

[First Reprint]

ASSEMBLY, No. 4998

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 7, 2019

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman PATRICIA EGAN JONES

District 5 (Camden and Gloucester)

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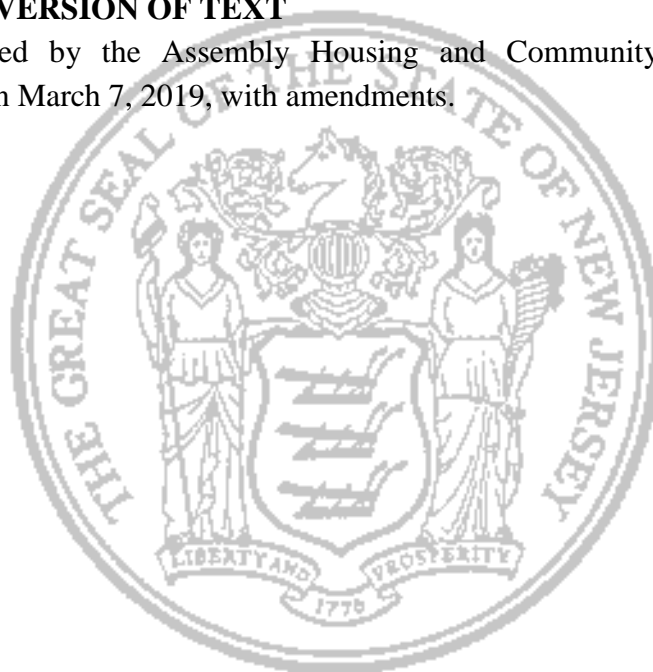
Assemblyman McKeon

SYNOPSIS

Clarifies that “New Jersey Residential Mortgage Lending Act” applies to certain out-of-state persons involved in residential mortgage lending in the State.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Community Development Committee on March 7, 2019, with amendments.



(Sponsorship Updated As Of: 3/26/2019)

1 AN ACT concerning licensing and other requirements for residential
2 mortgage lending ^{1,1} and amending P.L.2009, c.53 ¹and
3 P.L.1995, c.244¹ .
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 4 of P.L.2009, c.53 (C.17:11C-54) is amended to
9 read as follows:

10 4. Except as provided under section 5 of this act, beginning no
11 later than July 31, 2010, or a later date approved by the Secretary of
12 the United States Department of Housing and Urban Development
13 pursuant to the provisions of section 1508 of the federal "Secure
14 and Fair Enforcement for Mortgage Licensing Act of 2008,"
15 Pub.L.110-289 (12 U.S.C. s.5107), the licensing requirements under
16 this act shall be as follows:

17 a. For residential mortgage lenders and residential mortgage
18 brokers, as business licensees:

19 (1) No person shall act as a residential mortgage lender or
20 broker without first obtaining a license under this act, except that a
21 person licensed as a residential mortgage lender may act as a
22 broker, if proper disclosure is made. The department shall issue
23 licenses which specify whether a business licensee is licensed as a
24 residential mortgage lender or broker.

25 (2) No person shall be issued or hold a license as a residential
26 mortgage lender or residential mortgage broker unless one officer,
27 director, partner, owner or principal is a qualified individual
28 licensee. The commissioner may, by regulation, require a licensed
29 residential mortgage lender or broker to employ additional qualified
30 individual licensees to properly supervise the business licensee in
31 its branch offices. If a qualified individual licensee allows his
32 license to lapse or for some other reason is no longer affiliated with
33 the business licensee, the business licensee shall notify the
34 commissioner within 10 days, and shall appoint another qualified
35 individual licensee within 90 days or a longer period as permitted
36 by the commissioner.

37 (3) No person licensed as a mortgage banker, correspondent
38 mortgage banker, mortgage broker, or secondary lender under the
39 provisions of the "New Jersey Licensed Lenders Act," sections 1
40 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the
41 effective date of its reform and re-titling as the "New Jersey
42 Consumer Finance Licensing Act" pursuant to P.L.2009, c.53
43 (C.17:11C-51 et al.), shall continue to engage in any activities for
44 which a license was previously issued, and henceforth act as a

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted March 7, 2019.

1 residential mortgage lender or residential mortgage broker without
2 first obtaining a license under this act.

3 b. For qualified individual licensees:

4 (1) No individual shall act as a qualified individual licensee for
5 a residential mortgage lender or residential mortgage broker without
6 first obtaining a license under this act. A qualified individual
7 licensee may act as a mortgage loan originator.

8 (2) No individual licensee for a mortgage banker, correspondent
9 mortgage banker, mortgage broker, or secondary lender under the
10 provisions of the "New Jersey Licensed Lenders Act," sections 1
11 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the
12 effective date of its reform and re-titling as the "New Jersey
13 Consumer Finance Licensing Act" pursuant to P.L.2009, c.53
14 (C.17:11C-51 et al.), shall continue to engage in any activities for
15 which a license was previously issued, and henceforth act as a
16 qualified individual licensee without first obtaining a license under
17 this act.

