

17:11B-1 to 17:11B-20

LEGISLATIVE HISTORY CHECKLIST

NJSA 17:11B-1 to 17:11B-20 (Mortgage bankers, brokers,
solicitors--licensing)
LAWS 1981 CHAPTER 18
Bill No. A755
Sponsor(s) Bornheimer and others
Date Introduced Jan. 29, 1980
Committee: Assembly Banking and Insurance
Senate Labor, Industry and Professions

Amended during passage Yes Amendments during passage
denoted by asterisks

Date of Passage: Assembly Oct. 6, 1980
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Following statements are attached if available:

Sponsor statement	Yes	<input checked="" type="checkbox"/>
Committee Statement: Assembly	Yes	<input checked="" type="checkbox"/>
Senate	Yes	<input checked="" type="checkbox"/>
Fiscal Note	Yes	No
Veto Message	Yes	No
Message on signing	Yes	No

Following were printed:

Reports	Yes	No
Hearings	Yes	<input checked="" type="checkbox"/>

974.90 N.J. Legislature. Senate. Labor, Industry and Professions
B218 Committee and Assembly. Banking and Insurance.
1980 Public hearings, held 3-19-80 and 4-3-80. Trenton, 1980.

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ASSEMBLY, No. 755

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1980

By Assemblymen BORNHEIMER, T. GALLO, KOSCO, MAYS
and ADUBATO

Referred to Committee on Banking and Insurance

AN ACT providing for the regulation and licensing of mortgage bankers***[.]*** *and* mortgage brokers ***[and mortgage solicitors]*** by the Commissioner of Banking, defining the powers and duties of the commissioner in connection therewith, and prescribing penalties for violations thereof and making an appropriation therefor.

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

1 1. As used in this act:

2 a. "Mortgage loan" means any loan secured by a first mortgage
3 on real property on a one to six family dwelling, a portion of which
4 may be used for nonresidential purposes.

5 b. "Primary market" means the market wherein mortgage loans
6 are originated between a lender and a borrower, whether or not
7 through a mortgage broker or other conduit.

8 c. "Mortgage banker" means any person not exempt under sec-
9 tion ***[3]*** *2* of this act, who for compensation or gain, or in the
10 expectation of compensation or gain, either directly or indirectly
11 originates, acquires or negotiates mortgage loans in the primary
11A market.

12 d. "Mortgage broker" means any person not exempt under sec-
13 tion ***[3]*** *2* of this act, who for compensation or gain, or in the
14 expectation of compensation or gain, either directly or indirectly
15 negotiates, places or sells for others, or offers to negotiate, place
16 or sell for others a mortgage loan in the primary market.

17 e. "Mortgage solicitor" means any person not licensed as a
18 mortgage banker or mortgage broker, who performs any of the
19 functions under subsections ***[d.]*** *c.* or ***[e.]*** *d.* of this section
20 and who is employed by a mortgage banker or mortgage broker.

21 f. "Department" means the Department of Banking.

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

22 g. "Commissioner" means the Commissioner of Banking.

23 h. "Licensee" means a mortgage banker*[,]* *or* mortgage
24 broker *[,or mortgage solicitor]* licensed under any of the pro-
24A visions of this act.

25 i. "License" means a license issued under the provisions of this
26 act.

1 2. The *[,licensing and examination]* requirements of this act
2 shall not apply to:

3 a. Savings and loan associations, commercial banks, savings
4 banks, insurance companies and credit unions; but subsidiaries and
5 service corporations of these institutions shall not be exempt and
6 shall be subject to the provisions of this act.

7 b. A person making, acquiring or selling mortgage loans for
8 private investment or gain and not in the regular course of busi-
9 ness.

10 c. An attorney at law of this State, not actively and principally
11 engaged in the business of a mortgage banker or broker, when the
12 attorney renders services in the course of his practice.

