

[Fourth Reprint]

**ASSEMBLY, No. 75**

**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

INTRODUCED MAY 9, 2002

**Sponsored by:**

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**District 38 (Bergen)**

**Assemblyman JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

**Assemblyman CRAIG A. STANLEY**

**District 28 (Essex)**

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**SYNOPSIS**

"New Jersey Home Ownership Security Act of 2002."

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on March 13, 2003.

(Sponsorship Updated As Of: 3/14/2003)

1 AN ACT prohibiting certain abusive lending practices and  
2 supplementing Title 46 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Home Ownership Security Act of 2002."

9

10 2. The Legislature finds and declares that:

11 a. Abusive mortgage lending has become an increasing problem in  
12 this State, exacerbating the loss of equity in homes and causing an  
13 increase in the number of foreclosures in recent years. One of the  
14 most common forms of abusive lending is the making of loans that are  
15 equity-based, rather than income-based. The financing of points and  
16 fees in these loans provides immediate income to the originator and  
17 encourages the repeated refinancing of home loans. The lender's  
18 ability to sell loans reduces the incentive to ensure that the homeowner  
19 can afford the payments of the loan. As long as there is sufficient  
20 equity in the home, an abusive lender benefits even if the borrower is  
21 unable to make the payments and is forced to refinance. In addition,  
22 the financing of high points and fees causes the loss of precious equity  
23 in each refinancing and often leads to foreclosure.

24 b. Abusive lending has threatened the viability of many  
25 communities and caused decreases in home ownership. While the  
26 marketplace appears to operate effectively for conventional mortgages,  
27 too many homeowners find themselves victims of overreaching lenders  
28 who provide loans with unnecessarily high costs and terms that are  
29 unnecessary to secure repayment of the loan.

30 c. As competition and self-regulation have not eliminated the  
31 abusive terms from loans secured by a consumer's home, the consumer  
32 protection provisions of this act are necessary to encourage lending at  
33 reasonable rates with reasonable terms.

34

35 3. As used in this act:

36 <sup>1</sup>["Benchmark rate" is the interest rate which the borrower can  
37 reduce by paying bona fide discount points; this rate shall not exceed  
38 the weekly average yield of United States Treasury securities having  
39 a maturity of five years, on the 15th day of the month immediately  
40 preceding the month in which the loan is made, plus four percentage

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 ASI committee amendments adopted June 6, 2002.

<sup>2</sup> Senate SCM committee amendments adopted December 12, 2002.

<sup>3</sup> Senate floor amendments adopted February 27, 2003.

<sup>4</sup> Assembly floor amendments adopted March 13, 2003.

1 points.]<sup>1</sup>

2 <sup>2</sup>"Affiliate" means any company that controls, is controlled by, or  
3 is under the common control with any company, as set forth in  
4 12 U.S.C. s.1841 et seq.<sup>2</sup>

5 "Bona fide discount points" means loan discount points which are:

6 (1) Knowingly paid by the borrower;

7 (2) Paid for the express purpose of <sup>1</sup>[lowering the benchmark rate;

8 (3) In fact]<sup>1</sup> reducing <sup>1</sup>, and which result in a reduction of,<sup>1</sup> the

9 interest rate or time-price differential applicable to the loan <sup>1</sup>[from an  
10 interest rate which does not exceed the benchmark rate]<sup>1</sup>;

11 <sup>3</sup>(3) In fact reducing the interest rate or time-price differential  
12 applicable to the loan from an interest rate which does not exceed the  
13 conventional mortgage rate for a home loan secured by a first lien, by  
14 more than two percentage points, or for a home loan secured by a  
15 junior lien, by more than three and one half percentage points;<sup>3</sup> and

16 <sup>1</sup>[(4)] <sup>3</sup>[(3)<sup>1</sup>] (4)<sup>3</sup> Recouped within the first <sup>1</sup>[four] five<sup>1</sup> years of  
17 the scheduled loan payments. Loan discount points will be considered  
18 to be recouped within the first <sup>1</sup>[four] five<sup>1</sup> years of the scheduled  
19 loan payments if the reduction in the interest rate that is achieved by  
20 the payment of the loan discount points reduces the interest charged  
21 on the scheduled payments such that the borrower's dollar amount of  
22 savings in interest over the first <sup>1</sup>[four] five<sup>1</sup> years is equal to or  
23 exceeds the dollar amount of loan discount points paid by the  
24 borrower.

25 "Borrower" means any natural person obligated to repay the loan,  
26 including a coborrower, cosigner, or guarantor.

27 <sup>1</sup>"Commissioner" means the Commissioner of Banking and  
28 Insurance.<sup>1</sup>

29 <sup>2</sup>"Conventional mortgage rate" means the most recently published  
30 annual yield on conventional mortgages published by the Board of  
31 Governors of the Federal Reserve System, as published in Statistical  
32 Release H.15 or any publication that may supersede it, as of the  
33 applicable time set forth in 12 C.F.R. 226.32(a)(1)(I).<sup>2</sup>

34 <sup>3</sup>"Conventional prepayment penalty" means any prepayment penalty  
35 or fee that may be collected or charged in a home loan, and that is  
36 authorized by law other than by this act, provided the home loan (1)  
37 does not have an annual percentage rate that exceeds the conventional  
38 mortgage rate by more than two percentage points; and (2) does not  
39 permit any prepayment fees or penalties that exceed two percent of the  
40 amount prepaid.<sup>3</sup>

41 <sup>2</sup>"Covered home loan" means a home loan in which:

42 (1) The total points and fees payable in connection with the loan,  
43 excluding <sup>3</sup>either a conventional prepayment penalty or<sup>3</sup> not more than  
44 two bona fide discount points, exceed 4 percent of the total loan  
45 amount, or 4.5 percent of the total loan amount if the total loan

1 amount is \$40,000 or less, and <sup>3</sup>[4.25] 4.5<sup>3</sup> percent of the total loan  
2 amount if the loan is <sup>3</sup>[a purchase money loan]<sup>3</sup> insured by the  
3 Federal Housing Administration or guaranteed by the federal  
4 Department of Veterans Affairs; or

5 (2) The home loan is such that it is considered a high-cost home  
6 loan under this act.<sup>2</sup>

