

P.L. 1997, CHAPTER 290, *approved January 8, 1998*  
Senate No. 928 (*Fourth Reprint*)

1 AN ACT concerning the use of "good funds" for <sup>2</sup>[the purchase of]<sup>2</sup>  
2 real property <sup>2</sup>mortgages<sup>2</sup> and amending <sup>3</sup>[P.L.1981, c.18]  
3 P.L.1996, c.157<sup>3</sup> and supplementing P.L.1975, c.106 (C.17:46B-1  
4 et seq.).

5

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

8

9 <sup>3</sup>[1. Section 14 of P.L.1981, c.18 (C.17:11B-14) is amended to  
10 read as follows:

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

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

28 c. No person or licensee shall charge or exact directly or indirectly

**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:**

<sup>1</sup> Senate SCM committee amendments adopted May 2, 1996.

<sup>2</sup> Assembly AFI committee amendments adopted September 16, 1996.

<sup>3</sup> Assembly floor amendments adopted January 29, 1997.

<sup>4</sup> Assembly floor amendments adopted March 13, 1997.

1 from the mortgagor or any other person fees, commissions or charges  
2 determined to be excessive in accordance with subsection b. of section  
3 13 of this act.

4 d. No person not licensed or not exempt from licensure under this  
5 act shall receive any commission, bonus or fee in connection with  
6 arranging or originating a mortgage loan for a borrower, except that  
7 a mortgage solicitor can receive such commission, bonus, or fee from  
8 his employer.

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

14 f. No person shall obtain or attempt to obtain a license by fraud or  
15 misrepresentation.

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

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

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

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

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

40 l. No person or licensee shall fail (1) to present a certified check,  
41 cashier's check <sup>1</sup>, teller's check<sup>1</sup> or bank check for the proceeds of the  
42 loan, (2) to arrange an electronic funds transfer for the proceeds of the  
43 loan or (3) to provide for payment by [any other means which is  
44 ethically permissible] cash, to the <sup>2</sup>[purchaser] mortgagor<sup>2</sup>, acting on  
45 his own behalf, or the attorney or other person acting for the  
46 <sup>2</sup>[purchaser] mortgagor<sup>2</sup>, at a reasonable time and place prior to the

1 time of the mortgage closing transaction. [This subsection shall not  
2 prevent a person or licensee from utilizing any method of payment  
3 which is agreed upon by the person or licensee and the closing agent;  
4 nor] Nothing contained in this subsection 1. shall [it] prevent the  
5 person or licensee from assessing a reasonable charge as set forth by  
6 regulation by the Commissioner of Banking <sup>2</sup>and Insurance<sup>2</sup> to reflect  
7 the additional cost to the person or licensee for the issuance of a  
8 certified, cashier's <sup>1</sup>, teller's<sup>1</sup> or bank check [,] or arranging an  
9 electronic funds transfer [, or any other means of payment which is  
10 ethically permissible]. Such reasonable charge shall be fully disclosed  
11 at or prior to the issuance of the loan commitment. A "bank check"  
12 means a negotiable instrument drawn by a state or federally chartered  
13 bank, savings bank or savings and loan association on itself or on its  
14 account in another state or federally chartered bank, savings bank or  
15 savings and loan association doing business in this State. <sup>2</sup>A "teller's  
16 check" means a draft drawn by a bank on another bank, or payable at  
17 or through a bank.<sup>2</sup>  
18 (cf: P.L.1985, c.23, s.1)]<sup>3</sup>

19  
20 <sup>3</sup>1. Section 22 of P.L.1996, c.157 (C.17:11C-22) is amended to  
21 read as follows:

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

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

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

43 d. No person shall receive any commission, bonus or fee in  
44 connection with arranging or originating a first mortgage loan for a  
45 borrower unless that person is licensed or exempt from licensure as a  
46 mortgage banker or mortgage broker, except that a registered

1 mortgage solicitor may receive a commission, bonus, or fee from his  
2 employer.

