

17:11A-37

LEGISLATIVE HISTORY CHECKLIST
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(Secondary mortgage loan--increase
financial requirements)

NJSA: 17:11A-37

LAWS OF: 1992 CHAPTER: 20

BILL NO: A1019

SPONSOR(S): Penn and others

DATE INTRODUCED: March 23, 1992

COMMITTEE: ASSEMBLY: Financial Institutions
SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
by asterisks

DATE OF PASSAGE: ASSEMBLY: April 30, 1992
SENATE: May 7, 1992

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FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

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FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

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[FIRST REPRINT]
ASSEMBLY, No. 1019

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1992

By Assemblyman PENN, Assemblywoman VANDERVALK,
Assemblymen Lustbader, Roberts, DeCroce, Kavanaugh,
Felice, Assemblywoman J. Smith, Assemblymen Franks,
Geist, Assemblywoman Haines, Assemblymen Bryant,
Rocco, Kamin, Zangari, Impreveduto, Kelly,
Charles, Doria and Pascrell

1 AN ACT concerning secondary mortgage loan licensees and
2 amending 1and supplementing¹ P.L.1970, c.205.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. Section 4 of P.L.1970, c.205 (C.17:11A-37) is amended to
7 read as follows:

8 4. a. An application for a secondary mortgage loan license
9 shall be on a form provided by the commissioner. The application
10 shall set forth the name and resident address of the applicant
11 and, if the applicant is other than an individual or corporation, of
12 each partner or member, and if the applicant is a corporation, of
13 each officer, director and the registered agent. The application
14 shall also set forth the address or addresses where the secondary
15 mortgage loan business is to be conducted in this State.

16 b. The application shall demonstrate that the applicant has
17 liquid assets of at least ~~[\$100,000.00]~~ \$150,000 available for the
18 purpose of making secondary mortgage loans and a net worth of
19 at least ~~[\$100,000.00]~~ \$150,000, except that, in the case of the
20 application of an officer, partner, member or other principal of a
21 corporation, partnership, association or other entity, that
22 individual shall not be required to demonstrate that the individual
23 has liquid assets and a net worth of at least ~~[\$100,000.00]~~
24 \$150,000.

25 In the case of an entity other than a corporation, the
26 commissioner may promulgate regulations as he deems necessary
27 to insure that the liquid asset and net worth requirements of this
28 subsection are maintained by at least one individual licensee of
29 that entity upon dissolution or other disposition affecting liquid
30 assets or net worth.

31 c. The application shall contain such other information as the
32 commissioner shall require in order to carry out the purposes of
33 this act.

34 d. If the applicant intends to conduct business under a name
35 other than its legal name, the applicant shall furnish the
36 certificates required by the law of this State with the application.

37 e. If the applicant is a foreign corporation, said corporation
38 shall be authorized to do business in this State in accordance with
39 the law of this State regulating corporations.

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AFI committee amendments adopted April 13, 1992.

1 f. Applicants for a secondary mortgage loan license shall file
2 with the application an irrevocable consent, duly acknowledged,
3 that suits and actions may be commenced against such licensee in
4 the courts of this State by the service of process or any pleading
5 upon the commissioner, in the usual manner provided for service
6 of process and pleadings by the statutes and Rules Governing the
7 Courts of the State of New Jersey. Said consent shall provide
8 that such service shall be as valid and binding as if service had
9 been made personally upon the licensee in this State. In all cases
10 where process or pleadings are served upon the commissioner
11 pursuant to the provisions of this section, such process or
12 pleadings shall be served in duplicate, one of which shall be filed
13 in the office of the commissioner and the other shall be
14 forwarded by the commissioner, by certified or registered mail,
15 return receipt, to the last known principal place of business of
16 the licensee to whom such process or pleadings is directed.

17 (cf: P.L.1987, c.230, s.3)

18 2. Section 12 of P.L.1970, c.205 (C.17:11A-45) is amended to
19 read as follows:

20 12. A secondary mortgage loan licensee shall:

21 a. (Deleted by amendment, P.L.1987, c.230.)

22 b. (Deleted by amendment, P.L.1987, c.230.)

23 c. (Deleted by amendment, P.L.1987, c.230.)

