

CHAPTER 65
(CORRECTED COPY)

AN ACT concerning licensing of mortgage servicers, supplementing Title 17 of the Revised Statutes and amending P.L.2005, c.199.

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

C.17:16F-27 Short title.

1. This act shall be known and may be cited as the “Mortgage Servicers Licensing Act.”

C.17:16F-28 Definitions relative to mortgage servicers.

2. As used in this act:

“Branch office” means a location other than the main office at which a licensee or any person on behalf of a licensee acts as a mortgage servicer.

“Commissioner” means the Commissioner of Banking and Insurance.

“Control” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise.

“Control person” means an individual that directly or indirectly exercises control over any person that:

- (1) is a director, general partner or executive officer;
- (2) in the case of a corporation, directly or indirectly has the right to vote 10 percent or more of a class of any voting security or has the power to sell or direct the sale of 10 percent or more of any class of voting securities;
- (3) in the case of a limited liability company, is a managing member; or
- (4) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 10 percent or more of the capital, shall be presumed to be a control person.

“Department” means the Department of Banking and Insurance.

“Individual” means a natural person.

“Mortgage servicer” means:

- (1) any person, wherever located, who, for the person or on behalf of the holder of a residential mortgage loan, receives payments of principal and interest in connection with a residential mortgage loan, records the payments on the person’s books and records and performs the other administrative functions as may be necessary to properly carry out the mortgage holder’s obligations under the mortgage agreement including, when applicable, the receipt of funds from the mortgagor to be held in escrow for payment of real estate taxes and insurance premiums and the distribution of the funds to the taxing authority and insurance company; and

- (2) includes a person who makes payments to borrowers pursuant to the terms of a home equity conversion mortgage or reverse mortgage.

“Mortgagee” means the grantee of a residential mortgage, provided if the residential mortgage has been assigned of record, “mortgagee” means the last person to whom the residential mortgage has been assigned of record.

“Mortgagor” means any person obligated to repay a residential mortgage loan.

“Office” means a main office or branch office.

“Residential mortgage loan” means a loan made to a natural person or persons to whom credit is offered or extended primarily for personal, family or household purposes which is secured by a mortgage constituting a lien upon real property located in this State on which there is erected or to be erected a structure containing one, two, three, four, five, or six

dwelling units, a portion of which structure may be used for nonresidential purposes, in the making of which the mortgagee relies primarily upon the value of the mortgaged property.

“Residential mortgage lender” means the same as “residential mortgage lender” as defined in section 3 of P.L.2009, c.53 (C.17:11C-53).

C.17:16F-29 Licensure for mortgage servicer required; exceptions.

3. a. On and after the effective date of this act, no person shall act as a mortgage servicer, directly or indirectly, without first obtaining a license under section 4 of this act from the commissioner for its main office, which shall be designated by the mortgage servicer, and each branch office where business is conducted, unless the person is exempt from licensure pursuant to subsection b. of this section.

b. The following persons shall be exempt from mortgage servicer licensing requirements:

(1) any bank, out-of-state bank, credit union chartered in New Jersey, federal credit union, or out-of-state credit union, provided the bank or credit union is federally insured;

(2) any wholly-owned subsidiary of the bank or credit union;

(3) any operating subsidiary in situations in which each owner of the operating subsidiary is wholly owned by the same bank or credit union;

(4) any person licensed as a residential mortgage lender pursuant to the “New Jersey Residential Mortgage Lending Act,” P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) while acting as a mortgage servicer, provided that:

(a) the person meets the supplemental mortgage servicer surety bond, fidelity bond, and errors and omissions coverage requirements under section 8 of this act; and

(b) during any period that the license of the residential mortgage lender in this State has been suspended, the exemption shall not be effective; and

(5) the New Jersey Housing and Mortgage Finance Agency.

c. The provisions of sections 9 through 12 of this act shall apply to any person, including a person exempt from licensure pursuant to subsection b. of this section, who acts as a mortgage servicer in this State on or after the effective date of this act.

C.17:16F-30 Issuance of mortgage servicer license; requirements.

