



New Jersey Licensing and Compliance Example

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The research on which these Survey is based was last updated as of certain specified dates on or before 2023 and do not reflect changes in law that occurred after those dates.

The conclusions contained in this Survey are based only upon our examination of published statutes and regulations and do not reflect any formal opinion concerning the laws of any state.

Please be advised that the persons who prepared these Surveys are not members of the Bar in any jurisdiction other than California, Massachusetts and Rhode Island, and are not licensed to opine on matters in jurisdictions other than in Massachusetts and Rhode Island. Furthermore, the regulatory authorities and court systems empowered to administer the laws discussed in this Survey have broad discretionary powers that may permit them to interpret specific provisions in different manners than discussed herein. We did not specifically contact local counsel in connection with researching the laws discussed in this survey, and we have not consulted nor obtained a formal opinion from any attorney licensed in any jurisdiction to take an application for or negotiate the matters covered by this survey.

Please be further advised that these surveys are rendered for the sole benefit of the recipient, and no other person or entity is entitled to rely thereon. Copies of this Survey may not be furnished to any other party or entity, nor may any portion of this survey be quoted, circulated or referred to in any other document, without our prior written consent. To the extent such consent is given, it shall be for general information purposes only.

Any recipient of a copy of this survey should consult and rely upon the advice of such recipient's own counsel.

Are State Courts likely to Uphold Parties' Choice of Law?	Discussion
<p>Generally Yes (with possible exception of usury)</p> <p>See Discussion</p> <p>(New Jersey has a strong public policy against usury with respect to consumer purpose loans made to New Jersey residents and will not uphold the usury law of a foreign state with rates that exceed rates under New Jersey usury laws. At least one case involving a business purpose financing has been identified that applied a similar public policy in protecting New Jersey residents from out-of-state lenders who seek to lend money to New Jersey residents on terms which are usurious under New Jersey law.)</p>	<p>RESTATEMENT (SECOND) CONFLICTS OF LAWS</p> <p>In General.</p> <p>New Jersey choice of law rules are established by common law rather than by statute. The New Jersey courts follow the general rule of the Restatement (Second) Conflict of Laws with respect to contracts parties' choice of law. § 187 of the Restatement allows the contract parties to agree that the law of a specific jurisdiction will apply to a transaction.</p> <p>Choice of Law When Parties Do Not Agree to an Express Choice of Law Provision in the Contract.</p> <p>If the contract parties do not select a choice of law to govern a transaction, New Jersey courts have adopted the "most significant relationship" test of § 188 of the Restatement to determine the applicable choice of law for the transaction. When applying the "most significant relationship" test, New Jersey courts take the following factors from §188(2) of the Restatement into account:</p> <ul style="list-style-type: none"> - the place of contracting, - the place of negotiation of the contracts, - the place of performance, the location of the subject matter of the contract, - the domicile, residence, and nationality of the parties, - the place of incorporation and the place of business of the parties. <p>Enforcing the Parties' Choice of law Under § 187 of the Restatement.</p> <p>The New Jersey courts apply the approach in § 187 of the Restatement when determining whether to enforce the contract parties' choice of law.¹ The New Jersey courts will not enforce the contract parties' choice of law if:</p> <ul style="list-style-type: none"> - the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or - application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties. Restatement (Second) of Conflict of Laws § 187(2).² <p>NEW JERSEY PUBLIC POLICY WITH RESPECT TO USURY</p> <p>A California resident purchased a stake in the outcome of civil litigation between a New Jersey resident and a defendant in exchange for providing the New Jersey resident with necessary financing of that litigation as well as maintaining the New Jersey resident's lifestyle. The California lender attempted to enforce the lender's financing agreement with respect to the litigation. The financing agreement related to litigation under which the New Jersey resident obtained an option to purchase a hotel corporation that controlled a complex of hotels and golf courses. The New Jersey resident argued that the effective rate of interest for the financing agreement exceeded the applicable usury rate in New Jersey. The United States District Court for the District of New Jersey, in applying</p>

