with New Jersey consumers does not relieve the licensee of the obligation to maintain the confidentiality of any financial information in accordance with all applicable Federal and State laws and rules.

A principal office where the licensee has direct contact with New Jersey consumers regarding residential mortgage loan origination or brokering must be in a suitable location as determined by the Commissioner.

The Commissioner will consider the following factors in determining whether a location in New Jersey at which there is direct contact with New Jersey consumers is suitable:

- The location must have a space that may only be utilized for the licensee's business and by the licensee and its employees, structured in such a way as to ensure the maintenance of a consumer's right to privacy with respect to conversations and documents involving personal and financial information.
- The location must conform to all local ordinances and zoning requirements.
- The location must be reasonably accessible to the public.
- Any signage proposed for the location must clearly identify the licensee.
- The location must be reasonably free of noise and other distractions so as to permit customers to give appropriate consideration to the loan transaction.
- In addition, a location in a residence will not be considered suitable unless the office is separate from the residential area and conveniently accessible to all consumers through a separate business entrance.

The Commissioner will consider the following factors in determining whether an out-of-State location at which there is direct contact with New Jersey consumers is suitable:

- The location must ensure the maintenance of a consumer's right to privacy with respect to conversations and documents involving personal and financial information.
- The location of the out-of-State office must comply with all applicable Federal, State, and local laws in the state where the office is located.

Applicants for a business license must certify that the location of their principal office follows the requirements. A licensee may maintain more than one office and must secure a license for each branch office. Each branch office shall be under the supervision of a branch manager. A branch manager shall supervise only one branch office at any given time except as may be permitted by the commissioner in accordance with applicable

rules. In order to act in the capacity as a branch manager, an individual must either possess a mortgage loan originator license or, if unlicensed, the qualified individual licensee of the business licensee shall certify that when acting in the capacity of a branch manager the unlicensed individual shall not engage in any activity that would require licensure as an MLO. Notice of a change in the location of the business licensee's principal office must be entered into the NMLS within 10 days of the effective date of the change. After the processing of the change has been completed, the Commissioner will issue a new license reflecting the new designation.

N.J.A.C 3:15-1.3; NJ Statutes 17: 11C-65

Business Name

A business licensee can use alternate or trade names and can change the name(s) following approval by the Commissioner. The true name and all alternate or trade names must appear on the license issued by the Department. A licensee can use its true name, any or all of its alternate or trade names, or any combination of them, in its advertising. In residential mortgage closing documents, a licensee must use its true name, plus the alternate or trade name that it used in its contacts with the consumer involved in the transaction.

The number of alternate or trade names that can be used by a licensee in this State cannot exceed three. The exception is if the licensee provides evidence to the Commissioner that prohibiting it from using a fourth or subsequent alternate or trade name would produce a substantial and unreasonable hardship on the licensee. The unreasonable hardship must be beyond the mere ability to market under the new name. The licensee must also satisfy the Department that procedures have been established to assure that consumers will not be misled about the true identity of the licensee. The Commissioner will not grant an exception to the limitation of three alternate or trade names except in extraordinary circumstances.

The Commissioner can deny an application to use an alternate or trade name if:

- The name is lewd, offensive, or otherwise inappropriate for the conduct of the licensed activity.
- The name would create a substantial risk of misleading or confusing consumers.

Each business licensee must post its license conspicuously at its principal office location. Each business licensee must make the licenses of its qualified individual licensee(s) and MLOs available for inspection at the licensed office from where they operate. Each branch office license must be displayed at the branch office.

N.J.A.C 3:15-1.4-1.7

Branch Licensing

Applicants for branch office licenses must certify that the location of the branch office is in compliance with the requirements. Before conducting activities as a mortgage lender or mortgage broker from a branch office in this State or from a branch office outside this State that includes direct contact with New Jersey consumers regarding origination or brokering, the licensee must obtain a license for the branch office from the Department.

The application for a branch office license must include the following:

- The true name of the licensed entity and no more than three trade names or alternate names.
- The address of the principal office.
- The address of the branch to be licensed.

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. A proposed branch where the licensee will have direct contact with New Jersey consumers shall be in a suitable location per the suitability criteria. Licenses must run from the date of issuance to the end of the current licensing period.

Branch office arrangements will be restricted as follows:

- A branch office cannot be a separate business entity. If an office of another entity is purchased by or merged into a licensed mortgage lender or mortgage broker, the licensee must file for a branch office license. The filing must include documentation evidencing the acquisition or merger of that entity into the surviving licensed entity.
- A branch office cannot pay its operating expenses. Operating expenses include compensation of branch office employees, and payments for equipment, furniture, office rent, and other similar expenses incurred in operating a mortgage lending business.
- A branch office cannot maintain a banking account or accounts for the payment of expenses of that branch that is separate from the account or accounts of the licensee.
- A branch office cannot maintain contractual relationships with vendors for items such as leases, telephones, utilities, and advertising in the name of the branch office.
- A branch office cannot maintain lines of credit, warehouse agreements, or other investor agreements that are separate from those of the business licensee.
- A branch office cannot indemnify the mortgage lender or mortgage broker against damages incurred from any apparent, express, or implied agency representation by or through the branch office's actions.

N.J.A.C 3:15-2.4

Renewal of a License

A person who holds, in good standing, a license as a mortgage lender or mortgage broker who seeks to renew a license must submit the following in connection with the renewal application:

- A completed renewal application including the following:
 - The name of the applicant.
 - The location of the principal place of business of the applicant.
 - A certification or other submissions that the applicant has bond coverage and tangible net worth.
- No license will be renewed unless all assessments due and owing as of the expiration date of the current license have been paid.

All licenses expire on December 31st of every year unless they are renewed.

N.J.A.C 3:15-2.5

Renewal of a Branch Office

A business licensee in good standing must submit in connection with the branch renewal a completed renewal application including the following:

- The true name of the licensed entity and all trade names or alternate names.
- The address of the principal New Jersey place of business.
- The address of each branch whose license is being renewed.

NJ Rev Stat 17:11C-65, N.J.A.C 3:15-2.6

Late Renewal

A person who submits a renewal application for a business license after the expiration of the license, but no later than the last day of February immediately following the renewal period, can renew by paying a penalty for late filing of \$600 per license. A person who submits a renewal application for a branch after the expiration of the branch license but no later than the last day of February immediately following the renewal period, may renew by paying a penalty for late filing of \$500 per branch license. A person who submits a renewal application after the last day of February immediately following the expiration of the license will be treated as a new licensee and be required to submit an application with a fee.

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, imposing fines and penalties on anyone who engages in a licensed activity without being properly licensed.

N.J.A.C 3:15-2.7

Conversion of Mortgage Lender and Mortgage Broker Licenses

A person licensed, in good standing, as a mortgage lender must submit the following to convert from a mortgage lender to a correspondent mortgage lender, and a person licensed, in good standing, as a correspondent mortgage lender must submit the following to convert from a correspondent mortgage lender to a mortgage lender:

- The original license, the licenses of all branch offices, and the licenses of all qualified licensed individuals.
- A completed conversion form, including 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.
- For a conversion from a mortgage lender to a correspondent mortgage lender, a signed affidavit from the president or other principal who owns, controls, or votes 25% or more of the stock of the licensee, a general partner, a managing member 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.
- For a conversion from a correspondent mortgage lender to a mortgage lender, an audited financial statement demonstrating the required tangible net worth.

A licensee must submit the following to convert from a mortgage lender or a correspondent mortgage lender to a mortgage broker, or from a mortgage broker to a mortgage lender or a correspondent mortgage lender:

- The original license, the licenses of all branch offices, and the licenses of all qualified licensed individuals.
- A completed conversion form, including 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.
- For a conversion from a mortgage lender or a correspondent mortgage lender to a mortgage broker, a signed affidavit from the president or other principal who owns, controls, or votes 25% or more of the stock of the licensee, a general partner, a managing member 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.

- For a conversion from a mortgage broker to a mortgage lender or a correspondent mortgage lender, an audited financial statement demonstrating the required tangible net worth.

The Department will approve an application for conversion of a license 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.

N.J.A.C 3:15-2.9

Replacement of a Qualified Individual

If a qualified individual licensee upon whom a corporation, partnership, association, limited liability company, or other entity relies for its license, has his or her qualified individual license revoked or suspended by any state, or allows the license to lapse, or for some other reason is no longer affiliated with the business licensee, the business licensee must notify the Commissioner within 10 days of the event.

Also, the business licensee must appoint another qualified individual licensee within 90 days of the effective date of the termination of the former qualified individual licensee's affiliation with the business licensee for any reason. The Department can extend the 90-day period for good cause upon written request of the business licensee.

A qualified individual licensee must satisfy all applicable requirements and must be responsible to perform the following:

- Supervise the operations of the licensed office(s) to ensure that the business is being conducted per applicable State and Federal laws and regulations.
- Supervise the prompt review and response to Department communications regarding consumer complaints and inquiries regarding the licensee's licensed activities.
- Supervise the prompt review and response to Department communications relating to on-site examinations, including requests for scheduling, responses to examination findings and responses to directives arising from examinations.
- Ensure the proper completion and timely submission of the required licensees annual report filing, as well as any other special reports or surveys that can be requested by the Department.
- Ensure that license renewals and other licensing matters such as new branch office applications, changes of address, changes of name, change of control, and requests for additional licenses are submitted to the Department or NMLS, as applicable, and accompanied by the required documentation.

- Have and maintain sufficient knowledge of all applicable Federal and State statutes and rules.
- Ensure that all employees operating as MLOs are duly licensed and that copies of the licenses issued for all MLOs are available for inspection at the licensed office where they operate.

N.J.A.C 3:15-2.13

Change of Control

A business licensee must file a completed application for approval whenever a change of control of ownership of 25% or more of the licensee is planned. The change of control request must be submitted at least 90 days prior to the anticipated sale date and include:

- A fully executed change of control form.
- A copy of the executed stock purchase agreement or other agreement evidencing the proposed sale.
- A copy of the corporate resolution providing that existing officers or directors cease to hold positions and that new officers or directors are appointed, if applicable.
- Each new officer, partner, member, or manager of an LLC, director, and any other individual who, as a result of the sale, transfer, or change of control owns at least 10% of the business will satisfy requirements.

The Commissioner must approve the sale or transfer or change of control unless, after an opportunity for a hearing, it is determined that there are sufficient grounds to deny the application. Unless the Commissioner issues a preliminary denial of the application and affords the applicant an opportunity for a hearing within 90 days of the Commissioner's receipt of the completed application, the application will be deemed approved.

NJ Rev Stat 17:11C-69, N.J.A.C 3:15-2.13

Discontinuation of Lender or Broker Business Activity

When a mortgage lender or mortgage broker discontinues its licensed business operations in New Jersey, the business licensee must:

- Surrender the entity's current license(s), as well as the license of each qualified individual licensee, branch office, and MLO.
- Identify, in writing, if there are any New Jersey residential mortgage loans being processed and provide the total number of any such loans, together with the consumer's names and addresses and the property address for each loan.
- Identify, in writing, the number of New Jersey residential mortgage loans being processed that have scheduled closing dates and such dates and provide the consumers' names and addresses and the property address for each loan.

- Identify, in writing, the location of the loan files of pending New Jersey residential loan applications.
- Identify, in writing, the location of other loan files required to be maintained under New Jersey law and regulations.
- Identify, in writing, any arrangements that have been made to have other entities take over loan files, together with complete information on the name, address, telephone number, and contact person of entities involved in such arrangements.
- Identify, in writing, the name and telephone number of person(s) within the licensee's operation designated to handle consumer problems that may arise.
- Satisfy all outstanding obligations owed to the Department.
- Satisfy all filing requirements, including the final annual report, which report will be for the year in which the licensed lender discontinues its licensed business operations in New Jersey.
- Pay all assessments due and owing and prepay the base assessment for the year of the discontinuance by paying the amount of the most recently billed base assessment within 15 days after ceasing business or upon being acquired. If the said amounts are not paid, the Department will proceed against the bond. Adjustments to the base assessment, if any, and the final volume assessment for the year of discontinuance will be billed in the year following the discontinuance. In the event of an acquisition, the amount carried forward will be paid by the acquiring entity.
- Identify, in writing, the name, address and phone number of the person within the licensee's operation responsible for the payment of assessments.

N.J.A.C 3:15-2.17

Required Notifications

A licensee must notify the Department, in writing, within 15 days of the occurrence of any of the following:

- Upon each arrest, indictment, or conviction of the licensee, or of any officer, director, partner, member, owner, or substantial stockholder of the licensee in this State, in another state, or in any Federal jurisdiction for any offense, crime, or misdemeanor, except for a motor vehicle violation.
- Upon each revocation, denial, suspension, or restraint of a business or professional license, registration, certificate, or other right to engage in business issued to the licensee, or to any officer, director, partner, member, owner, or substantial stockholder of the licensee, or to any affiliate thereof, by this State, by another state or by the Federal government.
- Upon filing a petition of bankruptcy or reorganization by the licensee, or by any officer, director, partner, member, owner, or substantial stockholder of the licensee.
- Upon the fining, penalizing, or disciplining of the licensee, or any affiliates, by this State, by another state or by the Federal government.
- Upon the involvement of the licensee, or any officer, director, partner, member, owner, or substantial stockholder of the licensee in any activity that may have a

substantial impact on the ability of a licensee to engage in the licensed activity in a prudent or worthy manner.

- The entry of any final judgment in a civil or administrative action against the licensee upon the grounds of fraud, misrepresentation, or deceit.
- Failure to demonstrate financial responsibility through disregard in the management of the licensee's financial condition. Occurrences which indicate a disregard in the management of the licensee's financial condition includes but are not limited to:
 - The entry of any civil judgment against the licensee which is not appealed and remains unsatisfied except judgments solely as a result of medical expenses.
 - The issuance to the licensee of a tax lien or other government lien.
 - The entry against the licensee of a judgment of foreclosure.
 - The receipt of notifications within a six-month period that two or more of the licensee's accounts with creditors are 90 or more days in arrears.

N.J.A.C 3:15-2.18

Fees Associated with Licensing

All fees associated with licensing must be paid electronically to the NMLS for administration of the nationwide database and collection of fees payable to the Department. A person who is applying for an initial individual or business license under the Act must pay a non-refundable application fee as follows:

- Business license - \$1,200
- Each branch office - \$1,000
- Qualified individual licensee - \$500
- Mortgage loan originator - \$150
- Change of affiliation by mortgage loan originator - \$50
- Change of affiliation by qualified individual licensees - \$250

NJ Rev Stat 17:11C-58, N.J.A.C 3:15-4.1

Mortgage Loan Originators and Qualified Individuals

An individual applying for a qualified individual license, or MLO, must comply with the following conditions and provide the following submissions, as applicable:

- A criminal history record background check in connection with an application by submitting:
 - Fingerprints, for submission to the FBI and any other governmental agency authorized to receive this information for a State, Federal, and International criminal history record background check, to determine whether the

individual has been convicted of, or pled guilty or no contest to, a felony in a domestic court in this State that includes any crime of the fourth degree or higher, punishable by a term of imprisonment of more than one year, or in a foreign or military court:

- During the seven-year period preceding the filing of the application; or
- At any time preceding the filing of the application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.
- Personal history and experience and permission from applicant to obtain:
 - An independent credit report from a consumer reporting agency for use in making a determination of character and fitness.
 - Information related to any administrative, civil, or criminal findings by any governmental jurisdiction, to determine whether the individual had an MLO license revoked in any governmental jurisdiction, except that a subsequent, formal vacation of a revocation is not considered disqualifying information.
- Evidence of good character and fitness showing the applicant has demonstrated financial responsibility, character, and general fitness to command the confidence of the community that the applicant will operate honestly, fairly, and efficiently. Evidence that the applicant is not financially responsible includes disregard in the management of his or her financial condition, which can include, but not be limited to:
 - Current outstanding judgments, except judgments solely as a result of medical expenses.
 - Current outstanding tax liens or other government liens and filings.
 - Foreclosures during the three-year period preceding the filing of the application.
 - A pattern of seriously delinquent accounts during the three-year period preceding the filing of the application.
 - A determination by the NMLS that the applicant cheated or attempted to cheat on an examination required for licensure or for continued is evidence that the applicant lacks the requisite character and fitness for licensure.
- Evidence of completion of pre-licensing education and passage of the written Federal and State law tests.
- Payment of required fees, including non-refundable application fees.

N.J.A.C 3:15-2.3, NJ Rev Stat 17:11C-57

Pre-licensing Education

An applicant for a new license as an MLO or a qualified individual licensee must complete, as a pre-licensing requirement, at least 20 hours of education from a provider approved by the NMLS. The approved education course must include, at a minimum:

- Three hours of instruction on federal statutes and regulations
- Three hours of instruction on ethics including instruction on fraud, consumer protection, and fair lending issues
- Two hours of training related to lending standards for the nontraditional mortgage product marketplace
- Four hours of instruction on state-specific statutes and rules
- Eight hours of undefined electives.

Pre-licensing education requirements of another state that were approved by the NMLS and completed by an applicant for licensure as a New Jersey qualified individual licensee or MLO shall be accepted as credit towards completion of the pre-licensing education requirements.

Example: Annabelle wants to become licensed in both New York and New Jersey. She starts out by taking 20 hours of education that includes three hours of federal law, three hours of ethics, two hours of nontraditional mortgage product marketplace training, eight hours of electives, and three hours of state-specific education regarding New York. All of that education would go towards the requirements for New Jersey; Annabelle would just need to take four hours of education regarding New Jersey law and regulations to complete her pre-licensing education requirement.

