

[Second Reprint]
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 ²[P.L.1981, c.18] P.L.1996, c.157² and
3 supplementing P.L.1975, c.106 (C.17:46B-1 et seq.).
4

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted September 16, 1996.

² Assembly floor amendments adopted January 29, 1997.

1 act shall receive any commission, bonus or fee in connection with
2 arranging or originating a mortgage loan for a borrower, except that
3 a mortgage solicitor can receive such commission, bonus, or fee from
4 his employer.

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

10 f. No person shall obtain or attempt to obtain a license by fraud or
11 misrepresentation.

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

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

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

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

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

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

1 licensee from assessing a reasonable charge as set forth by regulation
2 by the Commissioner of Banking ¹and Insurance¹ to reflect the
3 additional cost to the person or licensee for the issuance of a certified,
4 cashier's, teller's or bank check [,] or arranging an electronic funds
5 transfer [, or any other means of payment which is ethically
6 permissible]. Such reasonable charge shall be fully disclosed at or
7 prior to the issuance of the loan commitment. A "bank check" means
8 a negotiable instrument drawn by a state or federally chartered bank,
9 savings bank or savings and loan association on itself or on its account
10 in another state or federally chartered bank, savings bank or savings
11 and loan association doing business in this State. ¹A "teller's check"
12 means a draft drawn by a bank on another bank, or payable at or
13 through a bank.¹

14 (cf: P.L.1985, c.23, s.1)]²

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16 ²1. Section 22 of P.L.1996, c.157 (C.17:11C-22) is amended to
17 read as follows:

18 22. a. No person shall use the word "mortgage" or similar words
19 in any advertising, signs, letterheads, cards, or like matter which tend
20 to represent that the person arranges first mortgage loans unless that
21 person is licensed to act as a mortgage banker or mortgage broker
22 under this act, or is exempt from licensing under section 4 of this act.
23 No person licensed under this act shall be granted a license in a name
24 containing such words as "insured," "bonded," "guaranteed," "secured"
25 and the like. Notwithstanding the provisions of section 18 of
26 P.L.1948, c.67 (C.17:9A-18) or any other law to the contrary, a
27 person licensed under this act to act as a mortgage banker or mortgage
28 broker may use the terms "mortgage banker" or "mortgage broker,"
29 respectively, as part of the licensee's name.

30 b. No mortgage banker or mortgage broker shall, in connection
31 with or incidental to the making of a first mortgage loan, require or
32 permit the mortgage instrument or bond or note to be signed by a
33 party to the transaction if the instrument contains any blank spaces to
34 be filled in after it has been signed, except blank spaces relating to
35 recording.

36 c. No mortgage banker or mortgage broker shall charge or exact
37 directly or indirectly from the mortgagor or any other person fees,
38 commissions or charges not authorized by this act.

39 d. No person shall receive any commission, bonus or fee in
40 connection with arranging or originating a first mortgage loan for a
41 borrower unless that person is licensed or exempt from licensure as a
42 mortgage banker or mortgage broker, except that a registered
43 mortgage solicitor may receive a commission, bonus, or fee from his
44 employer.

45 e. No person or licensee authorized to act as a mortgage banker or
46 mortgage broker shall pay any commission, bonus or fee to any

1 person not licensed or not exempt under the provisions of this act in
2 connection with arranging for or originating a mortgage loan for a
3 borrower, except that a registered mortgage solicitor may be paid a
4 bonus, commission or fee by his employer.

5 f. No person shall obtain or attempt to obtain a license by fraud or
6 misrepresentation.

7 g. No mortgage banker or mortgage broker shall misrepresent,
8 circumvent, or conceal the nature of any material particular of any
9 transaction to which the mortgage banker or broker is a party.

10 h. No mortgage banker or mortgage broker shall fail to disburse
11 funds in accordance with the mortgage banker's or broker's
12 agreements, unless otherwise ordered by the commissioner or a court
13 of this State or of the United States.

14 i. No mortgage banker or mortgage broker shall fail without good
15 cause to account or deliver to any person any personal property,
16 money, fund, deposit, check, draft, mortgage, document or thing of
17 value, which is not the mortgage banker's or broker's property, or
18 which the mortgage banker or broker is not in law or equity entitled
19 to retain under the circumstances, at the time which has been agreed
20 upon, or is required by law or, in the absence of a fixed time, upon
21 demand of the 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 mortgage banker or mortgage broker shall fail (1) to present
32 a certified check, cashier's check, teller's check or bank check for the
33 proceeds of the first mortgage loan; (2) to arrange an electronic fund
34 transfer for the proceeds of the loan; or (3) to provide for payment by
35 [any other means which is ethically permissible] cash to the
36 [purchaser] mortgagor, acting on the [purchaser's] mortgagor's own
37 behalf, or to the attorney or other person acting for the
38 [purchaser] mortgagor, at a reasonable time and place prior to the time
39 of the mortgage closing transaction. [This subsection shall not prevent
40 a person or licensee from utilizing any method of payment which is
41 agreed upon by the person or licensee and the closing agent; nor]
42 Nothing contained in this subsection k. shall [it] prevent the person
43 or licensee from assessing a reasonable charge as set forth by
44 regulation by the commissioner to reflect the additional cost to the
45 person or licensee for the issuance of a certified, cashier's, teller's or
46 bank check [,] or for arranging an electronic fund transfer [,] or any

1 other means of payment which is ethically permissible] . That
2 reasonable charge shall be fully disclosed at application or at or prior
3 to the issuance of the loan commitment. A "bank check" means a
4 negotiable instrument drawn by a state or federally chartered bank,
5 savings bank or savings and loan association on itself or on its account
6 in another state or federally chartered bank, savings bank or savings
7 and loan association doing business in this State. A "teller's check"
8 means a draft drawn by a bank on another bank, or payable at or
9 through a bank.²

10 (cf: P.L.1996, c.157, s.22)

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

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

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

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41 3. This act shall take effect immediately.

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