Are State Courts likely to Uphold Parties' Choice of Law?	Discussion
	<p>New Jersey law, held that New Jersey has a specific interest in protecting its residents from out-of-state lenders who seek to lend money to New Jersey residents on terms which are usurious under New Jersey law (citing a series of cases described below relating to consumer loans).³</p> <p>New Jersey courts have also held that New Jersey's public policy requires the application of New Jersey law for CONSUMER LOANS that are made to New Jersey residents.⁴</p> <p>The United States District Court for the District of New Jersey held that the application of a foreign jurisdiction's law with respect to consumer payday loans would be contrary to New Jersey's fundamental public policy of protecting its citizens from usurious loans and unlicensed lenders. "New Jersey has demonstrated an opposition to usurious interest rates like the 116.73% interest rate charged under Plaintiff's Loan Agreement. The State has expressed this public policy by expressly prohibiting interest rates higher than 16% for consumer contracts. ⁵</p> <p>The New Jersey Appellate Division considered whether to apply the usury provision of New Jersey's Retail Installment Sales Act ("RISA"), despite the parties' contractual selection of Illinois law. After finding that the New Jersey Legislature "intended to offer New Jersey consumers the protection of RISA [with respect to consumer purpose extensions of credit] no matter from where the seller deals," the Court concluded that to apply Illinois law would "contravene fundamental policy of [New Jersey] as it appears documented in RISA."⁶</p> <p>The Third Circuit applied § 187 of the Restatement to determine whether Pennsylvania law, which prohibited usury, or the loan agreement's selection of Delaware law, which did not prohibit usury, should be applied to determine whether the contract's arbitration clause was unconscionable. The Court held that Pennsylvania had a materially greater interest than Delaware in the determination of whether the arbitration clause was unconscionable, and that "Pennsylvania's interest in the dispute, particularly its antipathy to high interest rates [for consumer purpose car title loans] such as the 300.01 percent interest charged in the contract at issue, represents such a fundamental policy that we must apply Pennsylvania law."⁷</p> <p>New Jersey has an interest in "seeing that its consumer protection law[s] be applied" because "[s]tate consumer protection laws are designed to protect the residents of the states in which the statutes are promulgated."⁸</p> <p>UCC CHOICE OF LAW.</p> <p>New Jersey statutes provides that when a lawsuit arises out of a contract, the action may be maintained in New Jersey courts regardless of whether the transaction bears a reasonable relation to New Jersey, and the court shall apply the law agreed upon by the contract parties, if the agreement provides that:</p> <ul style="list-style-type: none"> - the rights and duties of the contract parties are governed in whole or in part by New Jersey law; and - contains the parties' agreement to submit to the jurisdiction of the New Jersey courts. [N.J.S.A. §§ 12A:1-301; 12A:4A-507, and 12A:5-116] <p>MORTGAGE FORECLOSURES</p> <p>New Jersey procedural law applies to mortgage foreclosure actions without regard to the parties' choice of law.</p>

¹ *Instructional Sys., Inc. v. Computer Curriculum Corp.*, 130 N.J. 324, 614 A.2d 124, 133 (1992). *Rowen Petroleum Properties, LLC v. Hollywood Tanning Systems, Inc.*, 899 F.Supp.2d 303 (2012).

² See also *Coface Collections N. Am. Inc. v. Newton*, 430 Fed. Appx. 162, 166–67 (3d Cir. 2011).

³ *Dopp v. Yari*, 927 F. Supp. 814 (D.N.J. 1996)

⁴ See: *Oxford Consumer Discount Co. of North Philadelphia v. Stefanelli*, 55 N.J. 489 262 A.2d 874 March 17, 1970, and *Turner vs. Aldens, Inc.*, 179 N.J. Super. 596433 A.2d 439.

⁵ *MacDonald v. CashCall, Inc.*, 2017 WL 1536427 (2017).

⁶ *Turner v. Aldens, Inc.*, 179 N.J. Super. 596, 601-604 (App. Div. 1981)

⁷ *Kaneff v. Delaware Title Loans, Inc.*, 587 F.3d 616, 621–22 (3d Cir. 2009)

⁸ *Stone St. Servs., Inc. v. Daniels*, No. 00–1904, 2000 WL 1909373, at *5 (E.D. Pa. Dec. 29, 2000).