NJ Rev Stat 17:11C-59, N.J.A.C 3:15-2.10

Licensing Examination Requirement

An applicant for a new license as an MLO or qualified individual licensee will pass, as a pre-licensing requirement, a national written test developed by the NMLS and administered by a test provider approved by the NMLS. The National written test must examine, at a minimum, the applicant's knowledge of the topics listed below:

- Federal and state statutes and regulations about mortgage loan origination
- Other federal and state statutes and rules, including those about fraud, consumer protection, fair lending issues, and the nontraditional marketplace
- Ethics
- The test for licensure as a qualified individual must also include questions relating to employee supervision, office management, licensing, and regulatory compliance issues.

An applicant must achieve a test score of at least 75% to obtain a passing score. An applicant who fails to pass the written test must wait at least 30 calendar days to take the test again. An applicant can take the written test up to three consecutive times. If the applicant fails to pass the written test after three consecutive attempts, they must wait

least six months to take the test again. An MLO or a qualified individual licensee who fails to maintain a valid license for five years or longer is required to take the test and pass it as part of the requirements for reinstatement.

NJ Rev Stat 17:11C-60, N.J.A.C 3:15-2.11

Approved Inactive Status

A formerly licensed individual whose New Jersey license is not under suspension or revoked and who has not had an MLO license or a qualified individual licensee license or its equivalent revoked in any other governmental jurisdiction can, for up to five years from the date on which the license was placed in inactive status, apply to reactivate the individual license. The inactive individual licensee must complete the continuing education requirements in effect for the last calendar year in which the individual was licensed.

An applicant for an MLO license who has met all the requirements for licensure except the demonstration of employment will be considered to be in **approved inactive status** and designated as such in the NMLS and may remain in that status for as long as the applicant renews the approved inactive status annually and meets the continuing education requirements.

An applicant for licensure as an individual licensee who has unresolved credit issues but who demonstrates to the satisfaction of the Commissioner a good faith effort to achieve the level of financial responsibility required can be deemed in **approved conditional status** and be designated as such in the NMLS. The applicant may remain in approved conditional status so long as the applicant continues to demonstrate substantial progress toward the achievement of financial responsibility, renews the applicant's MLO license or qualified individual license annually, and meets the continuing education requirements. Upon demonstration to the satisfaction of the Commissioner that the applicant has achieved financial responsibility and predicated on the applicant continuing to fulfill all other applicable requirements for such status, the license status of the individual will be revised to approved. While the applicant's license is in approved conditional status, an individual may engage in activity as a mortgage loan originator or a qualified individual licensee in accordance with the New Jersey law and all applicable rules.

For applicants as individual licensees, an offense that was the subject of an order granting the individual admission to the New Jersey Pre-trial Intervention Program, and such offense having been dismissed with prejudice, or the applicant having been admitted to a functionally equivalent program of another state or of the United States whereby an offense was dismissed or a felony conviction was avoided or eliminated from the record upon the

applicant having successfully completed the program as established by the submission of confirming documentation, will not be considered disqualifying information.

The Commissioner may deem abandoned an application for licensure as an MLO, transitional MLO, or a qualified individual licensee if the application fails to meet all of the requirements of a complete application within 90 days of the date on which the application was initially submitted. A person whose application is deemed abandoned shall be required to submit a new application in order to pursue licensure as an MLO, transitional MLO, or a qualified individual licensee. The commissioner may adopt rules addressing notices of abandonment and the subsequent submission of new applications.

N.J.A.C 3:15-2.8; NJ Statutes 17:11C-57

Transitional License

A transitional MLO license is a license that may be issued to an out-of-state MLO, and that provides temporary authority to engage in the business of mortgage loan origination in this state pending the completion by the transitionally licensed individual of the requirements for full licensure as a New Jersey MLO as set forth in section 7 of P.L. 2009, c. 53 (C.17:11C-57). A transitional MLO license shall be valid for a term of no longer than 120 days from a complete application, during which time a transitional MLO licensee duly sponsored by a business licensee may engage in business as an MLO.

The application for a transitional MLO license must include a completed application for full licensure, authorization for a credit report through NMLS, and authorization for a criminal background check ("CBC") in the form of an FBI CBC. The individual may use the 120-day period to fulfill the New Jersey specific pre-licensing education and written test requirements prescribed in N.J.A.C. 3:15-2.10 and N.J.A.C. 3:15-2.11 of the New Jersey Administrative Code.

NJ Transitional Mortgage Loan Originator License New Application Checklist (Individual)

Renewal of an MLO or Qualified Individual License

When applying to renew a license, a qualified individual licensee or MLO in good standing must submit a completed renewal application including, at a minimum, the following:

- Payment of any required fees to the NMLS.
- Evidence of completion of continuing education requirements.

The license must contain the name of the MLO, the name of the employing licensee, and the address of the office location of the employing licensee where the MLO operates. The employing licensee must make the licenses available for inspection at the licensed office where the MLO operates.

Within five calendar days after an MLO ceases his or her affiliation with a business licensee, the employing licensee must return the license to the Department. It is not necessary for an employing licensee to return the license of an MLO who changes from one branch location of the employing licensee to another branch office. Within 10 calendar days after a qualified individual licensee ceases to be affiliated with a business licensee in that capacity, the qualified individual licensee must return the license to the Department. All licenses expire on December 31st of every year.

N.J.A.C 3:15-2.14

Late Renewal

An individual who submits a renewal application after the expiration of the license, but no later than the last day of February immediately following the renewal period, can still renew by paying a penalty for late filing:

- Qualified individual license - \$250
- Mortgage loan originator - \$75

An individual who submits a renewal application after the last day of February following the expiration of the license will be treated as a new licensee and be required to submit an application with a fee.

N.J.A.C 3:15-2.15

Continuing Education

An applicant for renewal as an MLO or qualified individual licensee must, during the license term preceding renewal, complete at least 12 hours of continuing education from a provider approved by the NMLS. The approved continuing education course(s) must include, at a minimum:

- Three hours of instruction on federal statutes and regulations
- Two hours of instruction on ethics, including instruction on fraud, consumer protection, and fair lending issues
- Two hours of training related to lending standards for the nontraditional mortgage product marketplace
- Two hours of instruction on state-specific statutes and rules
- Three hours of electives

Credit for an approved continuing education course can be applied:

- Only in the calendar year in which the course is taken.
- Provided that it is not the same approved course already taken in that calendar year or the immediately preceding calendar year.

Successive Year Rule and Continuing Education

Each continuing education course that is approved by the NMLS is assigned a course number. MLOs need to take note of this because an MLO cannot take the same course two years in a row to satisfy their continuing education requirements. For example, Erin took course #4455 to satisfy her eight hours of continuing education for 2020. Erin cannot take course #4455 to satisfy her eight hours of continuing education for 2021; she must take another course.

A licensee who is an approved instructor of an approved continuing education course can receive credit towards the individual's continuing education requirements for the content of the course taught at the rate of two hours of credit for every one hour of an approved continuing education course taught.

Any continuing education requirements of another state reviewed and approved by NMLS and completed in another state by the applicant for renewal will be accepted as credit towards completion of the continuing education requirements in this state.

Reciprocity Between States

Every state requires continuing education for MLOs. New York requires 11 hours of education. Ohio requires eight hours of education. States realize that they are all asking for the same thing, so they allow for continuing education to apply towards multiple state requirements. If they did not allow that, a lot of individual MLOs who are licensed in multiple states would be taking hundreds of hours of continuing education each year. Instead, they only must take eight hours, and those eight hours satisfy either the whole or partial requirement for all states where they are licensed.

NJ Rev Stat 17:11C-61, N.J.A.C 3:15-2.12

Unique Identifier

Every residential mortgage lender or residential mortgage broker as qualified individual licensees, and every MLO licensee must provide, in a conspicuous manner, the unique identifier assigned to the licensee through the NMLS, on all residential mortgage loan application forms, solicitations, and advertisements, whether in print, broadcast, or

electronically transmitted, and on any other document established by regulation of the Commissioner. Every residential mortgage lender or broker as a business licensee must ensure the provision of the unique identifier by its qualified individual licensees and MLOs appear as required.

No residential mortgage lender, residential mortgage broker, or MLO, whether a business or individual licensee, may transact business using any name other than that named in the licensee's license, and if applicable, using any unique identifier other than the individual licensee's unique identifier assigned through the NMLS.

NJ Rev State 17:11C-72

Books, Records, and Annual Reports

Each business licensee must notify the Department of the place of business where the books, records, accounts, and other business documents of its activity as a mortgage lender or mortgage broker are kept. If the licensee moves the books, records, accounts, or other business documents, the licensee must notify the Department before the move.

A business licensee may keep its records at:

- A licensed office in this state.
- An unlicensed site in or out of this state, provided that the licensee secures the prior approval of the Department.
- A licensed office outside of this state, provided that the licensee secures the prior approval of the Department.

The approval of the Department to keep records at a site or office will be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at the site. The provisions of the agreement must include the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations and investigations, if any, and the right of the Department to rescind the agreement.

Business licensees operating more than one licensed office can maintain the general ledger at their principal office. The trial balance or balance sheet and profit and loss statement of the licensed office must be made available upon request to the examiner or investigator at the office where the general ledger is kept.

The books, accounts, and records that pertain to each business activity conducted by a licensee must be maintained separate and apart from the books, accounts, and records of

all non-licensed lines of business conducted by the licensee and be maintained so that an examiner or investigator can efficiently examine the various types of licensed activities.

Business licensees must preserve all books, records, accounts, and documents related to the business for at least three years after making the final entry on any application or loan. The denial or withdrawal of an application or the assignment or sale of a loan constitutes the final entry. In the case of an open-end loan, the licensee must preserve the books, accounts, and records for at least three years after each entry.

All books, records, accounts, and documents can be stored electronically as long as the electronically stored information can be produced in electronic format upon request by the Department or reproduced on paper and delivered to the Department within five days of the business licensee's receipt of a request from the Department to produce the records.

In the case of a business licensee that ceases to do business, the Commissioner can move and store abandoned books, accounts, and records in whatever form and make a claim against the bond for costs of moving and storage. Each licensee must maintain books and records per recognized accounting principles.

If a person licensed to act as a mortgage lender or mortgage broker maintains books and records on a basis other than the accrual method of accounting, that licensee must also maintain books and records on the accrual basis of accounting that states the tangible net worth of the licensee.

A licensee can reproduce documents and records relating to the operation of its business for the purpose of complying with requirements and can substitute the copy for the original. Each business licensee must maintain a loan application system containing the following information for each application for a first mortgage loan:

- The case number
- The application date
- The applicant's name
- The property address
- The disposition
- The type of loan
- The amount of the loan

Each business licensee must maintain for each first mortgage loan application the following data, if utilized by the licensee in connection with the first mortgage loan application:

- The loan application
- The loan commitment
- The Closing Disclosure
- The Loan Estimate
- All other written disclosures required in connection with the loan transaction by state or federal law
- The loan closing statement
- A copy of the mortgage note or bond
- The adverse action or rejection of application letter
- The appraisal report
- The credit report

Each business licensee must maintain a recordkeeping system that documents each of the following fees if charged to first mortgage loan applicants by the licensee:

- Appraisal fees
- Credit report fees
- Application fees
- Commitment fees
- Warehouse fees
- Third party charges

The borrower, or an agent applying on behalf of a borrower, must sign each loan application. If more than one borrower applies each borrower and each agent applying on behalf of a borrower must sign the application.

Each credit report where the applicant is charged a separate fee must be memorialized in a written memorandum or other written documentation. The memorandum or documentation must indicate that the credit history of the applicant was investigated and by whom.

Each appraisal report where the applicant is charged a separate fee for a first mortgage loan or a second mortgage loan must be memorialized in a written memorandum or other written documentation. The memorandum or documentation must indicate that the value of the property was evaluated and by whom.

Each person licensed as a mortgage lender must maintain a trustee account and ledger detailing receipts and disbursement of all funds deposited by the borrower or seller with the licensee in connection with the origination or closing of any loan. The funds must be held in accordance with the terms of a written agreement between the mortgage lender and borrower or seller, which provides that upon the occurrence of a specific condition or event, the funds or a portion will be disbursed to the borrower or seller. All such trust accounts must be reconciled at least quarterly. This does not apply to escrows collected or held by the mortgage lender for taxes or insurance.

One copy of each advertisement, including radio and television scripts, and any materials disseminated over the Internet or by any other electronic means must be kept on file in the business licensee's office for at least two years after the last date the advertisement was used and a notation of the date the advertisement was last used.

N.J.A.C 3:15-6.3, 6.9, 6.8, 6.6, 6.5, 6.4, 6.2, 6.1, NJ Rev Stat 17:11C-71

Recordkeeping Requirements for Secondary Mortgages

Each mortgage lender must maintain an individual record or ledger card for each secondary mortgage loan that includes:

- The account number
- The name and address of borrower (mortgagor)
- The address and physical description of mortgaged property
- The date of the secondary mortgage loan
- The amount of the secondary mortgage loan
- The appraisal or inspection fee
- The credit investigation fee
- The title search fee
- Legal fees
- Recording and filing fee
- Insurance premiums and types of coverage

- The interest charge
- The full amount of the secondary mortgage loan
- The terms by which the secondary mortgage loan is to be repaid
- The amount and to whom any commissions, fees, or points, if any, were paid by the licensee and the form of disbursement (for example, cash or check)
- A record of the computation of any rebate upon prepayment of the secondary mortgage loan in full before maturity
- A record of the computation of any refund of unearned insurance premium charge upon prepayment of the secondary mortgage loan in full before maturity
- The name and address of any subsequent holder of the secondary mortgage loan obligation if it is sold or assigned

Each person licensed as a mortgage lender must maintain an original or true copy of the following instruments, documents, accounts, books, and records for each secondary mortgage loan:

- Promissory note evidencing each borrower's secondary mortgage loan indebtedness
- Mortgage indenture or any other similar instrument or document that creates a lien on the real property that is taken as security for a secondary mortgage loan
- Credit life and accident and health insurance policy or a certificate of insurance when such insurance is obtained
- Closing statement for each secondary mortgage loan
- Appraisal or search, where utilized
- Individual ledger card or any other form or record which shows all installment payments made by the borrower and all other charges or credits to the borrower's account
- Individual file in which the borrower's application for a loan and any correspondence, including collection letters, memorandums, notes or any other written information pertaining to the borrower's account, shall be kept
- General ledger cash receipts and disbursements register, checkbook, canceled checks, and such other accounts, books, or records as shall be required by the Commissioner to ascertain whether the licensee has been conducting secondary mortgage loan business in full compliance.

N.J.A.C 3:15-6.7

Reports to the Department

Each business licensee must file a report with the Department annually on or before May 1st of each year. The report must be submitted on forms provided by the Department and indicate the tangible net worth of the licensee. The report must also indicate the warehousing lines available and outstanding. The Department will assess a penalty against any business licensee when the annual report is filed late.

Every residential mortgage lender and broker must additionally submit to the NMLS a mortgage call report of condition, in the form and manner, and with any information, at any time as may be required by the NMLS. Any negligently made false statement or knowing omission of material fact in connection with any report or supporting information filed with the Commissioner, NMLS, or through the NMLS with any federal or state agency is a violation of New Jersey law.

A licensee that fails to make and file its annual report with the Commissioner, or any report with or through the NMLS, in the form and within the time provided in this, will be subject to a penalty payable to the Commissioner of not more than \$100 for each day's failure concerning the annual report, and any penalty for a failure concerning a report to be filed with or through the NMLS, payable to the NMLS, and the Commissioner may revoke or suspend the licensee's authority to do business in this state.

NJ Rev Stat 17:11C-85, N.J.A.C 3:15-6.12

Reporting Requirements on Mortgage Foreclosure Actions

The following words and terms shall have the following meaning for purposes of this subchapter:

Adjustable-rate mortgage means a mortgage loan that does not have a fixed interest rate or on some other basis. During the life of the loan, the interest rate will change based on a specified index rate or on some other basis. Also known as adjustable mortgage loans or variable-rate mortgages.

Conforming mortgage means a mortgage with a loan amount that does not exceed the loan limits set by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) or their successors.

Creditor means a mortgagee or an agent or assignee of a mortgagee, such as the servicer, who has filed a complaint in the Superior Court of New Jersey seeking to foreclose upon a residential mortgage.

FHA mortgage means a mortgage insured by the Federal Housing Administration.

FICO score means a borrower's credit score calculated using methodology developed by Fair Isaac Corporation.

Fixed-rate mortgage means a mortgage with payments that remain the same throughout the life of the loan because the interest rate and other terms are fixed and do not change.

Interest-only mortgage means a mortgage where the borrower has the option of paying only the interest for a limited period of time.

Mortgage foreclosure proceeding instituted means the filing of a complaint in the Superior Court of New Jersey seeking to foreclose upon a residential mortgage.

Nonconforming mortgage means a mortgage with a loan amount that exceeds the loan limits set by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), or their successors.

Prime market rate mortgage means a residential mortgage given to a borrower with a FICO score of 660 or more.

Reporting quarter means the calendar quarter immediately prior to the month in which the data is being inputted in accordance with this subchapter.

Residential mortgage means a mortgage in which the security is an owner-occupied residential property of not more than four dwelling units as defined by N.J.S.A. 2A:50-55.

Servicer means a business that collects mortgage payments from borrowers and manages the borrower's escrow accounts.

Subprime market rate mortgage means a residential mortgage given to a borrower with a FICO score of less than 660.