4. a. The commissioner shall issue a mortgage servicer license to an applicant if the commissioner finds that:

(1) the applicant has identified a qualified individual for its main office, and a branch manager for each branch office where the business is conducted, provided the qualified individual and branch manager have supervisory authority over the mortgage servicer activities at the respective office location and at least three years’ experience in the mortgage servicing business within the five years immediately preceding the date of the application for licensure;

(2) the applicant, the control persons of the applicant, the qualified individual and any branch manager with supervisory authority at the office for which the license is sought, have not been convicted of or pled guilty or nolo contendere to, in a domestic, foreign, or military court, a felony during the seven-year period preceding the date of the application for licensing, or a felony involving an act of fraud or dishonesty, a breach of trust or money laundering at any time preceding the date of application, except that any pardon or expungement of a conviction shall not be a conviction for purposes of this paragraph;

(3) the applicant demonstrates that the financial responsibility, character and general fitness of the applicant, the control persons of the applicant, the qualified individual and any

branch manager having supervisory authority over the office for which the license is sought, warrant a determination that the applicant will operate honestly, fairly and efficiently within the purposes of this act. Financial responsibility shall be demonstrated by submission of the applicant's most recent audited financial statements and by such other information and documents as the commissioner may require by regulation;

(4) the applicant has met the surety bond, fidelity bond, and errors and omissions coverage requirement under section 8 of this act;

(5) the applicant has not made a material misstatement in the application; and

(6) the applicant has met any other similar requirements as determined by the commissioner.

If the commissioner fails to make the findings, the commissioner shall not issue a license, and shall notify the applicant of the denial and the reasons for the denial. For purposes of this subsection, the level of offense of the crime and the status of any conviction, pardon, or expungement shall be determined by reference to the law of the jurisdiction where the case was prosecuted. In the event the jurisdiction does not use the term "felony," "pardon," or "expungement," the terms shall include legally equivalent events. For purposes of paragraph (1) of this subsection, "experience in the mortgage servicing business" means paid experience in the:

(a) servicing of mortgage loans;

(b) accounting, receipt and processing of payments on behalf of mortgagees or creditors;

or

(c) supervision of these activities, or any other relevant experience as determined by the commissioner.

b. An application for a license as a mortgage servicer or renewal of the license shall be filed with the department, in a form prescribed by the commissioner, and shall be accompanied by the fees required by section 7 of this act. The applicant shall, at a minimum, furnish to the department information concerning the identity of the applicant, any control person of the applicant, the qualified individual and any branch manager, including personal history and experience in a form prescribed by the commissioner, and information related to any administrative, civil or criminal findings by any governmental jurisdiction. The applicant shall notify the department of any change to the information submitted in connection with its most recent application for licensure not later than 15 days after the applicant has reason to know of the change. For the purpose of this subsection, evidence of experience of the qualified individual and any branch manager shall include:

(1) a statement specifying the duties and responsibilities of the person's employment, the term of employment, including month and year, and the name, address and telephone number of a supervisor, employer or, if self-employed, a business reference; and

(2) if required by the commissioner, copies of W-2 forms, 1099 tax forms or, if self-employed, 1120 corporate tax returns, signed letters from the employer on the employer's letterhead verifying the person's duties and responsibilities and term of employment including month and year, and, if the person is unable to provide the letters, other proof satisfactory to the commissioner that the person meets the experience requirement. The commissioner may conduct a criminal history records check of the applicant, any control person of the applicant, the qualified individual and any branch manager with supervisory authority at the office for which the license is sought and require the applicant to submit the fingerprints of those persons as part of the application. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of

Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility for the applicant, any control person of the applicant, the qualified individual and any branch manager. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event any person who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed, whether the person is a prospective new licensee, or subsequently, a current license holder.

c. (1) The minimum standards for license renewal for a mortgage servicer shall include the following:

(a) the applicant continues to meet the minimum standards under subsection a. of this section, including, but not limited to, the financial responsibility requirement of paragraph (3) of subsection a. of this section ; and

(b) the mortgage servicer has paid all required fees for renewal of the license.