Debt Collection License Requirements for Business Purpose Mortgage Loans

State	License Required if Collect 3 rd Party Debt?	License Required if Collect Own Debt?	Penalties for Violations
NEW JERSEY	<p>Yes¹ (Bond Only)</p> <p>A New Jersey collection agency must file a \$5,000 bond with the New Jersey Secretary of State.</p>	Statute silent	Up to \$500 Fine, 3 Months in Prison, or Both

¹ NEW JERSEY DEBT COLLECTION REQUIREMENTS

LICENSING REQUIREMENTS (NEW JERSEY COLLECTION AGENCIES STATUTE))

General Bond Requirement. No person shall conduct a **collection agency**, collection bureau or collection office in this state, or engage therein in the **business of collecting or receiving payment for others of any account**, bill or other indebtedness, or engage therein in the business of **soliciting the right to collect or receive payment for another of any account**, bill or other indebtedness, or **advertise for or solicit** in print the right to collect or receive payment for another of any account, bill or other indebtedness, unless such person, or the person for whom he may be acting as agent has on file with the secretary of state sufficient **bond** as hereinafter specified. [\[N.J.S.A. 45:18-1\]](#)

\$5,000 Bond Required. The bond shall be in the sum of five thousand dollars and shall provide that the person giving the same shall, upon written demand, pay and turn over to or for the person for whom any account, bill or other indebtedness is taken for collection the proceeds thereof in accordance with the terms of the agreement upon which such account, bill or other indebtedness was received for collection. The board shall be in such form and shall contain such further provisions and conditions as the secretary of state deems necessary or proper for the protection of the persons for whom the accounts, bills or other indebtedness are taken for collection, and shall be for the term of one year from its date and must be renewed annually. No action on the bond shall be begun after two years from the expiration thereof. [\[N.J.S.A. 45:18-2\]](#)

Bond Must be Approved by Attorney General and Filed With Secretary of State. The bond mentioned in sections 45:18-1 and 45:18-2 of this Title shall be executed by the person filing the same to the State of New Jersey for the use of any party aggrieved with sufficient surety, to be furnished by any company or corporation authorized to transact such business in this State. The said bond shall be examined and approved by the Attorney General and thereafter accepted and filed with the Secretary of State; provided, however, that cash may be accepted in lieu of sureties; and provided, further, that no such bond with individual sureties thereon may be approved, accepted or filed. [\[N.J.S.A. 45:18-3\]](#)

\$25 Bond Filing Fee. The Secretary of State shall keep a record of such bonds, with the names, places of residence and places of business of the principals and sureties, and the name of the officer before whom the bond was executed or acknowledged, and the record shall be open to public inspection. There shall be paid a filing fee of \$25.00 to the Secretary of State for the filing of each bond. [\[N.J.S.A. 45:18-4\]](#)

EXEMPTIONS

This chapter shall not apply to:

- an attorney at law duly authorized to practice in this state,
- a national bank, or
- any bank or trust company duly incorporated under the laws of this state. [\[N.J.S.A. 45:18-6\]](#)

DEFINITIONS

No definitions are contained in the Collection Agency Statute

PENALTIES

Up to \$500 Fine, 3 Months in Prison, or Both. Any person, member of a partnership or officer of an association or corporation who fails to comply with any of the provisions of this chapter shall be subject to a fine of not more than five hundred dollars or to imprisonment for not more than three months, or both. [\[N.J.S.A. 45:18-5\]](#)



NEW JERSEY
DBA Registration Requirements

DBA Requirements	Description
State Registration Agency	New Jersey Department of the Treasury
Form	Form C-150G: Registration of Alternate Name
Mandatory Registration?	Yes - Sole-proprietorships and partnerships register for a trade name at the county level, but other entities register with the division of revenue.
Filing Method	Mail, fax, or online .
Registration Fee	\$50
County Level Filing	Yes (If sole proprietorship or partnership) - Sole-proprietorships and partnerships register for a trade name at the county level. - Other entities register with the division of revenue.
Does Registration Prevent Others From Using Name?	No - Registration of an alternate name does not by itself confer ownership rights.
Additional Matters	- There are no statutory provisions on the use of alternate names by limited liability partnerships. - Publication of registration is not required in New Jersey.