18 c. For mortgage loan originators:

19 (1) (a) No individual shall act as a mortgage loan originator
20 without first obtaining a license or transitional license under this
21 act.

22 (b) No individual, except as provided in paragraph (2) of this
23 subsection, shall be issued or hold a license or transitional license
24 as a mortgage loan originator unless employed as an originator by
25 one, and not more than one, business licensee, and is subject to the
26 direct supervision and control of that licensee, employed by an
27 exempt company, or who is under a written agreement with and
28 sponsored in the Nationwide Mortgage Licensing System by one,
29 and not more than one, person exempt from licensing requirements
30 and registered with the department under subsection a. of section 5
31 of P.L.2009, c.53 (C.17:11C-55), and is subject to the direct
32 supervision and control of that exempt person.

33 (2) No individual shall act as a loan processor or underwriter
34 who is an independent contractor or employed by an independent
35 contractor without first obtaining a mortgage loan originator license
36 under this act, except as provided in subsection d. of this section.

37 (3) No individual registered as a mortgage solicitor under the
38 provisions of the "New Jersey Licensed Lenders Act," sections 1
39 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the
40 effective date of its reform and re-titling as the "New Jersey
41 Consumer Finance Licensing Act" pursuant to P.L.2009, c.53
42 (C.17:11C-51 et al.), shall continue to engage in any activities for
43 which a registration was previously issued, and henceforth act as a
44 mortgage loan originator without first obtaining a license under this
45 act.

46 d. For exempt companies:

47 (1) No person shall qualify for registration as an exempt
48 company unless the person is in the business of mortgage loan

1 origination solely by virtue of its performance of loan processing or
2 underwriting functions. The commissioner shall have the authority
3 to adopt rules in accordance with the "Administrative Procedure
4 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) specifying additional
5 criteria on the basis of which a person in the business of mortgage
6 loan origination solely by virtue of its performance of loan
7 processing or underwriting functions may qualify for registration as
8 an exempt company.

9 (2) An exempt company shall register with the commissioner
10 and with the Nationwide Mortgage Licensing System and Registry.
11 An applicant for registration or for renewal of registration as an
12 exempt company shall:

13 (a) Submit a completed application to the commissioner on the
14 form, in the manner, and with the appropriate evidence in support of
15 the application as may be prescribed by the commissioner;

16 (b) Pay to the commissioner at the time of application a
17 nonrefundable application fee not to exceed \$500 as established by
18 the commissioner by regulation;

19 (c) Pay to the Nationwide Mortgage Licensing System and
20 Registry any fees required by that system and registry, or any fees
21 which, by arrangement of the commissioner, are payable to the
22 Nationwide Mortgage Licensing System and Registry on behalf of
23 the commissioner; and

24 (d) Obtain a blanket bond in an amount and form prescribed by
25 the commissioner, but not less than \$25,000. The bond shall be
26 obtained from a surety company authorized by law to do business in
27 this State. The exempt company shall procure the bond to cover its
28 mortgage loan origination related activities. The bond shall run to
29 the State for the benefit of any person injured by the wrongful act,
30 default, fraud or misrepresentation of any person covered by the
31 bond. No bond shall comply with the requirements of this
32 subparagraph unless the bond contains a provision that it shall not
33 be canceled for any cause unless notice of intention to cancel is
34 filed in the department at least 30 days before the day upon which
35 cancellation shall take effect.

36 (3) A registered exempt company shall:

37 (a) Respond in a timely manner to any request of the
38 commissioner for the production of and access to books, records,
39 accounts, documents or other information relative to its operations;

40 (b) Submit to the Nationwide Mortgage Licensing System and
41 Registry a mortgage call report of conditions, in the form and
42 manner, and with such information, at any time as may be required
43 by the nationwide system and registry, and any other report to, or
44 through, the nationwide system and registry pursuant to an
45 arrangement for reporting and sharing information;

46 (c) Provide written notice to the commissioner within 10 days of
47 the occurrence of any event that would cause the exempt company
48 to no longer qualify for registration as such under the terms of this

1 subsection d. and so notify in writing all licensed mortgage loan
2 originators employed or retained by the exempt company; and

3 (d) Employ at least one individual who is licensed as a mortgage
4 loan originator who shall not engage in the origination of mortgage
5 loans under P.L.2018, c.108 and shall be assigned supervision and
6 instruction duties with respect to individuals employed as loan
7 processors or loan underwriters as defined in section 3 of P.L.2009,
8 c.53 (C.17:11C-53).

9 e. The provisions of the “New Jersey Residential Mortgage
10 Lending Act,” sections 1 through 39 of P.L.2009, c.53 (C.17:11C-
11 51 through C.17:11C-89) shall also apply to residential mortgage
12 lenders, residential mortgage brokers, mortgage loan originators,
13 and other persons that are located out-of-State, provided they are
14 otherwise required to be licensed pursuant to the provisions of the
15 act in the State.

