



State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING
PO BOX 040
TRENTON, NJ 08625-0040

JON S. CORZINE
Governor

STEVEN M. GOLDMAN
Commissioner

BULLETIN NO. 07-12

**TO: ALL NEW JERSEY LICENSED MORTGAGE BANKERS,
CORRESPONDENT MORTGAGE BANKERS, MORTGAGE
BROKERS, SECONDARY LENDERS AND REGISTERED
MORTGAGE SOLICITORS**

FROM: STEVEN M. GOLDMAN, COMMISSIONER

RE: COMMITMENT PROCESS ISSUES

The Department of Banking and Insurance ("Department") is notifying all entities involved in the mortgage lending industry regulated under the New Jersey Licensed Lenders Act (the "Act"), N.J.S.A. 17:11C-1 et seq., of the following issues relating to the commitment process, as such is addressed in the Act's implementing administrative rules set forth at N.J.A.C. 3:1-16.1 et seq. The frequency with which questions arise in this area warrants a clear restatement of the rules.

Commitment - Timing

N.J.A.C. 3:1-16.1 defines a commitment as "...a signed statement issued by a lender in which the lender promises to make a loan of specified terms to a specified borrower, and which is based on a satisfactory underwriting analysis of the appraisal, if an appraisal is required in connection with the loan, and a satisfactory underwriting analysis of the credit report, if a credit report is required in connection with the loan, except that any document indicating approval of a loan application which is contingent on the approval of a party to whom the lender seeks to sell the loan shall not be deemed a commitment."

N.J.A.C. 3:1-16.2 defines a commitment fee as "... a fee, exclusive of third-party fees, imposed by a lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its commitment and payable on or after acceptance of the commitment... The amount of any commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan or the amount financed."

N.J.A.C. 3:1-16.5(a) requires that at or before the issuance of a commitment, the lender shall disclose various items including, but not limited to, the expiration date of the commitment, the commitment fee (if any), the amount financed, and if the interest rate is not subject to change before the expiration of the commitment: the finance charge, the annual percentage rate and the payment schedule. The requirements also include “[t]he time, if any, within which the commitment must be accepted by the borrower.” N.J.A.C. 3:1-16.5(c) provides that “[t]he provisions of a commitment cannot be changed prior to expiration of the specified period within which the borrower must accept it.” N.J.A.C. 3:1-16.5(d) further provides that, “if the interest rate... discount points or fees charged by the lender and set forth in the commitment are subject to increase before closing, such items shall be fixed no later than midnight of the third business day before the date the loan closes.”

These rules require a commitment to be embodied in a separate and distinct document that is dated and also signed by a duly authorized representative of the lender. Prior to the charging of a commitment fee, a commitment must be given to and accepted by the borrower. See N.J.A.C. 3:1-16.5(a)5. The Department considers it a best practices standard for a commitment to be provided to a borrower no later than midnight of the third business day before the date the loan closes. Later issuance of a commitment would undercut the important consumer protections afforded by N.J.A.C. 3:1-16.5. In addition, later issuance of a commitment tends to negate its value as consideration for a commitment fee. A commitment issued at closing, for instance, does not warrant a commitment fee. Finally, again as a best practices matter, we view the best evidence of acceptance of a commitment to be the borrower’s dated signature on the commitment or other document, clearly indicating acceptance of the commitment. The Department intends to propose rule amendments in the future to address these issues.

Commitment - Prepayment Penalties

N.J.S.A. 46:10B-2 provides that the “[p]repayment of a mortgage loan may be made by or on behalf of a mortgagor at any time without penalty.” The mortgage processing rules, at N.J.A.C. 3:1-16.5(e), provide that “[a] lender who commits to make a mortgage loan may assign the commitment to another lender authorized to make mortgage loans in this State, or allow another such lender to close the loan, provided that... [t]he lender who committed to make the mortgage loan shall remain responsible for ensuring that the ultimate lender closes the loan in accordance with the terms and conditions of the commitment and applicable New Jersey and Federal laws and regulations.” In short, the assignment of a loan may not, alone, operate as an amendment of the loan’s terms. Consequently, if a commitment is made by a New Jersey licensed lender subject to N.J.S.A. 46:10B-2, it may not include a prepayment penalty, irrespective of the regulatory jurisdiction applicable to the lender who may take such loan commitment by assignment. By the same token, the terms of such a commitment may not be amended to include prepayment penalties by operation of an assignment alone.

Commitment – Not Issued by Mortgage Brokers

As defined at N.J.A.C. 3:1-16.1, a commitment is issued by a “lender.” The same rules define a “lender” as including a mortgage banker and a correspondent mortgage banker, as such are defined in the Act at N.J.S.A. 17:11C-2. A mortgage broker is not a “lender” and, therefore, may not issue a commitment.

6/13/07
Date

/S/ Steven M. Goldman
Steven M. Goldman
Commissioner

Bulletin on commitment.inoregs