13 d. A person licensed as a real estate broker or salesman pursuant
14 to chapter 15 of Title 45 of the Revised Statutes, and not *[,princi-
15 pally]* engaged in the business of a mortgage banker or broker.
15A **Any person holding a license under this act as a mortgage
15B banker or mortgage broker shall be exempt from the licensing and
15C other requirements of R. S. 45:15-1 et seq. in the performance of
15D those functions authorized pursuant to this act.**

16 e. Builders who secure mortgages for their own construction or
17 for sale of their own construction.

1 3. a. No person shall act as a mortgage banker*[,]* *or* mort-
2 gage broker *[,or mortgage solicitor]* without a license therefor as
3 provided in this act, but a person licensed as a mortgage banker may
4 act as a mortgage broker or mortgage solicitor and a person
5 licensed as a mortgage broker may act as a mortgage solicitor.

6 b. No corporation, partnership, association or any other entity
7 shall be issued or hold a license unless one officer of the corporation,
8 or one principal of any other entity has a license of the same type
9 sought or held.

1 4. The commissioner *[,may]* *shall* issue any license under
2 this act if the following conditions are met:

3 a. A written application shall be accompanied by the required
4 fees, for a new license or for a renewal thereof and shall be made
5 on the forms and in the manner and accompanied by such evidence
6 in support of the application as may be prescribed by the com-
7 missioner.

8 b. An applicant shall qualify by examination approved by the
 9 commissioner, which examination may be written or oral or partly
 10 written and partly oral, and shall include a general knowledge of
 11 the statutes of this State concerning real property, conveyancing,
 12 mortgages, and agreements of sale, and of the provisions thereof.
 13 The commissioner may designate an independent testing service
 14 to prepare and administer the examinations.

15 c. ***[Every application for a mortgage solicitor's license shall be**
 16 **accompanied by a statement of a mortgage banker or mortgage**
 17 **broker, who shall certify that he is to be the applicant's employer**
 18 **and will be responsible for the applicant's actions.]*** **If the com-*
 18A *missioner finds that the financial responsibility, experience,*
 18B *character, and general fitness of the applicant are such as to justify*
 18C *the belief that the business will be operated honestly, fairly, and*
 18D *efficiently within the purpose of this act.**

19 d. An application for a mortgage broker's or mortgage banker's
 20 license shall include suitable evidence that the requirements of
 21 section 8 of this act have been met.

22 e. The examination requirements of this section may be waived
 23 by the commissioner for any person applying for a ***[:]***

24 ***[(1) Mortgage solicitor's license, who, prior to the effective date**
 25 **of this act, has been employed by a mortgage banker or broker**
 26 **and who has been and continues to be licensed as a real estate**
 27 **broker or salesman under chapter 15 of Title 45 of the Revised**
 28 **Statutes; or]***

29 ***[(2) Mortgage]*** **mortgage** banker's or mortgage broker's
 30 license who can demonstrate to the satisfaction of the commissioner
 31 that he has for a period of at least ***[10]*** **5** years prior to the
 32 effective date of this act, been principally engaged in the business
 33 of mortgage banker, or mortgage broker in this State and who
 34 submits a written request to the commissioner for his approval.
 35 **The commissioner may waive examination requirements for a*
 36 *mortgage banker's or mortgage broker's license for any person who*
 37 *has, prior to the effective date of this act, been in business for less*
 38 *than 5 years and who can demonstrate to the commissioner that*
 39 *he is otherwise qualified for a license without the need for an*
 40 *examination.**

1 5. The license fee for each **mortgage banker's or mortgage*
 2 *broker's** license for a 2-year period or any part thereof ending the
 3 second June 30 from date of issuance, shall be ***[\$500.00 for a**
 4 **mortgage banker, \$500.00 for a mortgage broker and \$100.00 for a**
 5 **mortgage solicitor.]*** **prescribed by rule or regulation of the com-*
 6 *missioner, not to exceed \$1,000.00. Such license shall run from the*

7 *date of issuance to the end of the biennial year. When the initial*
 8 *license is issued in the second year of the biennial licensing period,*
 9 *the license fee shall not exceed \$500.00.**

1 6. Each license issued pursuant to this act shall expire on the
 2 second June 30 following the date on which it becomes effective.
 3 Licenses shall not be transferable or assignable.