USDA Rural Development Loan means a mortgage insured by Rural Development Office of the United States Department of Agriculture.

VA mortgage means a mortgage insured by the Veteran's Administration.

Within 30 days of the end of each calendar quarter, each creditor must file electronically on a form prescribed by the Commissioner, a report containing information about the number of residential mortgage foreclosure actions instituted by that creditor in that quarter.

Such reports must include the following information:

- The name of the servicer or the name of the mortgagee if there is no servicer.
- The name of the individual submitting the data.
- The total number of residential mortgages upon which a mortgage foreclosure proceeding was instituted by the creditor in the State of New Jersey during the reporting calendar quarter.
- The total number of residential mortgages on which a mortgage foreclosure proceeding was instituted during the reporting calendar quarter in each municipality in which a property being foreclosed upon is situated.

- The following information with respect to the residential mortgages on which foreclosure actions were instituted on properties situated in the respective municipalities:
 - The number of such mortgages executed in the respective years prior to the filing of the report, with a general category to capture the oldest mortgages reported upon, for example "mortgages executed prior to 2002.
 - The number of such mortgages that were fixed-rate mortgages
 - The number of such mortgages that were adjustable-rate mortgages.
 - The number of such mortgages that were conforming mortgages.
 - The number of such mortgages that were nonconforming mortgages.
 - The number of such mortgages that were VA mortgages.
 - The number of such mortgages that were FHA mortgages.
 - The number of such mortgages that were USDA Rural Development Loans.
 - The number of such mortgages that were prime rate mortgages.
 - The number of such mortgages that were subprime rate mortgages.
 - The number of such mortgages that were interest only mortgages.

A mortgage must be reported for every pertinent category. The individual submitting the data must certify to their being authorized by the creditor to do so and to the truthfulness of the reported data to the best of their knowledge. On a quarterly basis, the Department will post on its website, a report detailing the information reported by creditors on residential mortgage foreclosure actions instituted in the State. All creditors must retain copies of the information they report to the Department for at least three years from the date reported. The Commissioner can, during the retention period, request the production of a readable copy of the reported information for audit purposes.

N.J.A.C 3:10-9.2-9.4

Disciplinary Action

The Commissioner has the authority to do any of the following:

- Whenever it appears to the Commissioner that any person has engaged, is engaged, or is about to engage in any practice or transaction that is prohibited, the Commissioner can issue a cease and desist order if the Commissioner determines it necessary. In addition to any other remedy available, the Commissioner may also bring a summary action in a court of competent jurisdiction against a person, and any other person concerned or in any way participating in or about to participate in a practice or transaction in violation, to enjoin the person from continuing the practice or transaction engaged in, or from engaging in the practice or transaction, or doing any act in furtherance towards engaging in the practice or transaction.
- The Commissioner can impose a civil penalty not exceeding \$25,000 on any person for a violation. Each violation, including any order, rule, or regulation made or

issued, constitutes a separate offense. Additionally, each violation that constitutes a knowing violation will be considered a crime of the third degree.

- The Commissioner can order that any person who has been found to have knowingly violated any provision of New Jersey law and has caused financial harm to consumers, be barred from acting as a residential mortgage lender, residential mortgage broker, or MLO, or a stockholder, officer, director, partner or other owner, or an employee of a licensee, or acting in any other capacity. Violations of this final order will be considered a crime of the third degree.
- The Commissioner can order a person found to be in violation of this act to make restitution to any person aggrieved by the violation.
- The Commissioner can order any other remedial action with respect to a violation as the Commissioner deems necessary.

NJ Rev Stat 17:11C-70

Investigations by the Commissioner

The Commissioner can investigate or examine any residential mortgage lender, residential mortgage broker, MLO, or another person, as the Commissioner deems necessary, to determine compliance with New Jersey law. The Commissioner can examine the books, accounts, records, and other documents or matters of any licensee or other person.

Each licensee will be subject to an examination by the Commissioner, not more than once in any nine-month period, unless the Commissioner has reason to believe that the licensee is not complying with New Jersey law, or is not transacting business in accordance with law, in which case the Commissioner may conduct an examination at any time. The Commissioner has the power to compel by subpoena the production of all relevant books, accounts, records, and other documents and materials about an examination or investigation.

Examinations conducted are confidential. The examinations are subject to:

- Reporting and sharing procedures established by the NMLS.
- Public disclosure as required in the administration, enforcement, and prosecution of violations.

The cost of any investigation or examination shall be borne by the licensee. The Commissioner or the Commissioner's designee has the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, accounts, records, and other evidence.

NJ Rev Stat 17-11C-84

Authority of the Commissioner in Issuing Licenses

The Commissioner's authority to issuing licenses includes the following:

- The Commissioner may access, receive, and use any information or material required of an applicant or licensee, or any other information or material deemed relevant, to determine whether to issue or renew a license, or revoke, suspend, or refuse to renew a license.
- The Commissioner may refuse to issue, and may revoke, suspend, or refuse to renew, a residential mortgage lender or residential mortgage broker license, including the license of a qualified individual licensee or a branch office license, or an MLO license, or impose a penalty pursuant to this act, if the Commissioner finds, after notice and an opportunity for a hearing that any person, applicant for or holder of the license has:
 - Violated any of the provisions New Jersey law or any order, rule, or regulation.
 - Failed at any time to meet the requirements for licensure or withheld information or made a material misstatement in the application for the license.
 - Been convicted of an offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing, including, but not limited to, the disqualifying criminal activities, or had a final judgment entered against the person in a civil or administrative action upon grounds of fraud, misrepresentation, deceit, or failure to maintain books, accounts, records, and other documents.
 - Failed to comply with any reporting requirements.
 - Become insolvent.
 - Demonstrated unworthiness, incompetence, bad faith, or dishonesty in the transaction of business as a licensee.
 - Engaged in any other conduct that would be deemed by the Commissioner to be the cause for denial, revocation, suspension, or refusal of the license or license renewal.

A license of a business licensee may be suspended, revoked, or not renewed if any officer, director, partner, or owner of the licensee has committed any act that would be cause for suspending, revoking, or not renewing a license if issued to that person as an individual.

If the license issued to a residential mortgage lender or residential mortgage broker as a qualified individual licensee is revoked or suspended, the affiliated license issued to the business licensee will also be revoked or suspended by the Commissioner. If, within the time fixed by the Commissioner, in the case of a partnership, the connection between the offending qualified individual licensee whose license has been revoked or suspended is severed and that individual's interest in the partnership and share in its activities is brought to an end, the affiliated license will not be revoked or suspended.

In the case of an association, corporation, or other legal entity, the offending qualified individual licensee whose license has been revoked or suspended must be discharged and have no further participation in the legal entity's activities to prevent the revocation or suspension of the affiliated business license.

In the case of an offending qualified individual licensee who is an officer or director of the corporation or other legal entity, that individual must be required to divest fully himself of all stock, bonds, or other corporate holdings to prevent the revocation or suspension of the affiliated business license.

NJ Rev Stat 17-11C-70

Initiation of Action

Before an administrative penalty is imposed, the Department must 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 must include:

- A reference to the statute, rule, and administrative order alleged to be violated.
- A concise statement of the facts on which the violation is based.
- A statement of the administrative penalty, penalties, or other relief sought to be imposed.
- A statement advising the alleged violator of the right to a hearing and the procedure for requesting a hearing.

The notice can 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. The notice must 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.

N.J.A.C 3:15-12.1

Failure to Respond to Notice

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

If no response is received within the time provided in any notice to suspend or revoke a

license or authority to conduct any activity, the Department will 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.

If the notice issued 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.

N.J.A.C 3:15-12.2

Consent to Administrative Penalty

In order for matters 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 can require any or all of the following:

- That the licensee return his or her license to the Department for cancellation.
- The payment of a monetary penalty.
- The reimbursement to the Department of the costs of investigation and examination.
- The restitution of moneys owed any person.
- 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.

N.J.A.C 3:15-12.3

Request for Hearing

An alleged violator has 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.

A request for a hearing must include:

- The name, address and daytime telephone number of the alleged violator.
- A copy of the notice.
- A statement requesting a hearing.

- A specific admission, denial, or explanation of each fact alleged in the notice, or a statement that the person is without knowledge.
- A concise statement of the facts or principles of law asserted to constitute any factual or legal defense.

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, the facts alleged in the notice will be deemed to have been admitted.

If a hearing request lacks any of the elements, the Department will, 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 the Department, within 10 calendar days, receives no reply correcting the deficiencies, the Department can issue a final order without granting a hearing.

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

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 will advise the alleged violator of the manner of disposition, which may be as follows:

- Terminated with or without prejudice
- Resolved by consent order, which may provide for a lesser or different administrative penalty
- A finding that the matter constitutes a contested case. In such a case, the Department shall transmit the matter to the Office of Administrative Law for a hearing.

N.J.A.C 3:15-12.4

Chapter 2: Compliance

Students will learn and understand New Jersey laws and regulations pertaining to compliance with New Jersey law, including sections on prohibited conduct, insurance, appraisals, advertising, permissible fees, characteristics of loans, and secondary loans.

Objectives:

- Indicate what is considered a prohibited practice
- Describe the requirements for advertising
- Restate permissible fees
- Discuss the requirements for secondary mortgage loans
- Relate the requirements for insurance

Chapter Time: 50 Minutes

Prohibited Practices

The following practices are prohibited and a violation of New Jersey law with respect to any mortgage loan:

- No person will use the word "mortgage" or similar word in any advertising, sign, letterhead, business card, or like matter that represents that the person is soliciting, making, brokering, or negotiating mortgage loans unless they are licensed.
- No person can obtain or attempt to obtain a license by fraud or misrepresentation.
- No person can assist, or aid or abet a licensee with respect to any licensed activities unless properly licensed.
- No residential mortgage lender, residential mortgage broker, or MLO, whether a business or individual licensee, may make, advertise, print, display, publish, distribute, electronically transmit, telecast, broadcast, or cause or permit to be made, advertised, printed, displayed, published, distributed, electronically transmitted, televised, or broadcast, in any manner, any statement or representation which is false, misleading, or deceptive.
- No residential mortgage lender, residential mortgage broker, or MLO will engage in any unfair or deceptive practice toward any person, or directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers, lenders, or any other person, including any action to misrepresent, circumvent, or conceal the nature of any information or material particular of any transaction, or to obtain the real property that is, or intended to be, the security for the loan.

- No residential mortgage lender, residential mortgage broker, or MLO can advertise, solicit, or make, broker, or negotiate a mortgage loan for a specific interest rate, points, or other financing terms, unless those terms are available at the time of advertising, making, brokering, or negotiating the loan.
- No residential mortgage lender, residential mortgage broker, or MLO can make any statement or representation that the licensee will provide "immediate approval" of any mortgage loan application or "immediate closing" of a loan or will afford unqualified access to credit.
- No residential mortgage lender, residential mortgage broker, or MLO will fail to make any disclosures concerning a mortgage loan as required by federal and state law, including any order, rule, or regulation made or issued.
- No residential mortgage lender, residential mortgage broker, or MLO will make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage loan, including to any appraiser of the real property that is, or intended to be, the security for the loan for the purposes of influencing the appraiser's judgment with respect to the value of the property.
- No residential mortgage lender, residential mortgage broker, or MLO will, in connection with or incidental to the making of any mortgage loan, require or permit a party to the transaction to sign the loan agreement, promissory note, bond, or other mortgage instrument if it contains any blank space to be filled in after it has been signed, except a blank space relating to recording.
- With respect to any commission, bonus, or fee:
 - No person will pay or receive any commission, bonus, or fee to or from any person not licensed, or not exempt from licensure, in connection with soliciting, making, brokering, or negotiating any mortgage loan for a borrower.
 - A residential mortgage lender, residential mortgage broker, or MLO will not solicit, make, broker, or negotiate a contract with a borrower that provides in substance that the licensee can earn a commission, bonus, or fee through "best efforts" to obtain a mortgage loan, even though no loan is actually consummated for the borrower.
- No residential mortgage lender, residential mortgage broker, or MLO will charge or exact, directly or indirectly, from a borrower or any other person, any commission, bonus, fee, or charge that is not allowed.
- No residential mortgage lender or residential mortgage broker will fail to disburse funds in accordance with the licensee's agreements unless otherwise ordered by the Commissioner or a court of competent jurisdiction.
- No residential mortgage lender or residential mortgage broker will fail to place in escrow, immediately upon receipt, any money, fund, deposit, check, or draft entrusted to the licensee by any person, in a manner approved by the Commissioner, or to deposit the funds in a trust or escrow account maintained by the licensee with a depository institution, wherein the funds will be kept until the disbursement is properly authorized.

- If a residential mortgage lender or residential mortgage broker provides loan proceeds to a closing agent for the purpose of closing and settling a mortgage transaction, the licensee will not fail:
 - To present a certified check, cashier's check, teller's check, or bank check for the proceeds of the mortgage loan.
 - To arrange an electronic fund transfer for the proceeds of the loan.
 - To provide for payment, by cash, to the closing agent, at a reasonable time and place, prior to the time of the mortgage closing transaction. The closing agent will deposit the loan proceeds in a trust or escrow account that cannot be commingled with the agent's funds and must disburse the loan proceeds upon the closing or settlement per the settlement documents. Nothing requires the licensee to utilize a closing agent or to prevent the licensee from directly disbursing loan proceeds from the account of the licensee to the borrower and other persons entitled to receive disbursements from the settlement if a closing agent is not used. Nothing prevents the licensee from assessing a reasonable charge as per regulation to reflect the additional cost to the licensee for the issuance of a certified, cashier's, teller's, or bank check, or for arranging an electronic funds transfer. The reasonable charge will be fully disclosed at application, or at or prior to the issuance of the loan commitment. A "bank check" means a negotiable instrument drawn by a federal or state chartered bank, savings bank, or savings and loan association on itself or on its account in another federal or state chartered bank, savings bank, or savings and loan association doing business in this State, and a "teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.
- No residential mortgage lender, residential mortgage broker, or MLO can fail, without good cause, to truthfully account or deliver to any person any personal property, money, fund, deposit, check, draft, mortgage, document, or thing of value, that is not the licensee's property, or that the licensee is not in law or equity entitled to retain under the circumstances, at the time that has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery.
- No residential mortgage lender or residential mortgage broker can request that a borrower incorporate in connection with a secondary mortgage loan, or aid or abet a scheme to incorporate a borrower.
- No residential mortgage lender can make a secondary mortgage loan that has been referred by a retail seller, who, in connection with that referral, has required the borrower to purchase personal property or services, or has indicated that the purchase is necessary as a condition precedent for the loan.
- No residential mortgage lender or residential mortgage broker will 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.

RESPA Section 8

As we talked about under New Jersey law, residential mortgage lenders, residential mortgage brokers, and MLOs cannot charge or exact, directly or indirectly, from a borrower or any other person, any commission, bonus, fee, or charge that is not allowed. This correlates with RESPA Section 8.

Section 8 of RESPA was created to eliminate the payment of referral fees and kickbacks between parties in a real estate transaction. RESPA reconsidered legitimate business relationships and established the term and documentation required for Affiliated Business Arrangements (ABA).

An ABA is:

- A person who may refer business to a settlement service of a federally related mortgage loan, or an associate of such person, and has either an affiliate relationship with or a direct beneficial ownership interest of more than one percent in the provider of the settlement service; and
- Either person directly or indirectly refers business to that provider or influences the selection of that provider.

The ABA disclosure must be delivered to the borrower at the time of the referral.

An example of an ABA is if a mortgage lender's CEO has ownership interest in a title insurance company. If the mortgage lender's MLOs wants to refer their borrowers to use that title insurance company, the relationship must be disclosed between the CEO of the mortgage lender and the title insurance company at the time the MLO refers them.

Section 8 also states that no person may give or receive a fee, kickback, or any other form of valuable compensation (or arrange to do so) for referring a potential borrower to a certain lender or service provider for a federally related mortgage loan.

No one can either give or receive any portion, split, or percentage of any charge made for settlement service that is not actually performed. RESPA covers the costs associated with a loan and it states that fees must be reasonable but does not regulate the amount of fees.

Section 8 does not prohibit the payment of a fee to an attorney for services actually performed, payment to a title company for services actually performed, payment to a lender or broker for services actually performed, or payment of a bona fide salary, compensation, bonus or other payment for goods actually furnished or for services actually performed.

If someone violates Section 8 of RESPA, they are looking at a fine of up to \$10,000, up to one year in prison, or both. They also may be required to make payment to damaged parties up to three times the original fee that violated the section. If more than one individual is involved, all parties are liable to the damaged borrower both jointly and separately.

12 CFR 1024.8

What Constitutes a Thing of Value?

RESPA broadly defines a “thing of value” to include:

- Monies
- Things
- Discounts
- Salaries
- Commissions
- Fees
- Duplicate payments of a charge
- Stock
- Dividends
- Distributions of partnership profits
- Franchise royalties
- Credits representing monies that may be paid at a future date
- The opportunity to participate in a money-making program
- Retained or increased earnings
- Increased equity in a parent or subsidiary entity
- Special bank deposits or accounts
- Special or unusual banking terms
- Services of all types at special or free rates
- Sales or rentals at special prices or rates
- Ease or rental payments based in whole or in part on the amount of business referred
- Trips and payment of another person's expenses
- Reduction in credit against an existing obligation.

What does RESPA consider a referral? A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or pay a charge attributable in whole or in part to such settlement service. A referral also occurs whenever a person paying for a settlement service is required to use a particular provider of a settlement service.