7 "Creditor" means a person who extends consumer credit that is  
8 subject to a finance charge or is payable by written agreement in more  
9 than four installments, and to whom the obligation is payable at any  
10 time. <sup>1</sup>Creditor shall also mean any person brokering a home loan,  
11 which shall include any person who directly or indirectly solicits,  
12 processes, places, or negotiates home loans for others or who closes  
13 home loans which may be in the person's own name with funds  
14 provided by others and which loans are thereafter assigned to the  
15 person providing the funding of such loans, provided that creditor shall  
16 not include a person who is an attorney providing legal services <sup>2</sup>to the  
17 borrower<sup>2</sup> or <sup>2</sup>[an insurance producer with title insurance authority]  
18 a person or entity holding an individual or organization insurance  
19 producer license in the line of title insurance or a title insurance  
20 company, as defined by subsection c. of section 1 of P.L.1975, c.106  
21 (C.17:46B-1), or any officer, director or employee thereof,<sup>2</sup> providing  
22 services in the closing of a home loan <sup>2</sup>who is not also funding the  
23 home loan and is not an affiliate of the creditor<sup>2</sup> <sup>4</sup>or an assignee that  
24 is subject to the provisions of section 6 of this act<sup>4</sup>.

25 "Department" means the Department of Banking and Insurance.<sup>1</sup>

26 "High-cost home loan" means a home loan for which the principal  
27 amount of the loan does not exceed \$350,000, which amount shall be  
28 adjusted annually to include the last published increase of the housing  
29 component of the national Consumer Price Index, New York-  
30 Northeastern New Jersey Region, in which the terms of the loan meet  
31 or exceed one or more of the thresholds as defined in this section.

32 "Home loan" means <sup>2</sup>[a loan] an extension of credit primarily for  
33 personal, family or household purposes<sup>2</sup>, including an open-end credit  
34 plan, other than a reverse mortgage transaction, in which the loan is  
35 secured by:

36 (1) A mortgage or deed of trust on real estate in this State upon  
37 which there is located or there is to be located a one to six family  
38 dwelling which is or will be occupied by a borrower as the borrower's  
39 principal dwelling; or

40 (2) A security interest in a manufactured home which is or will be  
41 occupied by a borrower as the borrower's principal dwelling.

42 <sup>2</sup>"Manufactured home" means a structure, transportable in one or  
43 more sections, which in the traveling mode is eight body feet or more  
44 in width or 40 body feet or more in length or, when erected on site is  
45 320 or more square feet and which is built on a permanent chassis and  
46 designed to be used as a dwelling with a permanent foundation when

1 erected on land secured in conjunction with the real property on which  
2 the manufactured home is located and connected to the required  
3 utilities and includes the plumbing, heating, air-conditioning and  
4 electrical systems contained therein; except that such term shall  
5 include any structure which meets all the requirements of this  
6 paragraph except the size requirements and with respect to which the  
7 manufacturer voluntarily files a certification required by the Secretary  
8 of the United States Department of Housing and Urban Development  
9 and complies with the standards established under the federal National  
10 Manufactured Housing Construction and Safety Standards Act of  
11 1974, 42 U.S.C. s.5401 et seq. Such term does not include rental  
12 property or second homes or manufactured homes when not secured  
13 in conjunction with the real property on which the manufactured home  
14 is located.<sup>2</sup>

15 "Points and fees" means:

16 (1) All items listed in 15 U.S.C. s.1605(a)(1) through (4), except  
17 interest or the time-price differential;

18 (2) All charges listed in 15 U.S.C. s.1605(e);

19 (3) All compensation paid directly or indirectly to a mortgage  
20 broker, including a broker that originates a loan in its own name in a  
21 table-funded transaction;

22 (4) The cost of all premiums financed by the creditor, directly or  
23 indirectly for any credit life, credit disability, credit unemployment or  
24 credit property insurance, or any other life or health insurance, or any  
25 payments financed by the creditor directly or indirectly for any debt  
26 cancellation or suspension agreement or contract, except that  
27 insurance premiums calculated and paid on a monthly basis shall not  
28 be considered financed by the creditor;

29 (5) The maximum prepayment fees and penalties that may be  
30 charged or collected under the terms of the loan documents; <sup>1</sup>[and]<sup>1</sup>

31 (6) All prepayment fees or penalties that are <sup>2</sup>[charged to]  
32 incurred by<sup>2</sup> the borrower if the loan refinances a previous loan made  
33 <sup>3</sup>or currently held<sup>3</sup> by the same creditor or an affiliate of the  
34 creditor<sup>1</sup> []; and<sup>1</sup>

35 (7) For open-end loans, the points and fees are calculated by  
36 adding the total <sup>2</sup>points and<sup>2</sup> fees <sup>2</sup>[charged at] known at or before<sup>2</sup>  
37 closing <sup>2</sup>[plus the maximum additional fees which can be charged  
38 pursuant to the loan documents during the term of the loan], including  
39 the maximum prepayment penalties which may be charged or collected  
40 under the terms of the loan documents <sup>4</sup>if prepayment penalties are  
41 authorized by law other than by this act<sup>4</sup> . plus the minimum additional  
42 fees the borrower would be required to pay to draw down an amount  
43 equal to the total credit line<sup>2</sup>.

44 <sup>1</sup>"Points and fees" shall not include the following <sup>2</sup>items<sup>2</sup>: <sup>2</sup>title  
45 insurance premiums and fees, charges and premiums paid to a person  
46 or entity holding an individual or organization insurance producer

1 license in the line of title insurance or a title insurance company, as  
 2 defined by subsection c. of section 1 of P.L.1975, c.106 (C.17:46B-  
 3 1);<sup>2</sup> taxes, filing fees, and recording and other charges and fees paid  
 4 or to be paid to public officials for determining the existence of or for  
 5 perfecting, releasing, or satisfying a security interest; and <sup>3</sup>reasonable<sup>3</sup>  
 6 fees paid to a person other than a creditor or an affiliate of the creditor  
 7 or to the mortgage broker or an affiliate of the mortgage broker for  
 8 the following <sup>3</sup>, provided that the conditions in 12 C.F.R. s.226.4(c)(7)  
 9 are met<sup>3</sup>; fees for tax payment services; fees for flood certification;  
 10 fees for pest infestation and flood determinations; appraisal fees; fees  
 11 for inspections performed prior to closing; fees for credit reports; fees  
 12 for surveys; attorneys' fees; notary fees; escrow charges; <sup>2</sup>[title  
 13 insurance premiums;]<sup>2</sup> and fire and flood insurance premiums,  
 14 provided that the conditions in 12 C.F.R. s.226.4(d)(2) are met.<sup>1</sup>

15 "Rate" means <sup>2</sup>[the interest rate charged on the home loan, based  
 16 on an annual simple interest yield] that annual percentage rate for the  
 17 loan calculated at closing based on the points and fees set forth in this  
 18 act and according to the provisions of 15 U.S.C. s. 1601 et seq. and  
 19 the regulations promulgated thereunder by the Federal Reserve  
 20 Board<sup>2</sup>.