1 7. ***[a.]*** A licensed mortgage banker or mortgage broker shall
 2 have and maintain a place of business in the State for the transac-
 3 tion of business. A license shall specify the address of the place of
 4 business of the mortgage banker or mortgage broker and shall be
 5 conspicuously displayed therein **[**, together with the licenses of all
 6 mortgage solicitors employed at that place of business **]**. If a mort-
 7 gage banker or mortgage broker maintains a branch office or offices,
 8 one of the offices will be designated as the principal office and the
 9 department ****[may]**** ****shall****, upon application and the pay-
 10 ment of a fee of \$250.00, ****and if the application for the branch**
 10A *office demonstrates that the office is in a suitable location; includes*
 10B *the name and license number of the mortgage banker or mortgage*
 10C *broker in charge; and contains a certification that the office is cov-*
 10D *ered by the bond required by this act,*** issue a branch office license
 11 specifying thereon the address of each branch office, which license
 12 shall be conspicuously displayed therein. ****[*The application for**
 13 *the branch office must demonstrate that the office is in a suitable*
 14 *location; the name and license number of the mortgage banker or*
 15 *broker in charge; and a certification that the office is covered by*
 16 *the bond required by this act.*]** A mortgage banking and mort-
 17 gage brokerage office or branch thereof shall be operated under the
 18 full control and supervision of an individual licensed under this act
 19 and employed at the office or branch on a regular and full-time basis
 20 to supervise and perform mortgage banking and mortgage broker-
 20A age services. No such individual may be in charge of more than
 20B one office. In case the address of the principal place of business
 20C or of any branch office is changed, the commissioner shall endorse
 20D the change of address on the license.*

21 ***[b.** A mortgage solicitor's license issued pursuant to this act
 22 shall indicate thereon the licensed mortgage broker or mortgage
 23 banker who employs the mortgage solicitor. The mortgage
 24 solicitor's license shall be immediately returned to the commissioner
 25 for cancellation if for any reason the mortgage solicitor ceases to be
 26 employed by that mortgage banker or mortgage broker. **]****

1 8. A licensed mortgage banker and mortgage broker, prior to
 2 doing business, shall obtain a bond in an amount and form pre-
 3 scribed by regulations of the commissioner **but not less than*

4 \$25,000.00*. The bond shall be obtained from a surety company
 5 authorized by law to do business in this State. In lieu of individual
 6 bonds, a mortgage banker or mortgage broker may procure a
 7-9 blanket bond to cover all employees licensed under the provisions
 10 of this act in an amount as prescribed by regulation of the com-
 11 missioner. The bond shall run to the State for the benefit of any
 12 person injured by the wrongful act, default, fraud or misrepre-
 13 sentation of the mortgage banker, broker or solicitors. No bond
 14 shall comply with the requirements of this section unless the bond
 15 contains a provision that it shall not be cancelled for any cause
 16 unless notice of intention to cancel is filed in the Department of
 17 Banking at least 30 days before the day upon which cancellation
 18 shall take effect.

1 9. a. The commissioner may refuse to issue and may revoke,
 2 suspend or refuse to renew a license or impose a penalty pursuant
 3 to this act if he finds, after notice and an opportunity for a hearing
 4 in accordance with the "Administrative Procedure Act," P. L.
 5 1968, c. 410 (C. 52:14B-1 et seq.) and any rules adopted there-
 6 under, that any person, applicant for or holder of the license has:
 7 (1) ***Willfully violated**)* *Violated** any of the provisions of
 8 this act or any order, rule or regulation made or issued pursuant to
 8A this act;

9 (2) Withheld information or made a material misstatement in
 10 the application for the license;

11 (3) Been convicted of an offense involving breach of trust,
 12 moral turpitude or fraudulent or dishonest dealing, or had a final
 13 judgment entered against him in a civil action upon grounds of
 14 fraud, misrepresentation or deceit;

15 (4) Become insolvent or bankrupt, or had filed a petition in an
 16 insolvency or bankruptcy proceedings; or

17 (5) Demonstrated unworthiness, incompetence, bad faith or dis-
 18 honesty in the transacting of business as a mortgage banker or
 19 mortgage broker ***or mortgage solicitor**)*.