NEW JERSEY DISCLOSURES REQUIRED FOR BUSINESS PURPOSE MORTGAGE LOANS

Name of Disclosure	Law	Timing	Lender Broker Both	Borrower Category	Property Type	Signature 'Required?	Discussion
NJ Commitment Letter Cx4479	N.J. Stat. Ann. § 46:10A-6(c)	At the time the commitment letter is delivered to the Borrower or within 10 days afterwards	Both	All	Real Property	No	<p>DISCLOSURE FORM:</p> <p>NEW JERSEY COMMITMENT LETTER N.J. Stat. Ann. § 46:10A-6(c)</p> <p>Lender: Lender License No.: Date:</p> <p>Borrower: Property Address</p> <p>Commitment Date: _____, 202__ Commitment Period: ____ months. Commitment Expiration Date: _____, 202__. Commitment Fee: \$ _____. Good Faith Effort to Close and Process Loan: Lender must make a good faith effort to process the application and fulfill the terms its commitment before this Commitment Agreement expires. Loan Terms: Loan Type: <input checked="" type="checkbox"/> Purchase money <input type="checkbox"/> Refinance <input type="checkbox"/> Rehabilitation <input type="checkbox"/> Ground-up construction Interest Rate: ____ % Points: ____ Loan Term to Maturity: ____ months Lien Position: _____. This is Not a Rate Lock Agreement: This Agreement is not a rate lock agreement. An agreement to lock in Borrower's rate and points may only be made pursuant to a separate writing signed by the Borrower and Lender. Lender's Attorney's Fees Paid by Borrower: Borrower will pay the Lender's attorney \$ _____ for services provided to the Lender in connection with that loan. The following is the basis for determining any charge that the borrower will be required to pay the lender's attorney for services provided to the Lender in connection with that loan: _____. Enforceable: Borrower may enforce this Agreement. By signing below, Borrower agrees to the terms of this Agreement, acknowledges that Borrower has received a copy of this Agreement, and intends to proceed with Borrower's loan application. [NAME OF BORROWER], [TYPE OF ENTITY] By: _____ (Date)</p>



NEW JERSEY DISCLOSURES REQUIRED FOR BUSINESS PURPOSE MORTGAGE LOANS

Name of Disclosure	Law	Timing	Lender Broker Both	Borrower Category	Property Type	Signature 'Required?	Discussion
							<p>STATUTORY REQUIREMENT:</p> <p>If a lender makes a written offer to a borrower to make a loan secured by real property located in New Jersey, the lender shall disclose in writing as part of the loan commitment, or within 10 days after the issuance of the commitment, to the borrower and before the acceptance of the commitment by the borrower:</p> <p>1. Basis For Determining Lender's Attorneys Fee to Be Paid by Borrower.</p> <p>The basis for the determination of any charge which the borrower will be required to pay the lender's attorney for services provided to the lender in connection with that loan; and</p> <p>2. Good Faith Estimate of Lender's Attorneys' Fees to be Paid by Borrower.</p> <p>A good faith estimate of any charge which the borrower will be expected to pay to the lender's attorney for the services specified in paragraph (1) of this subsection c.</p> <p>Increase in Good Faith Estimate of Lender's Attorneys' Fees.</p> <p>If the good faith estimate supplied to the borrower by the lender pursuant to paragraph (2) of this subsection c. will be materially exceeded, the lender shall notify the borrower of the increase at the time the lender becomes aware of the change and, to the extent feasible, at least prior to closing of the loan.</p> <p>The failure of the lender to advise the borrower of an increase in the estimate shall preclude the lender from seeking payment of the excess from the borrower.</p> <p>The failure to give a good faith estimate or to advise the borrower of additional charges shall not affect the validity or enforceability of the loan commitment, the loan, or the security for the loan.</p> <p>[N.J. Stat. Ann. § 46:10A-6(c)]</p>