21 "Threshold" means any one of the following <sup>3</sup>[three] two<sup>3</sup> items,  
 22 as defined:

23 (1) "Rate threshold" means the annual percentage rate of the loan  
 24 at the time the loan is consummated such that the loan is considered  
 25 a "mortgage" under section 152 of the federal "Home Ownership and  
 26 Equity Protection Act of 1994," Pub.L. 103-325 (15 U.S.C.  
 27 s.1602(aa)), and the regulations promulgated by the Federal Reserve  
 28 Board, including 12 C.F.R. s.226.32, without regard to whether the  
 29 loan transaction is or may be a "residential mortgage transaction," as  
 30 defined in 12 C.F.R. s.226.2(a)(24) <sup>4</sup>[<sup>2</sup>less]<sup>4</sup> <sup>3</sup>[1.25] <sup>4</sup>[1.0<sup>3</sup>  
 31 percentage]<sup>4</sup> <sup>3</sup>[points] <sup>4</sup>[point<sup>3</sup> for a loan secured by a first lien or  
 32 a loan secured by a junior lien<sup>2</sup> ]<sup>4</sup> .

33 (2) "Total points and fees threshold" means that the total points  
 34 and fees payable by the borrower at or before the loan closing,  
 35 excluding <sup>3</sup>either a conventional prepayment penalty or<sup>3</sup> up to two  
 36 bona fide discount points, exceed:

37 (a) 5% of the total loan amount if the total loan amount is  
 38 <sup>2</sup>[\$20,000] <sup>2</sup>\$40,000<sup>2</sup> or more; or

39 (b) the lesser of <sup>2</sup>[8%] <sup>2</sup>6%<sup>2</sup> of the total loan amount or \$1,000, if  
 40 the total loan amount is less than \$20,000 <sup>2</sup>, and 6% if the total loan  
 41 amount is \$20,000 or more but less than \$40,000<sup>2</sup> <sup>1</sup>[; provided, the  
 42 following discount points and prepayment fees shall be excluded from  
 43 the calculation of the total points and fees payable by the borrower:

44 (I) Up to and including two bona fide loan discount points payable  
 45 by the borrower in connection with the loan transaction, but only] <sup>3</sup>[.

1 ~~except that~~<sup>3 2</sup> ~~[two]~~<sup>3</sup> ~~[no<sup>2</sup> bona fide discount points shall]~~<sup>3 2</sup> ~~[not]~~<sup>2</sup>  
 2 ~~<sup>3</sup>[be excluded<sup>1 2</sup> from the calculations in either subparagraph (a) or (b)~~  
 3 ~~of this paragraph<sup>2</sup> if the interest rate from which the loan's interest rate~~  
 4 ~~will be discounted]~~<sup>3 1</sup> ~~[does not exceed, by more than one percentage~~  
 5 ~~point, the required net yield for a 90-day standard mandatory delivery~~  
 6 ~~commitment for a reasonably comparable loan from either the Federal~~  
 7 ~~National Mortgage Association or the Federal Home Loan Mortgage~~  
 8 ~~Corporation, whichever is greater;~~

9 (ii) Up to and including one bona fide loan discount point payable  
 10 by the borrower in connection with the loan transaction, but only if the  
 11 interest rate from which the loan's interest rate will be discounted does  
 12 not exceed, by more than two percentage points, the required net yield  
 13 for a 90-day standard mandatory delivery commitment for a reasonably  
 14 comparable loan from either the Federal National Mortgage  
 15 Association or the Federal Home Loan Mortgage Corporation,  
 16 whichever is greater] ~~<sup>3</sup>[<sup>2</sup>is such that it<sup>2</sup> exceeds the]~~<sup>3 2</sup> ~~[average~~  
 17 ~~weekly yield of United States Treasury securities having a maturity of~~  
 18 ~~10 years, on the 15th day of the month immediately preceding the~~  
 19 ~~month in which the loan is made, plus four percentage points<sup>1</sup>]~~  
 20 ~~<sup>3</sup>[conventional mortgage rate for a home loan secured by a first lien,~~  
 21 ~~by more than two percentage points, or for a home loan secured by a~~  
 22 ~~junior lien, by more than three and one half percentage points<sup>2</sup>]~~<sup>3</sup>.

23 <sup>2</sup>[(3) "Prepayment penalty threshold" means the home loan  
 24 agreement permits the lender to charge or collect]<sup>2 1</sup> ~~[payment~~  
 25 ~~penalties or]~~<sup>2</sup> ~~[prepayment<sup>1</sup> penalties more than 30 months after the~~  
 26 ~~loan closing or which exceed, in the aggregate, more than 2% of the~~  
 27 ~~amount prepaid.]]<sup>2</sup>~~

28 "Total loan amount" means the principal of the loan minus those  
 29 points and fees as defined in this section that are included in the  
 30 principal amount of the loan. For open-end loans, the total <sup>2</sup>loan<sup>2</sup>  
 31 amount shall be calculated using the total line of credit allowed under  
 32 the home loan.

33

34 4. a. No creditor making a home loan shall finance, directly or  
 35 indirectly, any credit life, credit disability, credit unemployment or  
 36 credit property insurance, or any other life or health insurance, or any  
 37 payments directly or indirectly for any debt cancellation or suspension  
 38 agreement or contract, except that insurance premiums or debt  
 39 cancellation or suspension fees calculated and paid on a monthly basis  
 40 shall not be considered financed by the creditor.