24 d. Maintain a net worth of [~~\$100,000.00~~] \$150,000 at all times;
25 except that licensees licensed prior to March 31, 1981 shall
26 maintain a net worth of [~~\$50,000.00~~] \$50,000, until five years
27 from [the effective date of this 1987 amendatory and
28 supplementary act] July 31, 1987, at which time the licensee shall
29 be required to prove and maintain at all times a net worth of at
30 least [~~\$100,000.00~~] \$100,000, and except that licensees licensed
31 prior to the effective date of P.L. _____, c. _____ (now pending in
32 the Legislature as this bill), shall maintain the net worth required
33 of them prior to that date until ¹[five] ¹three¹ years from the
34 effective date of P.L. _____, c. _____ (now pending in the Legislature
35 as this bill), at which time the licensee shall be required to prove
36 and maintain at all times a net worth of at least \$150,000.

37 e. Maintain at his place of business in this State an original,
38 true, xerographic or electronic copy of the following instruments,
39 documents, accounts, books and records:

40 (1) Promissory note or loan agreement evidencing each
41 borrower's secondary mortgage loan indebtedness.

42 (2) Mortgage, indenture or any other similar instrument or
43 document which creates a lien on the real property which is taken
44 as security for a secondary mortgage loan.

45 (3) Any insurance policies or certificates of insurance where
46 such insurance is obtained in accordance with section 2 of
47 P.L.1983, c.348 (C.17:11A-49.1).

48 (4) Closing statement for each secondary mortgage loan.

49 (5) Appraisal, survey, title examination, title insurance policy,
50 abstract of title, credit report or search, where utilized.

51 (6) Individual ledger card or any other form of record which
52 shows all installment payments made by the borrower and all
53 other charges or credits to the borrower's account.

54 (7) Individual file in which the borrower's application for a

1 loan and any correspondence, including collection letters,
2 memorandums, notes or any other written information pertaining
3 to the borrower's account, shall be kept.

4 (8) Accounts, books and records as shall be required by the
5 commissioner in order to ascertain whether the licensee has been
6 conducting his secondary mortgage loan business in full
7 compliance with the provisions of this act.

8 All of the aforementioned instruments, documents, accounts,
9 books and records shall be preserved and kept available for
10 investigation or examination by the commissioner for at least two
11 years after a secondary mortgage loan has been paid in full, but
12 in the case of an open-end loan, the two-year period is measured
13 from the date of each entry. The provisions of this section shall
14 not apply to any instrument, document, account, book or record
15 which is assigned, sold or transferred to another secondary
16 mortgage loan licensee nor shall the two-year requirement apply
17 to an instrument or document which must be returned to the
18 borrower at the time a secondary mortgage loan is paid in full.

19 f. Annually, before February 1, file a report with the
20 commissioner which shall set forth such information as the
21 commissioner shall require concerning the business conducted as
22 a licensee during the preceding calendar year. The report shall
23 be in writing, under oath and on a form provided by the
24 commissioner.

25 g. Be subject to an examination by the commissioner, not more
26 than once in any 18 month period, unless the commissioner has
27 reason to believe that the licensee is not complying with the
28 provisions of P.L.1970, c.205 (C.17:11A-34 et seq.) or any rule or
29 regulation promulgated thereunder, at which time the
30 commissioner shall have free access, during regular business
31 hours, to the licensee's place or places of business in this State
32 and to all instruments, documents, accounts, books and records
33 which pertain to the licensee's secondary mortgage loan
34 business. The cost of any such examination shall be borne by the
35 licensee.

36 h. In the event a borrower's application for a secondary
37 mortgage loan is denied, notify the borrower, in writing, of said
38 denial and, provided further, the name of any such borrower or a
39 list of any such borrowers shall not be referred by the licensee, in
40 any manner whatsoever, to any other lender, retail seller of
41 personal property or services or to any other person, whether in
42 this or any other state.

43 i. If a secondary mortgage loan is not consummated, return all
44 documents executed by or belonging to the borrower.

45 j. Give to the borrower, without charge, a copy of every
46 instrument, document or other writing the borrower signs.

47 k. Give to the borrower, without charge, written evidence of
48 any insurance obtained in accordance with section 16 of P.L.1970,
49 c.205 (C.17:11A-49).

50 l. Give to the borrower, without charge, at the time a
51 closed-end loan is made, and at the time of the first advance on
52 an open-end loan, a closing statement which itemizes the
53 individual amounts disbursed to or on behalf of the borrower,
54 including, but not limited to, the premium for insurance, if any,

1 the total amount of the funds so disbursed, the amount of the
2 interest charge, total amount of the loan, the amount, number
3 and due date of the installment payments and the interest charge
4 expressed as an annual percentage rate, as applicable.

