

17:11A-35 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:11A-35 et al

(Secondary mortgage licensees - permit open - end loans)

LAWS OF: 1983

CHAPTER: 437

Bill No: A4057

Sponsor(s): Karcher

Date Introduced: November 21, 1983

Committee: Assembly: -----

Senate: -----

Amended during passage: NO

Date of Passage: Assembly: December 8, 1983

Senate: December 12, 1983

Date of Approval: January 6, 1983

Following statements are attached if available:

Sponsor statement: YES (Below)

Committee statement: Assembly NO

Senate NO

Fiscal Note: NO

Veto Message: NO

Message on Signing: ~~no~~ Yes

Following were printed:

Reports: NO

Hearings: NO

Sponsor's statement:

This bill permits secondary mortgage loan licensees to make open - end loans.

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ASSEMBLY, No. 4057

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 21, 1983

By Assemblyman KARCHER

AN ACT concerning certain loans made by secondary mortgage loan licensees, and amending and supplementing P. L. 1970, c. 205.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 2 of P. L. 1970, c. 205 (C. 17:11A-35) is amended to
2 read as follows:

3 2. As used in this act, the following words and terms shall have
4 the following meanings unless the context otherwise requires:

5 a. "Secondary mortgage loan" means a loan made to an indi-
6 vidual, association, joint venture, partnership, limited partnership,
7 limited partnership association, or any other group of individuals
8 however organized, except a corporation, which is secured in whole
9 or in part by a lien upon any interest in real property, including
10 but not limited to shares of stock in a cooperative corporation,
11 created by a security agreement, including a mortgage, indenture,
12 or any other similar instrument or document, which real property is
13 subject to one or more prior mortgage liens, except that a loan
14 which: (1) is to be repaid in 90 days or less; (2) is taken as
15 security for a home repair contract executed in accordance with
16 the provisions of chapter 41, P. L. 1960; (3) is at an interest rate
17 which is not in excess of the usury rate in existence at the time
18 the loan is made, as established in accordance with the law of this
19 State, and on which loan the borrower has not agreed to pay, di-
20 rectly or indirectly, any charge, cost, expense or any fee whatso-
21 ever other than said interest; or (4) is the result of the private
22 sale of a dwelling if title to the dwelling is in the name of the seller

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

23 and the seller has resided in said dwelling for at least one year if
 24 the buyer is purchasing said dwelling for his own residence and,
 25 as part of the purchase price, executes a secondary mortgage in
 26 favor of the seller, shall not be subject to the provisions of this act.

27 b. "Borrower" means any person applying for a secondary
 28 mortgage loan, whether or not the loan is granted, and any person
 29 who has actually obtained such a loan.

30 c. "Licensee" means a person who is required to be licensed by
 31 section 3 of this act.

32 d. "Person" means an individual, association, joint venture,
 33 partnership, limited partnership, limited partnership association,
 34 corporation or any other group of individuals however organized.

35 e. "Commissioner" means the Commissioner of Banking of
 36 New Jersey including his deputies, or any other salaried employee
 37 of the Department of Banking appointed or designated by the com-
 38 missioner to perform the functions required for the administration
 39 or enforcement of this act.

40 f. "*Billing cycle*" means the time interval between periodic bill-
 41 ing dates. A billing cycle shall be considered monthly if the closing
 42 date of the cycle is the same date each month or does not vary by
 43 more than four days from that date.

44 g. "*Open-end loan*" means a secondary mortgage loan made by
 45 a licensee pursuant to a written agreement between the licensee and
 46 the borrower whereby:

47 (1) *The licensee may permit the borrower to obtain advances of*
 48 *money from the licensee from time to time or the licensee may*
 49 *advance money on behalf of the borrower from time to time as*
 50 *directed by the borrower;*

51 (2) *The amount of each advance and permitted interest and*
 52 *charges are debited to the borrower's account and payments and*
 53 *other credits are credited to the same account;*

54 (3) *Interest is computed on the unpaid principal balance or*
 55 *balances of the account from time to time;*

56 (4) *The borrower has the privilege of paying the account in full*
 57 *at any time or, if the account is not in default, in monthly install-*
 58 *ments of fixed or determinable amounts as provided in the agree-*
 59 *ment; and*

60 (5) *The agreement expressly states that the open-end loan is*
 61 *made pursuant to this 1983 amendatory and supplementary act.*

1 2. Section 11 of P. L. 1970, c. 205 (C. 17:11A-44) is amended to
 2 read as follows:

3 11. a. Notwithstanding the provisions of R. S. 31:1-1 or any
 4 other law to the contrary, a licensee shall have authority to make a

5 secondary mortgage loan repayable in installments, and may charge,
6 contract for and receive thereon interest at an annual percentage
7 rate or rates agreed to by the licensee and the borrower.

