

CHAPTER 169

AN ACT concerning the retention of records by certain financial institutions and amending P.L.1999, c.257.

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

1. Section 2 of P.L.1999, c.257 (C.17:16W-2) is amended to read as follows:

C.17:16W-2 Definitions regarding records retention.

2. As used in this act:

"Commissioner" means the Commissioner of Banking and Insurance.

"Date of the passbook" means the date of the last entry by the financial institution of a transaction with respect to the passbook account, or if the form of the passbook is such that it does not provide for entry of transactions, the last date for which the financial institution has a record of an account transaction. If there is no record of activity with respect to a passbook account subsequent to the issuance of the passbook, the date of issuance shall be the date of the passbook.

"Financial institution" means a State chartered bank, savings bank or savings and loan association.

"Owner" means the person or persons in whose name the account was opened.

"Passbook" means a document or record issued by a financial institution, which document or record represents an obligation of the financial institution, which obligation either has no fixed maturity or due date or which by its term is subject to automatic renewal or renewals for an indefinite time or indefinite number of times. Neither a periodic account statement nor any obligation for which applicable law provides a time by which the payment is due is a passbook for the purposes of this act.

"Passbook account" means an account which is evidenced by a passbook, certificate of deposit or similar document.

"Statement account" means an account which is not a passbook account and for which a financial institution supplies a periodic statement of the account's activity, balance or both, or supplies any other statement of the account as the owner and financial institution may agree.

"Termination of the loan account" means: (1) with respect to a closed-end loan, the date on which the loan is paid; or (2) with respect to an open-end loan, the date on which the outstanding balance on the account is brought to zero and the account is closed so that the borrower has no right to borrow additional funds under the loan agreement; or (3) the date upon which, pursuant to action or policy of the governing board of a financial institution or committee thereof, a loan is charged-off or the loan file is otherwise closed by the financial institution.

2. Section 5 of P.L.1999, c.257 (C.17:16W-5) is amended to read as follows:

C.17:16W-5 Loan, collateralized loans; records.

5. A financial institution shall retain records relating to the making, collection and administration of loans as follows:

- a. For all loans:

- (1) Records of dispositive or final judgments in bankruptcies or other litigation involving a loan, and termination of loan accounts shall be retained for at least six years after the termination of the loan account.

- (2) (Deleted by amendment, P.L.2001, c.169.)

- (3) Records of approval of loans or credit shall be retained for not less than six years after the closing of the loan or credit files.

- (4) Records of denials of loan applications shall be retained for not less than 25 months after the date of the denial.

- (5) Loan files, including copies of records regarding collateral and the perfection of security interests, guarantees and other records from time to time specified for retention by regulation adopted by the commissioner, shall be retained for not less than six years after the termination of the loan account. For lines of credit and open-end loans, records of transactions shall be retained for six years after the date of a transaction.

- (6) Loan committee minutes shall be retained for not less than six years after the date of the

committee meeting.

(7) Record of compliance with all applicable State and federal regulatory requirements shall be retained for the period specified in the applicable State or federal law or regulation. If no record retention period is specified in the law or regulation, the financial institution shall retain the records necessary to show compliance for not less than six years.

b. Collateralized loans:

(1) Records identifying the collateral perfection of the financial institution's security interest in the collateral and, for tangible personal property, the place and method of possession of the collateral shall be retained for not less than six years after the termination of the loan account.

(2) Records of the disposition by a financial institution of collateral that is personal property shall be retained for not less than six years after the date of disposition.

(3) For collateral that is real estate, records regarding the transfer of title by the financial institution shall be retained for at least six years after the date of transfer of title. Records of dispositive or final judgments or orders in foreclosure proceedings shall be retained for not less than six years after the date of the judgment of foreclosure or if no judgment, from the date of the termination of those proceedings.

(4) Records of escrow analyses and statements and of transactions in escrow accounts shall be retained for not less than six years.

3. Section 10 of P.L.1999, c.257 (C.17:16W-10) is amended to read as follows:

C.17:16W-10 Claims where records not required to be retained, statutes of limitations not affected; requirements.

10. a. In the event of any claim against a financial institution where the claimant relies in any way on records of the financial institution, which records are not required to be retained by the financial institution by the terms of this act or by other applicable State or federal record retention statutes or regulations and the records have not been retained by the financial institution, the fact that the financial institution does not have the records shall not give rise to any inference or presumption against the financial institution as to the content of the records nor shall the lack of the records shift any burden of proof from the claimant to the financial institution.

b. Nothing in this act shall be deemed to amend or alter any statute of limitations.

c. Nothing in P.L.1999, c.257 (C.17:16W-1 et seq.) shall be interpreted to require a financial institution to create any data or, except as specifically provided in that act, to retain any records that would not otherwise be created or retained. Records required to be retained by P.L.1999, c.257 (C.17:16W-1 et seq.) may be preserved in any form permitted by section 247 of P.L.1948, c.67 (C.17:9A-247).

4. Section 11 of P.L.1999, c.257 (C.17:16W-11) is amended to read as follows:

C.17:16W-11 Applicability.

11. The provisions of this act shall apply to all financial institutions chartered by this State and to the records of out-of-State banks, savings banks and savings and loan associations which relate to accounts, loans or other transactions which are made or located in this State. The provisions of section 4 of P.L.1999, c.257 (C.17:16W-4) shall apply to federally chartered banks and savings banks in this State to the extent that they are not inconsistent with applicable federal law.

5. This act shall take effect immediately.

Approved July 26, 2001.