

[First Reprint]
SENATE, No. 928

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1996

By Senator BUBBA

1 AN ACT concerning the use of "good funds" for the purchase of real
2 property 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

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.

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 ¹, teller's check¹ 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, acting on his own behalf,
41 or the attorney or other person acting for the purchaser, at a
42 reasonable time and place prior to the time of the mortgage closing
43 transaction. [This subsection shall not prevent a person or licensee
44 from utilizing any method of payment which is agreed upon by the
45 person or licensee and the closing agent; nor] Nothing contained in
46 this subsection l. shall [it] prevent the person or licensee from

1 assessing a reasonable charge as set forth by regulation by the
2 Commissioner of Banking to reflect the additional cost to the person
3 or licensee for the issuance of a certified, cashier's ¹ teller's¹ or bank
4 check [,] or arranging an electronic funds transfer [, or any other
5 means of payment which is ethically permissible]. Such reasonable
6 charge shall be fully disclosed at or prior to the issuance of the loan
7 commitment. A "bank check" means a negotiable instrument drawn by
8 a state or federally chartered bank, savings bank or savings and loan
9 association on itself or on its account in another state or federally
10 chartered bank, savings bank or savings and loan association doing
11 business in this State.

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

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

22 b. No title insurance producer or company shall disburse funds
23 representing closing or settlement proceeds of a real estate transaction
24 unless those funds shall have been deposited in a separate trust or
25 escrow account by cash, electronic wire transfer, or certified, cashier's
26 ¹ teller's¹ or bank check, or other collected funds; provided
27 nevertheless, that nothing contained herein shall be construed to
28 prohibit a title insurance producer or company from disbursing against
29 uncollected 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.

34 c. The Commissioner of Insurance shall promulgate regulations
35 pursuant to the "Administrative Procedure Act," P.L.1968, ¹[c.412]
36 c.410¹ (C.52:14B-1 et seq.), necessary to effectuate the provisions of
37 this section.

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39 3. This act shall take effect immediately.

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44 Requires the use of "good funds" for closing or settlement proceeds
45 of a real estate transaction.