5 m. When a payment is made in cash on an account of a
6 secondary mortgage loan, give to the borrower, without charge,
7 at the time such payment is actually received, a written receipt
8 which shall show the name and address of the licensee, the name
9 and address of the borrower, account number or other
10 identification mark or symbol, date and amount paid.

11 n. With respect to closed-end loans, upon written request from
12 the borrower, give or forward to the borrower, without charge,
13 within five days from the date of receipt of such request, a
14 written statement of the borrower's account which shall show
15 the dates and amounts of all installment payments credited to the
16 borrower's account, the dates, amounts and an explanation of all
17 other charges or credits to the account and the unpaid balance
18 thereof. A licensee shall not be required to furnish more than
19 two such statements in any 12-month period.

20 o. When a closed-end loan is paid in full, or when an open-end
21 loan is paid in full and the borrower has notified the licensee in
22 writing to discontinue his account with the licensee:

23 (1) Refund or credit to the borrower, in accordance with
24 regulations promulgated by the Commissioner of Insurance, any
25 unearned portion of the premium for any insurance, if a premium
26 for such insurance was disbursed on behalf of the borrower at the
27 time the secondary mortgage loan was originally made.

28 (2) Stamp or write on the face of the promissory note or loan
29 agreement evidencing the borrower's secondary mortgage loan
30 indebtedness "Paid in Full" or "Cancelled," the date paid and the
31 name and address of the licensee and, within 45 days, return the
32 promissory note or loan agreement to the borrower.

33 (3) Release [, at the expense of the licensee,] any lien on real
34 property and cancel the same of record pursuant to P.L. 1975, c.
35 137 (C. 46:18-11.2 et seq.), and, at the time the promissory note
36 or loan agreement evidencing the borrower's secondary mortgage
37 loan indebtedness is returned, deliver to the borrower such good
38 and sufficient assignments, releases or any other certificate,
39 instrument or document as may be necessary to vest the borrower
40 with complete evidence of title, insofar as the applicable
41 secondary mortgage loan is concerned, to the real property,
42 except that the licensee may require the borrower to pay any
43 charge imposed upon the licensee by a county recording officer to
44 effect the cancellation or release.

45 (cf: P.L.1987, c.230, s.9)

46 3. Section 13 of P.L.1970, c.205 (C.17:11A-46) is amended to
47 read as follows:

48 13. A secondary mortgage loan licensee shall not:

49 a. Transact any business subject to the provisions of this act
50 under any other name or at any other location except that
51 designated in his license. For the purpose of this section, the
52 transaction of business includes, but is not limited to, the signing
53 of any instrument, document or any other form by the borrower,
54 except that a borrower's application for a secondary mortgage

1 loan need not be signed in the office of the licensee and that a
2 secondary mortgage loan need not be closed at the office of a
3 licensee provided that it is closed in New Jersey at the office of
4 an attorney admitted to practice in this State. A licensee who
5 changes his name or place of business shall immediately notify
6 the commissioner who shall issue a certificate to the licensee,
7 which shall specify the licensee's new name or address.

8 b. Photocopy or otherwise reproduce his license.

9 c. Request that a borrower incorporate in connection with a
10 secondary mortgage loan or aid or abet such a scheme.

11 d. Make a secondary mortgage loan which has been referred by
12 a retail seller, who, in connection with such referral, has required
13 the borrower to purchase personal property or services or has
14 indicated that such purchase is necessary as a condition
15 precedent for such loan.

16 e. Charge an application fee or make any other charge or
17 accept an advance deposit prior to the time a secondary
18 mortgage loan is closed.

19 f. Require or accept from a borrower any collateral or
20 security for a secondary mortgage loan other than a mortgage,
21 indenture or any other similar instrument or document which
22 creates a lien upon any real property or an interest in real
23 property including, but not limited to, shares of stock in a
24 cooperative corporation.

25 g. Contract for, charge, receive or collect directly or
26 indirectly, any of the following in connection with a secondary
27 mortgage loan: a broker's or finder's fee; commission;
28 [discount;] expense; fine; penalty; [points;] premium, or any other
29 thing of value other than the charges authorized by this act;
30 except the expenses incurred on actual sale of the real property
31 in foreclosure proceedings or upon the entry of judgment, which
32 are otherwise authorized by law; provided, however, that:

33 (1) a licensee may require a borrower to pay a reasonable legal
34 fee at the time of the execution of the secondary mortgage loan,
35 provided any such legal fee shall represent a charge actually
36 incurred in connection with said secondary mortgage loan and
37 shall not be paid to a person except an attorney authorized to
38 practice law in this State; provided, further, that such legal fee
39 shall be evidenced by a statement from such attorney issued to
40 the licensee; and

