

CHAPTER 70

AN ACT concerning licensing and other requirements for residential mortgage lending, and amending P.L.2009, c.53 and P.L.1995, c.244.

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

1. Section 4 of P.L.2009, c.53 (C.17:11C-54) is amended to read as follows:

C.17:11C-54 Licensing requirements.

4. Except as provided under section 5 of this act, beginning no later than July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.5107), the licensing requirements under this act shall be as follows:

- a. For residential mortgage lenders and residential mortgage brokers, as business licensees:

(1) No person shall act as a residential mortgage lender or broker without first obtaining a license under this act, except that a person licensed as a residential mortgage lender may act as a broker, if proper disclosure is made. The department shall issue licenses which specify whether a business licensee is licensed as a residential mortgage lender or broker.

(2) No person shall be issued or hold a license as a residential mortgage lender or residential mortgage broker unless one officer, director, partner, owner or principal is a qualified individual licensee. The commissioner may, by regulation, require a licensed residential mortgage lender or broker to employ additional qualified individual licensees to properly supervise the business licensee in its branch offices. If a qualified individual licensee allows his license to lapse or for some other reason is no longer affiliated with the business licensee, the business licensee shall notify the commissioner within 10 days, and shall appoint another qualified individual licensee within 90 days or a longer period as permitted by the commissioner.

(3) No person licensed as a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender under the provisions of the "New Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the "New Jersey Consumer Finance Licensing Act" pursuant to P.L.2009, c.53 (C.17:11C-51 et al.), shall continue to engage in any activities for which a license was previously issued, and henceforth act as a residential mortgage lender or residential mortgage broker without first obtaining a license under this act.

- b. For qualified individual licensees:

(1) No individual shall act as a qualified individual licensee for a residential mortgage lender or residential mortgage broker without first obtaining a license under this act. A qualified individual licensee may act as a mortgage loan originator.

(2) No individual licensee for a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender under the provisions of the "New Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the "New Jersey Consumer Finance Licensing Act" pursuant to P.L.2009, c.53 (C.17:11C-51 et al.), shall continue to engage in any activities for which a license was previously issued, and henceforth act as a qualified individual licensee without first obtaining a license under this act.

- c. For mortgage loan originators:

(1) (a) No individual shall act as a mortgage loan originator without first obtaining a license or transitional license under this act.

(b) No individual, except as provided in paragraph (2) of this subsection, shall be issued or hold a license or transitional license as a mortgage loan originator unless employed as an originator by one, and not more than one, business licensee, and is subject to the direct supervision and control of that licensee, employed by an exempt company, or who is under a written agreement with and sponsored in the Nationwide Mortgage Licensing System by one, and not more than one, person exempt from licensing requirements and registered with the department under subsection a. of section 5 of P.L.2009, c.53 (C.17:11C-55), and is subject to the direct supervision and control of that exempt person.

(2) No individual shall act as a loan processor or underwriter who is an independent contractor or employed by an independent contractor without first obtaining a mortgage loan originator license under this act, except as provided in subsection d. of this section.

(3) No individual registered as a mortgage solicitor under the provisions of the "New Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the "New Jersey Consumer Finance Licensing Act" pursuant to P.L.2009, c.53 (C.17:11C-51 et al.), shall continue to engage in any activities for which a registration was previously issued, and henceforth act as a mortgage loan originator without first obtaining a license under this act.

d. For exempt companies:

(1) No person shall qualify for registration as an exempt company unless the person is in the business of mortgage loan origination solely by virtue of its performance of loan processing or underwriting functions. The commissioner shall have the authority to adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) specifying additional criteria on the basis of which a person in the business of mortgage loan origination solely by virtue of its performance of loan processing or underwriting functions may qualify for registration as an exempt company.

(2) An exempt company shall register with the commissioner and with the Nationwide Mortgage Licensing System and Registry. An applicant for registration or for renewal of registration as an exempt company shall:

(a) Submit a completed application to the commissioner on the form, in the manner, and with the appropriate evidence in support of the application as may be prescribed by the commissioner;

(b) Pay to the commissioner at the time of application a nonrefundable application fee not to exceed \$500 as established by the commissioner by regulation;

(c) Pay to the Nationwide Mortgage Licensing System and Registry any fees required by that system and registry, or any fees which, by arrangement of the commissioner, are payable to the Nationwide Mortgage Licensing System and Registry on behalf of the commissioner; and

(d) Obtain a blanket bond in an amount and form prescribed by the commissioner, but not less than \$25,000. The bond shall be obtained from a surety company authorized by law to do business in this State. The exempt company shall procure the bond to cover its mortgage loan origination related activities. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of any person covered by the bond. No bond shall comply with the requirements of this subparagraph unless the bond contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is filed in the department at least 30 days before the day upon which cancellation shall take effect.

(3) A registered exempt company shall:

(a) Respond in a timely manner to any request of the commissioner for the production of and access to books, records, accounts, documents or other information relative to its operations;

(b) Submit to the Nationwide Mortgage Licensing System and Registry a mortgage call report of conditions, in the form and manner, and with such information, at any time as may be

required by the nationwide system and registry, and any other report to, or through, the nationwide system and registry pursuant to an arrangement for reporting and sharing information;

(c) Provide written notice to the commissioner within 10 days of the occurrence of any event that would cause the exempt company to no longer qualify for registration as such under the terms of this subsection d. and so notify in writing all licensed mortgage loan originators employed or retained by the exempt company; and

(d) Employ at least one individual who is licensed as a mortgage loan originator who shall not engage in the origination of mortgage loans under P.L.2018, c.108 and shall be assigned supervision and instruction duties with respect to individuals employed as loan processors or loan underwriters as defined in section 3 of P.L.2009, c.53 (C.17:11C-53).

e. The provisions of the “New Jersey Residential Mortgage Lending Act,” sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) shall also apply to residential mortgage lenders, residential mortgage brokers, mortgage loan originators, and other persons that are located out-of-State, provided they are otherwise required to be licensed pursuant to the provisions of the act in the State.

2. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read as follows:

C.2A:50-56 Notice of intention to foreclose.

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage debtor notice of such intention, which shall include a notice of the right to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in advance of such action as provided in this section.

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party.

c. The written notice shall clearly and conspicuously state in a manner calculated to make the debtor aware of the situation:

(1) the particular obligation or real estate security interest;

(2) the nature of the default claimed;

(3) the right of the debtor to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57);

(4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;

(5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made;

(6) that if the debtor does not cure the default by the date specified under paragraph (5) of this subsection c., the lender may take steps to terminate the debtor's ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction;

(7) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection c., a debtor shall still have the right to cure the default pursuant to section 5 of P.L.1995, c.244 (C.2A:50-57), but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey;

(8) the right, if any, of the debtor to transfer the real estate to another person subject to the security interest and that the transferee may have the right to cure the default as provided in P.L.1995, c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

(9) that the debtor is advised to seek counsel from an attorney of the debtor's own choosing concerning the debtor's residential mortgage default situation, and that, if the debtor is unable to obtain an attorney, the debtor may communicate with the New Jersey Bar Association or Lawyer Referral Service in the county in which the residential property securing the mortgage loan is located; and that, if the debtor is unable to afford an attorney, the debtor may communicate with the Legal Services Office in the county in which the property is located;

(10) the possible availability of financial assistance for curing a default from programs operated by the State or federal government or nonprofit organizations, if any, as identified by the Commissioner of Banking and Insurance. This requirement shall be satisfied by attaching a list of such programs promulgated by the commissioner;

(11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default;

(12) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection, the debtor has the option to participate in the Foreclosure Mediation Program following the filing of a mortgage foreclosure complaint by initiating mediation pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019, c.64 (C.2A:50-77). Notice of the option to participate in the Foreclosure Mediation Program shall adhere to the requirements of section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules, procedures, or guidelines adopted by the Supreme Court;

(13) that the debtor is entitled to housing counseling, at no cost to the debtor, through the Foreclosure Mediation Program established by the New Jersey Judiciary, including information on how to contact the program;

(14) that if the property which is the subject of the mortgage has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver; and

(15) that the lender is either licensed in accordance with the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) or exempt from licensure under the act in accordance with applicable law.

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage.

e. The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or

federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice.

f. Compliance with this section shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based.

g. If more than 180 days have elapsed since the date the notice required pursuant to this section is sent, and any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage has not yet been commenced, the lender shall send a new written notice at least 30 days, but not more than 180 days, in advance of that action.

h. If the property which is the subject of the notice of intention to foreclose has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver.

3. This act shall take effect immediately.

Approved April 29, 2019.