

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

1 AN ACT concerning the use of "good funds" for ²[the purchase of]²
2 real property ²mortgages² and amending ³[P.L.1981, c.18]
3 P.L.1996, c.157³ 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 ³[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:

¹ Senate SCM committee amendments adopted May 2, 1996.

² Assembly AFI committee amendments adopted September 16, 1996.

³ Assembly floor amendments adopted January 29, 1997.

⁴ 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 ¹, teller's check¹ 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 ²[purchaser] mortgagor², acting on
45 his own behalf, or the attorney or other person acting for the
46 ²[purchaser] mortgagor², 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 ²and Insurance² to reflect
7 the additional cost to the person or licensee for the issuance of a
8 certified, cashier's ¹, teller's¹ 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. ²A "teller's
16 check" means a draft drawn by a bank on another bank, or payable at
17 or through a bank.²
18 (cf: P.L.1985, c.23, s.1)]³

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20 ³1. 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. ⁴[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 the⁴ mortgage banker or mortgage broker shall
38 ⁴not⁴ 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] ⁴[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 agent⁴ 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] ⁴The 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.⁴ 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.³

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 ¹teller's¹ 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 ²[uncollected]² funds ²deposited 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 funds² 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. ²A "teller's check" means a draft drawn by a
5 bank on another bank, or payable at or through a bank.²

6 c. The Commissioner of ²Banking and²Insurance shall promulgate
7 regulations pursuant to the "Administrative Procedure Act," P.L.1968,
8 ¹[c.412] c.410¹ (C.52:14B-1 et seq.), necessary to effectuate the
9 provisions of this section.

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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.