Section 8 of RESPA permits referral fees to be paid to:

- A payment to an attorney at law for services actually rendered.
- A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance.
- A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan.
- A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.
- A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers).
- Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incidents thereto, or
- An employer's payment to its own employees for any referral activities.

Not all referrals arrangements fall under RESPA's referral restriction as outlined above. To simplify, the following arrangements are allowed:

1. Educational activities -These activities must not defray the expenses that the real estate broker/agent otherwise would have to pay. You can't pay for the real estate agent's CE or renewal fees, and it cannot be in exchange for, or tied in any way to, referrals.
2. Payments for Goods or Services Actually Provided – The fee has to be what market value is for the service provided. If it's in excess of that market value it would be a violation of RESPA Section 8.

3. Affiliated Business Arrangements

Based on these definitions, there are gray areas to what is and isn't allowed under Section 8 of RESPA. Each situation needs to be analyzed to determine whether it is a violation of Section 8.

Here are a couple of examples:

An MLO takes a real estate agent to lunch to introduce themselves and their services. This is OK. What would not be ok is if the MLO sends the real estate a gift card to a restaurant as a thank you for referring a borrower to them.

An MLO can provide content, coffee, and doughnuts for training real estate agents on new mortgage products. But it would not be acceptable for the MLO to pay the real estate agents' CE classes and filing fees for renewal.

An MLO can lease space from a real estate agent and pay fair market rent, but it becomes an issue if the MLO rents a conference room in the real estate agent's office for their closings at higher than market value.

A lender can sponsor a real estate agent's holiday party and receive recognition on invitations, programs, and signage. They can also receive tickets to attend, set up a table to display marketing materials and be given the opportunity to address all the attendees. But it would not be acceptable for the lender to pay for the party because of how many referrals they received from the real estate agents.

An MLO can send real estate agents seasonal candy bearing their logo or information, but it becomes an issue when the MLO only sends referring agents boxes of expensive candy as a holiday gift.

An MLO attends and caters an agent's caravan with signage touting promotional consideration beside displayed as business cards. This is allowed, but it's not ok if the MLO pays for the caterer for an agent's open house.

An MLO can create a flyer featuring themselves and an agent and have the agent print and distribute the flyer, but the MLO cannot create, print, mail, and pay for postcard featuring themselves, the lender, and the agent.

An MLO can't purchase tickets to a sporting event or pay for the real estate agents' round of golf. This would also be a violation of RESPA section 8.

12 CFR 1024.14

New Jersey & Section 8 Violations

On June 12, the CFPB [announced](#) that it has issued a [Consent Order](#) under which a New Jersey title services company, Stonebridge Title Services Inc., agreed to pay a \$30,000 civil money penalty for paying illegal kickbacks for referrals in violation of RESPA Section 8.

According to the CFPB's press release, Stonebridge paid commissions to more than 20 independent salespeople who referred title insurance business to the company. Stonebridge paid referral commissions of up to 40% of the title insurance premiums it received from consumers to the individuals who solicited title insurance business for the company. The amount of the commission was based on the value of the title insurance premiums multiplied by a commission percentage agreed to beforehand between Stonebridge and the independent salespersons.

Although the individuals who referred business to Stonebridge received W-2s, the CFPB determined that they were not "employees" who are allowed to collect commissions from employers for referrals under 12 C.F.R. § 1024.14(g)(1)(vii). According to the CFPB, the individuals acted as independent contractors and Stonebridge did not have the right or power to control the manner and means by which they performed their duties.

The settlement bars the title services company from taking a tax deduction or credit for the civil money penalty or from seeking or accepting reimbursement or indemnification for the penalty, including under any insurance policy.

Similar to other recent CFPB Section 8 enforcement actions, we have reported on involving a [law firm](#), [home builder](#), [national mortgage insurers](#), and a [mortgage lender](#). This matter was not initiated by the CFPB but was referred to the CFPB from another agency. In this particular settlement, the matter was referred to the CFPB by HUD.

*Used with permission: <https://www.consumerfinancemonitor.com/2014/06/16/cfpb-orders-new-jersey-title-services-company-to-pay-for-illegal-mortgage-referrals/>;
https://files.consumerfinance.gov/f/201406_cfpb_consent-order_stonebridge-title-services.pdf*

Insurance

A borrower will not be required to purchase credit life or accident and health insurance or credit involuntary unemployment insurance in connection with any mortgage loan. If the borrower consents in writing, a residential mortgage lender or residential mortgage broker can obtain or provide:

- Insurance on the life and on the health or disability, or both, of one borrower, and on the lives, health, or disability of two borrowers.
- Credit involuntary unemployment insurance with forms and rates filed and approved by the Commissioner per applicable regulations.

If a licensee obtains or provides any credit insurance for a borrower, or borrowers, a licensee may deduct from the principal of the loan and retain an amount equal to the premium lawfully charged by the insurance company. The premium can be charged monthly in the case of an open-end, secondary mortgage loan. The amount deducted and retained will not be considered a prohibited charge or amount of any examination, service, brokerage, commission, expense, fee or bonus, or other thing or otherwise.

If a borrower, or borrowers, obtain the credit insurance from or through a licensee, the licensee must show the amount of the charge for the insurance and cause to be delivered to the borrower, or borrowers, a copy of the policy, certificate, or other evidence of that insurance when the loan is made. Nothing prohibits the licensee from collecting the premium or identifiable charge for insurance permitted and from receiving and retaining any dividend, or any other gain or advantage resulting from that insurance.

A licensee can require a borrower to demonstrate that the property securing any mortgage loan is insured against damage or loss due to fire and other perils, including those of extended coverage, for a term not to exceed the term of the loan and in an amount not to exceed the amount of the loan, together with the amount needed to satisfy all prior liens on that property.

The licensee will provide the borrower with the following written statement, to be printed in at least 10-point bold type: *NOTICE TO THE BORROWER: YOU MAY BE REQUIRED TO PURCHASE PROPERTY INSURANCE AS A CONDITION OF RECEIVING THE LOAN. IF PROPERTY INSURANCE IS REQUIRED, YOU MAY SECURE INSURANCE FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.*

NJ Rev Stat 17:11C-73

Insurance matters for Mortgage Lenders

If insurance is lawfully required or obtained in connection with a loan, the insurance must 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.

It will be the responsibility of the mortgage 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 that the borrower contemplates getting in connection with a loan.

Each mortgage lender will 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.

If a mortgage 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 lender will immediately give written notice to the borrower and will promptly refund to or credit to the account of the borrower the amount collected from him or charged to him for such insurance.

If a credit life policy issued in connection with a loan contains no provision for designation of a second beneficiary, it will 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, other blood relative, or person equitably entitled to the insurance company.

N.J.A.C 3:15-7.1

Insurance Provisions for Secondary Mortgage Loans

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

If a borrower has re-paid a secondary mortgage loan in full, or if a beneficiary named in a policy under a claim is due a refund of unearned premiums, and the mortgage lender is unable to locate the borrower or beneficiary after due diligence, but in no event longer than 180 days, the licensee must return all unearned premiums to the insurer, stating the reason for it.

The lender can file evidence in the borrower's file of their efforts to locate the borrower. The "Sum of Digits Method," commonly known as the "Rule of 78ths," must compute all refunds and credits made by mortgage lenders. 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. When the refund or credit of the unearned insurance premium is less than \$1.00, no refund is required.

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

If a secondary mortgage loan contract contains credit life insurance, the mortgage lender must file a death claim with the insurer upon receipt of notice of the death of the insured. The death claim filed by a mortgage lender with an insurer will be made for the full amount of the coverage held at death by the insured.

A policy for credit life insurance, credit health, or disability insurance, or credit involuntary unemployment insurance can 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 will be considered as the only borrower insured by the policy, and the mortgage lender must disclose to the borrower in writing the effect of the order of signing the loan contract.

N.J.A.C 3:15-7.2

Maximum Charge

No lender or other legal entity servicing mortgages will make any charge in excess of \$5.00 for the substitution in midterm by the mortgagor of an insurance policy or policies.

N.J.A.C 3:10-5.1

100% Appraised Value Loans

A licensee may originate or acquire mortgage loans up to 100% of the appraised value of the property for which:

- The applicant has insufficient resources to make a down-payment of 10% or more.
- The loan does not exceed the lending limits for FHA loans by County (published at www.fha.com).
- The aggregate amount of loans originated or acquired cannot exceed 5% of the capital funds of the bank or savings bank without prior approval of the Commissioner.
- One or more of the following conditions are met:
 - The mortgage loan is made to an individual or family of low or moderate income who will occupy the property as a primary residence.

- The mortgage loan is made to a first-time homebuyer who will occupy the property as a primary residence.
- The mortgage loan is made to an individual or family who currently resides, or who will reside, in a low or moderate income census tract and who will occupy the property to be mortgaged as a primary residence.
- The mortgage loan is made to an individual or family who is seeking a loan in connection with any State or Federal agency affordable housing construction, purchase, or refinancing program.

N.J.A.C 3:10-8.1

Advertising

If a mortgage lender requires a borrower to insure the collateral assigned as security for a loan, the licensee cannot 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. All solicitations and advertisements by licensees, whether in print, broadcast, or electronically transmitted, will include, in a conspicuous manner, the unique identifier assigned to the licensee by the NMLS. Business cards will be considered advertisements.

Each verbal advertisement for a loan that a licensee makes or authorizes to be broadcast or disseminated by radio, television, Internet, or other electronic means, will include a statement indicating whether the advertisement is for a first or second mortgage loan. The statement can be made by either verbal or visual means if visual means are used, and the statement will appear for the entire time the advertisement is broadcast or disseminated.

No advertisement can contain false, misleading, or deceptive claims or misrepresentations. In all advertisements that make express or implied claims that are likely to be misleading in the absence of certain qualifying information, such qualifying information will be disclosed in the advertisement in a clear and conspicuous manner. The use of any of the following types of advertising will be deemed to be misleading or deceptive:

- A form that has the appearance of a check, money order, draft, or other instrument that is normally used for the transfer of funds.
- 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.
- The placing by a business licensee of a supply of blank notes, chattel mortgages, security agreements, applications, or other similar forms in any place other than a licensed office.

Nothing prohibits the use of the term "mortgage banker" or "correspondent mortgage banker" by duly licensed mortgage lenders or correspondent mortgage lenders. A person who is not licensed or exempt will not offer residential mortgage loans in this State through direct or indirect solicitation or advertisement in print, electronic, or any other medium.

N.J.A.C 3:15-8.1-8.3

Federal Requirements Related to Advertising

There are a lot of federal requirements related to advertising, including the MAP Rule (Regulation N), the Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), and the Equal Credit Opportunity Act (ECOA).

In this section we are going to briefly talk about a few things related to federal law and how it relates to GA law related to advertising.

It is a violation of The MAP Rule (Regulation N) for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

- Interest
- APR

An unfair, deceptive, or abusive act or practice may also violate other federal or state laws. For example, pursuant to the TILA, creditors must “clearly and conspicuously” disclose the costs and terms of credit. An act or practice that does not comply with these provisions of TILA may also be unfair, deceptive, or abusive.

Conversely, a transaction that is in technical compliance with other federal or state laws may nevertheless violate the prohibition against UDAPs (Unfair Deceptive Acts and Practices -under the Dodd-Frank Wall-Street Reform and Consumer Protection Act). For example, an advertisement may comply with TILA’s requirements, but contain additional statements that are untrue or misleading, and compliance with TILA’s disclosure requirements does not insulate the rest of the advertisement from the possibility of being deceptive. If you intend to do any advertising, you must ensure that you are compliant with all federal and New Jersey state laws related to advertising. If you are ever in doubt, get the advice of a compliance officer or an attorney.

What does it mean for something to be deceptive?

Deceptive means:

- A representation, omission, or practice that misleads or is likely to mislead the consumer.
- A consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances.
- The misleading representation, omission, or practice is material.

What does it mean for something to be misleading?

If you can answer yes to any of the following questions, you might be misleading in your advertisements:

- •Is the statement **prominent** enough for the consumer to notice?
- •Is the information **presented** in an easy-to-understand format that does not contradict other information in the package and at a time when the consumer's attention is not distracted elsewhere?
- •Is the **placement** of the information in a location where consumers can be expected to look or hear?
- Finally, is the information in close **proximity** to the claim it qualifies?

Deception is not limited to situations in which a consumer has already been misled. Instead, an act or practice may be deceptive if it is likely to mislead consumers.

Review the context of the statement to see if it is misleading. A representation may be an express or implied claim or promise, and it may be written or spoken. If material information is necessary to prevent a consumer from being misled it may be deceptive to omit that information. Written disclosures may be insufficient to correct a misleading statement or representation, particularly where the consumer is directed away from qualifying limitations in the text or is counseled that reading the disclosures is unnecessary.

Section 8 of RESPA permits normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto.

If an advertisement is for credit secured by a dwelling, the advertisement should not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

- Do include actually available terms.
- Do follow the clear and conspicuous standard.

- If you include a rate, do include the APR (and do make it at least as conspicuous as any other rate stated). Also include the following the rate and APR:
 - The amount or percentage of any down payment,
 - The number of payments or period of repayment,
 - The amount of any payment, or
 - The amount of any finance charge.
 - The amount or percentage of the down payment.
 - The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
- The “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact.

The Consumer Financial Protection Bureau (CFPB) also has released information stating that misrepresenting government affiliation is a violation. Using terms like “HUD-Approved” or “Pursuant to the Federal Housing Administration (FHA) HUD NO. 12-045” and other similar phrases is misleading and deceptive.

It is a violation of ECOA to discriminate or discourage a borrower, including in advertising.

What does it mean to discriminate or discourage?

Discrimination. A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

Discouragement. A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.

As part of ECOA’s rules advertisements must always include the Equal Housing Opportunity Logo.

Mortgage Acts and Practices, Regulation N, 12 CFR § 1014.3; 12 CFR Section 1024.14; 12 CFR Section 1026.24, 12 CFR Section 1002.4

Permissible Fees

A residential mortgage lender, incidental to the origination, processing, and closing of any mortgage loan transaction have the right to charge only the following fees:

- Application fee
- Origination fee

- Lock-in Fee
- Commitment fee
- Warehouse fee
- Discount points
- Fees necessary to reimburse the residential mortgage lender for charges imposed by third parties, including:
 - Appraisal fee
 - Credit Report fee
 - Other third-party charges allowed by the Commissioner

A residential mortgage broker, incidental to the brokering of any mortgage loan transaction has the right to charge only the following fees:

- Application fee
- Broker fee
- Fees necessary to reimburse the residential mortgage broker or lender for charges imposed by third parties, including:
 - Appraisal fee
 - Credit report fee
 - Such other third-party charges as the Commissioner may expressly permit to brokers by rule or in accordance with a procedure established by rule.

For purposes of this section, the following terms have the meanings and permitted uses set forth below:

Application fee means a fee imposed by a lender or a broker for taking or processing a loan application, which fee shall not be based upon a percentage of the principal amount of the loan or the amount financed. An application fee may be charged only once with respect to the same mortgage loan application and, where a loan is brokered, may be charged by a residential mortgage lender or a residential mortgage broker, but not by both.

Appraisal fee means a fee charged to a borrower by a lender or broker to recover the direct cost of the fee charged by a duly credentialed real estate appraiser for an appraisal in connection with a mortgage loan application. An appraisal fee may be charged to a borrower by a residential mortgage lender or by a residential mortgage broker, but not by both in connection with the same mortgage loan application. A lender or broker may charge a borrower an appraisal fee for a second appraisal provided that requiring a second appraisal is in accordance with duly promulgated rules.

Broker fee means a fee that may be charged to a borrower only by a broker and that shall be payable only at closing, which fee may be based on a percentage of the principal amount

of the loan or a fraction thereof.

Commitment fee means a fee, exclusive of third-party fees, imposed by a residential mortgage lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its written commitment and payable on or after the borrower's acceptance of the commitment. The amount of the commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan. A commitment fee may not be charged or collected unless the borrower receives a written commitment from the lender by midnight of the third business day prior to the day upon which the mortgage loan closing occurs and the borrower has accepted such commitment.

Credit report fee means a fee charged to a borrower by a lender or broker in connection with a mortgage loan application to recover the direct cost of the fee charged by a credit reporting agency for obtaining a credit report.

A credit report fee may be charged to a borrower by a residential mortgage lender or by a residential mortgage broker, but not by both in connection with the same mortgage loan application. A lender or broker may charge a borrower a credit report fee for a second credit report provided that requiring a second credit report is in accordance with duly promulgated rules.

Discount point means a fee charged by a lender based on a percentage of the principal amount of the loan and payable only at the closing of the mortgage loan, which fee operates to reduce the interest rate of the mortgage loan.

Lock-in agreement means a written agreement between a lender and a borrower whereby the lender guarantees, until a specified date or for a specified period of time, the availability of a specified rate of interest or specified formula by which the rate of interest will be determined and, if applicable, the specific number of discount points required to obtain such rate or formula, provided the loan is approved and closed by the specified date. No lender may charge a lock-in fee for a lock-in agreement executed after midnight of the third business day prior to the day upon which the mortgage loan closing occurs.

Lock-in fee means a fee that a lender may charge to a borrower for a lock-in agreement, which fee may be payable at closing, but shall in no event be payable prior to the commencement of the lock-in period.

Origination fee means a fee that a lender may charge to a borrower for originating a loan and that is based on a percentage of the principal amount of the loan and is payable only at the closing of the mortgage loan. An origination fee may also be referred to as a "point."

Warehouse fee means a fee charged by a lender not to exceed the cost associated with holding the particular mortgage loan pending its assignment 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 a lender from collection of a warehouse fee.