41 b. No creditor shall engage in the unfair act or practice of  
 42 "flipping" a ~~<sup>3</sup>[<sup>2</sup>covered<sup>2</sup>]~~<sup>3</sup> home loan. "Flipping" <sup>2</sup>[a loan is the  
 43 making of] ~~occurs when a creditor makes<sup>2</sup> a <sup>2</sup>covered<sup>2</sup> home loan to~~  
 44 ~~a borrower that refinances an existing home loan <sup>2</sup>that was~~  
 45 ~~consummated within the prior 60 months<sup>2</sup> when the new loan does not~~

1 have reasonable, tangible net benefit to the borrower considering all  
2 of the circumstances, including the terms of both the new and  
3 refinanced loans, <sup>2</sup>the economic and noneconomic circumstances, the  
4 purpose of the loan. <sup>2</sup> the cost of the new loan, and the borrower's  
5 circumstances. <sup>2</sup>[<sup>1</sup>The commissioner may promulgate regulations to  
6 implement the provisions of this section.] <sup>2</sup> In addition, the following  
7 home loan refinancings shall be presumed to be flipping if:

8 (1) The primary tangible benefit to the borrower is an interest rate  
9 lower than the interest rate on a debt satisfied or refinanced in  
10 connection with the home loan, and it will take more than four years  
11 for the borrower to recoup the costs of the points and fees and other  
12 closing costs through savings resulting from the lower interest rate; or

13 (2) The new loan refinances an existing home loan that is a special  
14 mortgage originated, subsidized, or guaranteed by or through a state,  
15 tribal or local government, or nonprofit organization, which either  
16 bears a below-market interest rate at the time the loan was originated,  
17 or has nonstandard payment terms beneficial to the borrower, such as  
18 payments that vary with income or are limited to a percentage of  
19 income, or where no payments are required under specified conditions,  
20 and where, as a result of refinancing, the borrower will lose one or  
21 more of the benefits of the special mortgage.

22 <sup>2</sup>Without limiting the foregoing, it is hereby declared that  
23 <sup>3</sup>subsection b. of <sup>3</sup> this section shall create no presumption that any  
24 home loan that is not a covered home loan or a high-cost home loan,  
25 and any refinancing outside the durational limits set forth above, is not  
26 unconscionable, and it is hereby further declared that <sup>3</sup>subsection b.  
27 of <sup>3</sup> this section shall create no presumption that any home loan that  
28 is not a covered home loan or a high-cost home loan, and any  
29 refinancing outside the durational limits set forth above, shall not  
30 constitute an unlawful practice under P.L.1960, c.39 (C.56:8-1 et  
31 seq.), based on <sup>3</sup>[the]<sup>3</sup> factors <sup>3</sup>including those<sup>3</sup> set forth in  
32 <sup>3</sup>subsection b. of <sup>3</sup> this section <sup>3</sup>alone<sup>3</sup> or <sup>3</sup>in conjunction with<sup>3</sup> any  
33 other circumstances. <sup>2</sup>

34 c. No creditor shall recommend or encourage default on an existing  
35 loan or other debt prior to and in connection with the closing or  
36 planned closing of a home loan that refinances all or any portion of  
37 that existing loan or debt.

38 d. No creditor shall charge a late payment fee in relation to a home  
39 loan except according to the following rules:

40 (1) The late payment fee may not be in excess of <sup>1</sup>~~[4%]~~ 5% <sup>1</sup> of the  
41 amount of the payment past due.

42 (2) The fee may only be assessed by a payment past due for  
43 15 days or more.

44 (3) The fee may not be charged more than once with respect to a  
45 single late payment. If a late payment fee is deducted from a payment  
46 made on the loan, and such deduction causes a subsequent default on



1 a subsequent payment, no late payment fee may be imposed for such  
2 default. If a late payment fee has been once imposed with respect to  
3 a particular late payment, no such fee shall be imposed with respect to  
4 any future payment which would have been timely and sufficient, but  
5 for the previous default.

6 (4) No fee shall be charged unless the creditor notifies the  
7 borrower within 45 days following the date the payment was due that  
8 a late payment fee has been imposed for a particular late payment. No  
9 late payment fee may be collected from any borrower if the borrower  
10 informs the creditor that nonpayment of an installment is in dispute  
11 and presents proof of payment within 45 days of receipt of the  
12 creditor's notice of the late fee.

13 (5) The creditor shall treat each and every payment as posted on  
14 the same date as it was received by the creditor, servicer, creditor's  
15 agent, or at the address provided to the borrower by the creditor,  
16 servicer, or the creditor's agent for making payments.

17 e. No home loan shall contain a provision that permits the creditor,  
18 in its sole discretion, to accelerate the indebtedness. This provision  
19 does not prohibit acceleration of the loan in good faith due to the  
20 borrower's failure to abide by the material terms of the loan.

21 f. No creditor shall charge a fee for informing or transmitting to  
22 any person the balance due to pay off a home loan or to provide a  
23 release upon prepayment. Payoff balances shall be provided within  
24 seven business days after the request.

25

26 5. A high-cost home loan shall be subject to the following  
27 additional limitations and prohibited practices:

28 a. No high-cost home loan shall contain a scheduled payment that  
29 is more than twice as large as the average of earlier scheduled  
30 payments. This provision shall not apply when the payment schedule  
31 is adjusted to the seasonal or irregular income of the borrower.

32 b. No high-cost home loan shall include payment terms under  
33 which the outstanding principal balance will increase at any time over  
34 the course of the loan because the regular periodic payments do not  
35 cover the full amount of interest due.

36 c. No high-cost home loan shall contain a provision that increases  
37 the interest rate after default. This provision <sup>2</sup>[does] shall<sup>2</sup> not apply  
38 to interest rate changes in a variable rate loan otherwise consistent  
39 with the provisions of the loan documents, provided the change in the  
40 interest rate is not triggered by the event of default or the acceleration  
41 of the indebtedness.

42 d. No high-cost home loan shall include terms under which more  
43 than two periodic payments required under the loan are consolidated  
44 and paid in advance from the loan proceeds provided to the borrower.

45 e. <sup>2</sup>[No high-cost home loan shall be subject to a mandatory  
46 arbitration clause that]<sup>2</sup> <sup>1</sup>[limits in any way the right of the borrower

1 to seek relief through the judicial process for any and all claims and  
2 defenses the borrower may have against the creditor, broker, or other  
3 party involved in the loan transaction] <sup>2</sup>[is oppressive, unfair,  
4 unconscionable, or substantially in derogation of the rights of  
5 borrowers. Arbitration clauses that comply with the standards set  
6 forth in the Statement of Principles of the National Consumer Dispute  
7 Advisory Committee in effect as of the effective date of this act shall  
8 be presumed not to violate this subsection. The borrower shall have  
9 the exclusive option to require arbitration concerning any claims or  
10 defenses relating to high-cost home loans<sup>1</sup>] Without regard to  
11 whether a borrower is acting individually or on behalf of others  
12 similarly situated, any provision of a high-cost home loan agreement  
13 that allows a party to require a borrower to assert any claim or defense  
14 in a forum that is less convenient, more costly, or more dilatory for the  
15 resolution of a dispute than a judicial forum established in this State if  
16 the borrower may otherwise properly bring a claim or defense or limits  
17 in any way any claim or defense the borrower may have is  
18 unconscionable and void<sup>2</sup>.

