BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Licensed Lenders: Mortgage Bankers; Correspondent Mortgage Bankers; Mortgage Brokers; Secondary Lenders; Consumer Lenders and Sales Finance Companies

First Mortgage Loans

Proposed Amendment: N.J.A.C. 3:15-10.4

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-465

Submit comments by February 18, 2005 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to amend N.J.A.C. 3:15-10.4. The rule proposed for amendment applies to all first mortgage lenders licensed by the Department pursuant to the New Jersey Licensed Lenders Act, N.J.S.A. 17:11C-1 et seq. This includes mortgage bankers and correspondent mortgage bankers.

In 2002, N.J.A.C. 3:15-10.4 was initially adopted. The intent of the Department at that time was to prohibit household and personal items from being taken as collateral by licensed lenders in conjunction with a first mortgage loan. Upon review, the Department has determined that the language used in the rule is overly broad, in that it prohibits the use of any collateral other than a mortgage or other instrument establishing a first lien on the property or on the interest in real property for which the loan is sought. The Department is aware of certain loan programs available to licensed first mortgage lenders that allow the use of additional financial assets of the borrower as collateral, such as certificates of deposit (c.d.'s) or shares of stock in corporations. On occasion, these additional financial assets are needed to adequately secure a particular loan. The proposed amendment would permit such additional financial assets to be used as collateral, but would still maintain the policy of the Department to prohibit personal or household items from being used as collateral for first mortgage loans.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.JA.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendment regarding first mortgage loan collateral will have a positive impact on the New Jersey first mortgage lending market by providing more flexibility to consumers and lenders. The proposed amendment will enable lenders to extend credit to more consumers by allowing them to accept the additional appropriate forms of collateral that are currently prohibited. This will result in more consumers being able to obtain loans to purchase or refinance their homes.

The Department believes it is reasonable and necessary to retain the restrictions upon taking household and personal goods as security in order to protect borrowers and other consumers of banking services and, therefore, the general welfare. The Department believes that, in the event of default, borrowers should have the ability to retain their household and personal goods to help them relocate.

Economic Impact

The Department expects that the proposed amendment will have a positive economic impact. Consumers seeking to qualify for first mortgage loans will have a better chance to qualify as a result of the additional collateral options. Lenders may be able to make more loans and thereby generate more income for their business. First mortgage lenders may incur costs for attorneys or accountants as a result of making loan transactions involving items such as stock or c.d.'s taken as loan collateral. Such costs will vary based on the fees charged by the professionals and the scope of the work performed.

Federal Standards Analysis

As mentioned above in the Summary, the current rule is very restrictive, permitting only a first lien on the mortgaged property to be used as security for the loan. The proposed amendment would liberalize this rule by permitting items other than household or personal goods to be used as security. The proposal would retain the prohibition against household and personal goods as part of the security for a first mortgage loan. The Department has analyzed this restriction in relation to existing Federal standards.

Generally speaking, there are Federal law standards or requirements that apply to both Federal and state chartered, licensed or authorized lenders, for example, the Real Estate Settlement Procedures Act,12 U.S.C. § 2601 et seq. and the Truth in Lending Act, 12 U.S.C. §

1601 et seq. To the Department's knowledge, there are no standards in these generally applicable laws that would be exceeded by the proposed amendments.

More directly relevant to the current fact pattern, the U.S. Government Sponsored Enterprises (Fannie Mae, Freddie Mac, and Ginnie Mae) have established underwriting standards that may have the effect of operating as a Federal standard because of the importance of the secondary market to the residential mortgage industry. While the Department's proposed amendment on what can be taken as security on a first lien loan may be more restrictive than these underwriting standards, the Department does not think that the restriction is so significant as to impede the proper functioning of the mortgage market. The Department notes that the Federal National Mortgage Association, a government sponsored enterprise involved in mortgage lending on a national scale, has reviewed the proposed amendment and has determined that the proposed amendment would not interfere with its programs or with the mission of the enterprise. The Department also notes that the effect of the proposed amendment is to liberalize the current standard that the Department regards as being overly restrictive.

The Department did not consider the Federal law standards or requirements applicable specifically to Federally-chartered depositories. The scope of Chapter 15 generally does not extend to Federally-chartered depositories because all depositories are exempted from substantial portions of the first lien mortgage provisions of the Licensed Lenders Act by N.J.S.A. 17:11C-4. Beyond that are principles of federal preemption of state law. Therefore, the proposed amendment does not contain standards or requirements that exceed standards or requirements imposed by Federal banking law upon those lenders. There is also the possibility that stricter State standards would create an uneven playing field for New Jersey state-chartered depositories vis-à-vis their Federally-chartered competitors. The Department does not think that the restriction contained in this proposed amendment is significant enough to constitute a burden on State-chartered institutions.

The most controversial group of lenders that would be affected by the proposed amendment is subsidiaries of Federally-chartered depositories. Generally, Federal regulators have taken the position that the operating subsidiaries of Federally-chartered institutions are exempt from many provisions of state law, while the Department, along with many other state regulators, have taken the position that the subsidiaries, as separately-incorporated entities, are fully subject to state law, including licensing. Consistent with this position, the Department has concluded that the proposed amendment applies to subsidiaries of Federally-chartered depository institutions. Moreover, having considered the burden on those entities, the Department has concluded that the restriction is not so significant as to warrant a change in the proposed rule, given the public policy purpose sought to be achieved. The Department thinks that it is important to assure borrowers that their personal and household possessions will not be placed at risk in connection with a first lien residential mortgage transaction.

Jobs Impact

The Department does not anticipate that any jobs will be gained or lost as a result of the proposed amendment.

The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendment together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed amendment.

Regulatory Flexibility Analysis

Some New Jersey licensed first mortgage lenders are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment will reduce compliance requirements. The compliance required will consist of continuing to prohibit first mortgage lenders from taking personal or household goods as collateral, but permitting financial instruments such as c.d.'s and stock to be used as collateral. The proposed amendment will not impose any additional reporting or recordkeeping requirements above what is already required by the existing rule. The Department does not anticipate that compliance with the amendment will require substantial additional professional services, if professionals are being retained. The cost of any professional that may be retained is discussed in the Economic Impact above.

The Department does not believe that the compliance requirements are unduly burdensome and finds that they are consistent with prudent banking practices. The purpose of the amended collateral requirements for first mortgage loans does not vary based upon business size. Accordingly, no differentiation based on business size is provided.

Smart Growth Impact

The proposed amendment will have no impact on the achievement of smart growth and implementation of the State Plan or Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

3:15-10.4 First mortgage loans

A first mortgage lender shall not require or accept from a borrower [any] **as** collateral or security for a first mortgage loan [other than a mortgage, indenture or any other similar instrument or document that creates a first lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation] **household or personal goods, such as furniture, electronic equipment, motor vehicles, appliances, and jewelry**.

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