(2) The license of a mortgage servicer that fails to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses. The commissioner may suspend a mortgage servicer license if the licensee is in violation of any provision of this act. After a license has been suspended pursuant to this section, the commissioner shall give the licensee notice of the suspension, pending proceedings for revocation or refusal to renew pursuant to sections 14 and 15 of this act and an opportunity for a hearing on the action and require the licensee to take or refrain from taking any action that, in the opinion of the commissioner, is necessary to effectuate the purposes of this act.

d. (1) Withdrawal of an application for a license filed under this section shall become effective upon receipt by the commissioner of a notice of intent to withdraw the application. The commissioner may deny a license up to one year after the effective date of withdrawal.

(2) If the license of a mortgage servicer expires due to the licensee's failure to renew, the commissioner may institute a revocation or suspension proceeding or issue an order suspending or revoking the license pursuant to subsection a. of section 14 of this act not later than one year after the date of the expiration.

e. The commissioner may deem an application for a license under this section abandoned if the applicant fails to respond to any request for information required under this act, or the regulations adopted pursuant to this act. The commissioner shall notify the applicant that if the information is not submitted within 60 days from the date of the request, the application shall be deemed abandoned. An application filing fee paid prior to the date an application is deemed abandoned pursuant to this subsection shall not be refunded. Abandonment of an application pursuant to this subsection shall not preclude the applicant from submitting a new application for a license.

C.17:16F-31 Filing of information relative to mortgages serviced.

5. At least annually, a mortgage servicer shall file with the commissioner the following information with respect to mortgages that it services in this State:

a. a current schedule of the ranges of costs and fees it charges mortgagors for its servicing-related activities;

b. a report in a form and format acceptable to the commissioner detailing the mortgage servicer's activities in the State, including:

(1) the number of residential mortgage loans the mortgage servicer is servicing; and

(2) the type and characteristics of the residential mortgage loans the mortgage servicer is servicing;

c. the number of serviced residential mortgage loans in default, along with a breakdown of 30, 60, and 90-days of delinquency;

d. a description of the mortgage servicer's loss mitigation activities, including details on workout arrangements undertaken; and

e. the number of foreclosures commenced.

C.17:16F-32 License not transferable or assignable; surrender; name change.

6. a. A mortgage servicer license shall not be transferable or assignable. A licensee shall not use any name other than its legal name or a fictitious name approved by the commissioner, provided the licensee shall not use its legal name if the commissioner disapproves use of the name. Any licensee who intends to permanently cease acting as a mortgage servicer at any time during a license period for any cause, including, but not limited to, bankruptcy or voluntary dissolution, shall file with the department a request to surrender the license for each office at which the licensee intends to cease to do business, not later than 15 days after the date of the cessation. A surrender shall not be effective until accepted by the commissioner.

b. A mortgage servicer licensee may change the name of the licensee or address of any office specified on the most recent filing with the department if:

(1) at least 30 calendar days prior to the change, the licensee files the change with the department and, in the case of a main office or branch office, provides, directly to the commissioner, a bond rider or endorsement, or addendum, as applicable, to any bond or evidence of errors and omissions coverage on file with the commissioner that reflects the new name or address of the main office or branch office; and

(2) the commissioner does not disapprove the change, in writing, or request further information within the 30-day period.

c. The mortgage servicer licensee shall notify the department, in writing, not later than five business days after the licensee has reason to know of the occurrence of any of the following events:

(1) a material change of financial condition, filing for bankruptcy, or the consummation of a corporate restructuring, of the licensee;

(2) filing of a criminal indictment against the licensee or receiving notification of the filing of any criminal felony indictment or felony conviction of any of the licensee's officers, directors, members, partners or shareholders owning ten percent or more of the outstanding stock;

(3) receiving notification of the institution of license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action by any governmental agency against the licensee and the reasons for the action;

(4) receiving notification of the initiation of any action by the Attorney General or the attorney general of any other state and the reasons for the action;

(5) suspension or termination of the licensee's status as an approved seller or servicer by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Government National Mortgage Association;

(6) receiving notification that certain servicing rights of the licensee will be rescinded or cancelled, and the reasons provided therefor;

(7) receiving notification of filing for bankruptcy of any of the licensee's officers, directors, members, partners or shareholders owning ten percent or more of the outstanding stock of the licensee; or

(8) receiving notification of the initiation of a class action lawsuit on behalf of consumers against the licensee that is related to the operation of the licensed business.

C.17:16F-33 Expiration of initial license; renewals; fees.

7. a. An initial mortgage servicer license shall expire at the close of business on December 31 of the year in which it is approved, except that any license that is approved on or after November 1 shall expire at the close of business on December 31 of the year following the year in which it is approved. An application for renewal of a license shall be filed between November 1 and December 31 of the year in which the license expires and a renewal license shall expire at the close of business on December 31 of the third year after the year in which it was approved. Each applicant for an initial license or renewal of a license as a mortgage servicer shall pay to the department any required fees or charges and a license fee of \$1,000. Each applicant for a renewal license shall pay to the department any required fees or charges and a license fee of \$3,000.

b. All fees paid pursuant to this section, including fees paid in connection with an application that is denied or withdrawn prior to the issuance of the license, shall be nonrefundable. A fee paid pursuant to this section shall not be prorated if the license is surrendered, revoked or suspended prior to the expiration of the period for which it was approved.

C.17:16F-34 Exemptions from licensure; required filings.

8. a. A mortgage servicer applicant or licensee and any person exempt from mortgage servicer licensure pursuant to paragraph (4) of subsection b. of section 3 of this act shall file with the commissioner:

(1) a surety bond, written by a surety authorized to write the bonds in this State, covering its main office and any branch office from which it acts as mortgage servicer, in a penal sum of \$100,000 per office location in accordance with subsection b. of this section;

(2) a fidelity bond, written by a surety authorized to write the bonds in this State, in accordance with the requirements of subsection c. of this section; and

(3) evidence of errors and omissions coverage, written by an entity authorized to write the coverage in this State, in accordance with the requirements of subsection c. of this section. A mortgage servicer licensee and a person otherwise exempt from mortgage servicer licensure pursuant to paragraph (4) of subsection b. of section 3 of this act shall not act as a mortgage servicer in this State without maintaining the surety bond, fidelity bond and errors and omissions coverage required by this section.

b. The surety bond required by subsection a. of this section shall be:

(1) in a form approved by the Attorney General; and

(2) conditioned upon the mortgage servicer licensee or person exempt from mortgage servicer licensure pursuant to paragraph (4) of subsection b. of section 3 of this act performing any and all written agreements or commitments with or for the benefit of mortgagors and mortgagees, accounting for all funds received from a mortgagor or mortgagee in the person's capacity as a mortgage servicer, and conducting the mortgage business consistent with the provisions of this act. Any mortgagor damaged by the failure of a mortgage servicer licensee or person exempt from mortgage servicer licensure pursuant to paragraph (4) of subsection b. of section 3 of this act to perform any written agreements or

commitments, or by the wrongful conversion of funds paid by a mortgagor to the licensee or person, may proceed on the bond against the principal or surety thereon, or both, to recover damages. The commissioner may proceed on the bond against the principal or surety on the bond, or both, to collect any appropriate civil penalty. The proceeds of the bond, even if commingled with other assets of the principal, shall be deemed by operation of law to be held in trust for the benefit of claimants against the principal in the event of bankruptcy of the principal and shall be immune from attachment by creditors and judgment creditors. The surety bond shall run concurrently with the period of the license for the main office of the mortgage servicer or residential mortgage lender and the aggregate liability under the bond shall not exceed the penal sum of the bond. The principal shall notify the commissioner of the commencement of an action on the bond. When an action is commenced on a principal's bond, the commissioner may require the filing of a new bond and immediately on recovery on any action on the bond, the principal shall file a new bond.

c. The fidelity bond and errors and omissions coverage required by subsection a. of this section shall name the Department of Banking and Insurance as an additional loss payee on drafts the surety issues to pay for covered losses directly or indirectly incurred by mortgagors of residential mortgage loans serviced by the mortgage servicer. The fidelity bond shall cover losses arising from dishonest and fraudulent acts, embezzlement, misplacement, forgery and similar events committed by employees of the mortgage servicer. The errors and omissions coverage shall cover losses arising from negligence, errors and omissions by the mortgage servicer with respect to the payment of real estate taxes and special assessments, hazard and flood insurance or the maintenance of mortgage and guaranty insurance. The fidelity bond and errors and omissions coverage shall each be in the following principal amounts based on the mortgage servicer's volume of servicing activity most recently reported to the department:

(1) If the amount of the residential mortgage loans serviced is \$100,000,000 or less, the principal amount shall be \$300,000; or

(2) If the amount of the loans exceeds \$100,000,000, the principal amount shall be \$300,000 plus:

(a) three-twentieths of one percent of the amount of residential mortgage loans serviced greater than \$100,000,000 but less than or equal to \$500,000,000;

(b) plus one-eighth of one percent of the amount of residential mortgage loans serviced greater than \$500,000,000 but less than or equal to \$100,000,000,000; and

(c) plus one-tenth of one percent of the amount of residential mortgage loans serviced greater than \$100,000,000,000.

The fidelity bond and errors and omissions coverage may provide for a deductible amount not to exceed the greater of \$100,000 or five percent of the principal amount.

d. A surety shall have the right to cancel the surety bond, fidelity bond and errors and omissions coverage required by this section at any time by a written notice to the principal stating the date cancellation shall take effect. The notice shall be sent by certified mail to the principal at least 30 days prior to the date of cancellation. A surety bond, fidelity bond or errors and omissions coverage shall not be cancelled unless the surety notifies the commissioner, in writing, not less than 30 days prior to the effective date of cancellation. After receipt of the notification from the surety, the commissioner shall give written notice to the principal of the date the cancellation shall take effect. The commissioner shall suspend the license of a mortgage servicer on that date. A suspension or inactivation shall not occur if, prior to the date that the bond or errors and omissions coverage cancellation shall take effect:

(1) the principal submits a letter of reinstatement of the bond or errors and omissions coverage, or a new bond or errors and omissions policy; or

(2) the mortgage servicer licensee has ceased business in this State and has surrendered all licenses in accordance with section 5 of this act. After a mortgage servicer license has been suspended pursuant to this section, the commissioner shall give the licensee notice of the suspension, pending proceedings for revocation or refusal to renew pursuant to section 14 of this act and an opportunity for a hearing on the action and require the licensee to take or refrain from taking the action as in the opinion of the commissioner will effectuate the purposes of this section. A person licensed as a residential mortgage lender in this State acting as a mortgage servicer from a location licensed as a main office or branch office shall cease to be exempt from mortgage servicer licensing requirements in this State upon cancellation of any surety bond, fidelity bond or errors and omissions coverage required by this section.

e. If the commissioner finds that the financial condition of a mortgage servicer or residential mortgage lender licensee so requires, as evidenced by the reduction of tangible net worth, financial losses or potential losses as a result of a violation of this act, the commissioner may require one or more additional bonds meeting the standards set forth in this section. The licensee shall file any the additional bonds not later than ten days after receipt of the commissioner's written notice of the requirement. A mortgage servicer or residential mortgage lender licensee shall file, as the commissioner may require, any bond rider or endorsement or addendum, as applicable, to any bond or evidence of errors and omissions coverage on file with the commissioner to reflect any changes necessary to maintain the surety bond, fidelity bond and errors and omissions coverage required by this section.

C.17:16F-35 Exemptions to maintain adequate records.

9. a. A mortgage servicer licensee and person exempt from licensure pursuant to paragraph (4) of subsection b. of section 3 of this act shall maintain adequate records of each residential mortgage loan transaction at the office named in the mortgage servicer or residential mortgage lender license, or, if requested by the commissioner, shall make the records available at the office or send the records to the commissioner by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than five business days after requested by the commissioner to do so. Upon request, the commissioner may grant a licensee additional time to make the records available or send them to the commissioner. The records shall provide the following information:

(1) a loan history for residential mortgage loans upon which payments are received or made by the mortgage servicer, itemizing the amount and date of each payment and the unpaid balance at all times;

(2) the original or an exact copy of the note, residential mortgage or other evidence of indebtedness;

(3) the name and address of the residential mortgage lender, and mortgage broker, if any, involved in the residential mortgage loan transaction;

(4) copies of any disclosures or notifications provided to the mortgagor required by State or federal law;

(5) a copy of any bankruptcy plan approved in a proceeding filed by the mortgagor or a co-owner of the property subject to the residential mortgage loan;

(6) a communications log that documents all verbal communications with the mortgagor or the mortgagor's representative; and

(7) a copy of all notices sent to the mortgagor related to any foreclosure proceeding filed against the encumbered property.

b. Every mortgage servicer licensee and person exempt from licensure pursuant to paragraph (4) of subsection b. of section 3 of this act shall retain the records of each residential mortgage loan serviced for not less than two years following the final payment on the residential mortgage loan, or the assignment of the residential mortgage loan, whichever occurs first, or a longer period as may be required by any other provision of law. Every mortgage servicer licensee and person exempt from licensure pursuant to paragraph (4) of subsection b. of section 3 of this act shall keep and use in its business books, accounts and records that will enable the commissioner to determine whether the mortgage servicer is complying with the provisions of this act.

C.17:16F-36 Disclosures to mortgagor.

10. Upon assignment of servicing rights on a residential mortgage loan, the mortgage servicer shall disclose to the mortgagor:

a. any notice required by the "Real Estate Settlement Procedures Act of 1974" (12 U.S.C. s.2601 et seq.), and the regulations promulgated thereunder, and within the time periods prescribed therein; and

b. a schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with State and federal law and, if the disclosure is made by a mortgage servicer licensee, shall not exceed those reported to the commissioner in accordance with section 5 of this act.

C.17:16F-37 Compliance with federal laws, regulations.

11. a. A mortgage servicer shall comply with all applicable federal laws and regulations relating to mortgage loan servicing, including, but not limited to:

(1) the "Real Estate Settlement Procedures Act of 1974" (12 U.S.C. s.2601 et seq.); and

(2) the "Truth-in-Lending Act" (15 U.S.C. s.1601 et seq.).

b. In addition to any other remedies provided by law, a violation of any federal law or regulation shall be deemed a violation of this section and a basis upon which the commissioner may take enforcement action pursuant to section 14 of this act.

C.17:16F-38 Schedule of fees.

12. a. A mortgage servicer shall maintain and keep current a schedule of fees that it charges mortgagors for its servicing-related activities. The schedule shall identify each fee, provide a plain English explanation of the fee and state the amount of the fee or range of amounts or, if there is no standard fee, how the fee is calculated or determined. A mortgage servicer shall make its schedule available to the mortgagor or the mortgagor's authorized representative upon request.

b. A mortgage servicer shall not impose any late fee or delinquency charge when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period. Late charges shall not be:

(1) based on an amount greater than the past due amount;

(2) collected from the escrow account or from escrow surplus without the approval of the mortgagor; or

(3) deducted from any regular payment.

C.17:16F-39 Prohibited actions.

13. A mortgage servicer shall not:

- a. directly or indirectly employ any scheme, device or artifice to defraud or mislead mortgagors or mortgagees or to defraud any person;
- b. engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a residential mortgage loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a residential mortgage loan, the terms and conditions of the servicing agreement or the mortgagor's obligations under the residential mortgage loan;
- c. obtain property by fraud or misrepresentation;
- d. knowingly misapply or recklessly apply residential mortgage loan payments to the outstanding balance of a residential mortgage loan;
- e. knowingly misapply or recklessly apply payments to escrow accounts;
- f. place hazard, homeowner's or flood insurance on the mortgaged property when the mortgage servicer knows or has reason to know that the mortgagor has an effective policy for the insurance;
- g. knowingly or recklessly provide inaccurate information to a credit bureau, thereby harming a mortgagor's creditworthiness;
- h. fail to report both the favorable and unfavorable payment history of the mortgagor to a nationally recognized consumer credit bureau at least annually if the mortgage servicer regularly reports information to a credit bureau;
- i. collect private mortgage insurance beyond the date for which private mortgage insurance is required;
- j. fail to issue a release of mortgage in accordance with the provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.);
- k. fail to provide written notice to a mortgagor upon taking action to place hazard, homeowner's or flood insurance on the mortgaged property, including a clear and conspicuous statement of the procedures by which the mortgagor may demonstrate that the mortgagor has the required insurance coverage and by which the mortgage servicer shall terminate the insurance coverage placed by it and refund or cancel any insurance premiums and related fees paid by or charged to the mortgagor;
- l. place hazard, homeowner's, or flood insurance on a mortgaged property, or require a mortgagor to obtain or maintain that insurance, in excess of the replacement cost of the improvements on the mortgaged property as established by the property insurer;
- m. fail to provide to the mortgagor a refund of unearned premiums paid by a mortgagor or charged to the mortgagor for hazard, homeowner's, or flood insurance placed by a mortgagee or the mortgage servicer if the mortgagor provides reasonable proof that the mortgagor has obtained coverage so that the forced placement insurance is no longer necessary and the property is insured. If the mortgagor provides reasonable proof that no lapse in coverage occurred so that the forced placement is not necessary, the mortgage servicer shall promptly refund the entire premium;
- n. require any amount of funds to be remitted by means more costly to the mortgagor than a bank or certified check or attorney's check from an attorney's account to be paid by the mortgagor;
- o. refuse to communicate with an authorized representative of the mortgagor who provides a written authorization signed by the mortgagor, provided the mortgage servicer

may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the mortgagor;

p. conduct any business covered by this act, without holding a valid license as required under this act, or assist or aid and abet any person in the conduct of business without a valid license as required under this act; or

q. negligently make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with a governmental agency or the department or in connection with any investigation conducted by the commissioner or another governmental agency.

C.17:16F-40 Authority of commissioner.

14. a. The commissioner shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this act, the commissioner may access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to:

(a) criminal, civil and administrative history information;

(b) financial statements and any other records of financial condition of the licensee, any control person of the licensee, and any business entity exerting control over the licensee;

(c) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the "Fair Credit Reporting Act" (15 U.S.C. s.1681a(p)); and

(d) any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of the documents, information or evidence; and

(2) For the purposes of investigating violations or complaints arising under this act, or for the purposes of examination, the commissioner may review, investigate, or examine any mortgage servicer licensee or person subject to the act as often as necessary in order to carry out the purposes of the act. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the residential mortgage loans or the business or subject matter of any examination or investigation, and may direct, subpoena or order the person to produce books, accounts, records, files and any other documents the commissioner deems relevant to the inquiry.

b. A mortgage servicer licensee or any person subject to this act shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section including accounting compilations, information lists and data concerning residential mortgage loan transactions in a format prescribed by the commissioner or any other information the commissioner deems necessary to carry out the purposes of this act.

c. In making an examination or investigation authorized by this section, the commissioner may control access to any documents and records of the mortgage servicer licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner

has reasonable grounds to believe the documents or records of the mortgage servicer licensee or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this act, the mortgage servicer licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

d. In order to carry out the purposes of this section, the commissioner may:

(1) retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

(2) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burdens by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;

(3) use, hire, contract or employ public or privately available analytical departments, methods or software to examine or investigate the mortgage servicer licensee or person subject to this act;

(4) accept and rely on examination or investigation reports made by other government officials, within or without this State; and

(5) accept audit reports made by an independent certified public accountant for the mortgage servicer licensee or person subject to this act, in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation or other writing of the commissioner.

e. The authority of this section shall remain in effect, whether the mortgage servicer licensee or person subject to this act, acts or claims to act under any licensing or registration law of this State, or claims to act without the authority.

f. A mortgage servicer licensee or person subject to investigation or examination under this section shall not knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information.

C.17:16F-41 Suspension, revocation, failure to renew license.