A residential mortgage lender or residential mortgage broker may use a term for a fee that is different from a term enumerated in this section or in duly promulgated rules implementing the provisions of this section, provided that the lender or broker can document to the department that such fee fits the definition and description of a fee permitted by this section or permitted in accordance with duly promulgated rules implementing the provisions of this section, provided that such fee functions accordingly, and provided that the lender or broker has disclosed such fee in writing to the borrower in conformity with applicable State and federal disclosure rules.

No residential mortgage lender or residential mortgage broker may charge any fee not expressly authorized either by this section or by the Commissioner by regulation.

Mortgage lenders, correspondent mortgage lenders, and mortgage brokers can charge the following fees:

- The fees specified as applicable. Correspondent mortgage lenders can charge any fee that may be charged by mortgage lenders.
- The fee charged by the county recording officer to cancel the mortgage, plus an additional service fee not to exceed \$25.00, provided that the borrower has received prior notice of the fees required by the mortgage lender or correspondent mortgage lender, and provided further that if the mortgage lender or correspondent mortgage lender collects the service fee at the time of the mortgage transaction and transfers the servicing rights prior to cancellation, the mortgage lender will refund the service fee to the borrower.

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

A mortgage lender can charge a borrower, incident to a secondary mortgage loan, only the following:

- The fees specified as applicable.

- 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 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 will refund the service fee to the borrower.

Nothing contained will limit a mortgage lender's ability to impose reasonable charges upon foreclosure. The following provisions will govern the charging of attorney fees on secondary mortgage loans:

- A mortgage lender on a secondary mortgage loan cannot charge a borrower attorney fees if the attorney is an employee, partner, officer, director, or stockholder of the licensee.
- An attorney, who is providing legal service cannot compensate any of the following persons for the preparation of documents or any other services performed for on or behalf of the attorney:
 - A mortgage lender
 - An employee, partner, officer, director, or stockholder of a mortgage lender
 - Any other person in which a mortgage lender is an employee, partner, officer, member, director, or stockholder.

No person listed above can 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. Any mortgage lender who requires a borrower to pay an attorney fee must, at least four days prior to the closing of the loan, inform the borrower in writing of that requirement.

In order to receive reimbursement from the borrower at closing for attorney fees charged to the mortgage lender in connection with a secondary mortgage loan, the mortgage lender will 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 lender and the charge to the lender for each service. All services charged by the attorney must be listed irrespective of whether they are less than \$100.00.

A mortgage lender will provide the following to the borrower, at or before closing:

- A copy of the itemized listing of attorney fees prepared by the attorney.
- A closing statement 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, the full amount of the loan, and the terms that the loan is to be repaid. Each expense item will be separately listed with the corresponding dollar amount if the amount charged for that item exceeds \$100.00.

Proof of compliance with this must be included in the licensee's loan file.

N.J.A.C 3:15-9.1-9.2, NJ Rev Stat 17:11C-74

Characteristics of Loans

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

For the purposes of this section, and notwithstanding any law of this State which permits as a maximum interest rate a rate or rates agreed to by the parties of the transaction, any loan or forbearance with an interest rate **which exceeds 30% per annum** shall not be a rate authorized or permitted by law, except if the loan or forbearance is made to a corporation, limited liability company, or limited liability partnership. Any rate, **not in excess of 50% per annum**, shall be a rate authorized or permitted by law.

Criminal usury is a crime of the second degree if the rate of interest on any loan made to any person exceeds 50% per annum or the equivalent rate for a longer or shorter period. It is a crime of the third degree if the interest rate on any loan made to any person, except a corporation, limited liability company, or limited liability partnership does not exceed 50% per annum, but the amount of the loan or forbearance exceeds \$1,000.00. Otherwise, making a loan to any person in violation of subsections a. (1) and a. (2) of this section is a disorderly persons offense.

A borrower can repay a mortgage loan at any time without penalty. **No prepayment penalty is allowed.** A licensee can only compute interest accrued between monthly payments using the 365/365 method (actual number of days between payments) or the 360/360 method (each month assumed to be 30 days).

A borrower must be given a copy of **every document** he or she is required to sign. Where any disclosure is required that is also required by any Federal law or regulation, compliance with such Federal law or regulation will be deemed to be in compliance.

No licensee can 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 engages in any other business activity with the licensee. Nothing prohibits a licensee from offering to a borrower other services or products in connection with a loan. A licensee cannot require, nor receive, from a borrower a rebate of any portion of the proceeds of a loan that is not a permissible fee.

N.J.A.C 3:15-10.1; NJ Rev Stat 2C:21-19

Secondary Loans

A residential mortgage lender can make a closed-end loan as a secondary mortgage loan, and can charge, contract for, and receive interest at an annual percentage rate agreed to by the licensee and the borrower.

The promissory note evidencing the closed-end loan may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the licensee. If the note provides for a variation in the interest rate, that fact shall be clearly described in plain language, in at least eight-point bold face type on the face of the note. If the note provides for a final payment that is substantially greater than the previous installments, that fact, together with a statement that the licensee is under no obligation to refinance the loan, unless the licensee unconditionally obligates itself to do so, must be clearly disclosed in plain language, in at least eight-point bold face type on the face of the note. No rate increase or decrease shall take effect during the first six months of the term of the loan. Thereafter, no rate increase or decrease can take effect unless at least 30 days prior to the effective date of that increase or decrease, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the increase or decrease, and unless at least six months have elapsed without any increase in the rate.

Upon written request from the borrower, the licensee shall give to the borrower, without charge, within five days from the date of receipt of that request, a written statement of the borrower's account, which shall show the dates and amounts of all installment payments on the closed-end loan credited to the borrower's account, the dates, amounts and explanation of all other charges or credits to the account, and the unpaid balance thereof. The licensee cannot be required to furnish more than two statements in any 12-month period.

NJ Rev Stat 17:11C-76

Open-ended Secondary Loans

A licensed residential mortgage lender shall have authority to make an open-end, secondary mortgage loan upon the same terms and conditions permitted to banks, savings banks, and savings and loan associations pursuant to State and Federal statutes and regulations promulgated thereunder, and may charge, contract for, and receive thereon, interest at an annual percentage rate agreed to by the licensee and the borrower, provided, however, that with respect to fees and other charges permitted in connection with the

open-end loan, the licensee shall be subject to the provisions of this act.

NJ Rev Stat 17:11C-77

General Requirements

A mortgage 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.

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, constitutes prohibited collateral or security unless the co-signer is a joint borrower.

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

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

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

N.J.A.C 3:15-10.2

Requirements for Instrument Evidencing

An instrument evidencing a secondary mortgage loan must:

- Be in the form of a promissory note for a closed-end loan, and in the form of a loan agreement for an open-end loan and shall be identifiable by the use of the words "Secondary Mortgage Loan" printed prominently, in 14-point bold type or larger, centered and at the top of the promissory note or loan agreement.
- Provide for the payment, in full, of the total amount of the secondary mortgage loan in substantially equal payment periods, measured in terms of weeks or months, and, except as otherwise permitted, substantially equal installment payment amounts, except that the initial payment period may be deferred for 60 days, and, provided further, when appropriate for the purpose of facilitating payment in accordance with the borrower's intermittent income, a promissory note or loan agreement may provide an installment schedule which reduces or omits payments over any period

during which the borrower's income is reduced or suspended, and the final installment may be \$1 more or less than the amount of all other installment payments.

- Contain the following notice printed prominently, in the identical form indicated below, in 10-point bold type or larger, directly above the space provided for the signature of the borrower.
- Be completed in full before it is signed by the borrower. If it is unnecessary to fill in a blank space provided for in any instrument, the figure -0-, a dash, line, or the word "none" shall be inserted in such blank space. *"NOTICE TO BORROWER: Read this promissory note or loan agreement before you sign. Do not sign this promissory note or loan agreement if it contains blank spaces. The promissory note or loan agreement is secured by a secondary mortgage on your real property."*

NJ Rev Stat 17:11C-78

Prohibited Wording

No writing of any kind executed in connection with a secondary mortgage loan shall contain:

- A power of attorney to confess judgment.
- An assignment of or order for the payment of any salary, wages, commissions, or any other compensation for services, or any part thereof, earned or to be earned.
- An agreement to pay any amount other than the unpaid balance of the promissory note or loan agreement or any other charge authorized by this act.
- A provision relieving the residential mortgage lender or residential mortgage broker from liability for any claim, or from any legal remedy, which the borrower will have against the licensee under the terms of the promissory note or loan agreement.
- A provision whereby the borrower waives any right of action against the licensee, a subsequent holder or any person acting on the licensee's or holder's behalf for any illegal act committed in the collection of payments under the promissory note or loan agreement.
- An acceleration clause under which the unpaid balance of the promissory note or loan agreement not yet matured, or any part thereof may be declared due and payable because the licensee or subsequent holder deems himself to be insecure.

NJ Rev Stat 17:11C-79

Prohibited Actions

A licensee acting as a residential mortgage lender cannot contract for, charge, receive or collect directly or indirectly, any of the following in connection with a secondary mortgage loan: a broker's or finder's fee, commission, expense, fine, penalty, premium, or any other thing of value other than the charges authorized; except the expenses incurred on actual

sale of the real property in foreclosure proceedings or upon the entry of judgment that are otherwise authorized; except that:

- The licensee can charge and receive no more than three discount points computed as a percentage of the principal amount of the secondary mortgage loan and can add these discount points to the principal balance of the loan, which discount points will be fully earned when the loan is made. The annual percentage rate charged to the borrower, including the discount points, are subject to New Jersey law. As used in this paragraph, "discount point" means one percent of the principal amount of the loan, and "principal amount of the loan" means the total amount of credit extended, including all loan closing fees, expenses, or costs that are financed, but excluding the discount points.
- The licensee can require a borrower to pay a reasonable legal fee at the time of the execution of the secondary mortgage loan, provided that any legal fee will represent a charge actually incurred in connection with the secondary mortgage loan and will not be paid to any person other than an attorney authorized to practice law in this State; provided further that the legal fee will be evidenced by a statement issued to the licensee from the attorney.

The licensee has the authority to collect fees for title examination, abstract of title, survey, title insurance, credit reports, appraisals, and recording fees when those fees are paid by the licensee to a third party for those services or purposes, and to include those fees in the amount of the loan principal.

The licensee has the authority to charge and collect a returned check fee in an amount not to exceed \$20 that the licensee can charge the borrower if a check of the borrower for a secondary mortgage loan is returned to the licensee uncollected due to insufficient funds in the borrower's account. The licensee also has the authority to charge and collect a late charge in any amount as can be provided in the promissory note or loan agreement, but no late charge can exceed 5% of the amount of payment in default. Not more than one late charge can be assessed on any one payment in arrears.

The licensee cannot make any other charge or accept an advance deposit before the time a secondary mortgage loan is closed, except that the licensee can charge:

- An application fee for the secondary mortgage loan at closing; or
- On an open-end loan, an annual fee of \$50 or 1% of the line of credit, whichever is less.

A promissory note or loan agreement by the licensee can provide for the payment of attorney fees in the event it becomes necessary to refer the promissory note or loan agreement to an attorney for collection provided, however, that any attorney fees provision will be void and unenforceable unless:

- The promissory note or loan agreement is referred to an attorney authorized to practice law in this State.
- The attorney to whom the promissory note or loan agreement is referred is not an officer, director, partner, owner, or employee, whether salaried or commissioned, of the licensee.
- Suit is actually filed by the attorney to whom the promissory note or loan agreement is referred and subsequently decided in favor of the licensee, in which event the attorney fees cannot exceed 15% of the first \$500, 10% of the next \$500, and 5% of any excess amount due and owing under the promissory note or loan agreement, and at least 15 days prior to the commencement of the suit, the licensee or his attorney will send to the borrower, by certified or registered mail, return receipt requested, at the borrower's last known address, a statement of the licensee's intention to sue, that statement will also specify the amount of principal, interest and any other charge due and owing to the licensee.

NJ Rev Stat 17:11C-80

Collection of Interest

If a residential mortgage lender charges or collects interest, costs, or other charges on a secondary mortgage loan in excess of those permitted by this act, the licensee can collect only the principal amount of the loan, and cannot collect interest, costs, or other charges with respect to the loan. In addition, a licensee who knowingly and willfully violates NJ law also forfeits to the borrower three times any amount of the interest, costs, or other charges collected in excess of that authorized by law.

The licensee has no liability on a secondary mortgage loan for an unintentional error if, within 90 days after discovering the error, the licensee notifies the borrower of the error and makes adjustments in the account as necessary to assure that the borrower will not be required to pay any interest, costs or other charges that aggregates in excess of the charges permitted for secondary mortgage loans.

The discovery of an unintentional error includes an entry of a judgment by a court of competent jurisdiction, holding that a rule or regulation with which the licensee acted in conformity was invalid or in violation, and the licensee will have no liability for that unintentional error if the licensee takes the actions required upon discovery of the error, within the time following entry of the judgment.

NJ Rev Stat 17:11C-81

Required Actions

A residential mortgage lender can, in connection with a secondary mortgage loan:

- Give to the borrower, without charge, a copy of every instrument, document, or other writing the borrower signs, and written evidence of any insurance obtained from the licensee.
- Give to the borrower, without charge, at the time the loan is made, if a closed-end loan, and at the time of the first advance, if an open-end loan, a closing statement that itemizes the individual amounts disbursed to or on behalf of the borrower, including, but not limited to, the premium for insurance, if any, the total amount of funds so disbursed, the amount of the interest charge, total amount of the loan, the amount, number and due date of the installment payments and the interest charge expressed as an annual percentage rate, as applicable.

In the event a borrower's application for the secondary mortgage loan is denied, notify the borrower, in writing, of that denial. The name of the denied borrower or a list of denied borrowers cannot be referred by the licensee, in any manner whatsoever, to any other lender, a retail seller of personal property or services, or to any other person, whether in this State or any other state. If the secondary mortgage loan is not consummated, return all documents executed by or belonging to the borrower.

Whenever payment is made in cash on an account of the secondary mortgage loan, give to the borrower, without charge, at the time that payment is actually received, a written receipt that shows the name and address of the licensee, the name and address of the borrower, account number or other identification mark or symbol, date, and amount paid.

When the loan, if a closed-end loan, is paid in full, or when the loan, if an open-end loan, is paid in full and the borrower has notified the licensee in writing to discontinue his account with the licensee:

- Refund or credit to the borrower, per regulations promulgated by the Commissioner, any unearned portion of the premium for any insurance, if a premium for the insurance was disbursed on behalf of the borrower at the time the secondary mortgage loan was originally made.
- Stamp or write on the face of the promissory note or loan agreement evidencing the borrower's secondary mortgage loan indebtedness "Paid in Full" or "Cancelled," the date paid, and the name and address of the licensee and, within 45 days, return the promissory note or loan agreement to the borrower.
- Release any lien on real property and cancel the same of record, and, at the time the promissory note or loan agreement evidencing the borrower's secondary mortgage loan indebtedness is returned, deliver to the borrower any good and sufficient

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assignments, releases or any other certificate, instrument, or document as may be necessary to vest the borrower with complete evidence of title, insofar as the applicable secondary mortgage loan is concerned, to the real property, except that the licensee may require the borrower to pay any charge imposed upon the licensee by a county recording officer to effect the cancellation or release.

NJ Rev Stat 17:11C-82

Chapter 3 Predatory Lending and Identity Theft

Students will learn and understand the requirements regarding predatory lending and identity theft legislature in New Jersey. This includes sections on required conduct, prohibited conduct related to home loans, high cost home loan limitations, violations, remedies, and liability, as well as methods of destruction of certain customer records, disclosure of breach of security to customers, and prohibited actions relative to displaying social security numbers.

Objectives:

- Understand what a high-cost home loan is
- Restate the restrictions placed upon high-cost home loans
- Identify prohibited conduct related to home loans
- Determine what is considered identity theft
- Discuss the requirements surrounding disclosure of a breach of security to customers
- Relate prohibited actions relative to the display of Social Security numbers

Chapter Time: 50 Minutes

Key Definitions

These definitions apply only to Chapter 3. Take some time and review them as they may be different than the definitions discussed previously in this course.

NJ Rev Stat 46:10B-24

Affiliate means any company that controls, is controlled by, or is under the common control with any company, as set forth in 12 U.S.C. s.1841 et seq.

Bona fide discount points means loan discount points which are:

- Knowingly paid by the borrower.
- Paid for the express purpose of reducing, and which result in a reduction of, the interest rate or time-price differential applicable to the loan.

- In fact, reducing the interest rate or time-price differential applicable to the loan from an interest rate which does not exceed the conventional mortgage rate for a home loan secured by a first lien, by more than two percentage points, or for a home loan secured by a junior lien, by more than three and one half percentage points.
- Recouped within the first five years of the scheduled loan payments. Loan discount points will be considered to be recouped within the first five years of the scheduled loan payments if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments such that the borrower's dollar amount of savings in interest over the first five years is equal to or exceeds the dollar amount of loan discount points paid by the borrower.

Borrower means any natural person obligated to repay the loan, including a coborrower, cosigner, or guarantor.

Commissioner means the Commissioner of Banking and Insurance.

Conventional mortgage rate means the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in Statistical Release H.15 or any publication that may supersede it, as of the applicable time set forth in 12 C.F.R. 226.32(a)(1)(I).

Conventional prepayment penalty means any prepayment penalty or fee that may be collected or charged in a home loan, and that is authorized by law other than by this act, P.L. 2003, CHAPTER 64 2 provided the home loan:

- Does not have an annual percentage rate that exceeds the conventional mortgage rate by more than two percentage points.
- Does not permit any prepayment fees or penalties that exceed 2% of the amount prepaid.

