

# RULE ADOPTIONS

## BANKING

### (a)

#### DEPARTMENT OF BANKING AND INSURANCE

#### DIVISION OF BANKING

#### General Provisions

#### Mortgage Loans, Fees, Obligation Fees

#### Adopted Amendment: N.J.A.C. 3:1-16.2

Proposed: June 5, 2017, at 49 N.J.R. 1273(a).

Adopted: November 21, 2017, by Richard J. Badolato,

Commissioner, Department of Banking and Insurance.

Filed: November 21, 2017, as R.2017 d.244, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:11C-74.

Effective Date: December 18, 2017.

Expiration Date: March 11, 2022.

#### Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received comments from Mark Schiffman, Executive Director, Real Estate Valuation Advocacy Association (REVAA) and Michael Afusso of the New Jersey Bankers Association.

COMMENT: One commenter stated they support the general intent of the proposed amendment to eliminate the “usual, customary, and reasonable fee” concept.

RESPONSE: The Department thanks the commenter for their support of the proposal.

COMMENT: One commenter stated they support the Department’s proposed amendment.

RESPONSE: The Department thanks the commenter for their support.

COMMENT: One commenter sought to clarify whether the proposed amendment conflicts with the enactment of S-2401 and the further operation and regulation of appraisal management companies.

RESPONSE: The Department notes that the reference to S-2401, is to the “Appraisal Management Company Registration and Regulation Act” enacted May 11, 2017, as P.L. 2017, c. 72 and codified at N.J.S.A. 45:14F-27 et seq. The Department sees no conflict between the two. The Department does not speak for the State Real Estate Appraiser Board but does not envision any conflict.

COMMENT: One commenter expressed concern that the use of the phrase “in excess of direct cost” in the definition of “appraisal fee” could be interpreted to bar a lender from passing on the cost of an Appraisal Management Company (AMC) fee to the borrower. The commenter believes this would be problematic for lenders and that the amendment does not grant lenders permission to pass along such fees. The commenter advocated for an additional change that would explicitly codify permission for lenders to pass through reasonable AMC fees to New Jersey borrowers. The use of AMCs by lenders is now an established, widespread business practice in New Jersey and the rest of the nation. Unless the Department broadly clarifies that lenders are permitted to charge reasonable AMC fees, it can expect to receive numerous requests from individual lenders for approval of AMC fees pursuant to N.J.A.C. 3:1-16.2(a)7xv. Delays and other issues with the processing of such requests could significantly interfere with the timely delivery of appraisal reports to lenders serving New Jersey consumers.

RESPONSE: The Department declines to make the change suggested by the commenter. The Department has issued a letter dated September 23, 2016, pursuant to N.J.A.C. 3:1-16.2(a)7xv authorizing an AMC fee pass through. Others in the industry may rely on this third-party fee approval letter, and it will be made available by the Department upon request. Therefore, the Department sees no delay to lenders seeking

AMC fee approval. The Department also anticipates posting this September 23, 2016, letter online in the near future.

COMMENT: One commenter stated they appreciate the Department’s acknowledgement in the Summary to this notice of proposal that its concerns about appraisal management company charges have subsided.

RESPONSE: The Department thanks the commenter for their support.

#### Federal Standards Analysis

A Federal standards analysis is not required because the adopted amendment is consistent with, but does not exceed, Federal standards. Relevant Federal standards that are equaled but not exceeded are set forth at 12 CFR 34.42(a), 225.62(a), 323.2(a), and 564.2(a).

#### Full text of the adoption follows:

#### SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

#### 3:1-16.2 Fees

(a) No lender shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise authorized by State or Federal law, either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda.

1.-2. (No change.)

3. Appraisal fee: Defined as a fee charged to a borrower by a lender or broker to recover the direct cost of the fee charged by a duly credentialed real estate appraiser for an appraisal in connection with a mortgage loan application. An appraisal fee may be charged to a borrower by a residential mortgage lender or by a residential mortgage broker, but not by both in connection with the same mortgage loan application. The initial charge to the borrower may be based on a reasonable estimate, provided that any amount in excess of the direct cost of the appraisal performed by a duly credentialed appraiser is refunded to the borrower at or prior to closing. The direct cost of any subsequent appraisal may be charged to a borrower in connection with the same property subject to the same mortgage loan application only for good cause shown. In determining good cause for such purposes, the following factors shall be considered:

i. Any changed circumstances shown to materially affect the value of the appraised property;

ii. The period of time since any prior appraisal was performed in connection with the same property subject to the same mortgage loan application, provided no material delay was caused by the lender;

iii. Compliance with applicable Federal regulations; and

iv. Such other factors as may reasonably be deemed material to the specific determination.

4.-9. (No change.)

(b)-(d) (No change.)

## COMMUNITY AFFAIRS

### (b)

#### DIVISION OF CODES AND STANDARDS

#### Emergency Shelters for the Homeless

#### Readoption with Amendments: N.J.A.C. 5:15

Proposed: July 17, 2017, at 49 N.J.R. 1963(a).

Adopted: October 4, 2017, by Charles A. Richman, Commissioner, Department of Community Affairs.

Filed: November 15, 2017, as R.2017 d.231, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 55:13C-5.