

ASSEMBLY, No. 2322

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1996

By Assemblymen AUGUSTINE and BATEMAN

1 AN ACT concerning the use of "good funds" for real property  
2 mortgages and amending P.L.1981, c.18 and supplementing  
3 P.L.1975, c.106 (C.17:46B-1 et seq.).

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

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8 1. Section 14 of P.L.1981, c.18 (C.17:11B-14) is amended to read  
9 as follows:

10 14. a. No person or licensee shall advertise, print, display, publish,  
11 distribute, telecast or broadcast, or cause or permit to be advertised,  
12 printed, displayed, published, distributed, televised or broadcast, in any  
13 manner, any statement or representation with regard to the rates, terms  
14 or conditions pertaining to the making, negotiating, or sale of loans,  
15 which is false, misleading or deceptive. No person who is not licensed  
16 under this act or not exempt under section 3 of this act shall use the  
17 word "mortgage" or similar words in any advertising, signs,  
18 letterheads, cards, or like matter which tend to represent that he  
19 arranges real estate mortgage loans. No person licensed under this act  
20 shall be granted a license in a name containing such words as  
21 "insured," "bonded," "guaranteed," "secured" and the like.

22 b. No person or licensee shall, in connection with or incidental to  
23 the making of a mortgage loan, require or permit the mortgage  
24 instrument or bond or note to be signed by a party to the transaction  
25 if the instrument contains any blank spaces to be filled in after it has  
26 been signed, except blank spaces relating to recording.

27 c. No person or licensee shall charge or exact directly or indirectly  
28 from the mortgagor or any other person fees, commissions or charges  
29 determined to be excessive in accordance with subsection b. of section  
30 13 of this act.

31 d. No person not licensed or not exempt from licensure under this  
32 act shall receive any commission, bonus or fee in connection with  
33 arranging or originating a mortgage loan for a borrower, except that  
34 a mortgage solicitor can receive such commission, bonus, or fee from

**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 his employer.

2 e. No person or licensee shall pay any commission, bonus or fee to  
3 any person not licensed or not exempt under the provisions of this act  
4 in connection with arranging for or originating a mortgage loan for a  
5 borrower, except that a mortgage solicitor may be paid such bonus,  
6 commission, or fee by his employer.

7 f. No person shall obtain or attempt to obtain a license by fraud or  
8 misrepresentation.

9 g. No person or licensee shall misrepresent, circumvent, or conceal  
10 the nature of any material particular of any transaction to which he is  
11 a party.

12 h. No person or licensee shall fail to disburse funds in accordance  
13 with his agreements, unless otherwise ordered by the commissioner or  
14 a court of this State or of the United States.

15 i. No person or licensee shall fail without good cause to account  
16 or deliver to any person any personal property, money, fund, deposit,  
17 check, draft, mortgage, document or thing of value, which is not his  
18 property, or which he is not in law or equity entitled to retain under  
19 the circumstances, at the time which has been agreed upon, or is  
20 required by law or, in the absence of a fixed time, upon demand of the  
21 person entitled to such accounting and delivery.

22 j. No person or licensee shall fail to place in escrow, immediately  
23 upon receipt, any money, fund, deposit, check or draft entrusted to  
24 him by any person dealing with him as a mortgage banker or mortgage  
25 broker, in a manner approved by the commissioner, or to deposit the  
26 funds in a trust or escrow account maintained by him with a financial  
27 institution the deposits of which are insured by the Federal Deposit  
28 Insurance Corporation or the Federal Savings and Loan Insurance  
29 Corporation, wherein the funds shall be kept until the disbursement  
30 thereof is properly authorized.

31 k. No person licensed under this act shall change the address of his  
32 place of business without notice to the commissioner.