19A *(6) *Engaged in any other conduct which would be deemed by the*
 19B *commissioner to be the cause for denial of a license.**

20 b. A license of a corporation, partnership, association or other
 21 entity may be suspended or revoked if any officer, director or mem-
 22 ber of the licensee has committed any act which would be cause
 23 for suspending or revoking a license to him as an individual.

24 If the license issued to any member of a partnership, or to any
 25 officer of an association or corporation is revoked or suspended,
 26 the license issued to the partnership, association or corporation
 27 shall be revoked by the commissioner, unless within the time fixed

28 by the commissioner, in the case of a partnership, the connection
29 therewith of the member whose license has been revoked shall be
30 severed and his interest in the partnership and his share in its
31 activities brought to an end, or in the case of an association or
32 corporation, the offending officer or director shall be discharged
33 and shall have no further participation in its activity. Officers and
34 directors of the corporation shall be required to fully divest them-
35 selves of all stock, bonds or other corporate holdings.

1 10. a. Every licensed mortgage banker and mortgage broker
2 shall maintain, at the place of business designated in the license
3 certificate, such books, accounts, records and documents of the
4 business conducted under the license as may be prescribed by the
5 commissioner to enable him to determine whether the business
6 of the licensee is being conducted in accordance with the provisions
7 of this act and the orders, rules and regulations issued hereunder;

8 b. A licensee operating two or more licensed places of business
9 in this State may maintain the general control records of all li-
10 censed places at any one of the licensed places. Upon appropriate
11 notice to the commissioner and if a change in location of records
12 is made, the commissioner shall be notified in writing of the change
13 within 5 business days of the change.

14 c. Every licensee shall preserve all books, accounts, records and
15 documents pertaining to his business, and keep them available for
16 examination by the commissioner for at least ***[7]*** **5** years from
17 date of original entry.

1 11. The commissioner may make such investigations and exami-
2 nations of any licensee or other person as he deems necessary to
3 determine compliance with this act and the orders, rules and regu-
4 lations issued hereunder. For such purposes, he may examine the
5 books, accounts, records and other documents or matters of any
6 licensee or other person. He shall have the power to compel by
7 subpoena the production of all relevant books, records and other
8 documents and materials relative to an examination or investiga-
9 tion. Examinations shall not be made more often than once during
10 ***[a year]*** **any 18-month period** unless the commissioner has
11 reason to believe the licensee is not complying with the provisions
12 of this act or the orders, rules and regulations issued hereunder.
13 Examinations conducted under the provisions of this act shall be
14 confidential except as required in the administration, enforcement
15 and prosecution of violations under this act or pursuant to a court
16 order. The cost of the investigations and examinations shall be
17 borne by the licensee.

1 12. a. The commissioner or ***[any deputy commissioner]*** **his*
 2 *designee** shall have power to issue subpoenas to compel the
 3 attendance of witnesses and the production of documents, papers,
 4 books, records and other evidence before him in any matter over
 5 which he has jurisdiction under this act, and to administer oaths
 6 and affirmations to any person.

7 b. If any person shall refuse to obey a subpoena, or to give testi-
 8 mony or to produce evidence as required thereby, the commissioner
 9 may apply ex parte to any court having jurisdiction over that
 10 person for an order compelling the appearance of the witness
 11 before the commissioner to give testimony or to produce evidence
 12 as required thereby, or both.

1 13. a. The commissioner may issue and promulgate such rules
 2 and regulations, in accordance with the "Administrative Procedure
 3 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), as he may deem
 4 necessary in the implementation and enforcement of this act, and
 5 such rules and regulations shall have the effect of law.

6 b. ***[Except as otherwise permitted by law, the commissioner may,**
 7 **by rules and regulations, establish guidelines to determine the**
 8 **reasonableness of fees and commissions, including but not limited**
 9 **to direct or indirect costs or expenses incidental to the processing**
 10 **and closing of a mortgage loan transaction.]*** **Notwithstanding*
 11 *the provisions of any other law and except as otherwise provided*
 12 *by law, a mortgage banker or broker shall, incidental to the origina-*
 13 *tion, processing and closing of a mortgage loan transaction, have*
 14 *the right to charge only the following fees: credit report fee;*
 15 *appraisal fee; application fee; commitment fee; warehouse fee;*
 16 *and fees necessary to reimburse the mortgage banker or broker for*
 17 *charges imposed by third parties. For the purposes of this act, a*
 18 *warehouse fee is deemed to be a fee charged to compensate a*
 19 *mortgage banker or broker for the costs associated with holding*
 20 *the mortgage loan pending its sale to a permanent investor. The*
 21 *commissioner shall, by rules and regulations, have the authority*
 22 *to establish guidelines to determine the reasonableness of such fees.*
 23 *In establishing guidelines concerning warehouse fees the commis-*
 24 *sioner shall consider the coupon rate of the mortgage loan, the*
 25 *prime lending rate, and the length of time the mortgage loan can*
 26 *reasonably be expected to be held for sale. Notwithstanding the*
 27 *provisions of this subsection, and subject to the passage of a State*
 28 *law overriding the provisions of the Depository Institutions Dereg-*
 29 *ulation and Monetary Control Act of 1980 (P. L. 96-221), a*
 30 *mortgage banker or mortgage broker may charge, and nothing in*
 31 *this act or any regulations promulgated thereto shall be deemed to*

32 *limit the right of a mortgage banker or mortgage broker to charge,*
33 *discount points.**

34 c. ***[**The provisions of this section shall not apply to loans insured
35 or guaranteed by any agency of the Federal Government.**]*** **No*
36 *mortgage banker or broker may charge any fee not expressly other-*
37 *wise authorized by this section or specifically otherwise authorized*
38 *by law.**

39 *d. *The provisions of this section and regulations pursuant*
40 *thereto shall apply to all loans, including those loans insured or*
41 *guaranteed by any agency of the Federal Government unless such*
42 *provisions or regulations are in conflict with any applicable Federal*
43 *law or regulation.**

1 14. a. No person or licensee shall advertise, print, display, pub-
2 lish, distribute, telecast or broadcast, or cause or permit to be
3 advertised, printed, displayed, published, distributed, televised or
4 broadcast, in any manner, any statement or representation with
5 regard to the rates, terms or conditions pertaining to the making,
6 negotiating, or sale of loans, which is false, misleading or deceptive.
7 No person who is not licensed under this act or not exempt under
8 section 3 of this act shall use the word "mortgage" or similar
9 words in any advertising, signs, letterheads, cards, or like matter
10 which tend to represent that he arranges real estate mortgage loans.
11 No person licensed under this act shall be granted a license in a
12 name containing such words such as "insured," "bonded," "guar-
13 anteed," "secured" and the like.

14 b. No person or licensee shall, in connection with or incidental
15 to the making of a mortgage loan, require or permit the mortgage
16 instrument or bond or note to be signed by a party to the trans-
17 action if the instrument contains any blank spaces to be filled in
18 after it has been signed, except blank spaces relating to recording.

19 c. No person or licensee shall charge or exact directly or indi-
20 rectly from the mortgagor or any other person fees, commissions
21 or charges determined to be excessive in accordance with subsec-
22 tion b. of section 13 of this act.

23 d. No person not licensed or not exempt from licensure under
24 this act shall receive any commission, bonus or fee in connection
25 with arranging or originating a mortgage loan for a borrower*,
25A *except that a mortgage solicitor can receive such commission, bonus,*
25B *or fee from his employer.**

26 e. No person or licensee shall pay any commission, bonus or fee
27 to any person not licensed or not exempt under the provisions of
28 this act in connection with arranging for or originating a mortgage
29 loan for a borrower **except that a mortgage solicitor may be paid*
29A *such bonus, commission, or fee by his employer*.*

30 f. No person shall obtain or attempt to obtain a license by fraud
31 or misrepresentation.

32 g. No person or licensee shall misrepresent, circumvent, or con-
33 ceal the nature of any material particular of any transaction to
34 which he is a party.

35 h. No person or licensee shall fail to disburse funds in accord-
36 ance with his agreements, unless otherwise ordered by the com-
37 missioner or a court of this State or of the United States.

38 i. No person or licensee shall fail without good cause to account
39 or deliver to any person any personal property, money, fund, de-
40 posit, check, draft, mortgage, document or thing of value, which
41 is not his property, or which he is not in law or equity entitled to
42 retain under the circumstances, at the time which has been agreed
43 upon, or is required by law or, in the absence of a fixed time, upon
44 demand of the person entitled to such accounting and delivery.

45 j. No person or licensee shall fail to place in escrow, immediately
46 upon receipt, any money, fund, deposit, check or draft entrusted
47 to him by any person dealing with him as a mortgage banker or
48 mortgage broker, in a manner approved by the commissioner, or
49 to deposit the funds in a trust or escrow account maintained by
50 him with a financial institution the deposits of which are insured
51 by the Federal Deposit Insurance Corporation or the Federal Sav-
52 ings and Loan Insurance Corporation, wherein the funds shall be
53 kept until the disbursement thereof is properly authorized.

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

1 15. If the commissioner has reason to believe that any person
2 or licensee has engaged, is engaged, or is about to engage in any
3 practice or transaction prohibited by this act, the commissioner
4 may, in addition to any other remedies he may have, bring a sum-
5 mary action in the name and on behalf of the State against the
6 person or licensee and any other person concerned or in any way
7 participating in or about to participate in such fraudulent prac-
8 tices or actions in violation of this act, to enjoin the person or
9 licensee from continuing the fraudulent practices or engaging
10 therein or doing any act in furtherance thereof or in violation of
11 this act.

1 16. Failure to comply with the provisions of this act shall not
2 affect the validity or enforceability of any mortgage loan, and no
3 person acquiring a mortgage loan, as mortgagee or assignee, shall
4 be required to ascertain whether or not the provisions of this act
5 have been complied with.

1 17. Any person or licensee who engages in any conduct or prac-
2 tice prohibited by this act may be liable to a penalty not exceeding
3 \$5,000.00, to be recovered in a summary proceeding under the
4 "penalty enforcement law" (N. J. S. 2A :58-1 et seq.). **In addition,*
5 *willful violations of this act shall be considered a crime of the*
6 *third degree, punishable as specified in N. J. S. 2C:43-3 and N. J. S.*
7 *2C:43-6.** Each violation shall constitute a separate offense, and
8 the penalty under this section shall be in addition to any suspension
9 or revocation of license under section 9 of this act.

1 18. Any agreement to waive any provision of this act shall be
2 unenforceable and void.

1 19. A person presently engaged in the business of a mortgage
2 banker, mortgage broker or mortgage solicitor shall comply with
3 the provisions of this act within 1 year of the effective date of
4 this act.

1 20. There is appropriated to the Department of Banking, for
2 the purpose of administering this act, the sum of ***[\$50,000.00]***
3 ***\$100,000.00***. In addition thereto, all fees and revenue received
4 pursuant to this act from the effective date of this act until June
5 30, 1982, shall be appropriated thereto.

1 **21. If any provisions of this act or the application thereof to*
2 *any person or circumstance is held unconstitutional, the remainder*
3 *of the act and the application of such provision to other persons or*
4 *circumstances shall not be affected thereby.**

1 ***[21.]*** ***22.*** This act shall take effect July 1 following its en-
2 actment, but section 20 of this act shall take effect immediately.
3 The commissioner may by regulation postpone the operative date
4 of sections 3 and 8 of this act for a period of not more than 1 year.

STATEMENT

This bill provides for the licensing and regulation of mortgage bankers, mortgage brokers and mortgage solicitors by the Commissioner of Banking. It defines "mortgage banker," "mortgage broker" and "mortgage solicitor," and prohibits anyone not specifically exempt from acting in one of these capacities without being licensed under this bill. Attorneys are exempt from licensing requirements when rendering services in the course of their legal practice, and anyone purchasing a mortgage for his own investment is also so exempt.

The bill establishes procedures and standards for the granting of licenses, and specifies the kinds of conduct which will justify the refusal to issue or renew a license or the suspension or revocation of a license. All mortgage bankers and mortgage brokers would be required to post at least a \$25,000.00 bond, to maintain a place of business in this State, and to keep available, for a period of 7 years, records of all transactions in the manner prescribed by the commissioner. The bill also prohibits several specific business practices which are deemed inconsistent with the public interest.

Any violation of the act subjects a person to a civil penalty of up to \$5,000.00 per violation. In addition, the commissioner may bring a summary action to enjoin any violation of this act or any fraudulent practice. These powers are in addition to the commissioner's power to revoke or suspend a license.

A755 (1981)

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 755

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 30, 1980

This legislation regulates mortgage bankers and mortgage companies, neither of which are presently regulated by the State. This legislation would bring them under the regulation of the Department of Banking. As originally drafted, the bill would require all mortgage bankers, mortgage brokers and mortgage solicitors to be licensed; the Assembly Banking and Insurance Committee has amended the legislation to eliminate mortgage solicitors from the licensing requirement. Candidates for licensing would be required to take an examination and to pay a biennial license fee established by the Commissioner of Banking; the license fee could not exceed \$1,000.00. Branch offices would also be required to be licensed by the commissioner. Mortgage bankers and mortgage brokers would be required to post a bond. Licenses could be refused or revoked by the commissioner for willful violation of the act or for other offenses, including conviction for certain offenses, insolvency, and incompetence or dishonesty.

As originally drafted, mortgage bankers and mortgage brokers would be required to maintain records, including books, accounts, and other documentary evidence used in the course of their business for a period of at least 7 years; the Banking and Insurance Committee has modified this retention of records requirement to a period of 5 years. The Commissioner of Banking would be given authority under the terms of the act to make such investigations as may be necessary, using the records and documentary evidence, and would be permitted to subpoena any records which he might find necessary.

The Banking and Insurance Committee has modified the section of the bill which deals with fees and other charges levied at closing. As originally drafted, the bill provided that the commissioner might establish "guidelines to determine the reasonableness of fees and commissions." In light of testimony given at a public hearing held on the bill, the committee has amended the legislation to enumerate specifically the kind of fees which may be charged; this will eliminate the practice of charging fees which may be questionable or inappropriate. The commissioner would be given the authority to regulate the reasonableness

of the fees. The charging of discount points on loans would be permitted.

The legislation regulates certain trade practices, including advertising, preparation of mortgage documents, the taking of bonuses or commissions by other than licensees, and the disbursement of funds. The legislation also deals with the question of the fiduciary responsibilities of a licensee with respect to the handling of money, personal property, or documents.

The legislation would permit the commissioner to bring a summary action in the name of and on behalf of the State if he feels that any provision of the act is or is about to be violated. Violations of the act would result in penalties levied not to exceed \$5,000.00. At the request of the Department of Banking, the Banking and Insurance Committee has amended the legislation to provide for a criminal penalty and to provide for a \$100,000.00, rather than a \$50,000.00, appropriation for the department.

Mortgage bankers, brokers, and solicitors are not regulated by the State and are unregulated by the Federal government except with respect to the making of Federally-related mortgage loans. The Banking and Insurance Committee and the Senate Labor, Industry and Professions Committee held two public hearings on this legislation. They heard testimony that in some cases mortgage commitments were slow in being issued by these lenders, closing dates were repeatedly postponed, excessive and extraordinary fees were charged at closing, and mortgages were poorly serviced. In the face of these complaints, the Department of Banking was unable to act because it had no jurisdiction, and individuals who were aggrieved by some of these practices had no recourse. Certain other states, including Arkansas, Arizona, Delaware, Florida, Hawaii, Illinois, Maryland, Minnesota, and Nevada, have laws regulating mortgage bankers and brokers.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 755
[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: NOVEMBER 10, 1980

The committee concurs in the Banking and Insurance Committee statement to this bill.

The committee notes for the record that the bill appropriates \$100,000.00 to the Department of Banking and in addition appropriates all fees and revenues received under the act through June 30, 1982.