41 (2) a licensee may charge and receive no more than three
42 discount points computed as a percentage of the amount of the
43 loan and may add such discount points to the principal balance of
44 the loan which discount points shall be fully earned when the loan
45 is made¹ and shall be included in the finance charge and disclosed
46 to the borrower as required under the truth in lending provisions
47 of the Consumer Credit Protection Act, 15 U.S.C. §1601 et. seq.
48 The annual percentage rate charged to the borrower, including
49 the discount points, if any, disclosed under this paragraph (2),
50 shall be subject to N.J.S. 2C:21-19. As used in this paragraph (2),
51 "discount point" means one per cent of the amount of credit to
52 be extended to the borrower¹.

53 h. Assign, sell or transfer a secondary mortgage loan to a
54 person other than a banking institution as defined in section 1 of

1 P.L.1948, c.67 (C.17:9A-1), association, as defined in section 5 of
2 P.L.1963, c.144 (C.17:12B-5), or another secondary mortgage loan
3 licensee, the Federal National Mortgage Association created
4 pursuant to section 302 of the National Housing Act, 48 Stat.
5 1246 (12 U.S.C. §1717), the Federal Home Loan Mortgage
6 Corporation created pursuant to section 303 of the "Federal
7 Home Loan Mortgage Corporation Act," Pub.L.91-351 (12 U.S.C.
8 §1452), or other persons or entities as from time to time
9 approved by the commissioner to facilitate and assure the steady
10 flow of secondary mortgage funds into the State. Notwithstanding
11 any other provisions of this act, such persons or entities need not
12 be licensed under the act to purchase or accept such an
13 assignment or transfer of a secondary mortgage loan.

14 i. Solicit business through any other person by paying, directly
15 or indirectly, for such business referred to the licensee by any
16 such person, except as described in subsection j. of this section.

17 j. Solicit business, directly or indirectly, for any other
18 licensee, lender, retail seller of personal property or services or
19 for any other person, whether in this or any other state, except
20 that a licensee may solicit on behalf of another licensee or lender
21 expressly authorized to make secondary mortgage loans in this
22 State if (1) such solicitation results in no additional cost or
23 expense to the borrower; and (2) the application and all
24 advertising in connection therewith clearly disclose the identity
25 of the person or entity which will be making the loan. If those
26 conditions are met, a licensee may collect a fee or a commission
27 from the lender as consideration for the solicitation.

28 k. Advertise, cause to be advertised or otherwise solicit
29 whether orally, in writing, by telecast, by broadcast or in any
30 other manner:

31 (1) That he is licensed by, or that his business is under the
32 supervision of, the State of New Jersey or the Department of
33 Banking, except that a licensee may advertise that he is "licensed
34 pursuant to the 'Secondary Mortgage Loan Act'"; provided,
35 however, that for the purpose of raising capital, no such
36 advertisement shall be permitted if it is to be used in connection
37 with a public solicitation for such funds.

38 (2) Any name, address or telephone number other than the
39 licensee's own name, address and telephone number in this State,
40 except as permitted in paragraph (3) of this subsection.

41 (3) The word "bank" or any term inferring that the licensee is
42 or is associated with a bank provided, however, that nothing in
43 this paragraph shall be deemed to prohibit a licensee which is
44 owned by or affiliated with a banking institution, as defined
45 pursuant to section 1 of P.L.1948, c.67 (C.17:9A-1), or a holding
46 company which owns or controls a banking institution from using
47 the name of the banking institution or the holding company in its
48 advertising.

49 (4) The amount of the interest to be charged, unless such
50 charge is also expressed as an annual percentage rate.

51 (5) Any statement or representation which is false, misleading
52 or deceptive and, provided further, a written or other visual
53 advertisement shall include the licensee's name, address and
54 telephone number in this State and the phrase "Secondary

1 Mortgage Loans" in 10-point bold type or larger.

2 (6) Any statement or representation that the licensee will
3 provide "immediate approval" of a loan application or
4 "immediate closing" of a loan or will afford unqualified access to
5 credit.

6 l. Make or offer to make any secondary mortgage loan which
7 would not be a prudent loan.