19 f. <sup>1</sup>A creditor shall not make a high-cost home loan unless the  
20 creditor has given the following notice, or substantially similar notice,  
21 in writing, to the borrower, acknowledged in writing and signed by the  
22 borrower not later than the time the notice is required under the notice  
23 provision contained in 12 C.F.R. s.226.31(c).

24

25

#### NOTICE TO BORROWER

26

27 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE  
28 TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD  
29 SHOP AROUND AND COMPARE LOAN RATES AND FEES.  
30 MORTGAGE LOAN RATES AND CLOSING COSTS AND  
31 FEES VARY BASED ON MANY FACTORS, INCLUDING  
32 YOUR PARTICULAR CREDIT AND FINANCIAL  
33 CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE  
34 LOAN-TO-VALUE REQUESTED AND THE TYPE OF  
35 PROPERTY THAT WILL SECURE YOUR LOAN. THE  
36 LOAN RATE AND FEES COULD ALSO VARY BASED ON  
37 WHICH CREDITOR OR BROKER YOU SELECT.

38

39 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE  
40 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR  
41 HOME. YOU COULD LOSE YOUR HOME AND ANY  
42 MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR  
43 PAYMENT OBLIGATIONS UNDER THE LOAN.

44

45 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND  
46 A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR

1 OTHER EXPERIENCED FINANCIAL ADVISOR  
2 REGARDING THE RATE, FEES AND PROVISIONS OF  
3 THIS MORTGAGE LOAN BEFORE YOU PROCEED. A  
4 LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY  
5 CONTACTING THE NEW JERSEY DEPARTMENT OF  
6 BANKING AND INSURANCE.

7  
8 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN  
9 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED  
10 THIS DISCLOSURE OR HAVE SIGNED A LOAN  
11 APPLICATION.

12  
13 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S  
14 INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL  
15 CREDITORS PROVIDE ESCROW SERVICES FOR THESE  
16 PAYMENTS. YOU SHOULD ASK YOUR CREDITOR  
17 ABOUT THESE SERVICES.

18  
19 ALSO, YOUR PAYMENTS ON EXISTING DEBTS  
20 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU  
21 SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR  
22 REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

23  
24 g.<sup>1</sup> A creditor shall not make a high-cost home loan <sup>1</sup>to a borrower  
25 who finances points and fees in connection with a high-cost home  
26 loan<sup>1</sup> without first receiving certification from a <sup>1</sup>third-party nonprofit  
27 credit<sup>1</sup> counselor, approved by the United States Department of  
28 Housing and Urban Development <sup>1</sup>and the Department of Banking and  
29 Insurance<sup>1</sup>, that the borrower has received counseling on the  
30 advisability of the loan transaction <sup>2</sup>or completing another substantial  
31 requirement developed by the department<sup>2</sup>.

32 <sup>1</sup>[g.] <sup>2</sup>[h.<sup>1</sup> A creditor shall not make a high-cost home loan  
33 without due regard to repayment ability. A creditor shall not make a  
34 high-cost home loan unless the creditor reasonably believes at the time  
35 the loan is consummated that one or more of the borrowers, when  
36 considered individually or collectively, will be able to make the  
37 scheduled payments to repay the obligation, based upon a  
38 consideration of their current and expected income, current  
39 obligations, employment status and other financial resources, other  
40 than the borrower's equity in the dwelling which secures repayment of  
41 the loan. A borrower shall be presumed to be able to make the  
42 scheduled payments to repay the obligation if, at the time the loan is  
43 consummated, the borrower's total monthly debts, including amounts  
44 owed under the loan, do not exceed 50% of the borrower's monthly  
45 gross income as verified by the credit application, the borrower's  
46 financial statement, a credit report, financial information provided to

1 the creditor by or on behalf of the borrower, or any other reasonable  
2 means. Notwithstanding the foregoing, no presumption of inability to  
3 make the scheduled payments to repay the obligation shall arise solely  
4 from the fact that, at the time the loan is consummated, the borrower's  
5 total monthly debts, including amounts owed under the loan, exceed  
6 50% of the borrower's monthly gross income.]<sup>2</sup> <sup>1</sup>[A creditor who  
7 follows the residual income guidelines established in 38 C.F.R.  
8 s.36.4337(e) and VA Form 26-6393 shall benefit from a rebuttable  
9 presumption that the creditor made the loan with due regard to  
10 repayment ability.]<sup>1</sup>

11 <sup>1</sup>[h.] <sup>2</sup>[i.<sup>1</sup>] h.<sup>2</sup> A creditor shall not pay a contractor under a  
12 home-improvement contract from the proceeds of a high-cost home  
13 loan, unless the instrument is payable to the borrower or jointly to the  
14 borrower and the contractor, or, at the election of the borrower,  
15 through a third-party escrow agent in accordance with terms  
16 established in a written agreement signed by the borrower, the  
17 creditor, and the contractor prior to the disbursement.

18 <sup>1</sup>[i.] <sup>2</sup>[j.<sup>1</sup>] i.<sup>2</sup> A creditor shall not charge a borrower any fees or  
19 other charges to modify, renew, extend, or amend a high-cost home  
20 loan or to defer any payment due under the terms of a high-cost home  
21 loan.

22 <sup>1</sup>[j.] <sup>2</sup>[k.<sup>1</sup>] j.<sup>2</sup> A creditor shall not charge a borrower points and  
23 fees in connection with a high-cost home loan if the proceeds of the  
24 high-cost home loan are used to refinance an existing high-cost home  
25 loan held by the same creditor as note holder.

26 <sup>1</sup>[k.] <sup>2</sup>[l.<sup>1</sup>] k.<sup>2</sup> Notwithstanding any other law to the contrary, a  
27 creditor making a high-cost home loan that has the legal right to  
28 foreclose shall use the judicial foreclosure procedures of this State so  
29 long as the property securing the loan is located in this State.  
30 <sup>1</sup>[Notwithstanding any other law to the contrary, the borrower shall  
31 have the right to assert in that proceeding the nonexistence of a default  
32 and any other claim or defense to acceleration and foreclosure,  
33 including any based on any violations of this act, though those claims  
34 or defenses shall not be deemed compulsory counterclaims.]

