

ASSEMBLY, No. 2138

STATE OF NEW JERSEY

INTRODUCED JUNE 10, 1996

By Assemblyman BATEMAN

1 AN ACT concerning secondary mortgage lenders and amending  
2 P.L.1970, c.205.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 13 of P.L.1970, c.205 (C.17:11A-46) is amended to  
8 read as follows:

9 13. A secondary mortgage loan licensee shall not:

10 a. Transact any business subject to the provisions of this act under  
11 any other name or at any other location except that designated in his  
12 license. For the purpose of this section, the transaction of business  
13 includes, but is not limited to, the signing of any instrument, document  
14 or any other form by the borrower, except that a borrower's  
15 application for a secondary mortgage loan need not be signed in the  
16 office of the licensee and that a secondary mortgage loan need not be  
17 closed at the office of a licensee provided that it is closed in New  
18 Jersey at the office of an attorney admitted to practice in this State. A  
19 licensee who changes his name or place of business shall immediately  
20 notify the commissioner who shall issue a certificate to the licensee,  
21 which shall specify the licensee's new name or address.

22 b. Photocopy or otherwise reproduce his license.

23 c. Request that a borrower incorporate in connection with a  
24 secondary mortgage loan or aid or abet such a scheme.

25 d. Make a secondary mortgage loan which has been referred by a  
26 retail seller, who, in connection with such referral, has required the  
27 borrower to purchase personal property or services or has indicated  
28 that such purchase is necessary as a condition precedent for such loan.

29 e. Charge an application fee in excess of \$300 or collect an  
30 application fee, if charged, prior to the time a secondary mortgage  
31 loan is closed or make any other charge or accept an advance deposit  
32 prior to the time a secondary mortgage loan is closed ; provided  
33 however, that if an application fee is charged and collected with  
34 respect to an open-end secondary mortgage loan, no annual fee shall

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

**Matter underlined thus is new matter.**

1 be charged pursuant to subsection m. of this section with respect to  
2 that loan.

3 f. Require or accept from a borrower any collateral or security for  
4 a secondary mortgage loan other than a mortgage, indenture or any  
5 other similar instrument or document which creates a lien upon any  
6 real property or an interest in real property including, but not limited  
7 to, shares of stock in a cooperative corporation.

8 g. Contract for, charge, receive or collect directly or indirectly, any  
9 of the following in connection with a secondary mortgage loan: a  
10 broker's or finder's fee; commission; expense; fine; penalty; premium,  
11 or any other thing of value other than the charges authorized by this  
12 act; except the expenses incurred on actual sale of the real property in  
13 foreclosure proceedings or upon the entry of judgment, which are  
14 otherwise authorized by law; provided, however, that:

15 (1) a licensee may require a borrower to pay a reasonable legal fee  
16 at the time of the execution of the secondary mortgage loan, provided  
17 any such legal fee shall represent a charge actually incurred in  
18 connection with said secondary mortgage loan and shall not be paid to  
19 a person except an attorney authorized to practice law in this State;  
20 provided, further, that such legal fee shall be evidenced by a statement  
21 from such attorney issued to the licensee; and

22 (2) a licensee may charge and receive no more than three discount  
23 points computed as a percentage of the amount of the loan and may  
24 add such discount points to the principal balance of the loan which  
25 discount points shall be fully earned when the loan is made and shall  
26 be included in the finance charge and disclosed to the borrower as  
27 required under the truth in lending provisions of the Consumer Credit  
28 Protection Act, 15 U.S.C. §1601 et seq. The annual percentage rate  
29 charged to the borrower, including the discount points, if any,  
30 disclosed under this paragraph (2), shall be subject to N.J.S.2C:21-19.  
31 As used in this paragraph (2), "discount point" means one per cent of  
32 the amount of credit to be extended to the borrower.

33 h. Assign, sell or transfer a secondary mortgage loan to a person  
34 other than a banking institution as defined in section 1 of P.L.1948,  
35 c.67 (C.17:9A-1), association, as defined in section 5 of P.L.1963,  
36 c.144 (C.17:12B-5), or another secondary mortgage loan licensee, the  
37 Federal National Mortgage Association created pursuant to section  
38 302 of the [National Housing Act,] "National Housing Act," 48 Stat.  
39 [1246] 1254 (12 U.S.C. §1717), the Federal Home Loan Mortgage  
40 Corporation created pursuant to section 303 of the "Federal Home  
41 Loan Mortgage Corporation Act," Pub.L. 91-351 (12 U.S.C. §1452),  
42 or other persons or entities as from time to time approved by the  
43 commissioner to facilitate and assure the steady flow of secondary  
44 mortgage funds into the State. Notwithstanding any other provisions  
45 of this act, such persons or entities need not be licensed under the act  
46 to purchase or accept such an assignment or transfer of a secondary

1 mortgage loan.

2 i. Solicit secondary mortgage loan business through any other  
3 person by paying, directly or indirectly, for such business referred to  
4 the licensee by any such person, except that a licensee may solicit  
5 secondary mortgage loan business on behalf of another licensee or  
6 lender expressly authorized to make secondary mortgage loans in this  
7 State if (1) such solicitation results in no additional cost or expense to  
8 the borrower; and (2) the application and all advertising in connection  
9 therewith clearly disclose the identity of the person or entity which will  
10 be making the loan. If those conditions are met, a licensee may collect  
11 a fee or a commission from the lender as consideration for the  
12 solicitation.

13 j. (Deleted by amendment, P.L.1993, c.260).

14 k. Advertise, cause to be advertised or otherwise solicit whether  
15 orally, in writing, by telecast, by broadcast or in any other manner:

16 (1) That he is licensed by, or that his business is under the  
17 supervision of, the State of New Jersey or the Department of Banking,  
18 except that a licensee may advertise that he is "licensed pursuant to the  
19 'Secondary Mortgage Loan Act'"; provided, however, that for the  
20 purpose of raising capital, no such advertisement shall be permitted if  
21 it is to be used in connection with a public solicitation for such funds.

22 (2) Any name, address or telephone number other than the  
23 licensee's own name, address and telephone number in this State,  
24 except as permitted in paragraph (3) of this subsection.

25 (3) The word "bank" or any term inferring that the licensee is or is  
26 associated with a bank provided, however, that nothing in this  
27 paragraph shall be deemed to prohibit a licensee which is owned by or  
28 affiliated with a banking institution, as defined pursuant to section 1  
29 of P.L.1948, c.67 (C.17:9A-1), or a holding company which owns or  
30 controls a banking institution from using the name of the banking  
31 institution or the holding company in its advertising.

32 (4) The amount of the interest to be charged, unless such charge  
33 is also expressed as an annual percentage rate.

34 (5) Any statement or representation which is false, misleading or  
35 deceptive and, provided further, a written or other visual  
36 advertisement shall include the licensee's name, address and telephone  
37 number in this State and the phrase "Secondary Mortgage Loans" in  
38 10-point bold type or larger.

39 (6) Any statement or representation that the licensee will provide  
40 "immediate approval" of a loan application or "immediate closing" of  
41 a loan or will afford unqualified access to credit.

42 l. Make or offer to make any secondary mortgage loan which  
43 would not be a prudent loan.

44 m. Charge an annual fee on an open-end secondary mortgage loan  
45 in excess of 1 per cent of the line of credit or \$50, whichever is less,  
46 provided however, that:

