

[First Reprint]

**ASSEMBLY, No. 4997**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED FEBRUARY 7, 2019

**Sponsored by:**

**Assemblywoman YVONNE LOPEZ**

**District 19 (Middlesex)**

**Assemblyman VINCENT MAZZEO**

**District 2 (Atlantic)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator DAWN MARIE ADDIEGO**

**District 8 (Atlantic, Burlington and Camden)**

**Co-Sponsored by:**

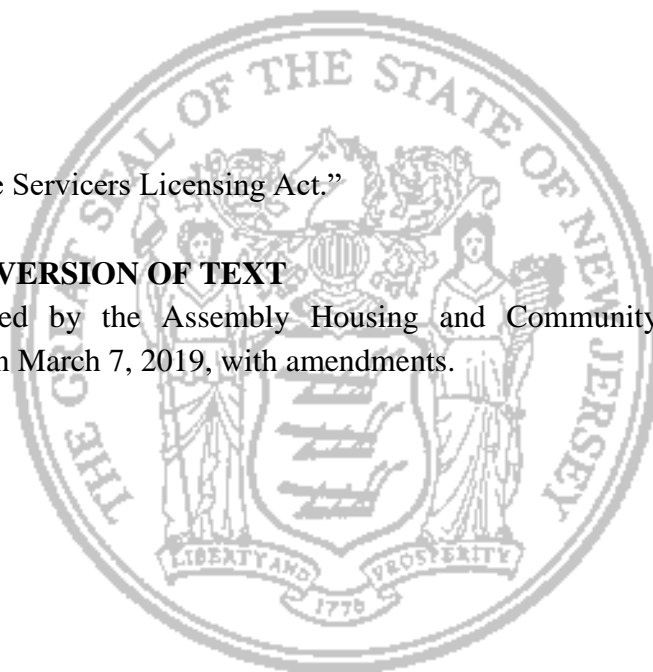
**Assemblyman McKeon**

**SYNOPSIS**

“Mortgage Servicers Licensing Act.”

**CURRENT VERSION OF TEXT**

As reported by the Assembly Housing and Community Development Committee on March 7, 2019, with amendments.



**(Sponsorship Updated As Of: 3/26/2019)**

1 AN ACT concerning licensing of mortgage servicers <sup>1</sup>**[and]**,<sup>1</sup>  
2 supplementing Title 17 of the Revised Statutes <sup>1</sup>and amending  
3 P.L.2005, c.199<sup>1</sup>.  
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*  
7

8 1. (New section) This act shall be known and may be cited as  
9 the “Mortgage Servicers Licensing Act.”  
10

11 2. (New section) As used in this act:

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

15 “Commissioner” means the Commissioner of Banking and  
16 Insurance.

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

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

22 (1) is a director, general partner or executive officer;

23 (2) in the case of a corporation, directly or indirectly has the  
24 right to vote 10 percent or more of a class of any voting security or  
25 has the power to sell or direct the sale of 10 percent or more of any  
26 class of voting securities;

27 (3) in the case of a limited liability company, is a managing  
28 member; or

29 (4) in the case of a partnership, has the right to receive upon  
30 dissolution, or has contributed, 10 percent or more of the capital,  
31 shall be presumed to be a control person.

32 “Department” means the Department of Banking and Insurance.

33 “Individual” means a natural person.

34 “Mortgage servicer” means:

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

**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:

<sup>1</sup>Assembly AHO committee amendments adopted March 7, 2019.

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

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

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

10 “Office” means a main office or branch office.

11 “Residential mortgage loan” means a loan made to a natural  
12 person or persons to whom credit is offered or extended primarily  
13 for personal, family or household purposes which is secured by a  
14 mortgage constituting a lien upon real property located in this State  
15 on which there is erected or to be erected a structure containing one,  
16 two, three, four, five, or six dwelling units, a portion of which  
17 structure may be used for nonresidential purposes, in the making of  
18 which the mortgagee relies primarily upon the value of the  
19 mortgaged property.

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

23

24 3. (New section) a. On and after <sup>1</sup>[January 1, 2019] the  
25 effective date of this act<sup>1</sup>, no person shall act as a mortgage  
26 servicer, directly or indirectly, without first obtaining a license  
27 under section 4 of this act from the commissioner for its main  
28 office, which shall be designated by the mortgage servicer, and each  
29 branch office where business is conducted, unless the person is  
30 exempt from licensure pursuant to subsection b. of this section.

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

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

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

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

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

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

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

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

5 c. The provisions of sections 9 through 12 of this act shall  
6 apply to any person, including a person exempt from licensure  
7 pursuant to subsection b. of this section, who acts as a mortgage  
8 servicer in this State on or after <sup>1</sup>~~January 1, 2019~~ the effective  
9 date of this act<sup>1</sup>.

10  
11 4. (New section) a. The commissioner shall issue a mortgage  
12 servicer license to an applicant if the commissioner finds that:

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

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

30 (3) the applicant demonstrates that the financial responsibility,  
31 character and general fitness of the applicant, the control persons of  
32 the applicant, the qualified individual and any branch manager  
33 having supervisory authority over the office for which the license is  
34 sought, warrant a determination that the applicant will operate  
35 honestly, fairly and efficiently within the purposes of this act <sup>1</sup>.  
36 Financial responsibility shall be demonstrated by submission of the  
37 applicant's most recent audited financial statements and by such  
38 other information and documents as the commissioner may require  
39 by regulation;<sup>1</sup>

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

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

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

47 If the commissioner fails to make the findings, the commissioner  
48 shall not issue a license, and shall notify the applicant of the denial

1 and the reasons for the denial. For purposes of this subsection, the  
2 level of offense of the crime and the status of any conviction,  
3 pardon, or expungement shall be determined by reference to the law  
4 of the jurisdiction where the case was prosecuted. In the event the  
5 jurisdiction does not use the term “felony,” “pardon,” or  
6 “expungement,” the terms shall include legally equivalent events.  
7 For purposes of paragraph (1) of this subsection, “experience in the  
8 mortgage servicing business” means paid experience in the:

9 (a) servicing of mortgage loans;

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

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

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

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

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

1 regulations, for the purposes of facilitating determinations  
2 concerning licensure eligibility for the applicant, any control person  
3 of the applicant, the qualified individual and any branch manager.  
4 The applicant shall bear the cost for the criminal history record  
5 background check, including all costs of administering and  
6 processing the check. The Division of State Police shall promptly  
7 notify the commissioner in the event any person who was the  
8 subject of a criminal history record background check pursuant to  
9 this section, is arrested for a crime or offense in this State after the  
10 date the background check was performed, whether the person is a  
11 prospective new licensee, or subsequently, a current license holder.

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

14 (a) the applicant continues to meet the minimum standards  
15 under subsection a. of this section <sup>1</sup>, including, but not limited to,  
16 the financial responsibility requirement of paragraph (3) of  
17 subsection a. of this section<sup>1</sup>; and

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

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

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

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

42 e. The commissioner may deem an application for a license  
43 under this section abandoned if the applicant fails to respond to any  
44 request for information required under this act, or the regulations  
45 adopted pursuant to this act. The commissioner shall notify the  
46 applicant that if the information is not submitted within 60 days  
47 from the date of the request, the application shall be deemed  
48 abandoned. An application filing fee paid prior to the date an

1 application is deemed abandoned pursuant to this subsection shall  
2 not be refunded. Abandonment of an application pursuant to this  
3 subsection shall not preclude the applicant from submitting a new  
4 application for a license.

5

6 5. (New section) At least annually, a mortgage servicer shall  
7 file with the commissioner the following information with respect  
8 to mortgages that it services in this State:

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

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

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

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

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

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

22 e. the number of foreclosures commenced.

23

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

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

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

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

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

4 (1) 'a material change of financial condition,'<sup>1</sup> filing for  
5 bankruptcy, or the consummation of a corporate restructuring, of  
6 the licensee;

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

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

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

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

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

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

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

33  
34 7. (New section) a. An initial mortgage servicer license shall  
35 expire at the close of business on December 31 of the year in which  
36 it is approved, except that any license that is approved on or after  
37 November 1 shall expire at the close of business on December 31 of  
38 the year following the year in which it is approved. An application  
39 for renewal of a license shall be filed between November 1 and  
40 December 31 of the year in which the license expires and a renewal  
41 license shall expire at the close of business on December 31 of the  
42 third year after the year in which it was approved. Each applicant  
43 for an initial license or renewal of a license as a mortgage servicer  
44 shall pay to the department any required fees or charges and a  
45 license fee of \$1,000. Each applicant for a renewal license shall pay  
46 to the department any required fees or charges and a license fee of  
47 \$3,000.



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

7  
8       8. (New section) a. A mortgage servicer applicant or licensee  
9 and any person exempt from mortgage servicer licensure pursuant  
10 to paragraph (4) of subsection b. of section 3 of this act shall file  
11 with the commissioner:

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

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

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

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

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

30       (2) conditioned upon the mortgage servicer licensee or person  
31 exempt from mortgage servicer licensure pursuant to paragraph (4)  
32 of subsection b. of section 3 of this act performing any and all  
33 written agreements or commitments with or for the benefit of  
34 mortgagors and mortgagees, accounting for all funds received from  
35 a mortgagor or mortgagee in the person's capacity as a mortgage  
36 servicer, and conducting the mortgage business consistent with the  
37 provisions of this act. Any mortgagor damaged by the failure of a  
38 mortgage servicer licensee or person exempt from mortgage  
39 servicer licensure pursuant to paragraph (4) of subsection b. of  
40 section 3 of this act to perform any written agreements or  
41 commitments, or by the wrongful conversion of funds paid by a  
42 mortgagor to the licensee or person, may proceed on the bond  
43 against the principal or surety thereon, or both, to recover damages.  
44 The commissioner may proceed on the bond against the principal or  
45 surety on the bond, or both, to collect any appropriate civil penalty.  
46 The proceeds of the bond, even if commingled with other assets of  
47 the principal, shall be deemed by operation of law to be held in trust  
48 for the benefit of claimants against the principal in the event of

1 bankruptcy of the principal and shall be immune from attachment  
2 by creditors and judgment creditors. The surety bond shall run  
3 concurrently with the period of the license for the main office of the  
4 mortgage servicer or residential mortgage lender and the aggregate  
5 liability under the bond shall not exceed the penal sum of the bond.  
6 The principal shall notify the commissioner of the commencement  
7 of an action on the bond. When an action is commenced on a  
8 principal's bond, the commissioner may require the filing of a new  
9 bond and immediately on recovery on any action on the bond, the  
10 principal shall file a new bond.

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

27 (1) If the amount of the residential mortgage loans serviced is  
28 \$100,000,000 or less, the principal amount shall be \$300,000; or

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

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

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

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

39 The fidelity bond and errors and omissions coverage may  
40 provide for a deductible amount not to exceed the greater of  
41 \$100,000 or five percent of the principal amount.

42 d. A surety shall have the right to cancel the surety bond,  
43 fidelity bond and errors and omissions coverage required by this  
44 section at any time by a written notice to the principal stating the  
45 date cancellation shall take effect. The notice shall be sent by  
46 certified mail to the principal at least 30 days prior to the date of  
47 cancellation. A surety bond, fidelity bond or errors and omissions  
48 coverage shall not be cancelled unless the surety notifies the

1 commissioner, in writing, not less than 30 days prior to the effective  
2 date of cancellation. After receipt of the notification from the  
3 surety, the commissioner shall give written notice to the principal of  
4 the date the cancellation shall take effect. The commissioner shall  
5 suspend the license of a mortgage servicer on that date. A  
6 suspension or inactivation shall not occur if, prior to the date that  
7 the bond or errors and omissions coverage cancellation shall take  
8 effect:

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

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

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

41  
42 9. (New section) a. A mortgage servicer licensee and person  
43 exempt from licensure pursuant to paragraph (4) of subsection b. of  
44 section 3 of this act shall maintain adequate records of each  
45 residential mortgage loan transaction at the office named in the  
46 mortgage servicer or residential mortgage lender license, or, if  
47 requested by the commissioner, shall make the records available at  
48 the office or send the records to the commissioner by registered or

1 certified mail, return receipt requested, or by any express delivery  
2 carrier that provides a dated delivery receipt, not later than five  
3 business days after requested by the commissioner to do so. Upon  
4 request, the commissioner may grant a licensee additional time to  
5 make the records available or send them to the commissioner. The  
6 records shall provide the following information:

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

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

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

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

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

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

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

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

38

39 10. (New section) Upon assignment of servicing rights on a  
40 residential mortgage loan, the mortgage servicer shall disclose to  
41 the mortgagor:

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

46 b. a schedule of the ranges and categories of its costs and fees  
47 for its servicing-related activities, which shall comply with State  
48 and federal law and, if the disclosure is made by a mortgage

1 servicer licensee, shall not exceed those reported to the  
2 commissioner in accordance with section 5 of this act.

3

4 11. (New section) a. A mortgage servicer shall comply with all  
5 applicable federal laws and regulations relating to mortgage loan  
6 servicing, including, but not limited to:

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

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

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

14

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

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

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

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

32 (3) deducted from any regular payment.

33

34 13. (New section) A mortgage servicer shall not:

35 a. directly or indirectly employ any scheme, device or artifice  
36 to defraud or mislead mortgagors or mortgagees or to defraud any  
37 person;

38 b. engage in any unfair or deceptive practice toward any person  
39 or misrepresent or omit any material information in connection with  
40 the servicing of a residential mortgage loan, including, but not  
41 limited to, misrepresenting the amount, nature or terms of any fee  
42 or payment due or claimed to be due on a residential mortgage loan,  
43 the terms and conditions of the servicing agreement or the  
44 mortgagor’s obligations under the residential mortgage loan;

45 c. obtain property by fraud or misrepresentation;

46 d. knowingly misapply or recklessly apply residential mortgage  
47 loan payments to the outstanding balance of a residential mortgage  
48 loan;

- 1 e. knowingly misapply or recklessly apply payments to escrow
- 2 accounts;
- 3 f. place hazard, homeowner's or flood insurance on the
- 4 mortgaged property when the mortgage servicer knows or has
- 5 reason to know that the mortgagor has an effective policy for the
- 6 insurance;
- 7 g. knowingly or recklessly provide inaccurate information to a
- 8 credit bureau, thereby harming a mortgagor's creditworthiness;
- 9 h. fail to report both the favorable and unfavorable payment
- 10 history of the mortgagor to a nationally recognized consumer credit
- 11 bureau at least annually if the mortgage servicer regularly reports
- 12 information to a credit bureau;
- 13 i. collect private mortgage insurance beyond the date for which
- 14 private mortgage insurance is required;
- 15 j. fail to issue a release of mortgage in accordance with the
- 16 provisions of P.L.1975, c.137 (C.46:18-11.2 et seq.);
- 17 k. fail to provide written notice to a mortgagor upon taking
- 18 action to place hazard, homeowner's or flood insurance on the
- 19 mortgaged property, including a clear and conspicuous statement of
- 20 the procedures by which the mortgagor may demonstrate that the
- 21 mortgagor has the required insurance coverage and by which the
- 22 mortgage servicer shall terminate the insurance coverage placed by
- 23 it and refund or cancel any insurance premiums and related fees
- 24 paid by or charged to the mortgagor;
- 25 l. place hazard, homeowner's, or flood insurance on a
- 26 mortgaged property, or require a mortgagor to obtain or maintain
- 27 that insurance, in excess of the replacement cost of the
- 28 improvements on the mortgaged property as established by the
- 29 property insurer;
- 30 m. fail to provide to the mortgagor a refund of unearned
- 31 premiums paid by a mortgagor or charged to the mortgagor for
- 32 hazard, homeowner's, or flood insurance placed by a mortgagee or
- 33 the mortgage servicer if the mortgagor provides reasonable proof
- 34 that the mortgagor has obtained coverage so that the forced
- 35 placement insurance is no longer necessary and the property is
- 36 insured. If the mortgagor provides reasonable proof that no lapse in
- 37 coverage occurred so that the forced placement is not necessary, the
- 38 mortgage servicer shall promptly refund the entire premium;
- 39 n. require any amount of funds to be remitted by means more
- 40 costly to the mortgagor than a bank or certified check or attorney's
- 41 check from an attorney's account to be paid by the mortgagor;
- 42 o. refuse to communicate with an authorized representative of
- 43 the mortgagor who provides a written authorization signed by the
- 44 mortgagor, provided the mortgage servicer may adopt procedures
- 45 reasonably related to verifying that the representative is in fact
- 46 authorized to act on behalf of the mortgagor;
- 47 p. conduct any business covered by this act, without holding a
- 48 valid license as required under this act, or assist or aid and abet any

1 person in the conduct of business without a valid license as required  
2 under this act; or

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

8

9 14. (New section) a. The commissioner shall have the authority  
10 to conduct investigations and examinations as follows:

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

17 (a) criminal, civil and administrative history information;

18 <sup>1</sup>(b) financial statements and any other records of financial  
19 condition of the licensee, any control person of the licensee, and  
20 any business entity exerting control over the licensee;<sup>1</sup>

21 <sup>1</sup>[(b)] (c)<sup>1</sup> personal history and experience information,  
22 including independent credit reports obtained from a consumer  
23 reporting agency described in Section 603(p) of the “Fair Credit  
24 Reporting Act” (15 U.S.C. 1681a(p)); and

25 <sup>1</sup>[(c)] (d)<sup>1</sup> any other documents, information or evidence the  
26 commissioner deems relevant to the inquiry or investigation  
27 regardless of the location, possession, control or custody of the  
28 documents, information or evidence; and

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

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

47 c. In making an examination or investigation authorized by this  
48 section, the commissioner may control access to any documents and

1 records of the mortgage servicer licensee or person under  
2 examination or investigation. The commissioner may take  
3 possession of the documents and records or place a person in  
4 exclusive charge of the documents and records in the place where  
5 they are usually kept. During the period of control, no person shall  
6 remove or attempt to remove any of the documents and records  
7 except pursuant to a court order or with the consent of the  
8 commissioner. Unless the commissioner has reasonable grounds to  
9 believe the documents or records of the mortgage servicer licensee  
10 or person have been, or are at risk of being, altered or destroyed for  
11 purposes of concealing a violation of this act, the mortgage servicer  
12 licensee or owner of the documents and records shall have access to  
13 the documents or records as necessary to conduct its ordinary  
14 business affairs.

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

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

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

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

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

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

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

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

45

46 15. (New section) a. The commissioner may suspend, revoke or  
47 refuse to renew any mortgage servicer license or take any other  
48 action for any reason which would be sufficient grounds for the



1 commissioner to deny an application for the license under section 4  
2 of this act, or if the commissioner finds that the licensee, any  
3 control person of the licensee, the qualified individual or any  
4 branch manager with supervisory authority, trustee, employee or  
5 agent of the licensee has done any of the following:

- 6 (1) made any material misstatement in the application;
- 7 (2) committed any fraud or misrepresentation or  
8 misappropriated funds;
- 9 (3) become insolvent;
- 10 (4)<sup>1</sup> violated any of the provisions of this act or of any  
11 regulations adopted pursuant thereto, or any other law or regulation  
12 applicable to the conduct of its business; or
- 13 ~~[(4)]~~ (5)<sup>1</sup> failed to perform any agreement with a mortgagee or  
14 a mortgagor.

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

- 21 (1) issue an order directing a person or licensee to cease and  
22 desist from engaging in any act or practice that is in violation of this  
23 act; ~~and~~<sup>1</sup>
- 24 (2) issue an order directing a person or licensee to perform  
25 corrective actions; and
- 26 (3)<sup>1</sup> bring an action in any court of competent jurisdiction to  
27 enjoin the acts or practices and to enforce compliance with any  
28 provision of this act.

29  
30 <sup>1</sup>16. (New section) The commissioner may order that any  
31 person who has been found to have knowingly violated any  
32 provision of this act, or of the rules and regulations issued pursuant  
33 hereto, and has thereby caused financial harm to consumers, be  
34 barred from acting as a residential mortgage servicer, residential  
35 mortgage lender, residential mortgage broker, or mortgage loan  
36 originator, or a stockholder, an officer, director, partner or other  
37 owner, or an employee of a licensee, or acting in any other capacity  
38 pursuant to this act. A violation of this final order shall be  
39 considered a crime of the third degree.<sup>1</sup>

40  
41 <sup>1</sup>17. (New section) The commissioner may impose a civil  
42 penalty not exceeding \$25,000 on any person for a violation of this  
43 act. Each violation of this act, including any order, rule or  
44 regulation made or issued pursuant to this act, shall constitute a  
45 separate offense. Additionally, each violation of this act which  
46 constitutes a knowing violation shall be considered a crime of the  
47 third degree.<sup>1</sup>

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

12  
13       <sup>1</sup>**[16.] 19.**<sup>1</sup> The provisions of sections 3 through 12 of this act  
14 shall not apply to:

15       (1) a person exempt from licensure as a residential mortgage  
16 lender pursuant to the “New Jersey Residential Mortgage Lending  
17 Act,” P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89), while  
18 servicing residential mortgage loans made pursuant to the  
19 exemption;

20       (2) a person servicing five or fewer residential mortgage loans  
21 within any period of twelve consecutive months;

22       (3) any agency of the federal government, any state or municipal  
23 government or any quasi-governmental agency servicing residential  
24 mortgage loans under the specific authority of the laws of any state  
25 or the United States; and

26       (4) a person exempt from licensure as a mortgage servicer  
27 pursuant to paragraphs (1), (2), and (3) of subsection b. of section 3  
28 of this act.

29  
30       <sup>1</sup>**[17.] 20.**<sup>1</sup> The Commissioner of Banking and Insurance may  
31 adopt rules and regulations, pursuant to the “Administrative  
32 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), including  
33 any fines or penalties, necessary to effectuate the provisions of this  
34 act.

35  
36       <sup>1</sup>21. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to  
37 read as follows:

38       2. For the purposes of this act:

39       "Assessment" means the assessment imposed pursuant to section  
40 3 of this act for the special functions of the division as provided in  
41 that section.

42       "Commissioner" means the Commissioner of Banking and  
43 Insurance.

44       "Department" means the Department of Banking and Insurance.

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

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

3 "Other financial entity" means a person who is licensed or  
4 registered pursuant to: the "New Jersey Consumer Finance  
5 Licensing Act," sections 1 through 49 of P.L.1996, c.157  
6 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage  
7 Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-  
8 51 et seq.), other than a financial entity with respect to the payment  
9 of required fees to the Nationwide Mortgage Licensing System and  
10 Registry as set forth by that nationwide system and registry; "The  
11 Check Cashers Regulatory Act of 1993," P.L.1993, c.383  
12 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act,"  
13 P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium  
14 Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the  
15 "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1  
16 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968,"  
17 P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair  
18 Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-  
19 Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-  
20 95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); the "Foreclosure  
21 Rescue Fraud Prevention Act," P.L.2011, c.146 (C.46:10B-53 et  
22 al.); the "Mortgage Servicers Licensing Act," P.L. , c. (C. )  
23 (pending before the Legislature as this bill); or the "pawnbroking  
24 law," R.S.45:22-1 et seq.

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

32 "Regulated entity" means a depository institution, other financial  
33 entity or person chartered, licensed or registered by the Division of  
34 Banking or who should be chartered, licensed or registered.<sup>1</sup>  
35 (cf: P.L.2011, c.146, s.17)

36

37 <sup>1</sup>[18.] 22.<sup>1</sup> This act shall take effect on the 90th day next  
38 following enactment.