35 <sup>2</sup>[m.] l.<sup>2</sup> No creditor making a high-cost home loan shall directly  
36 or indirectly finance points and fees in excess of 2% of the total loan  
37 amount.<sup>1</sup>

38

39 6. a. Notwithstanding any other law to the contrary, if a home loan  
40 was made, arranged, or assigned by a person selling either a  
41 manufactured home, or home improvements to the dwelling of a  
42 borrower<sup>2</sup>, or was made by or through a creditor to whom the  
43 borrower was referred by such seller<sup>2</sup>, the borrower may assert all  
44 affirmative claims and any defenses that the borrower may have against  
45 the seller or home-improvement contractor <sup>4</sup>limited to amounts

1 required to reduce or extinguish the borrower's liability under the  
2 home loan, plus the total amount paid by the borrower in connection  
3 with the transaction, plus amounts required to recover costs, including  
4 reasonable attorney's fees<sup>4</sup> against the creditor, any assignee <sup>2</sup>[,] or<sup>2</sup>  
5 holder, <sup>2</sup>[or servicer,]<sup>2</sup> in any capacity.

6 b. <sup>1</sup>[Notwithstanding any other law to the contrary, the remedies  
7 provided by this act apply to the creditor, any director, officer,  
8 employee, or controlling stockholder of, or agent for, a creditor who  
9 personally participated in the making or approving of a high-cost home  
10 loan, and any other persons to whom this act applies and who violated  
11 the requirements of this act.]<sup>1</sup> <sup>2</sup>[Any] Notwithstanding any other  
12 provision of law, any<sup>2</sup> person who purchases or is otherwise assigned  
13 a high-cost home loan shall be subject to all affirmative claims and any  
14 defenses with respect to the loan that the borrower could assert  
15 against the original creditor or broker of the loan <sup>2</sup>; provided that this  
16 subsection shall not apply if the purchaser or assignee demonstrates,  
17 by a preponderance of the evidence, that a reasonable person  
18 exercising reasonable due diligence could not determine that the  
19 mortgage was a high-cost home loan. It shall be presumed that a  
20 purchaser or assignee has exercised such due diligence if the purchaser  
21 or assignee demonstrates by a preponderance of the evidence that it:  
22 (1) <sup>4</sup>[maintains] has in place at the time of the purchase or  
23 assignment of the loan,<sup>4</sup> policies that expressly prohibit its purchase or  
24 acceptance of assignment of any high-cost home loan; (2) requires by  
25 contract that a seller or assignor of home loans to the purchaser or  
26 assignee represents and warrants to the purchaser or assignee that  
27 <sup>4</sup>either (a)<sup>4</sup> it will not sell or assign any high-cost home loan to the  
28 purchaser or assignee <sup>4</sup>or (b) that the seller or assignor is a beneficiary  
29 of a representation and warranty from a previous seller or assignor to  
30 that effect<sup>4</sup> ; and (3) exercises reasonable due diligence at the time of  
31 purchase or assignment of home loans or within a reasonable period  
32 of time thereafter intended by the purchaser or assignee to prevent the  
33 purchaser or assignee from purchasing or taking assignment of any  
34 high-cost home loan<sup>2</sup>.

35 c. Notwithstanding any other law to the contrary, <sup>2</sup>[a borrower in  
36 default more than 60 days or in foreclosure may assert a violation of  
37 this act by way of offset:

38 (1) As an original action;

39 (2) As a defense or counterclaim to an action to collect amounts  
40 owed; or

41 (3) To obtain possession of the home secured by the home loan]  
42 but limited to amounts required to reduce or extinguish the borrower's  
43 liability under the home loan plus amounts required to recover costs  
44 including reasonable attorney's fees, a borrower acting only in an  
45 individual capacity may assert against the creditor or any subsequent  
46 holder or assignee of the home loan:

1     (1) within six years of the closing of a covered home loan, a  
 2 violation of <sup>4</sup>[section 4, subsection d. of this section, section 8] <sup>4</sup>  
 3 <sup>3</sup>[and] <sup>4</sup>[or<sup>3</sup> section 12 of] <sup>4</sup> this act in connection with the loan as an  
 4 original action <sup>4,4</sup> or as a defense, claim or counterclaim after an  
 5 action to collect on the home loan or foreclose on the collateral  
 6 securing the home loan has been initiated or the debt arising from the  
 7 home loan has been accelerated or the home loan has become 60 days  
 8 in default; and

9     (2) at any time during the term of <sup>3</sup>[the] a high-cost home<sup>3</sup> loan  
 10 after an action to collect on the home loan or foreclose on the  
 11 collateral securing the home loan has been initiated or the debt arising  
 12 from the home loan has been accelerated or the home loan has become  
 13 60 days in default. <sup>3</sup>[a violation of this act in connection with a high-  
 14 cost home loan as a defense, claim or counterclaim; or] <sup>3</sup> any defense,  
 15 claim or counterclaim <sup>3</sup>[in connection with a high-cost home loan<sup>2</sup>] <sup>3</sup>.

16     d. <sup>2</sup>[<sup>1</sup>Notwithstanding any other law to the contrary, the borrower  
 17 shall have the right to assert in a foreclosure proceeding the  
 18 nonexistence of a default and any other claim or defense to  
 19 acceleration and foreclosure, including any claim based on any  
 20 violations of this act, though those claims or defenses shall not be  
 21 deemed compulsory counterclaims.

22     e.]<sup>2</sup> <sup>1</sup>It is a violation of this act for any person, in bad faith, to  
 23 attempt to avoid the application of this act by:

24     (1) Dividing any loan transaction into separate parts; or

25     (2) Any other such subterfuge, with the intent of evading the  
 26 provisions of this act.

27     <sup>2</sup>e. Nothing in this section shall be construed to limit the  
 28 substantive rights, remedies or procedural rights <sup>3</sup>, including , but not  
 29 limited to, recoupment rights under the common law, <sup>3</sup> available to a  
 30 borrower against any creditor, assignee or holder under any other law.  
 31 The limitations on assignee liability in subsection b. of this section  
 32 shall not apply to the assignee liability in subsection a., c. and d. of this  
 33 section.<sup>2</sup>

34  
 35     <sup>1</sup>7. a. The department shall conduct examinations and investigations  
 36 and issue subpoenas and orders to enforce the provisions of this act  
 37 with respect to a person licensed or subject to the provision of the  
 38 "New Jersey Licensed Lenders Act," P.L.1996, c.157 (C.17:11C-1 et  
 39 seq.).

