

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

General Provisions

Mortgage Loans, Fees, Obligation,

Fees

Proposed Amendment: N.J.A.C. 3:1-16.2

Authorized By: Richard J. Badolato, Commissioner, Department of Banking and Insurance.

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

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

Proposal Number: PRN 2017-089.

Submit comments by August 4, 2017, to:

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The agency proposal follows:

Summary

N.J.A.C. 3:1-16 governs first mortgage loans on residential real property located in New Jersey. The rules apply to State or Federally chartered banks, savings banks, savings and loan associations, credit unions, and residential mortgage lenders and brokers (collectively “lenders”).

N.J.A.C. 3:1-16.2 governs fees charged by lenders incident to the origination, processing, and closing of such first mortgage loans. The Department proposes to amend N.J.A.C. 3:1-16.2(a)3, which governs appraisal fees. Generally, an appraisal fee represents the cost paid to a duly credentialed third-party appraiser for the expense of preparing an appraisal of the value of the residential real property in question. Lenders use appraisals in determining whether to grant a mortgage application and the terms and conditions of a mortgage loan.

Effective December 16, 2002, the Department amended N.J.A.C. 3:1-16.2(a)3 to its current form. The Department was responding to marketplace developments and related consumer protection concerns at that time. Appraisal services were then increasingly obtained from in-house resources at the lenders, or from appraisal management companies (AMCs), often affiliated with lenders, rather than from the traditional third-party appraiser community. Concerns were raised that borrowers were being charged for the cost of appraisals, plus the added cost of in-house or AMC services. In the 2002 amendments, the Department undertook to guard consumers against such added charges by establishing a “usual, customary and reasonable fee” standard for the direct cost of an appraisal. Thus, the 2002 amendments provided for the Department to conduct an annual “survey” of third party appraisal fees charged by lenders to determine current “usual, customary and reasonable” fees that would be the benchmark for permissible fee amounts published in the New Jersey Register. Furthermore, the 2002 amendments provided that “[i]f the appraisal is performed and delivered in-house, the fee shall approximate the usual, customary and reasonable fee for comparable appraisals by third party

appraisers” established pursuant to the survey. Similarly, the 2002 amendments provided that, “[i]f the appraisal is performed by a third party appraiser and delivered by an [AMC], the fee shall not exceed the amount charged by the [AMC] and shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers” established pursuant to the survey.

The Department has determined that its concerns about appraisal management company charges have subsided. In fact, the Department has approved the pass-through to a borrower of a reasonable AMC fee as a separate third-party fee deemed permissible pursuant to the process afforded under N.J.A.C. 3:1-16.2(a)7xv. In addition, there is a concern that the survey could effectively represent an unwarranted restraint on a free market for appraisal charges, may have a negative impact on the business community, and may now constitute an unneeded and burdensome regulatory requirement imposed upon lenders. Thus, the Department is concerned that the survey effectively imposes a cap on these fees, while not significantly protecting borrowers.

The Department, therefore, proposes to amend the existing paragraph (a)3 to eliminate the survey and the “usual, customary and reasonable” fee pricing regulatory concept that it serves. The Department proposes to adopt a simpler requirement that an appraisal fee charged to a consumer must total no more than the amount charged by the third-party appraisers.

In addition, the Department notes that with the vast majority of loan applications only one appraisal is needed. Also noted is the fact unusual circumstances may develop in conjunction with individual residential real estate properties that necessitate a second appraisal. The Department, therefore, proposes to include a process for the lender to charge a consumer for a second appraisal in connection with the same loan when certain criteria are met. Proposed

criteria for charging a consumer such a second appraisal fee would include a change of circumstances materially affecting the value of the property to be used as collateral for the loan, a delay between the first appraisal and the scheduled closing not caused by the lender, and any applicable Federal regulations.

The Department's notice of proposal provides for a comment period of 60 days and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is excepted from the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendment would impact residential first mortgage lenders and their customers. They will assist the Department in protecting consumers from mortgage lenders who may try to pass along inappropriate costs to consumers in amounts charged for appraisals, or to charge for a second appraisal that does not benefit the borrower. Thus, it will have a positive social impact on the residential first mortgage industry and New Jersey residential mortgage consumers.

Economic Impact

The Department does not anticipate any significant economic impact on residential mortgage lenders as a result of the proposed amendment. Only appropriate appraisal fees will be passed along to residential first mortgage consumers. Lenders will save the time and expense of complying with the fee ranges generated by the Department's current appraisal fee survey, which is being eliminated as part of the proposed amendment.

Federal Standards Statement

A Federal standards analysis is not required because the proposed 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).

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendment. However, to the extent that these proposed amendment helps promote a healthy mortgage lending marketplace in New Jersey, the climate for business and job growth is improved. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendment, together with any written comments on other aspects of the proposal.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The proposed amendment will apply to residential mortgage lenders and brokers. A number of residential mortgage lenders and brokers are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Residential mortgage lenders and brokers will continue to be required to maintain records of appraisal costs and fees as part of the proposed amendment. There are no new reporting requirements imposed by the amendment. The rulemaking will eliminate the Department's survey of appraisal fees charged, and lenders will be relieved of the costs of compliance with the fee restrictions imposed pursuant to the survey. Records required to document the need for a subsequent appraisal and for charging the related fee to a consumer are already kept in the normal course of business. Further, the

Department does not believe that any additional professional services will be needed to comply with the rules as amended.

There has been no distinction made in the recordkeeping, reporting, or other compliance requirements for small businesses, as the requirements generally relate to the Department's oversight of residential mortgage lenders and brokers. The Department's interest in the effective oversight of these lenders and brokers applies regardless of business size. Therefore, no differentiation in compliance requirements is provided based on business size.

Housing Affordability Impact Analysis

The proposed amendment will not have a significant impact on the affordability of housing in New Jersey. They are not likely to evoke a change in the average costs associated with housing because the proposed amendment addresses the fees that may be charged to a borrower for an appraisal in connection with a residential mortgage loan for a dwelling with one to four units, and does not affect the process of appraising the value of single family or multi-family homes in any way. It is possible there may be a small increase in the cost for a residential home purchaser in connection with appraisal fee closing costs to obtain a residential mortgage loan.

Smart Growth Development Impact Analysis

The proposed amendment will not have a significant impact on smart growth. It is not likely that the proposed amendment would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the scope of the proposed amendment is limited to defining appraisal fees on residential mortgage loans.

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

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: [If the appraisal is performed and delivered by a third party appraiser, the fee shall not exceed the amount paid, or to be paid, directly to the party performing and delivering the appraisal. If the appraisal is performed and delivered in-house, the fee shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers based on a survey of such fees charged by lenders to be conducted annually by the Department and published in the New Jersey Register. If the appraisal is performed by a third party appraiser and delivered by an appraisal management company, the fee charged by the lender shall not exceed the amount charged by the appraisal management company and shall approximate the usual, customary and reasonable fee for comparable appraisals by third party appraisers based on a survey of such fees charged by lenders to be conducted annually by the Department and published in the New Jersey Register.] **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 [amount authorized above in this paragraph] **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.)