33 l. No person or licensee shall fail (1) to present a certified check,  
34 cashier's check, teller's check or bank check for the proceeds of the  
35 loan, (2) to arrange an electronic funds transfer for the proceeds of the  
36 loan or (3) to provide for payment by [any other means which is  
37 ethically permissible] cash, to the [purchaser] mortgagor, acting on his  
38 own behalf, or the attorney or other person acting for the [purchaser]  
39 mortgagor, at a reasonable time and place prior to the time of the  
40 mortgage closing transaction. [This subsection shall not prevent a  
41 person or licensee from utilizing any method of payment which is  
42 agreed upon by the person or licensee and the closing agent; nor]  
43 Nothing contained in this subsection l. shall [it] prevent the person or  
44 licensee from assessing a reasonable charge as set forth by regulation  
45 by the Commissioner of Banking to reflect the additional cost to the  
46 person or licensee for the issuance of a certified, cashier's, teller's or

1 bank check [,] or arranging an electronic funds transfer [, or any other  
2 means of payment which is ethically permissible]. Such reasonable  
3 charge shall be fully disclosed at or prior to the issuance of the loan  
4 commitment. A "bank check" means a negotiable instrument drawn by  
5 a state or federally chartered bank, savings bank or savings and loan  
6 association on itself or on its account in another state or federally  
7 chartered bank, savings bank or savings and loan association doing  
8 business in this State.

9 (cf: P.L.1985, c.23, s.1)

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11 2. (New section) a. Every title insurance producer licensed  
12 pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.) and every title  
13 insurance company shall maintain a separate record of all receipts and  
14 disbursements as a depository for funds representing closing or  
15 settlement proceeds of a real estate transaction, which funds shall be  
16 deposited in a separate trust or escrow account, and which shall not  
17 be commingled with a producer's or company's own funds or with  
18 funds held by a producer or company in any other capacity.

19 b. No title insurance producer or company shall disburse funds  
20 representing closing or settlement proceeds of a real estate transaction  
21 unless those funds shall have been deposited in a separate trust or  
22 escrow account by cash, electronic wire transfer, or certified, cashier's,  
23 teller's or bank check, or other collected funds; provided nevertheless,  
24 that nothing contained herein shall be construed to prohibit a title  
25 insurance producer or company from disbursing against funds  
26 deposited in a separate trust or escrow account other than by cash,  
27 electronic wire transfer, or certified, cashier's, teller's or bank check or  
28 other collected funds in an amount not to exceed \$1,000. A "bank  
29 check" means a negotiable instrument drawn by a state or federally  
30 chartered bank, savings bank or savings and loan association on itself  
31 or on its account in another state or federally chartered bank, savings  
32 bank or savings and loan association doing business in this State.

33 c. The Commissioner of Banking and Insurance shall promulgate  
34 regulations pursuant to the "Administrative Procedure Act," P.L.1968,  
35 c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of  
36 this section.

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38 3. This act shall take effect immediately.

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#### STATEMENT

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43 This bill requires lenders to disburse funds for the proceeds of a  
44 mortgage loan to a mortgagor only by means of a certified, cashier's,  
45 teller's or bank check, or by arranging an electronic transfer of funds  
46 or by providing for payment by cash. The bill also requires title

1 insurance producers and title insurance companies to maintain separate  
2 records of all receipts and disbursements for funds representing closing  
3 and settlement proceeds of a real estate transaction, to keep such  
4 funds in a separate trust or escrow account and not to commingle  
5 these funds with any other funds of the title insurance producer or  
6 company. The bill also prohibits a title insurance producer or  
7 company from disbursing funds representing closing or settlement  
8 proceeds of a real estate transaction unless those funds have been  
9 deposited in the trust or escrow account by certified, cashier's, teller's  
10 or bank check, an electronic funds transfer, cash, or other collected  
11 funds. Under the bill, a title insurance producer or company is not  
12 prohibited from making disbursements of \$1,000 or less from such  
13 trust or escrow account by other means.

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19 Requires the use of "good funds" for proceeds of real estate mortgage  
loans.