40     b. The department shall examine any instrument, document,  
 41 account, book, record, or file of a person originating or brokering a  
 42 high-cost home loan under this act. The department shall recover the  
 43 cost of examinations from the person. A person originating or  
 44 brokering high-cost home loans shall maintain its records in a manner  
 45 that will facilitate the department in determining whether the person  
 46 is complying with the provisions of this act and the regulations

1 promulgated thereunder. The department shall require the submission  
2 of reports by persons originating or brokering high-cost home loans  
3 which shall set forth such information as the department shall require  
4 by regulation.

5 c. In the event that a person fails to comply with a subpoena for  
6 documents or testimony issued by the department, the department may  
7 request an order from a court of competent jurisdiction requiring the  
8 person to produce the requested information.

9 d. If the department determines that a person has violated the  
10 provisions of this act, the department may do any combination of the  
11 following that it deems appropriate:

12 (1) Impose a civil penalty of up to \$10,000 for each offense, 40%  
13 of which penalty shall be dedicated for and used by the department for  
14 consumer education through nonprofit organizations which can  
15 establish to the satisfaction of the department that they have sufficient  
16 experience in credit counseling and financial education. In determining  
17 the penalty to be assessed, the commissioner shall consider the  
18 following criteria: whether the violation was willful; whether the  
19 violation was part of a pattern and practice; the amount of the loan;  
20 the points and fees charged; the financial condition of the violator; and  
21 other relevant factors. The department may require the person to pay  
22 investigative costs, if any.

23 (2) Suspend, revoke, or refuse to renew any license issued by the  
24 department.

25 (3) Prohibit or permanently remove an individual responsible for  
26 a violation of this act from working in his present capacity or in any  
27 other capacity related to activities regulated by the department.

28 (4) Order a person to cease and desist any violation of this act and  
29 to make restitution for actual damages to borrowers.

30 (5) Pending completion of an investigation or any formal  
31 proceeding instituted pursuant to this act, if the commissioner finds  
32 that the interests of the public require immediate action to prevent  
33 undue harm to borrowers, the commissioner may enter an appropriate  
34 temporary order to be effective immediately and until entry of a final  
35 order. The temporary emergent order may include: a temporary  
36 suspension of the creditor's authority to make high-cost home loans  
37 under this act; a temporary cease and desist order; a temporary  
38 prohibition against a creditor transacting high-cost home loan business  
39 in this State, or such other order relating to high-cost home loans as  
40 the commissioner may deem necessary to prevent undue harm to  
41 borrowers pending completion of an investigation or formal  
42 proceeding. Orders issued pursuant to this section shall be subject to  
43 an application to vacate upon two days' notice, and a preliminary  
44 hearing on the temporary emergent order shall be held, in any event,  
45 within five days after it is issued, in accordance with the provisions of  
46 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et

1 seq.).

2 (6) Impose such other conditions as the department deems  
3 appropriate.

4 e. Any person aggrieved by a decision of the department and who  
5 has a direct interest in the decision may appeal the decision of the  
6 department to the commissioner. The appeal shall be conducted in  
7 accordance with the provisions of the "Administrative Procedure Act,"  
8 P.L.1968, c.410 (C.52:14B-1 et seq.).

9 f. The department may maintain an action for an injunction or other  
10 process against any person to restrain and prevent the person from  
11 engaging in any activity violating this act.

12 g. A decision of the commissioner shall be a final order of the  
13 department and shall be enforceable in a court of competent  
14 jurisdiction. The department shall publish the final adjudication issued  
15 in accordance with this section, subject to redaction or modification  
16 to preserve confidentiality.

17 h. The provisions of this section shall not limit the authority of the  
18 Attorney General or the Public Advocate as established pursuant to  
19 P.L. , c. (C. ) (now before the Legislature as Assembly  
20 Committee Substitute for Assembly Bill Nos. 345 and 2341) from  
21 instituting or maintaining any action within the scope of their  
22 respective authority with respect to the practices prohibited under this  
23 act.<sup>1</sup>

24

25 <sup>1</sup>[7.] 8.<sup>1</sup> a. Any violation of this act constitutes an unlawful  
26 practice under P.L.1960, c.39 (C.56:8-1 et seq.). <sup>2</sup>Any borrower may  
27 seek damages under the provisions of section 7 of P.L.1971, c.247  
28 (C.56:8-19) or subparagraph (a) of paragraph (1) of subsection b. of  
29 this section, but not both.<sup>2</sup>

30 b. <sup>2</sup>[In addition to penalties under that law, including <sup>1</sup>, but not  
31 limited to,<sup>1</sup> any moneys or property ordered to be paid pursuant to  
32 section 2 of P.L.1966, c.39 (C.56:8-14) or section 3 of P.L.1971,  
33 c.247 (C.56:8-15)] Except as provided in subsection a. of this section  
34 <sup>4</sup>and, where applicable, subject to any limitation on the amounts  
35 recoverable against a holder or assignee pursuant to section 6 of this  
36 act<sup>4</sup>, in addition to the remedies available to a borrower under  
37 P.L.1960, c.39 (C.56:8-1 et seq.) and without limiting those  
38 remedies<sup>2</sup>:

39 (1) Any person found by a preponderance of the evidence to have  
40 <sup>3</sup>[<sup>2</sup>materially<sup>2</sup>]<sup>3</sup> violated this act shall be liable to the borrower for the  
41 following:

42 (a) <sup>3</sup>[Statutory] For material violations, statutory<sup>3</sup> damages equal  
43 to the finance charges agreed to in the home loan agreement, plus <sup>3</sup>up  
44 to<sup>3</sup> 10% of the amount financed <sup>1</sup>[.].<sup>1</sup>

45 (b) Punitive damages, when the violation was malicious or reckless  
46 <sup>2</sup>in appropriate circumstances as determined by the fact-finder<sup>2</sup>; and



1 (c) Costs and reasonable attorneys' fees.

2 (2) A borrower may be granted injunctive, declaratory, and such  
3 other equitable relief as the court deems appropriate in an action to  
4 enforce compliance with this act.

5 (3) <sup>1</sup>[The intentional violation of this act, or regulation hereunder,  
6 renders the home loan agreement void, and the creditor shall have no  
7 right to collect, receive, or retain any principal, interest, or other  
8 charges whatsoever with respect to the loan, and the borrower may  
9 recover any payments made under the agreement.