Dodd-Frank acknowledges that, in its effort to provide strict consumer protections in the mortgage process, some state laws actually provide more restrictive provisions. Dodd-Frank specifically states that the most stringent rules shall apply. We are going to talk about “covered loans” under NJ law which is a “high-cost home loan.” *Cite: Dodd-Frank Subtitle D: Sec. 1041(a)(2).*

Covered home loan means a home loan in which:

- The total points and fees payable in connection with the loan, excluding either a conventional prepayment penalty or not more than two bona fide discount points, exceed 4% of the total loan amount, or 4.5% of the total loan amount if the total loan amount is \$40,000 or less, and 4.5% of the total loan amount if the loan is insured by the Federal Housing Administration or guaranteed by the Federal Department of Veterans Affairs, or

- The home loan is such that it is considered a high-cost home loan under this act.

Creditor means a person who extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, and to whom the obligation is payable at any time. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly solicits, processes, places, or negotiates home loans for others or who closes home loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include a person who is an attorney providing legal services to the borrower or a person or entity holding an individual or organization insurance producer license in the line of title insurance or a title insurance company, as defined by subsection c. of section 1 of P.L.1975, c.106 (C.17:46B-1), or any officer, director, or employee thereof, providing services in the closing of a home loan who is not also funding the home loan and is not an affiliate of the creditor or an assignee that is subject to the provisions of section 6 of this act.

Department means the Department of Banking and Insurance.

High-cost home loan means a home loan for which the principal amount of the loan does not exceed \$350,000, which amount shall be adjusted annually to include the last published increase of the housing component of the national Consumer Price Index, New York Northeastern New Jersey Region, in which the terms of the loan meet or exceed one or more of the thresholds as defined in this section.

Home loan means an extension of credit primarily for personal, family, or household purposes, including an open-end credit plan, other than a reverse mortgage transaction, in which the loan is secured by:

- A mortgage or deed of trust on real estate in this State upon which there is located, or there is to be located, a one-to-six family dwelling which is or will be occupied by a borrower as the borrower's principal dwelling, or
- A security interest in a manufactured home which is or will be occupied by a borrower as the borrower's principal dwelling.

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph, except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Federal National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. s.5401 et seq. Such term does not include rental properties, second homes, or

manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

Points and fees means:

- All items listed in 15 U.S.C. s.1605(a)(1) through (4), except interest or the time-price differential.
- All charges listed in 15 U.S.C. s.1605(e); P.L. 2003, CHAPTER 64 3.
- All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction.
- The cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance, or any payments financed by the creditor, directly or indirectly, for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor.
- The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents.
- All prepayment fees or penalties that are incurred by the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor.
- For open-end loans, the points and fees are calculated by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents if prepayment penalties are authorized by law other than by this act, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

Points and fees shall not include the following items: title insurance premiums and fees, charges and premiums paid to a person or entity holding an individual or organization insurance producer license in the line of title insurance or a title insurance company, as defined by subsection c. of section 1 of P.L.1975, c.106 (C.17:46B-1); taxes, filing fees, and recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and reasonable fees paid to a person other than a creditor or an affiliate of the creditor or to the mortgage broker or an affiliate of the mortgage broker for the following, provided that the conditions in 12 C.F.R. s.226.4(c)(7) are met: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; fees for credit reports; fees for surveys; attorneys' fees; notary fees; escrow charges; and fire and flood insurance premiums, provided that the conditions in 12 C.F.R. s.226.4(d)(2) are met.

Rate means that annual percentage rate for the loan calculated at closing based on the points and fees set forth in this act and according to the provisions of 15 U.S.C. s. 1601 et

seq. and the regulations promulgated thereunder by the Federal Reserve Board.

Threshold means any one of the following two items, as defined:

- **Rate threshold** means the annual percentage rate of the loan at the time the loan is consummated such that the loan is considered a "mortgage" under section 152 of the Federal "Home Ownership and Equity Protection Act of 1994," Pub.L. 103-325 (15 U.S.C. s.1602(aa)), and the regulations promulgated by the Federal Reserve Board, including 12 C.F.R. s.226.32, without regard to whether the loan transaction is or may be a "residential mortgage transaction," as defined in 12 C.F.R. s.226.2(a)(24).
- **Total points and fees threshold** means that the total points and fees payable by the borrower at or before the loan closing, excluding either a conventional prepayment penalty or up to two bona fide discount points, exceed:
 - 5% of the total loan amount if the total loan amount is \$40,000 or more; or
 - The lesser of 6% of the total loan amount or \$1,000, if the total loan amount is less than \$20,000, and 6% if the total loan amount is between \$20,000 and \$40,000.

Total loan amount means the principal of the loan minus those points and fees as defined in this section that are included in the principal amount of the loan. For open-end loans, the total loan amount shall be calculated using the total line of credit allowed under the home loan.

Required Conduct

When a creditor that is a depository institution receives a home loan payment, the creditor must treat the payment as posted on the banking day that the payment is received. Payments received by a servicer or agent of a depository institution will be treated as received by the depository institution.

A payment received by a creditor that is not a depository institution must, if received before the end of business hours, be posted on the business day that it is received or, if received after the end of business hours, on the next business day. Payments received by a servicer or agent of a non-depository entity must be treated as received by the non-depository entity.

N.J.A.C 3:30-5.1

Prohibited Conduct About Home Loans

No creditor making a home loan is allowed to finance, directly or indirectly, any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance, or any payments, directly or indirectly, for any debt cancellation or suspension agreement or contract. The exception is insurance premiums or debt cancellation, or suspension fees calculated and paid on a monthly basis; these are not considered financed by the creditor.

No creditor shall engage in the unfair act or practice of "flipping" a home loan. Flipping occurs when a creditor makes a covered home loan to a borrower who refinances an existing home loan that was consummated within the prior 60 months when the new loan does not have reasonable, tangible net benefit to the borrower. Tangible net benefit is determined by considering all of the borrower's circumstances, including the terms of both the new and refinanced loans, the economic and noneconomic circumstances, the purpose of the loan, and the cost of the new loan. In addition, the following home loan refinances are considered flipping if:

- The primary tangible benefit to the borrower is an interest rate lower than the interest rate on a debt satisfied or being refinanced and it will take more than four years for the borrower to recoup the costs of the points and fees and other closing costs through savings resulting from the lower interest rate; or
- The new loan refinances an existing home loan that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal or local government, or nonprofit organization that either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower. This includes payments that vary with income or are limited to a percentage of income, or where no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage.

No creditor can recommend or encourage default on an existing loan or other debt before and in connection with the closing or planned closing of a home loan that refinances all or any portion of that existing loan or debt. No creditor can charge a late payment fee in relation to a home loan, except according to the following rules:

- The late payment fee may not be more than 5% of the amount of the payment past due.

- The fee can only be assessed by a payment past due for 15 days or more.
- The fee cannot be charged more than once on a single late payment. If a late payment fee is deducted from a payment made on the loan, and that deduction causes a subsequent default on a subsequent payment, no late payment fee can be imposed for that default. If a late payment fee has been imposed once on a particular late payment, no additional fee can be imposed on any future payment that would have been timely and sufficient, but for the previous default.
- No fee can be charged unless the creditor notifies the borrower, within 45 days following the date the payment was due, that a late payment fee has been imposed for a particular late payment.
- No late payment fee can be collected from any borrower if the borrower informs the creditor that nonpayment of an installment is in dispute and presents proof of payment within 45 days of receipt of the creditor's notice of the late fee.
- The creditor must treat each and every payment as posted on the same date as it was received by the creditor, servicer, creditor's agent, or at the address provided to the borrower by the creditor, servicer, or the creditor's agent for making payments.

No home loan can contain a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness. This doesn't prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan.

No creditor can charge a fee for informing or transmitting to any person the balance due to pay off a home loan or to provide a release upon prepayment. Payoff balances must be provided within seven business days after the request.

NJ Rev Stat 46:10B-25

High-Cost Home Loan Limitations

A high-cost home loan is subject to the following additional limitations and prohibited practices:

- No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.
- No high-cost home loan may include payment terms where the outstanding principal balance increases at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.
- No high-cost home loan can contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan that is otherwise consistent with the provisions of the loan documents, as long as

the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

- No high-cost home loan can include terms where more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
- Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this State if the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.
- A creditor cannot make a high-cost home loan unless the creditor has given the following notice, or substantially similar notice, in writing, to the borrower, acknowledged in writing and signed by the borrower not later than three days after application: *NOTICE TO BORROWER: YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT. IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN. YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE. YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES. P.L. 2003, CHAPTER 64 6 ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.*
- A creditor cannot make a high-cost home loan to a borrower that finances points and fees in connection with a high-cost home loan without first receiving certification from a third-party nonprofit credit counselor, approved by HUD and the Department of Banking and Insurance, that the borrower has received counseling on the advisability of the loan transaction or completing another substantial requirement developed by the Department.

- A creditor cannot pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan, unless the instrument is payable to the borrower or jointly to the borrower and the contractor, or, at the election of the borrower, through a third-party escrow agent per terms established in a written agreement signed by the borrower, the creditor, and the contractor prior to the disbursement.
- A creditor cannot charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.
- A creditor cannot charge a borrower points and fees if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same creditor as note holder.
- A creditor making a high-cost home loan that has the legal right to foreclose must use the judicial foreclosure procedures of this State so long as the property securing the loan is located in this State.
- No creditor making a high-cost home loan can directly or indirectly finance points and fees more than 2% of the total loan amount.

NJ Rev Stat 46:10B-26

Affirmative Claims and Defenses by the Borrower

Any person who purchases or is otherwise assigned a high-cost home loan is subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the original creditor or broker of the loan. This does not apply if the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising reasonable due diligence could not determine that the mortgage was a high-cost home loan. It will be presumed that a purchaser or assignee has exercised such due diligence if the purchaser or assignee demonstrates that it:

- Has in place at the time of the purchase or assignment of the loan, policies that expressly prohibit its purchase or acceptance of assignment of any high-cost home loan.
- Requires, by contract, that a seller or assignor of home loans to the purchaser or assignee represents and warrants to the purchaser or assignee that either:
 - It will not sell or assign any high-cost home loan to the purchaser or assignee.
 - That the seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect.
- Exercises reasonable due diligence at the time of purchase or assignment of home loans or within a reasonable period to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost home loan.

A borrower acting only in an individual capacity can assert against the creditor or any subsequent holder or assignee of the home loan:

- Within six years of the closing of a covered home loan, a violation of New Jersey law in connection with the loan as an original action, or as a defense, claim or counterclaim after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated, or the debt arising from the home loan has been accelerated or the home loan has become 60 days in default.
- At any time during the term of a high-cost home loan after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become 60 days in default, any defense, claim, or counterclaim.

It is a violation of this act for any person, in bad faith, to attempt to avoid the requirements for high-cost home loans by:

- Dividing any loan transaction into separate parts; or
- Any other such subterfuge, with the intent of evading the provisions required for high-cost home loans.

NJ Rev Stat 46:10B-27

Enforcement by the Department

The Department can conduct examinations and investigations and issue subpoenas and orders to enforce the provisions of New Jersey law.

The Department can examine any instrument, document, account, book, record, or file of a person originating or brokering a high-cost home loan. The Department can recover the cost of examinations from the person. A person originating or brokering high-cost home loans must maintain its records whether the person is complying with New Jersey law regarding high-cost home loans. The Department will require the submission of reports by persons originating or brokering high-cost home loans that sets forth information the Department requires.

If a person fails to comply with a subpoena for documents or testimony issued by the Department, the Department can request an order from a court of competent jurisdiction requiring the person to produce the requested information. If the Department determines that a person has violated the requirements regarding high-cost home loans, the Department can do any combination of the following that it deems appropriate:

- Impose a civil penalty of up to \$10,000 for each offense. 40% of that penalty will be dedicated for and used by the Department for consumer education through nonprofit organizations that can establish to the satisfaction of the Department that they have sufficient experience in credit counseling and financial education. In

determining the penalty to be assessed, the Commissioner will consider the following criteria:

- Whether the violation was willful.
 - Whether the violation was part of a pattern and practice, the amount of the loan, the points and fees charged.
 - The financial condition of the violator; and other relevant factors.
- The Department may require the person to pay investigative costs if any.
- Suspend, revoke, or refuse to renew any license issued by the Department.
- Prohibit or permanently remove an individual responsible for a violation from working in his present capacity or any other capacity related to activities regulated by the Department.
- Order a person to cease and desist any violation and to make restitution for actual damages to borrowers.
- Pending completion of an investigation or any formal proceeding, if the Commissioner finds that the interests of the public require immediate action to prevent undue harm to borrowers, the Commissioner can enter an appropriate temporary order to be effective immediately and until entry of a final order. The temporary emergent order can include:
 - A temporary suspension of the creditor's authority to make high-cost home loans.
 - A temporary cease and desist order.
 - A temporary prohibition against a creditor transacting high-cost home loan business in this State.
 - Such other order relating to high-cost home loans as the Commissioner may deem necessary to prevent undue harm to borrowers pending completion of an investigation or formal proceeding. Orders issued are subject to an application to vacate upon two days' notice, and a preliminary hearing on the temporary emergent order will be held, in any event, within five days after it is issued.
- Impose such other conditions as the Department deems appropriate.

Any person aggrieved by a decision of the Department and who has a direct interest in the decision can appeal the decision of the Department to the Commissioner. The appeal must be conducted per the provisions of the "Administrative Procedure Act." The Department can maintain an action for an injunction or another process against any person to restrain and prevent the person from engaging in any activity violating New Jersey law.

A decision of the Commissioner will be a final order of the Department and is enforceable in a court of competent jurisdiction. The Department will publish the final adjudication issued, subject to redaction or modification to preserve confidentiality.

The does not limit the authority of the Attorney General or the Public Advocate as from instituting or maintaining any action within the scope of their respective authority with respect to the practices prohibited by New Jersey law.

NJ Rev Stat 46:10B-28

Violations and Remedies

Any person found to have violated New Jersey law regarding high-cost home loans is liable to the borrower for the following:

- For material violations, statutory damages equal to the finance charges agreed to in the home loan agreement, plus up to 10% of the amount financed.
- Punitive damages, when the violation was malicious or reckless in appropriate circumstances as determined by the factfinder.
- Costs and reasonable attorneys' fees.
- A borrower can be granted injunctive, declaratory, and such other equitable relief as the court deems appropriate in an action to enforce compliance. A creditor in a home loan who, when acting in good faith, fails to comply with the provisions required regarding high-cost home loans, will not be deemed to be in violation if the creditor establishes that either: Within 45 days of the loan closing, the creditor has made appropriate restitution to the borrower, and appropriate adjustments are made to the loan.
- Within 90 days of the loan closing and prior to receiving any notice from the borrower of the compliance failure, and the compliance failure was not intentional and resulted from a bona fide error, even though the creditor has procedures to avoid these types of errors, the borrower is notified of the compliance failure, appropriate restitution is made to the borrower, and appropriate adjustments are made to the loan.

Examples of bona fide errors include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment concerning a person's obligations is not a bona fide error.

NJ Rev Stat 46:10B-29

Liability of Mortgage Broker

A mortgage broker shall be liable only for acts performed by the mortgage broker in the course of providing mortgage-brokering services. However, a mortgage broker can be held liable for acts performed by the mortgage broker outside the scope of mortgage brokering services if the acts are related to the purchasing or the making of a home loan and are otherwise prohibited.

NJ Rev Stat 46:10B-33

Identity Theft

Before we dive into New Jersey's requirements related to identity theft, let's take a few minutes and review some definitions that will be discussed in this section.

Breach of security means unauthorized access to electronic files, media or data containing personal information that compromises the security, confidentiality or integrity of personal information when access to the personal information has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable. Good faith acquisition of personal information by an employee or agent of the business for a legitimate business purpose is not a breach of security, provided that the personal information is not used for a purpose unrelated to the business or subject to further unauthorized disclosure.

Business means a sole proprietorship, partnership, corporation, association, or other entity, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this State, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution.

Communicate means to send a written or other tangible record or to transmit a record by any means agreed upon by the persons sending and receiving the record.

Customer means an individual who provides personal information to a business.

Individual means a natural person.

Internet means the international computer network of both federal and non-federal interoperable packet switched data networks.

Personal information means an individual's first name or first initial and last name linked with any one or more of the following data elements:

- Social Security number
- Driver's license number or State identification card number
- Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. Dissociated data that, if linked, would constitute personal information is personal information if the means to link the dissociated data were accessed in connection with access to the dissociated data. For the purposes of sections 10 through 15 of this amendatory and supplementary act, personal information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.

Private entity means any individual, corporation, company, partnership, firm, association, or other entity, other than a public entity.

Public entity includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State. For the purposes of sections 10 through 15 of this amendatory and supplementary act, public entity does not include the Federal Government.

Publicly post or publicly display means to intentionally communicate or otherwise make available to the general public.

Records means any material, regardless of the physical form, on which information is recorded or preserved by any means, including written or spoken words, graphically depicted, printed, or electromagnetically transmitted. Records does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed.

Method of Destruction of certain Customer Records

A business or public entity must destroy, or arrange for the destruction of, a customer's records within its custody or control containing personal information, that is no longer to be retained by the business or public entity, by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable, undecipherable or non-reconstructable through generally available means.