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

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

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

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

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

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

35 k. <sup>4</sup>[No] If a mortgage banker or mortgage broker provides loan  
36 proceeds to a closing agent for the purpose of closing and settling a  
37 mortgage transaction the<sup>4</sup> mortgage banker or mortgage broker shall  
38 <sup>4</sup>not<sup>4</sup> fail (1) to present a certified check, cashier's check, teller's  
39 check or bank check for the proceeds of the first mortgage loan; (2)  
40 to arrange an electronic fund transfer for the proceeds of the loan; or  
41 (3) to provide for payment by [any other means which is ethically  
42 permissible] cash to the [purchaser] <sup>4</sup>[mortgagor , acting on the  
43 [purchaser's] mortgagor's own behalf, or to the attorney or other  
44 person acting for the [purchaser]mortgagor,] closing agent<sup>4</sup> at a  
45 reasonable time and place prior to the time of the mortgage closing  
46 transaction. [This subsection shall not prevent a person or licensee

1 from utilizing any method of payment which is agreed upon by the  
2 person or licensee and the closing agent; nor] <sup>4</sup>The closing agent shall  
3 deposit the loan proceeds in a trust or escrow account, which shall not  
4 be commingled with the agent's own funds, and shall disburse the loan  
5 proceeds upon the closing or settlement in accordance with the  
6 settlement documents. Nothing contained in this subsection k. shall  
7 require a mortgage banker or mortgage broker to utilize a closing  
8 agent, nor prevent the mortgage banker or mortgage broker from  
9 directly disbursing loan proceeds from the account of the mortgage  
10 banker or mortgage broker to the mortgagor and other persons  
11 entitled to receive disbursements from the settlement if a closing agent  
12 is not used.<sup>4</sup> Nothing contained in this subsection k. shall [it] prevent  
13 the person or licensee from assessing a reasonable charge as set forth  
14 by regulation by the commissioner to reflect the additional cost to the  
15 person or licensee for the issuance of a certified, cashier's, teller's or  
16 bank check [,] or for arranging an electronic fund transfer [, or any  
17 other means of payment which is ethically permissible]. That  
18 reasonable charge shall be fully disclosed at application or at or prior  
19 to the issuance of the loan commitment. A "bank check" means a  
20 negotiable instrument drawn by a state or federally chartered bank,  
21 savings bank or savings and loan association on itself or on its account  
22 in another state or federally chartered bank, savings bank or savings  
23 and loan association doing business in this State. A "teller's check"  
24 means a draft drawn by a bank on another bank, or payable at or  
25 through a bank.<sup>3</sup>

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

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

36 b. No title insurance producer or company shall disburse funds  
37 representing closing or settlement proceeds of a real estate transaction  
38 unless those funds shall have been deposited in a separate trust or  
39 escrow account by cash, electronic wire transfer, or certified, cashier's  
40 <sup>1</sup>teller's<sup>1</sup> or bank check, or other collected funds; provided  
41 nevertheless, that nothing contained herein shall be construed to  
42 prohibit a title insurance producer or company from disbursing against  
43 <sup>2</sup>[uncollected]<sup>2</sup> funds <sup>2</sup>deposited in a separate trust or escrow account  
44 other than by cash, electronic wire transfer, or certified, cashier's,  
45 teller's or bank check, or other collected funds<sup>2</sup> in an amount not to  
46 exceed \$1,000. A "bank check" means a negotiable instrument drawn

1 by a state or federally chartered bank, savings bank or savings and loan  
2 association on itself or on its account in another state or federally  
3 chartered bank, savings bank or savings and loan association doing  
4 business in this State. <sup>2</sup>A "teller's check" means a draft drawn by a  
5 bank on another bank, or payable at or through a bank.<sup>2</sup>

6 c. The Commissioner of <sup>2</sup>Banking and<sup>2</sup>Insurance shall promulgate  
7 regulations pursuant to the "Administrative Procedure Act," P.L.1968,  
8 <sup>1</sup>[c.412] c.410<sup>1</sup> (C.52:14B-1 et seq.), necessary to effectuate the  
9 provisions of this section.

10

11 3. This act shall take effect immediately.

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