10 (4)]<sup>1</sup> <sup>2</sup>[The right of rescission granted under 15 U.S.C. s.1601 et  
11 seq. for violations of that law and all other remedies provided  
12 hereunder shall be available to a borrower by way of recoupment  
13 against a party foreclosing on the home loan or collecting on the loan,  
14 at any time during the term of the loan.]<sup>2</sup>

15 <sup>1</sup>[(5)] <sup>2</sup>[(4)]<sup>1</sup><sup>2</sup> The remedies provided in this section are not  
16 intended to be the exclusive remedies available to a borrower, nor  
17 must the borrower exhaust any administrative remedies provided under  
18 this act or any other applicable law before proceeding under this  
19 section.

20 c. <sup>2</sup>[Any person, including members, officers, and directors of the  
21 creditor, who knowingly violates this act is guilty of a disorderly  
22 persons offense and, on conviction, is subject to a fine not exceeding  
23 \$1,000, or to imprisonment not exceeding six months, or both.

24 d.]<sup>2</sup> A creditor in a home loan who, when acting in good faith, fails  
25 to comply with the provisions of this act, will not be deemed to have  
26 violated this section if the creditor establishes that either:

27 (1) Within <sup>1</sup>[30] 45 <sup>1</sup>days of the loan closing, [<sup>2</sup>and prior to  
28 receiving any notice from the borrower of the compliance failure,]<sup>2</sup>  
29 the creditor has made appropriate restitution to the borrower, and  
30 appropriate adjustments are made to the loan; or

31 (2) Within <sup>1</sup>[60] 90<sup>1</sup> days of the loan closing and prior to  
32 receiving any notice from the borrower of the compliance failure, and  
33 the compliance failure was not intentional and resulted from a bona  
34 fide error notwithstanding the maintenance of procedures reasonably  
35 adopted to avoid such errors, the borrower is notified of the  
36 compliance failure, appropriate restitution is made to the borrower,  
37 and appropriate adjustments are made to the loan.

38 Examples of bona fide errors include clerical, calculation, computer  
39 malfunction and programming, and printing errors. An error of legal  
40 judgment with respect to a person's obligations under this section is  
41 not a bona fide error.

42 <sup>2</sup>[e.] d.<sup>2</sup> <sup>3</sup>[Notwithstanding any provision of this act to the  
43 contrary, a broker, who is a creditor, shall be liable for any violation  
44 of this act by any party involved in a home loan transaction that he  
45 brokered.

1       <sup>2</sup>[f.] e.<sup>2</sup>]<sup>3</sup> <sup>1</sup>The remedies provided in this section are cumulative.

2

3       <sup>1</sup>[8. The rights conferred by this act are independent of and in  
4 addition to any other rights under other laws.]

5       9. The rights, remedies, and prohibitions accorded by the  
6 provisions of this act are hereby declared to be in addition to and  
7 cumulative of any other right, remedy, or prohibition accorded by the  
8 common law or statutes <sup>2</sup>of the United States or <sup>2</sup>of this State, and  
9 nothing herein shall be construed to deny, abrogate, or impair any such  
10 common law or statutory right, remedy, or prohibition.<sup>1</sup> <sup>2</sup>Without  
11 limiting the foregoing, the rights, remedies and prohibitions accorded  
12 by the provisions of this act are hereby further declared to create no  
13 presumption that any home loan or any term in a home loan is not  
14 unconscionable, whether or not the home loan or loan term, alone or  
15 in conjunction with other terms of the loan, violates the provisions of  
16 this act.<sup>2</sup>

17

18       <sup>1</sup>[9.] 10.<sup>1</sup> The law of the state in which the property is located  
19 shall be applied to all transactions governed by this act regardless of  
20 where those transactions originated. This act shall apply to all loans  
21 made or entered into after the effective date of this act.

22

23       <sup>1</sup>[10.] 11.<sup>1</sup> The Director of the Division of Banking in the  
24 Department of Banking and Insurance, in consultation with the  
25 Director of the Division of Consumer Affairs <sup>2</sup>and the Division of Civil  
26 Rights<sup>2</sup> in the Department of Law and Public Safety, shall develop and  
27 implement a program of consumer counseling and awareness designed  
28 to inform the public about the methods by which predatory creditors  
29 impose unconscionable and noncompetitive fees and charges as part of  
30 complex home mortgage transactions, to protect the public from  
31 incurring those fees and charges, and otherwise to encourage the  
32 informed and responsible use of credit.

33

34       <sup>2</sup>12. Notwithstanding any provision of this act to the contrary, a  
35 mortgage broker shall be liable under the provisions of this act only for  
36 acts performed by the mortgage broker in the course of providing  
37 mortgage brokering services. However, a mortgage broker may be  
38 held liable for acts performed by the mortgage broker outside the  
39 scope of mortgage brokering services if the acts are related to the  
40 purchasing or the making of a home loan and are otherwise prohibited  
41 under this act.<sup>2</sup>

42

43       <sup>2</sup>13. No municipality, county or political subdivision thereof, shall  
44 enact an ordinance or resolution or promulgate any rules or  
45 regulations relating to this act. The provisions of any ordinance or  
46 resolution or rules or regulations of any municipality or county relative

1 to abusive home loan lending practices are superseded by the  
2 provisions of this act.<sup>2</sup>

3  
4 <sup>1</sup>[11.] <sup>2</sup>[12.<sup>1</sup>] 14.<sup>2</sup> The Commissioner of Banking and Insurance  
5 shall promulgate regulations pursuant to the "Administrative  
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to  
7 effectuate the provisions of <sup>2</sup>subsections f. and g. of section 5 and  
8 section 11 of<sup>2</sup> this act <sup>1</sup>except that prior to the effective date of this  
9 act the commissioner may take those actions and promulgate those  
10 regulations necessary to implement <sup>2</sup>[the] these<sup>2</sup> provisions <sup>2</sup>[of this  
11 act<sup>1</sup>]<sup>2</sup>.

12  
13 <sup>1</sup>[12.] <sup>2</sup>[13.<sup>1</sup>] 15.<sup>2</sup> This act shall take effect on the <sup>2</sup>[90th]  
14 210th<sup>2</sup> day following enactment<sup>2</sup> and shall apply to home loans closed  
15 on and after that date, except that section 14 shall take effect  
16 immediately<sup>2 3</sup>, and except that a loan in existence on the effective  
17 date of this act and which meets the definition of home loan in this act  
18 shall be a home loan for the purposes of subsection b. of section 4 of  
19 this act<sup>3</sup>.