NJ Rev Stat 56:8-163

Disclosure of Breach of Security to Customers

Any business that conducts business in New Jersey, or any public entity that compiles or maintains computerized records that include personal information must disclose any breach of security of those computerized records following discovery or notification of the breach to any customer who is a resident of New Jersey whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person.

The disclosure to a customer must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, and/or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Disclosure of a breach of security to a customer is not required if the business or public entity establishes that misuse of the information is not reasonably possible. Any determination must be documented in writing and retained for five years.

Any business or public entity that compiles or maintains computerized records that include personal information on behalf of another business or public entity must notify that business or public entity, who must then notify its New Jersey customers, of any breach of security of the computerized records immediately following discovery, if the personal information was, or is reasonably believed to have been, accessed by an unauthorized person.

Any business or public entity required to disclose a breach of security of a customer's personal information must, in advance of the disclosure to the customer, report the breach of security and any information pertaining to the breach to the Division of State Police in the Department of Law and Public Safety for investigation or handling, which may include dissemination or referral to other appropriate law enforcement entities.

The notification required can be delayed if a law enforcement agency determines that the notification will impede a criminal or civil investigation and that agency has made a request

that the notification be delayed. The notification must be made after the law enforcement agency determines that its disclosure will not compromise the investigation and notifies that business or public entity.

The notice may be provided by one of the following methods:

- Written notice
- Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures outlined in section 101 of the federal "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. s.7001)
- Substitute notice, if the business or public entity demonstrates that the cost of providing notice would exceed \$250,000, or that the affected class of subject persons to be notified exceeds \$500,000, or the business or public entity does not have sufficient contact information. Substitute notice can consist of all of the following:
 - E-mail notice when the business or public entity has an e-mail address
 - Conspicuous posting of the notice on the Internet web site page of the business or public entity, if the business or public entity maintains one
 - Notification to major statewide media.

A business or public entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and is otherwise consistent with the requirements, will be deemed to be in compliance with the notification requirements if the business or public entity notifies subject customers in accordance with its policies in the event of a breach of security of the system.

In addition to any other disclosure or notification required, in the event that a business or public entity discovers circumstances requiring notification of more than 1,000 persons at one time, the business or public entity can also notify, without unreasonable delay, all consumer reporting agencies that compile or maintain files on consumers on a nationwide basis of the timing, distribution, and content of the notices.

NJ Rev Stat 56:8-163

Prohibited Actions Relative to Display of SSN

No person, including any public or private entity, may:

- Publicly post or publicly display an individual's Social Security number, or any four or more consecutive numbers taken from the individual's Social Security number,
- Print an individual's Social Security number on any materials that are mailed to the individual, unless State or federal law requires the Social Security number to be on the document to be mailed.

- Print an individual's Social Security number on any card required for the individual to access products or services provided by the entity.
- Intentionally communicate or otherwise make available to the general public an individual's Social Security number.
- Require an individual to transmit his Social Security number over the Internet, unless the connection is secure, or the Social Security number is encrypted.
- Require an individual to use his Social Security number to access an Internet website unless a password or unique personal identification number or another authentication device is also required to access the Internet website.

Nothing prevents a public or private entity from using a Social Security number for internal verification and administrative purposes, so long as the use does not require the release of the Social Security number to persons not designated by the entity to perform associated functions allowed or authorized by law.

Nothing prevents the collection, use or release of a Social Security number, as required by State or Federal law. Social Security numbers can be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend, or terminate an account, contract or policy, or to confirm the accuracy of the Social Security number. A Social Security number that is permitted to be mailed cannot be printed, in whole or part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

This does not apply to documents that are recorded or required to be open to the public pursuant to Title 47 of the Revised Statutes. This section does apply to records that are required by statute, case law, or New Jersey Court Rules, to be made available to the public by entities provided for in Article VI of the New Jersey Constitution.

This does not apply to the interactive computer service provider's transmissions or routing or intermediate temporary storage or caching of an image, information or data that is otherwise subject to this section.

NJ Rev Stat 56:8-164

Identity Theft

Identity theft is the act of unlawfully using one or more pieces of another individual's personal identifying information to obtain credit.

According to the Federal Trade Commission (FTC), identity theft complaints were the second biggest category of consumer complaints reported to them in 2017. They made up

nearly 14% of all the consumer complaints filed. In 2019, identity theft complaints took the number one spot. Credit card new account fraud caused by identity theft went up 88% in 2019, while tax fraud from identity theft went down 29%.

New data released by the FTC shows that FTC actions led to more than \$232 million in refunds to consumers across the country in 2019. A core part of the FTC's mission is to return money to consumers who are harmed by illegal business practices. Over the last four years, consumers have cashed more than \$1 billion in FTC refund checks.

In addition to refunds, the newly released data also shows that the FTC received 3.2 million reports to its Consumer Sentinel Network in 2019. Reports from around the country about consumer protection issues are a key resource for FTC investigations that stop illegal activities and, when possible, provide refunds to consumers. The most common type of fraud reported to the FTC in 2019 was imposter scams; government imposter scams, in particular, were the most frequently reported, and up more than 50 percent since 2018. Of all reports received, the top categories were identity theft, imposter scams, telephone and mobile services, online shopping, and credit bureaus.

Identities are stolen in the following ways:

- Data Breaches
- Internet Hacking
- Dark Web Marketplaces
- Malware Activity
- Credit Card Theft
- Mail Theft
- Phishing and Spam Attacks
- Wi-Fi Hacking
- Mobile Phone Theft
- ATM Skimmers

<https://www.ftc.gov/news-events/press-releases/2018/09/starting-today-new-law-allows-consumers-place-free-credit-freezes>; <https://www.experian.com/blogs/ask-experian/what-is-identity-theft/>; <https://www.ftc.gov/news-events/press-releases/2020/01/new-ftc-data-shows-ftc-received-nearly-17-million-fraud-reports>; <https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2019>

Borrower Identity Theft

What are some examples of borrower identity theft?

- Sam knows that, due to his negative credit history, he will most likely be denied for a mortgage. Therefore, he provides his deceased father's personal information on the application and uses fake documentation to represent his income and job title.
- Stan begins receiving calls from a collection agency regarding an unpaid second mortgage. Upon review of his credit report, he learns that someone applied for and received a mortgage using his personal information without his knowledge.

What are some borrower identity red flags?

- A borrower's Social Security number (SSN) is not listed correctly on the loan application or other documents in the loan file.
- A borrower is asked to "lend" their SSN to someone.
- Someone offers to sell a borrower an SSN.
- A borrower is encouraged to use another person's SSN to apply for a mortgage.
- A borrower received calls or mailings regarding a mortgage loan that they are not aware of and did not enter into a contract to finance.

Cite: <https://www.fanniemae.com/content/tool/mortgage-fraud-prevention-consumers.pdf>

Credit/Security Freezes

Under the new FCRA requirements, consumers can place a free credit freeze on their credit report through all three credit bureaus for free. The new requirement started on September 21, 2018. Credit freezes are helpful in protecting a borrower's identity from being stolen.

A credit freeze, also known as a security freeze, restricts access to a borrower's credit file, which makes it harder for identity thefts to open new accounts with a borrower's information. The new law also allows parents to freeze, for free, the credit of their children who are under 16, while guardians, conservators, and those with a valid power of attorney can get a free freeze for their dependents. If a borrower requests a credit freeze, the bureaus must comply within one business day of the request.

In the past, a credit freeze was something that had to be paid for based upon each state's laws, but now it's free to everyone no matter where they live.

In order to place a credit freeze, the borrower must contact all three credit bureaus: Experian, TransUnion, and Equifax directly online or by phone to place the credit freeze.

To place a security freeze, use the following contact information:

For Equifax:

[Equifax.com/personal/credit-report-services](https://www.equifax.com/personal/credit-report-services)
[800-685-1111](https://www.equifax.com/personal/credit-report-services)

For Experian:

[Experian.com/help](https://www.experian.com/help)
[888-EXPERIAN \(888-397-3742\)](https://www.experian.com/help)

For TransUnion:

[TransUnion.com/credit-help](https://www.transunion.com/credit-help)
[888-909-8872](https://www.transunion.com/credit-help)

It might be a good idea to ask every borrower who comes in the door whether they have a credit freeze on any of the credit bureaus. If a borrower has a credit freeze on their credit file for any or all bureaus, they'll need to lift it to allow credit to be pulled for a transaction.

The borrower must reach out to the bureaus, and the fastest way to get a cleared credit freeze is by making a phone call or going online. The credit bureaus are required to act to lift the credit freeze for the borrower within one hour of the request. If the request is by mail, the credit bureau has three business days from receiving the request to lift the freeze.

Citation: <https://www.identitytheft.gov/creditbureaucontacts>; <https://www.ftc.gov/news-events/press-releases/2018/09/starting-today-new-law-allows-consumers-place-free-credit-freezes>; <https://www.consumer.ftc.gov/blog/2018/06/free-credit-freezes-are-coming-soon-0>

Fraud Alerts

Fraud alerts are notes on a consumer's credit report that require a creditor that check a borrower's credit to confirm the borrower's identity before opening a new account.

In addition to security/credit freezes, the amendment extended the time that a borrower can have a fraud alert on their credit report from 90 days to one year.

Fraud alerts are not just for people who have already been or suspect they are victims of identity theft, though it can be a good idea for someone who has lost their wallet or misplaced their Social Security card or been exposed to a security breach. Fraud alerts are free through all three credit bureaus. If a borrower requests a fraud alert through one bureau, that bureau will notify the other two who will follow suit.

The fraud alert is only good for one year, but a consumer can request a new one after it expires.

<https://www.ftc.gov/news-events/press-releases/2018/09/starting-today-new-law-allows->

consumers-place-free-credit-freezes; <https://www.consumer.ftc.gov/articles/0275-place-fraud-alert>

The New Jersey Fair Credit Reporting Act

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

- In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a State or federal grand jury.
- In accordance with the written instructions of the consumer to whom it relates.
- To a person which it has reason to believe:
 - Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer.
 - Intends to use the information for employment purposes.
 - Intends to use the information in connection with the underwriting of insurance involving the consumer.
 - Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status.
 - Intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation.
 - Otherwise has a legitimate business need for the information:
 - In connection with a business transaction that is initiated by the consumer. or
 - To review an account to determine whether the consumer continues to meet the terms of the account.
- In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that:
 - The consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the

appropriate level of those payments.

- The paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws).
- The person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested.
- The consumer report will be kept confidential, will be used solely for a purpose described in paragraph (1) of this subsection, and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.
- To an agency administering a state plan under 42 U.S.C. s.654 for use to set an initial or modified child support award.

A consumer reporting agency may furnish a consumer report for employment purposes only if:

- The person who obtains the report from the agency certifies to the agency that:
 - The person has complied with subsection c. of this section with respect to the consumer report, and the person will comply with subsection d. of this section with respect to the consumer report if that subsection becomes applicable.
 - Information from the consumer report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation.
- The consumer reporting agency provides with the report a summary of the consumer's rights under the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq.

Disclosure to Consumer

Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

- All information in the consumer's file at the time of the request.
- The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: provided, that if an action is brought under this act or the federal "Fair Credit Reporting Act," such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.
- The identification of each person, including each end-user identified under

subsections d. and e. of section 5 of this act, who procured a consumer report:

- For employment purposes, during the two-year period preceding the date on which the request is made; or
- For any other purpose, during the one-year period preceding the date on which the request is made.
- An identification of a person under paragraph (1) shall include:
 - The name of the person, or, if applicable, the trade name written in full under which the person conducts business.
 - Upon request of the consumer, the address and telephone number of the person.
- The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.
- A record of all inquiries received by the agency during the one-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

A reporting agency that compiles and maintains files on consumers on a nationwide basis shall make the information subject to disclosure pursuant to this section available to a consumer upon the consumer's request in Spanish or any other language that the Director of the Division of Consumer Affairs determines is the first language of a significant number of consumers in the State. This determination shall be, at the discretion of the director, based on the numerical percentages of all consumers in the State for whom English or Spanish is not a first language or in a manner consistent with any regulations promulgated by the director for this purpose. The director shall require that the information is made available in at least the 10 languages other than English and Spanish that are most frequently spoken as a first language by consumers in this State.

A reporting agency that compiles and maintains files on consumers on a nationwide basis shall provide notice, in any language as determined by the director, on its Internet website in a clear and conspicuous location, of the availability of information subject to disclosure pursuant to this section in languages other than English.

As used in this section, "reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following, regarding consumers residing nationwide:

- Public record information.
- Credit account information from persons who furnish that information regularly and in the ordinary course of business.

Notice for Making Disclosures

A consumer reporting agency shall make the disclosures required under section 7 of this Act during normal business hours and on reasonable notice.

The disclosures required under section 7 of this act shall be made to the consumer:

- In person if the consumer appears in person and furnishes proper identification; or
- By telephone if the consumer has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to the consumer pursuant to section 7 of this Act.

The consumer shall be permitted to be accompanied by one other person of the consumer's choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in that person's presence.

Except as provided in sections 11 and 12 of this act and sections 616 and 617 of the Federal "Fair Credit Reporting Act," 15 U.S.C. s.1681n and 15 U.S.C. s.1681o, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 7 of this act or this section or section 609, 610 or 615 of the Federal "Fair Credit Reporting Act," 15 U.S.C. s.1681g, 15 U.S.C. s.1681h, or 15 U.S.C. s.1681m, or based on information disclosed by a user of a consumer report to or for a consumer against whom the user has taken adverse action, based in whole or in part on the report, except as to false information furnished with malice or willful intent to injure the consumer.

NJ Rev Stat 56:11-35; 56:11-34; 56:11-31

Violations & Penalties under the NJFCRA

Any person who willfully fails to comply with any requirement imposed under this act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- Any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000, or
- In the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater.

- Such number of punitive damages as the court may allow.
- In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency, or \$1,000, whichever is greater.

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorneys' fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper. pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure, or \$1,000, whichever is greater:

- Such number of punitive damages as the court may allow.
- In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorneys' fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

Any person who is negligent in failing to comply with any requirement imposed under this act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- Any actual damages sustained by the consumer as a result of the failure.
- In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorneys' fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses will be guilty of a crime of the fourth degree.

NJ Rev Stat 56:11-38; 56:11-39; 56:11-40

The Federal Fair Credit Reporting Act (FCRA)

There are federal laws that have been put in place to assist with stemming identity theft. The **Fair Credit Reporting Act**, or Regulation V, is a federal law that regulates how consumer credit reporting agencies use a consumer's information. Credit reports are a cornerstone for determining a borrower's creditworthiness when obtaining a loan. Access to credit reports and the information contained on them is regulated by FCRA. FCRA aims to ensure that the use of the information on credit reports is used for permissible purposes. Let's review the requirements under FCRA and talk about a few new things that were implemented under FCRA in 2018.

FCRA allows a consumer credit reporting agency to furnish consumer credit reports for certain acceptable circumstances and with written permission from the consumer or within the government agency's statutory authority. The following are considered acceptable circumstances:

- In response to a court order or Federal Grand Jury subpoena
- By the written instructions of the consumer
- To a person, including an MLO, when it has the reason to believe any of the following:
 - Intends to use the information for a credit transaction involving the consumer's request for an extension of credit, or review or collection of an account.
 - Intends to use the information for employment purposes.
 - Intends to use the information for the underwriting of insurance for the consumer.
 - Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental agency that is required by law to consider an applicant's financial responsibility.
 - Intends to use the information as a potential investor or servicer, or current insurer, regarding valuation of, or an assessment of the credit prepayment risks associated with an existing credit obligation.
 - Intends to use as a legitimate business need for the information related to a business transaction that is initiated by the consumer or to review an account to determine whether the consumer continues to meet the terms of

an existing account.

- In response to a request by the head of a State or local child support enforcement agency (or otherwise appointee) if the person certifies various information to the consumer reporting agency regarding the need to obtain the report (generally this purpose does not impact a financial institution that is not a consumer reporting agency).
- To an agency administering a State plan under Section 454 of the Social Security Act (42 U.S.C. § 654) for use to set an initial or modified child support award.
- To the Federal Deposit Insurance Corporation or National Credit Union Administration as part of its exercise of powers, as applicable.

MLOs must take reasonable care when obtaining a borrower's credit report. Safeguards should be in place to protect the consumer report so that all concerns about potential identity theft have been considered and that the report is only used for allowable purposes. MLOs may have access to pull credit reports, but that does not mean that it is legal under FCRA to pull a credit report on whoever they would like to. For example, an MLO cannot pull a credit report for a friend or to see what's on a neighbor's credit report. There is no permissible purpose in this case. It is also not recommended that an MLO pull their credit report unless they intend to apply for a loan, but MLOs are not permitted to do their own loans.

Along with the definition of permissible use, FCRA requires credit-reporting agencies to delete obsolete information and make sure that the information they have is reported accurately. Most information must be removed within seven years, ten years on bankruptcies. FCRA also allows consumers to dispute erroneous items on their credit report.

Adverse Action Disclosure

FCRA requires that an adverse action disclosure be provided to the borrower if their credit is the reasoning for all or part of the decision to deny the loan application. The disclosure must disclose from which credit reporting agency the credit information was obtained and disclose that the credit reporting agency is not responsible for the denial of the loan. It must also disclose that the credit reporting agency will provide a free copy of the exact report used (MLOs cannot do this as they are not a credit reporting agency), and this disclosure must be given within 30 days of an application (remember – according to ECOA a decision must be made on an application within 30 days of application).