15. a. The commissioner may suspend, revoke or refuse to renew any mortgage servicer license or take any other action for any reason which would be sufficient grounds for the commissioner to deny an application for the license under section 4 of this act, or if the commissioner finds that the licensee, any control person of the licensee, the qualified individual or any branch manager with supervisory authority, trustee, employee or agent of the licensee has done any of the following:

(1) made any material misstatement in the application;

(2) committed any fraud or misrepresentation or misappropriated funds;

(3) become insolvent;

(4) violated any of the provisions of this act or of any regulations adopted pursuant thereto, or any other law or regulation applicable to the conduct of its business; or

(5) failed to perform any agreement with a mortgagee or a mortgagor.

b. Whenever it appears to the commissioner that any person has violated, is violating, or is about to violate any of the provisions of this act or of any regulations adopted pursuant thereto, or any licensee has failed to perform any agreement with a mortgagee or mortgagor, committed any fraud, made any misrepresentation or misappropriated funds, the commissioner may:

- (1) issue an order directing a person or licensee to cease and desist from engaging in any act or practice that is in violation of this act;
- (2) issue an order directing a person or licensee to perform corrective actions; and
- (3) bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with any provision of this act.

C.17:16F-42 Violators barred from acting as residential mortgage servicer.

16. The commissioner may order that any person who has been found to have knowingly violated any provision of this act, or of the rules and regulations issued pursuant hereto, and has thereby caused financial harm to consumers, be barred from acting as a residential mortgage servicer, residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or an employee of a licensee, or acting in any other capacity pursuant to this act. A violation of this final order shall be considered a crime of the third degree.

C.17:16F-43 Civil penalty.

17. The commissioner may impose a civil penalty not exceeding \$25,000 on any person for a violation of this act. Each violation of this act, including any order, rule or regulation made or issued pursuant to this act, shall constitute a separate offense. Additionally, each violation of this act which constitutes a knowing violation shall be considered a crime of the third degree.

C.17:16F-44 Construction of act.

18. The rights, remedies and prohibitions accorded by the provisions of this act are in addition to and cumulative of any right, remedy or prohibition accorded by the common law or any statute of this State and nothing contained herein shall be construed to deny, abrogate, or impair any common law or statutory right, remedy or prohibition. The Attorney General and the Division of Consumer Affairs in the Department of Law and Public Safety shall continue to have the authority to enforce civil and criminal violations of the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), or any other applicable law, rule or regulation in connection with the activities of mortgage servicers.¹

C.17:16F-45 Inapplicability.

19. The provisions of sections 3 through 12 of this act shall not apply to:

- (1) a person exempt from licensure as a residential mortgage lender pursuant to the “New Jersey Residential Mortgage Lending Act,” P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89), while servicing residential mortgage loans made pursuant to the exemption;
- (2) a person servicing five or fewer residential mortgage loans within any period of twelve consecutive months;
- (3) any agency of the federal government, any state or municipal government or any quasi-governmental agency servicing residential mortgage loans under the specific authority of the laws of any state or the United States; and
- (4) a person exempt from licensure as a mortgage servicer pursuant to paragraphs (1), (2), and (3) of subsection b. of section 3 of this act.

C.17:16F-46 Rules, regulations.

20. The Commissioner of Banking and Insurance may adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), including any fines or penalties, necessary to effectuate the provisions of this act.

21. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to read as follows:

C.17:1C-34 Definitions relative to funding mechanism for Division of Banking.

2. For the purposes of this act:

"Assessment" means the assessment imposed pursuant to section 3 of this act for the special functions of the division as provided in that section.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Depository institution" means any entity holding a state charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

"Division" means the Division of Banking in the Department of Banking and Insurance.

"Other financial entity" means a person who is licensed or registered pursuant to: the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.), other than a financial entity with respect to the payment of required fees to the Nationwide Mortgage Licensing System and Registry as set forth by that nationwide system and registry; "The Check Cashers Regulatory Act of 1993," P.L.1993, c.383 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act," P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968," P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); the "Foreclosure Rescue Fraud Prevention Act," P.L.2011, c.146 (C.46:10B-53 et al.); the "Mortgage Servicers Licensing Act," P.L.2019, c.65 (C.17:16F-27 et al.); or the "pawnbroking law," R.S.45:22-1 et seq.

"Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized in this State pursuant to the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

"Regulated entity" means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or who should be chartered, licensed or registered.

22. This act shall take effect on the 90th day next following enactment.

Approved April 29, 2019.