8 (cf: P.L.1989, c.312, s.2)

9 14. (New section) The commissioner, for a period of five years
10 following the effective date of P.L. _____, c. _____ (now pending in
11 the Legislature as this bill), shall conduct a study including all the
12 secondary mortgage lenders licensed by the Department of
13 Banking concerning: the effect of the use of discount points on
14 the secondary mortgage loan market, including, but not limited
15 to, changes in interest rates, volume of business, and number of
16 consumer complaints; and the effect of the liquid asset and net
17 worth requirements of sections 4 and 12 of P.L. 1970, c.205
18 (C.17:11A-37 and C.17:11A-45) on licensees and applicants for
19 licenses.

20 The commissioner shall report his findings to the appropriate
21 committees of the Legislature on an annual basis and shall make
22 recommendations to these committees as to whether the
23 limitations on the use of discount points should be continued,
24 increased, or eliminated, and whether the net worth and liquid
25 asset requirements for applicants and licensees should be
26 increased or otherwise changed.¹

27 ¹[4.] 5.¹ This act shall take effect immediately.

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32 Increases financial requirements for secondary mortgage loan
33 licensees.

STATEMENT

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3 This bill provides for an increase in the net worth required of
4 secondary mortgage lenders from \$100,000 to \$150,000, except
5 that persons licensed prior to the effective date of this bill would
6 have a five-year phase-in period beginning with the effective
7 date of the bill to meet the increased net worth requirement.
8 The bill removes the prohibitions against discounts and points and
9 specifically permits secondary mortgage lenders to charge no
10 more than three discount points for making a secondary mortgage
11 loan and to add the amount charged for points to the principal
12 balance of the loan. The bill requires that, for an open-end
13 secondary mortgage loan, a lender is to keep certain records for
14 two years from the date of each entry rather than the date the
15 loan is paid in full. In addition, when a loan is paid in full, a
16 lender is required to release any lien on real property and cancel
17 the same of record pursuant to P.L.1975, c.137 (C.46:18-11.2
18 et seq.).

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23 Increases financial requirements for secondary mortgage loan
24 licensees.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1019

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: APRIL 13, 1992

The Assembly Financial Institutions Committee favorably reports Assembly Bill No. 1019, with committee amendments.

This bill, as amended, amends the "Secondary Mortgage Loan Act" to:

a. Provide for an increase in the net worth required of secondary mortgage licensees from \$100,000 to \$150,000, permitting existing licensees three years to increase their net worth to \$150,000;

b. Remove the prohibition against discounts and points and allow secondary mortgage licensees to charge no more than three discount points, to include the amount charged for points in the principal balance of the loan, and require the licensee to include the discount points, if any, in the finance charge to be disclosed to the consumer pursuant to the truth in lending provisions of the federal Consumer Credit Protection Act;

c. Require secondary mortgage licensees to keep open-end loan records and documents for investigation and examination for two years from the date of each entry instead of for two years after the loan is paid in full; and

d. Conform the requirements for the release of a lien by a secondary mortgage licensee to those required by P.L.1975, c.137 (C.46:18-11.2 et seq.), which means, in part, that the fees for releasing the lien would be paid by the mortgagor instead of the mortgagee as required under current law.

e. Require the commissioner, for a period of five years following the effective date of the act, to conduct a study including all the secondary mortgage lenders licensed by the Department of Banking concerning: the effect of the use of discount points on the secondary mortgage loan market, including, but not limited to, changes in interest rates, volume of business, and number of consumer complaints; and the effect of the liquid asset and net worth requirements on licensees and applicants for licenses. The commissioner is to report his findings to the appropriate committees of the Legislature on an annual basis and make recommendations to these committees as to whether the limitations on the use of discounts points should be continued, increased, or eliminated, and whether the net worth and liquid asset requirements for applicants and licensees should be increased or otherwise changed.

Amendments to the bill: define the term, "discount point;" require the licensee to include the discount points, if any, in the finance charge and disclose the finance charge to the borrower as required under the Consumer Credit Protection Act; prohibit the annual finance charge, including discount points, if any, from

exceeding the criminal usury rate found in N.J.S.2C:21-19; require the commissioner, for a period of five years following the effective date of the act, to conduct a study, including all secondary mortgage lenders licensed by the Department of Banking, of the effect of the use of discount points on the secondary mortgage loan market, including, but not limited to, changes in interest rates, volume of business and number of consumer complaints; and require the commissioner to report his findings to the appropriate committees of the Legislature on an annual basis and make recommendations as to whether the limitations on the use of discount points should be continued, increased, or eliminated, and whether the net worth and liquid asset requirements for applicants and licensees should be increased or otherwise changed.