8 The note evidencing **[the]** a loan *other than an open-end loan*
9 may provide for an increase, or may provide for a decrease, or
10 both, in the rate of interest applicable to the loan. No increase
11 during the entire loan term shall result in an interest rate of more
12 than 6% per annum over the rate applicable initially, nor shall the
13 rate be raised more than 3% per annum during any 12-month
14 period. The lender shall not be obligated to decrease the interest
15 rate more than 6% over the term of the loan, nor more than 3%
16 per annum during any 12-month period. If a rate increase is ap-
17 plied to the loan, the lender shall also be obligated to adopt and
18 implement uniform standards for decreasing the rate. If the note
19 provides for the possibility of an increase or decrease, or both, in
20 the rate, that fact shall be clearly described in plain language, in
21 at least 8-point boldface type on the face of the note. No rate
22 increase shall take effect during the first three years of the term
23 of the loan, or thereafter, (a) unless at least 90 days prior to the
24 effective date of the first such increase, or 30 days prior to the
25 effective date of any subsequent increase, a written notice has been
26 mailed or delivered to the borrower that clearly and conspicuously
27 describes such increase, and (b) unless at least 365 days have
28 elapsed without any increase in the rate. No increase during the
29 entire loan term shall result in an interest rate of more than 6%
30 per annum over the rate applicable initially, nor shall the rate be
31 raised more than 3% per annum during any 12-month period.
32 Where the note evidencing the loan so provides for an increase or
33 decrease in the rate of interest, the provision of subsection b. of
34 section 18 of P. L. 1970, c. 205 (C. 17:11A-51b.) requiring that pay-
35 ment be made in substantially equal installment payment amounts
36 shall not apply.

37 *b. The agreement evidencing an open-end loan may provide that*
38 *the interest rate applicable to the loan may be increased or may be*
39 *decreased, or both, from time to time provided, however, that no*
40 *increase in the interest rate shall be effective unless: (1) at least*
41 *90 days prior to the effective date of the first increase, or 30 days*
42 *prior to the effective date of any subsequent increase, a written*
43 *notice has been mailed or delivered to the borrower that clearly*
44 *and conspicuously describes the change and the indebtedness to*
45 *which it applies and states that the incurrence by the borrower of*
46 *any further indebtedness under the plan to which the agreement*
47 *relates on or after the effective date of the interest rate increase*

48 specified in the notice shall constitute acceptance of the interest
 49 rate increase and (2) the borrower either agrees in writing to the
 50 increase or incurs that further indebtedness on or after the effective
 51 date of the increase stated in the notice. The provisions of this
 52 subsection permitting an increase in the interest rate applicable to
 53 an open-end loan shall not apply in the case of an agreement which
 54 expressly prohibits changing of interest rates or which provides
 55 limitations on the changing of interest rates which are more re-
 56 strictive than the requirements of this subsection. If the written
 57 agreement evidencing the open-end loan provides for the possibility
 58 of an increase or decrease, or both, in the interest rate applicable
 59 to the loan, that fact shall be clearly described in plain language,
 60 in at least 8-point boldface type on the face of the written agree-
 61 ment.

62 c. No interest shall be paid, deducted, or received in advance.
 63 Interest shall not be compounded and shall be computed only on
 64 unpaid principal balances. For the purposes of computing interest,
 65 a month shall be considered a calendar month and where a fraction
 66 of a month is involved a day shall be considered one-thirtieth of
 67 a month.

1 3. (New section) Open-end loans shall be subject to the following:

2 a. A licensee may make open-end loans and may contract for
 3 and receive interest thereon as set forth in subsection b. of section
 4 11 of P. L. 1970, c. 205 (C. 17:11A-44).

5 b. A licensee shall not compound interest by adding any unpaid
 6 interest to the unpaid principal balance of the borrower's account;
 7 but the unpaid principal balance may include any charges au-
 8 thorized by subsection g. of section 13 of P. L. 1970, c. 205 (C.
 9 17:11A-46).

1 4. (New section) a. The interest charges on an open-end loan
 2 shall be deemed not to exceed the maximum interest permitted by
 3 subsection b. of section 11 of P. L. 1970, c. 205 (C. 17:11A-44) if
 4 that interest is computed in each billing cycle by any of the follow-
 5 ing methods:

6 (1) By converting the per annum rate to a daily rate and multi-
 7 plying the daily rate by the applicable portion of the daily unpaid
 8 principal balance of the account, in which case the daily rate is
 9 determined by dividing the per annum rate by 365; or

10 (2) By multiplying one-twelfth of each per annum rate by the
 11 applicable portion of the average daily unpaid principal balance
 12 of the account in the billing cycle, in which case the average daily
 13 unpaid principal balance is the sum of the amount unpaid each day
 14 during the billing cycle divided by the number of days in the billing
 15 cycle; or

16 (3) By converting the per annum rate applicable to the loan to
17 a daily rate and multiplying the daily rate by the applicable por-
18 tion of the average daily unpaid principal balance of the account
19 in the billing cycle, in which case each daily rate is determined by
20 dividing the per annum rate by 365, and the average daily unpaid
21 principal balance is the sum of the amount unpaid each day during
22 the billing cycle divided by the number of days in the billing cycle.