16 (cf: P.L.2018, c.108, s.2)

17

18 ¹2. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to
19 read as follows:

20 4. a. Upon failure to perform any obligation of a residential
21 mortgage by the residential mortgage debtor and before any
22 residential mortgage lender may accelerate the maturity of any
23 residential mortgage obligation and commence any foreclosure or
24 other legal action to take possession of the residential property
25 which is the subject of the mortgage, the residential mortgage
26 lender shall give the residential mortgage debtor notice of such
27 intention at least 30 days in advance of such action as provided in
28 this section.

29 b. Notice of intention to take action as specified in subsection
30 a. of this section shall be in writing, sent to the debtor by registered
31 or certified mail, return receipt requested, at the debtor's last known
32 address, and, if different, to the address of the property which is the
33 subject of the residential mortgage. The notice is deemed to have
34 been effectuated on the date the notice is delivered in person or
35 mailed to the party.

36 c. The written notice shall clearly and conspicuously state in a
37 manner calculated to make the debtor aware of the situation:

38 (1) the particular obligation or real estate security interest;

39 (2) the nature of the default claimed;

40 (3) the right of the debtor to cure the default as provided in
41 section 5 of **[this act]** P.L.1995, c.244 (C.2A:50-57);

42 (4) what performance, including what sum of money, if any, and
43 interest, shall be tendered to cure the default as of the date specified
44 under paragraph (5) of this subsection c.;

45 (5) the date by which the debtor shall cure the default to avoid
46 initiation of foreclosure proceedings, which date shall not be less
47 than 30 days after the date the notice is effective, and the name and

- 1 address and phone number of a person to whom the payment or
2 tender shall be made;
- 3 (6) that if the debtor does not cure the default by the date
4 specified under paragraph (5) of this subsection c., the lender may
5 take steps to terminate the debtor's ownership in the property by
6 commencing a foreclosure suit in a court of competent jurisdiction;
- 7 (7) that if the lender takes the steps indicated pursuant to
8 paragraph (6) of this subsection c., a debtor shall still have the right
9 to cure the default pursuant to section 5 of **[this act]** P.L.1995,
10 c.244 (C.2A:50-57), but that the debtor shall be responsible for the
11 lender's court costs and attorneys' fees in an amount not to exceed
12 that amount permitted pursuant to the Rules Governing the Courts
13 of the State of New Jersey;
- 14 (8) the right, if any, of the debtor to transfer the real estate to
15 another person subject to the security interest and that the transferee
16 may have the right to cure the default as provided in **[this act]**,
17 P.L.1995, c.244 (C.2A:50-53 et seq.) subject to the mortgage
18 documents;
- 19 (9) that the debtor is advised to seek counsel from an attorney of
20 the debtor's own choosing concerning the debtor's residential
21 mortgage default situation, and that, if the debtor is unable to obtain
22 an attorney, the debtor may communicate with the New Jersey Bar
23 Association or Lawyer Referral Service in the county in which the
24 residential property securing the mortgage loan is located; and that,
25 if the debtor is unable to afford an attorney, the debtor may
26 communicate with the Legal Services Office in the county in which
27 the property is located;
- 28 (10) the possible availability of financial assistance for curing a
29 default from programs operated by the State or federal government
30 or nonprofit organizations, if any, as identified by the
31 Commissioner of Banking and Insurance. This requirement shall be
32 satisfied by attaching a list of such programs promulgated by the
33 commissioner; **[and]**
- 34 (11) the name and address of the lender and the telephone
35 number of a representative of the lender whom the debtor may
36 contact if the debtor disagrees with the lender's assertion that a
37 default has occurred or the correctness of the mortgage lender's
38 calculation of the amount required to cure the default ; and
- 39 (12) that the lender is either licensed in accordance with the
40 “New Jersey Residential Mortgage Lending Act,” sections 1
41 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)
42 or exempt from licensure under the act in accordance with
43 applicable law.
- 44 d. The notice of intention to foreclose required to be provided
45 pursuant to this section shall not be required if the debtor has
46 voluntarily surrendered the property which is the subject of the
47 residential mortgage.

1 e. The duty of the lender under this section to serve notice of
2 intention to foreclose is independent of any other duty to give
3 notice under the common law, principles of equity, State or federal
4 statute, or rule of court and of any other right or remedy the debtor
5 may have as a result of the failure to give such notice.

6 f. Compliance with this section shall be set forth in the
7 pleadings of any legal action referred to in this section. If the
8 plaintiff in any complaint seeking foreclosure of a residential
9 mortgage alleges that the property subject to the residential
10 mortgage has been abandoned or voluntarily surrendered, the
11 plaintiff shall plead the specific facts upon which this allegation is
12 based.¹

13 (cf: P.L.2003, c.298, s.1)

14

15 ¹**[2.]** 3.¹ This act shall take effect immediately.