<https://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0111-fair-credit-reporting-act.pdf>

Economic Growth, Regulatory Relief, and Consumer Protection Act

In May of 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act, which requires nationwide consumer reporting agencies to provide national security freezes free to consumers. The National Security Freeze restricts prospective lenders from obtaining access to credit reports, making it harder for identity thieves to open accounts in a consumer's name. This amendment to FCRA requires that whenever the Summary of Consumer of Consumer Rights or the Summary of Consumer Identity Theft Rights is required to be sent, that a new disclosure must also be sent, related to the national security freeze. The Summary of Consumer Rights is a summary of rights to obtain and dispute information in consumer reports and to obtain credit scores. The Summary of Consumer Identity Theft Rights is a summary of the rights of identity theft victims.

Glossary of Terms

This section provides terms from New Jersey law that are used throughout this course and are important for understanding the content presented and being an effective MLO in New Jersey. Please take time to review them.

N.J.A.C. 3:15-1.2 Definitions

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 Residential Mortgage Lenders Act," N.J.S.A. 17:11C-51 et seq.

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

Alternate name means an alternate name of a licensed person other than an individual registered pursuant to N.J.S.A. 14A:2-2.1(2) or 42:2B-4b.

Application means the document(s) 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 mortgage loan document or documents to determine whether to grant or deny a loan.

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 mortgage loans 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.

- A home or place of business of a consumer shall not be considered a branch office.
- A location shall not be considered a branch office merely because any or all of the following activities are conducted at the location:

- Consumers receive information concerning available loan products from a computer terminal
- Consumers are prequalified for a loan, so long as no additional fee is charged for this service
- Advertising materials are distributed to consumers, so long as the materials do not in any way resemble an application for a loan
- 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.
- 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 office of a business licensee merely because the real estate broker or salesman distributes or receives an application of the business licensee at that office, or because a business license or an MLO of that licensee who does not hold himself out to the public as performing mortgage lending or mortgage brokering there, and does not maintain an office or desk there, meets prospective borrowers at the office of the real estate broker as a convenience to the borrower and distributes or receives applications or fees there.

Business licensee means a corporation, association, joint venture, partnership, limited liability company, limited liability partnership, sole proprietorship, or any other legal entity, however organized, permitted under the laws of this State, that is licensed as a residential mortgage lender or residential mortgage broker, or that should be so licensed.

Clerical or support duties means and includes: the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or communicating with a borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. The term "clerical or support duties" does not include making representations to the public, through advertising or other means of communicating or providing information, such as through the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, indicating that a person can or will perform any of the activities of a licensee under the Act or of a person exempt from licensure pursuant to the Act or rules.

Closed-end loan, with respect to a secondary mortgage loan, means a mortgage loan pursuant to which the business 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.

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

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

Controlling interest means ownership, control or interest of 25% or more of the licensee or applicant.

Correspondent mortgage lender means a residential mortgage lender who:

- In the regular course of business, does not hold mortgage loans in its portfolio, or service mortgage loans, for more than 90 days.
- Has shown to the Department's satisfaction an ability to fund mortgage 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 a "depository institution" as defined in section 3 of the "Federal Deposit Insurance Act," 12 U.S.C. § 1813, and also means any credit union.

Direct contact means in-person contact, and contact by means of a telephone, computer terminal, Internet, or other electronic means, during which contact, in the regular course of business, applications for first mortgage loans or second mortgage loans 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.

Federal banking agency means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation, or any of their successor agencies.

First mortgage loan means a residential mortgage loan secured in whole or in part by any interest in residential real estate which is not subject to any prior or superior mortgage lien.

Immediate family member means a spouse, domestic partner as defined in N.J.S.A. 26:8A-3, partner in a civil union couple as defined in N.J.S.A. 37:1-29, parent, stepparent, grandparent, sibling, stepsibling, child, stepchild, and grandchild, as related by blood or by law.

Individual means a natural person.

Individual licensee means a natural person licensed as a qualified individual licensee for a residential mortgage lender or residential mortgage broker, correspondent mortgage lender, or an MLO.

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

Lender means a residential mortgage lender.

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

License or licensing period means the one-year calendar period beginning January 1st, 2011, and each succeeding calendar year.

Licensee means a legal entity or individual who is licensed under the Act.

Loan processor or loan underwriter means an individual who performs clerical or support duties as an employee, at the direction of and subject to the supervision and instruction of a licensee under the Act or a person exempt from licensure.

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 and N.J.A.C. 3:1-16.2.

Mortgage loan originator or originator means any individual not exempt under section 5 of the Act and licensed pursuant to the provisions of the Act, and any individual who should be licensed pursuant to the provisions of the Act and this chapter who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. The term "mortgage loan originator" does not mean an individual:

- Who is a qualified individual licensee for a residential mortgage lender or residential mortgage broker.
- Engaged solely as a loan processor or underwriter, except as provided in section 4 of the Act.
- Engaged solely in extensions of credit relating to timeshare plans, as defined in section 101 (53D) of Title 11, United States Code (11 U.S.C. § 101 (53D)).

Nationwide Multistate Licensing System and Registry (NMLS or "Nationwide System and Registry") means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized for licensing and registering residential mortgage lenders and residential mortgage brokers as business licensees in accordance with the Act, and residential mortgage lenders and brokers as qualified individual licensees and MLOs as required pursuant to the Federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Title V of Pub. L. 110-289 (12 U.S.C. §§ 5101 et seq.)

Nontraditional mortgage product means any mortgage product other than a 30-year fixed-rate residential mortgage loan.

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

- The lender may permit the borrower to obtain advances of money from the lender from time to time or the lender may advance money on behalf of the borrower from time to time as directed by the borrower.
- 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.
- Interest is computed on the unpaid principal balance or balances of the account from time to time.
- 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 offer or commit to make a residential mortgage loan, or to close a residential mortgage loan in the name of the licensee.

Person means an individual, sole proprietorship, 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 residential 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 residential mortgage loan after the loan is closed.

Qualified individual licensee means an individual licensed as a residential mortgage lender or residential mortgage broker, who is required to be so licensed pursuant to the Act as a condition for a person to be issued or to hold a license as a business licensee, and who:

- Meets, at a minimum, the licensing criteria applicable to a mortgage loan originator.
- Is an officer, director, partner, owner, or principal of the business licensee.

Registered mortgage loan originator means any individual who:

- Is a mortgage loan originator and an employee of:
 - A depository institution
 - A subsidiary that is:
 - Owned and controlled by a depository institution; and
 - Regulated by a Federal banking agency; or
 - An institution regulated by the Farm Credit Administration established by section 5.7 of the "Farm Credit Act of 1971," Pub. L. 92-181 (12 U.S.C. § 2241), or its successor; and
- Is registered with and maintains a unique identifier through the NMLS.

Residential mortgage broker or "mortgage broker" or "broker" means any person, not exempt under section 5 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 takes a residential mortgage loan application for others, or negotiates, places or sells for others, or offers to take an application for, negotiate, place or sell residential

mortgage loans in the primary market for others. The term "residential mortgage broker" also means an individual who is a qualified individual licensee for a residential mortgage broker.

Residential mortgage lender or mortgage lender means any person, not exempt under this chapter and licensed pursuant to the Act and the provisions of this chapter, and any person who should be so licensed who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application or offers, negotiates, originates, or acquires residential mortgage loans in the primary market. The term "residential mortgage lender" also means:

- With respect to a business licensee, a correspondent mortgage lender, unless the provisions of this chapter clearly indicate otherwise.
- With respect to an individual licensee, an individual who is a qualified individual licensee for a residential mortgage lender.

Residential mortgage loan or mortgage loan means any loan primarily for personal, family, or household purposes that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a one-to four-family dwelling, as defined in section 103(v) of the Truth in Lending Act, Pub. L. 90-321 (15 U.S.C. § 1602(v)), or residential real estate upon which is constructed or intended to be constructed a dwelling.

Residential real estate means any real property located in this State, upon which is constructed, or intended to be constructed, a one-to-four family dwelling as defined in section 103(v) of the Truth in Lending Act (15 U.S.C. § 1602(v)).

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.

Secondary mortgage loan means a residential mortgage loan secured in whole or in part by a lien upon any interest in residential real estate, which is subject to one or more prior mortgage liens, except that the following loans shall not be subject to the provisions of this chapter:

- A loan that is to be repaid in 90 days or less.
- 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.
- 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.

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

Substantial stockholder means a person or entity owning 10% or more of the stock of a licensee.

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

Tangible net worth means net worth less the following assets:

- That portion of any assets pledged to secure obligations of any person or entity other than that of the applicant.
- 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.
- 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.
- 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.
- 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
- Goodwill.
- The value placed on insurance renewals or property management contract renewals or other similar intangibles of the applicant.
- Organization costs of the applicant.
- 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.
- Any real estate held for investment where development will not start within two years from the date of its initial acquisition.
- Any leasehold improvements not being amortized over the lesser of the expected life of the asset or the remaining term of the lease.

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

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

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

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

Unique identifier means a number or other identifier assigned by the NMLS.

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.

NJ Rev Stat Section 17:11C-53

Approved conditional status means the status of the license of an individual who has satisfied all conditions for licensure as a mortgage loan originator or qualified individual licensee except a satisfactory demonstration of his or her financial responsibility but who is making a good faith effort to achieve the level of financial responsibility required for such licensure.

Approved inactive status means the status of the license of an individual applicant who has satisfied all conditions for licensure except sponsorship by a licensed business entity or the status of a licensed individual who is no longer so sponsored.

Bona fide not for profit entity means an organization that:

- Maintains tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. s.501(c)(3).
- Promotes low to moderate income housing or provides homeownership education, or similar services.
- Conducts its activities in a manner that serves public or charitable purposes.
- Receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients.

- Compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.
- Provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.
- Meets such other standards as may be prescribed by the commissioner through rulemaking.

Borrower means any individual applying for a loan from a licensee licensed under this act, whether or not the loan is granted, and any individual who has actually obtained a loan.

Branch manager means an employee of a licensed business entity with management responsibilities over a branch and who is identified as such with the NMLS.

Business licensee means a corporation, association, joint venture, partnership, limited liability company, limited liability partnership, sole proprietorship, or any other legal entity, however organized, permitted under the laws of this State, that is licensed as a residential mortgage lender or residential mortgage broker, or that should be so licensed.

Clerical or support duties means and includes:

- The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or
- Communicating with a borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. However, the term "clerical or support duties" does not include making representations to the public, through advertising or other means of communicating or providing information, such as through the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, indicating that a person can or will perform any of the activities of a licensee under this Act or of a person exempt from licensure pursuant to section 5 of this Act.

Closed-end loan with respect to a secondary mortgage loan means a mortgage loan pursuant to which the business 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 residential 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 this act.

Commissioner means the Commissioner of Banking and Insurance.

Controlling interest means ownership, control, or interest of 25% or more of the business licensee or applicant.

Correspondent mortgage lender means a residential mortgage lender who:

- In the regular course of business, does not hold any mortgage loans in its portfolio, or service mortgage loans, for more than 90 days.
- Has shown to the department's satisfaction an ability to fund mortgage loans through warehouse agreements, table funding agreements, or otherwise.

Department means the Department of Banking and Insurance.

Depository institution means "depository institution" as defined in section 3 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1813), and also means any credit union.

Exempt company means a person other than a bona fide not for profit entity that is not subject to licensure as a residential mortgage lender or a residential mortgage broker under P.L.2009, c.53 (C.17:11C-51 et seq.) that is registered pursuant to subsection d. of section 4 of P.L.2009, c.53 (C.17:11C-54), and that employs, or will employ one or more licensed mortgage loan originators.

Expungement means, with respect to a record of criminal conviction entered in this State, an order issued pursuant to N.J.S. 2C:52-1 et seq. With respect to criminal convictions entered in another state, that other state's definition of expungement or the functional equivalent of expungement will apply.

Federal banking agency means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, [the Director of the Office of Thrift Supervision,] the National Credit Union Administration, or the Federal Deposit Insurance Corporation, or any of their successor agencies.

Immediate family member means a spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), partner in a civil union couple as defined in section 2 of P.L.2006, c.103 (C.37:1-29), parent, stepparent, grandparent, sibling, stepsibling, child,

stepchild, and grandchild, as related by blood or by law.

Individual licensee means a natural person licensed as a qualified individual licensee for a residential mortgage lender or residential mortgage broker, or a mortgage loan originator.

Insurer means an entity authorized to transact the business of insurance in this state pursuant to subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey Statutes.

Licensee means a legal entity or natural person who is licensed under this act, or who should be so licensed.

Loan processor or loan underwriter means an individual who performs clerical or support duties as an employee, at the direction of and subject to the supervision and instruction of a licensee under this act or a person exempt from licensure.

Mortgage loan originator means any individual, not exempt under section 5 of this act and licensed pursuant to the provisions of this act, and any individual who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. However, the term "mortgage loan originator" does not mean an individual:

- Who is a qualified individual licensee for a residential mortgage lender or residential mortgage broker.
- Engaged solely as a loan processor or underwriter, except as provided in section 4 of this act.
- Engaged solely in extensions of credit relating to timeshare plans, as defined in section 101(53D) of title 11, United States Code (11 U.S.C. s.101(53D)).
- Employed by a federal, state, or local government agency or a housing finance agency and who acts as a mortgage loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency, or of a housing finance agency. The agency itself is not considered a mortgage loan originator under the provisions of P.L.2009, c.53 (C.17:11C-51 et seq.).
 - For the purposes of subsection d. of this section:
 - **Employee** means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and whose compensation for federal income tax purposes is reported or required to be reported on a W-2 form issued by the controlling person.

Housing finance agency means any organization that is:

- Chartered by a state to help meet the affordable housing needs of the residents of the state.
- Supervised, directly or indirectly, by the state government.
- Subject to audit and review by the state in which it operates.
- Whose activities make it eligible to be a member of the National Council of State Housing Agencies.

Nationwide Multistate Licensing System and Registry means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized for licensing and registering residential mortgage lenders and residential mortgage brokers as business licensees in accordance with this act, and residential mortgage lenders and brokers as qualified individual licensees and mortgage loan originators as required pursuant to the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

Nontraditional mortgage product means any mortgage product other than a 30-year fixed rate residential mortgage loan.

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

- The lender may permit the borrower to obtain advances of money from the lender from time to time or the lender may advance money on behalf of the borrower from time to time as directed by the borrower.
- 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.
- Interest is computed on the unpaid principal balance or balances of the account from time to time.
- 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.

Out-of-State mortgage loan originator means an individual who maintains a unique identifier through the NMLS and currently holds a valid MLO license issued pursuant to the law of any state or other jurisdiction within the United States.

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

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

Qualified individual licensee means an individual licensed as a residential mortgage lender or residential mortgage broker, who is required to be licensed under this act as a condition for a person to be issued or hold a license as a business licensee, whereby the individual:

- Meets, at a minimum, the licensing criteria applicable to an MLO.
- Is an officer, director, partner, owner, or principal of the business licensee.

Registered mortgage loan originator means any individual who:

- Is a mortgage loan originator and an employee of:
 - A depository institution;
 - A subsidiary that is (i) owned and controlled by a depository institution and (ii) regulated by a federal banking agency; or
 - An institution regulated by the Farm Credit Administration established by section 5.7 of the "Farm Credit Act of 1971," Pub.L.92-181 (12 U.S.C. s.2241), or its successor; and
- Is registered with, and maintains a unique identifier through, the NMLS

Residential mortgage broker means any person, not exempt under section 5 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application for others, or negotiates, places or sells for others, or offers to take an application for, negotiate, place or sell, residential mortgage loans in the primary market for others. The term "residential mortgage broker" also means an individual who is a qualified individual licensee for a residential mortgage broker.

Residential mortgage lender means any person, not exempt under section 5 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application, or offers, negotiates, originates, or acquires residential mortgage loans in the primary market. The term "residential mortgage lender" also means:

- With respect to a business licensee, a correspondent mortgage lender, unless the provisions of this act clearly indicate otherwise.
- With respect to an individual licensee, an individual who is a qualified individual licensee for a residential mortgage lender.

Residential mortgage loan means any loan primarily for personal, family, or household purposes that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(w) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(w)) or residential real estate upon which is constructed or intended to be constructed a dwelling.

Residential real estate means any real property located in this State, upon which is constructed or intended to be constructed a dwelling as defined in section 103(w) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(w)).

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 mortgage liens and on which there is erected a structure containing a one, two, three, or four family dwelling, as defined in section 103(w) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(w)), a portion of which structure may be used for nonresidential purposes, except that the following loans shall not be subject to the provisions of this act: (1) a loan which is to be repaid in 90 days or less; (2) a loan which is taken as security for a home repair contract executed in accordance with the provisions of the "Home Repair Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); or (3) a loan which 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 that dwelling for at least one year, if the buyer is purchasing that dwelling for his own residence and, if the buyer, as part of the purchase price, executes a secondary mortgage in favor of the seller.

Sponsor means a business licensee that employs a qualified individual licensee, a mortgage loan originator, or an applicant for a transitional MLO license.

State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands unless the context clearly indicates otherwise.

Transitional MLO license or transitional license means a license, issued to an out-of-State MLO that provides temporary authority to engage in the business of mortgage

loan origination in this state pending the completion by the transitionally licensed individual of the requirements for licensure as a New Jersey MLO as set forth in section 7 of P.L.2009, c.53 (C.17:11C-57). A transitional MLO license shall be valid for a term of no longer than 90 days.

Unique identifier means a number or other identifier for a mortgage loan originator or a qualified individual licensee as a residential mortgage lender or residential mortgage broker, assigned by protocols established by the NMLS.