23 b. For all of the above methods of computation, the billing cycle
24 shall be monthly and the unpaid principal balance on any day shall
25 be determined by adding to any balance unpaid as of the beginning
26 of that day all advances and other permissible amounts charged
27 to the borrower and deducting all payments and other credits
28 made or received that day.

1 5. (New section) The borrower may at any time pay all or any
2 part of the unpaid balance in his account; or, if the account is not
3 in default, the borrower may pay the unpaid principal balance in
4 monthly installments, subject to minimum payment requirements
5 set forth in this section.

6 Minimum monthly payments shall be an amount provided for in
7 the open-end loan agreement. No minimum payment shall exceed
8 the amount required to pay the balance in full, including unpaid
9 interest and charges to date.

1 6. (New section) In addition to the interest permitted under
2 subsection a. of section 3 of this amendatory and supplementary
3 act, a licensee may contract for and receive the other charges
4 permitted by P. L. 1970, c. 205 (C. 17:11A-34 et seq.) on other
5 loans, subject to all the conditions and restrictions set forth in
6 those sections with the following variations:

7 a. If credit life or disability insurance is provided and if the
8 insured dies or becomes disabled when there is an outstanding
9 open-end loan indebtedness, the insurance shall be sufficient to pay
10 the total balance of the loan due on the date of the borrower's death
11 in the case of credit life insurance, or all minimum payments which
12 become due on the loan during the covered period of disability in
13 the case of credit disability insurance. The additional charge for
14 credit life insurance or credit disability insurance shall be calcu-
15 lated in each billing cycle by applying the current monthly premium
16 rate for that insurance, as the rate may be determined by the Com-
17 missioner of Insurance, to the unpaid balances in the borrower's
18 account, using any of the methods specified in section 4 of this
19 amendatory and supplementary act for the calculation of interest.

20 b. No credit life or disability insurance written in connection
21 with an open-end loan shall be cancelled by the licensee because of

22 delinquency of the borrower in the making of the required minimum
23 payments on the loan unless one or more of the payments is past
24 due for a period of 90 days or more; and the licensee shall advance
25 to the insurer the amounts required to keep the insurance in force
26 during that period, which amounts may be debited to the bor-
27 rower's account.

28 c. If insurance covering direct or indirect damage or loss, by
29 fire or other perils, including those of extended coverage, to the
30 property of the borrower which is the security for the loan, is made
31 available, that insurance shall be for an amount not to exceed the
32 maximum amount of credit agreed to be extended and a term not
33 to extend beyond the time in which payments will be due under
34 the loan agreement.

1 7. (New section) The provisions of subsections l. and m. of
2 section 12 of P. L. 1970, c. 205 (C. 17:11A-45) shall not apply to
3 open-end loans made under this amendatory and supplementary
4 act.

1 8. (New section) The record keeping systems used by licensees
2 for open-end loans shall be reviewed on an individual basis to
3 determine whether the records are adequate for the purposes of
4 subsection e. of section 12 of P. L. 1970, c. 205 (C. 17:11A-45).

1 9. This act shall take effect immediately.

STATEMENT

This bill permits secondary mortgage loan licensees to make open-end loans.

BILLS

PAGE TWO

TUESDAY, JANUARY 10, 1984

A-3191, sponsored by Assemblyman John P. Doyle, D-Ocean, which makes explicit that the definition of "multiple dwelling" under the Hotel and Multiple Dwelling Law shall include certain complexes of ten or more detached structures on one parcel of land or on contiguous parcels under common ownership.

A-3566, sponsored by Assemblyman Christopher J. Jackman, D-Hudson, which eliminates all references to mandatory retirement ages in the State Police Retirement System.

S-3158, sponsored by State Senator Carmen A. Orechio, D-Essex, which waives the training requirements for persons with ten or more years of experience in any position allowed to opt over to be sheriffs officers.

A-3328, sponsored by Assemblywoman Maureen B. Ogden, R-Essex, which clarifies the meaning of "municipality" as used in the Recycling Act to apply only to municipalities situated within the boundaries of New Jersey.

A-4057, sponsored by Assemblyman Alan J. Karcher, D-Middlesex, which permits secondary mortgage loan companies to make open-ended loans.

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