

[54 N.J.R. 37\(b\)](#)

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RULE ADOPTIONS

Reporter

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Agency

BANKING > DEPARTMENT OF BANKING AND INSURANCE > DIVISION OF BANKING

Administrative Code Citation

Readoption with Technical Changes: [N.J.A.C. 3:30](#)

Text

Notice of Readoption

Predatory Lending

Authority: [N.J.S.A. 17:1-8.1](#), 17:1-15.e, and [46:10B-22](#) through 35; and P.L. 2004, c. 84.

Authorized By: Marlene Caride, Commissioner, Department of Banking and Insurance.

Effective Dates: November 30, 2021, Readoption;

January 3, 2022, Technical Changes.

Expiration Date: November 30, 2028.

Take notice that pursuant to [N.J.S.A. 52:14B-5.1](#), the rules at [N.J.A.C. 3:30](#) were scheduled to expire on February 12, 2021. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021)

and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) is extended through January 1, 2022. Therefore, this chapter has not yet expired and the 30-day filing date pursuant to [N.J.S.A. 52:14B-5.1.c](#) has not yet occurred, therefore, pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 103, this notice of readoption is timely filed.

These rules address predatory lending in this State. The rules implement the New Jersey Home Ownership Security Act of 2002, [N.J.S.A. 46:10B-22](#) through 35, and the amendments to that statute effectuated by P.L. 2004, c. 84, signed into law on July 6, 2004 (hereinafter collectively referred to as the "Act"). The Act addresses abusive lending practices and is designed to regulate certain home loans that can be harmful to consumers.

The Department of Banking and Insurance (Department) is readopting [N.J.A.C. 3:30](#), with technical changes.

[N.J.A.C. 3:30-1.1](#) sets forth that the purpose of the chapter is to implement the New Jersey Home Ownership Security Act of 2002, [N.J.S.A. 46:10B-22](#) through 35.

[N.J.A.C. 3:30-1.2](#) sets forth that this chapter shall apply to all creditors and borrowers as defined at [N.J.A.C. 3:30-1.3](#).

[N.J.A.C. 3:30-1.3](#) contains the definitions of the words and terms used in the chapter.

[N.J.A.C. 3:30-2](#), 3, and 4 are reserved.

N.J.A.C. 3:30-5 sets forth the requirements for posting payments received from borrowers. The rules require depository institutions, that is, banks, savings banks, savings and loans, and credit unions, to post a payment on the banking day it is received. The rules require that all other creditors post a payment on the business day it is received.

[N.J.A.C. 3:30-6](#) and 7 are reserved.

N.J.A.C. 3:30-8 codifies the Act's provisions limiting borrowers' affirmative claims or defenses to the amounts required to reduce or extinguish liability under a home loan, plus the amount paid in connection with such a transaction, plus costs. [N.J.A.C. 3:30-8.1](#) applies to a home loan made, arranged, or assigned by a seller of manufactured homes or of home improvements and

applies to loans that were made by, or through, a creditor to whom the borrower was referred by such a seller. The section provides that borrowers on such loans may assert against the original creditors and any purchasers or assignees of the loans referenced in the section all affirmative claims or any defenses the borrower may have against a seller of manufactured homes or of home improvements, including any claims and defenses available under the Act against a home improvement contractor who was retained by a seller of home improvements to make home improvements on the borrower's dwelling. Claims or defenses related to the quality of the workmanship of the home improvement contractor, as opposed to claims and defenses related to the financing of the purchase of the home improvements, would not be among those that could be asserted by the borrower pursuant to this section.

[N.J.A.C. 3:30-8.2\(a\)](#) specifies actions that may be taken by purchasers or assignees of a high cost-home loan on the basis of which the Department will presume, for purposes of administrative liability, that the purchaser or assignee has exercised reasonable due diligence in its efforts to determine whether a loan it purchased or on which it took an assignment was a high-cost home loan. [N.J.A.C. 3:30-8.2\(b\)](#), (c), and (d) codify the Act's provisions limiting the liability of purchasers and assignees of high-cost home loans. Different limitations, based on particular factual situations, are recited in these respective subsections. Subsections (e), (g), (h), (i), and (j) explain the interaction of the Act with the New Jersey Consumer Fraud Act, set forth compliance standards applicable to purchaser or assignee liability, and reiterate the statutory prohibition against dividing transactions into parts or engaging in other subterfuges in an attempt to evade the Act. [N.J.A.C. 3:30-8.2\(f\)](#) states that the limitations on assignee liability are limited to only the grounds set forth at N.J.S.A. [page=38] [46:10B-27\(b\)](#). Subsection (h) references the possibility of damage recoveries at both [N.J.S.A. 46:10B-27\(a\)](#) and 27(c) in an action in which claims under both of those provisions are asserted by any borrower simultaneously. In such a case, the damage limitations in the Act would apply to the respective claims. The general principle that no double recovery may be obtained for the same loss would apply.

[N.J.A.C. 3:30-8.2\(k\)](#), (l), and (m) set forth methods that purchasers or assignees of loans may utilize to avoid or minimize administrative liability to the Department pursuant to the Act.

[N.J.A.C. 3:30-9.1\(a\)](#) cites to the statutory section located in the Act at [N.J.S.A. 46:10B-30](#) indicating the possibility of additional rights, remedies, and prohibitions.

[N.J.A.C. 3:30-9.1\(b\)](#) cites to the statutory section located in the Act at [N.J.S.A. 46:10B-23\(d\)](#) indicating that recent amendments to the Act do not relieve creditors of the duty to abide by the Consumer Fraud Act, [N.J.S.A. 56:8-1](#) through 226.

The Department has reviewed this chapter and has determined it remains necessary, reasonable, proper, efficient, understandable, and responsive to the purposes for which it was originally promulgated. Therefore, pursuant to [N.J.S.A. 52:14B-5.1.c\(1\)](#), [N.J.A.C. 3:30](#) is readopted and shall continue in effect for a seven-year period, with the following technical changes: correct the nomenclature of the Consumer Financial Protection Bureau, and correct a cross-reference. Specifically, the following technical changes are made:

[N.J.A.C. 3:30-1.3](#) is changed to reflect the correct name of the Consumer Financial Protection Bureau from "Consumer Financial Protection Board" and to correct a cross-reference to include the proper citation to the Code of Federal Regulations.

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

SUBCHAPTER 1. GENERAL PROVISIONS

3:30-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Rate" means that annual percentage rate for the loan calculated based on the points and fees set forth in this chapter and according to the provisions [of] **at** 15 U.S.C. [§§] § 1602(bb) and the regulations promulgated thereunder by the Consumer Financial Protection [Board] **Bureau**, including [12 CFR 1026.32\(a\)\(3\)](#).

...

"Threshold" means any one of the following two items, as defined:

1. "Rate threshold" means the annual percentage rate of the loan at the time the loan is consummated, such that the loan is considered a "mortgage" [under] pursuant to section 152 of the [federal] Federal Home Ownership and Equity Protection Act of 1994, *P.L. 103-325* ([15 U.S.C. § 1602\(bb\)](#)), and the regulations promulgated by the Consumer Financial Protection [Board] Bureau, including 12 [C.F.R.] CFR 1026.32, without regard to whether the loan transaction is, or may be, a "residential mortgage transaction," as defined [in [12 C.F.R. 1026.4\(a\)\(24\)](#)] at [12 CFR 1026.2\(a\)\(24\)](#). The description of "points and fees" [in] at [15 U.S.C. § 1605](#) shall be used for this determination.

2. (No change.)

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