NEW JERSEY DISCLOSURES REQUIRED FOR BUSINESS PURPOSE MORTGAGE LOANS

Name of Disclosure	Law	Timing	Lender Broker Both	Borrower Category	Property Type	Signature 'Required?	Discussion
NJ Right to Choose Own Attorney Cx4480	N.J. Stat. Ann. § 46:10A-6(a)	Prior to closing so that Borrower is not required to use Lender's attorney	Both	All	All	No	<p>DISCLOSURE REQUIREMENT:</p> <p>NEW JERSEY RIGHT TO OWN ATTORNEY DISCLOSURE N.J. Stat. Ann. § 46:10A-6(a)</p> <p>Lender: _____ Borrower: _____ Property Address: _____ Date: _____</p> <p>New Jersey law requires Lender to advise Borrower of the following prior to Borrower accepting a written offer:</p> <ol style="list-style-type: none">The lender's attorney only represents the interest of the lender;The interest of the lender and Borrower's interest may differ and could conflict; andBorrower should employ an attorney of Borrower's choice who is licensed to practice law in New Jersey and who will represent Borrower's interest <p>Borrower acknowledges receiving, reading, and understanding this Disclosure at prior to closing and within a sufficient amount of time to allow Borrower to select Borrower's own attorney.</p> <p><input type="checkbox"/> Borrower will select an attorney.</p> <p><input type="checkbox"/> Borrower does not wish to exercise Borrower's right to select an attorney.</p> <p>[NAME OF BORROWER], [TYPE OF ENTITY]</p> <p>By: _____ (Date)</p> <p>STATUTORY REQUIREMENT:</p> <p>No banking institution, other financial institution or other lender, which is licensed or authorize under the laws of this State or of the United States to engage in the business of making loans secured by mortgage, or which has an office in this State for that purpose, which institution or other lender is hereinafter referred to as a "lender," shall require a borrower to employ the services of the lender's counsel or an attorney specified by the lender with respect to such a loan secured by real property from the lender to the borrower if some or all of the collateral is located in this State. [N.J. Stat. Ann. § 46:10A-6(a)]</p>



NEW JERSEY DISCLOSURES REQUIRED FOR BUSINESS PURPOSE MORTGAGE LOANS

Name of Disclosure	Law	Timing	Lender Broker Both	Borrower Category	Property Type	Signature 'Required?	Discussion
Addendum to Loan Application Equal rights afforded to participants in a same sex marriage. Cx13441	<i>Garden State Equal v. Dow</i> , 434 N.J. Super. 163 (Law. Div. 2013)	Not specified	Both	Individuals	All	No	DISCLOSURE FORM: NEW JERSEY ADDENDUM TO LOAN APPLICATION <i>Garden State Equal v. Dow</i> , 434 N.J. Super. 163 (Law. Div. 2013) Lender: Date: Property Address: New Jersey law provides civil union partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed by spouses. Consequently, a non-borrowing civil union partner or spouse will have an ownership interest in the property of the borrowing civil union partner or spouse. This interest would prevent the lender from attaching the entire property securing the loan without the consent of both civil union partners or both spouses. Therefore, the lender will require that both civil union partners or both spouses sign the mortgage or other security instrument that secures the loan when such signature is required to protect the interest of the non-borrowing spouse or civil union partner. Borrower: Are you in a Registered Civil Union? <input type="checkbox"/> Yes <input type="checkbox"/> No Co-Borrower: Are you in a Civil Union? <input type="checkbox"/> Yes <input type="checkbox"/> No If response is "Yes" to any of the above questions, provide name of Civil Union Partner: _____ _____ Borrower Signature _____ Date _____ Co-Borrower Signature _____ Date _____ <i>[Garden State Equal v. Dow, 434 N.J. Super. 163 (Law. Div. 2013)]</i>
NJ Private Well Water Test Results Applies to purchase money loans Cx4441	N.J. Stat. Ann. § 58:12A-27	Closing	Both	All	All	Yes (Borrower/ Buyer and Seller)	STATUTORY REQUIREMENT: a. Every contract of sale of (1) real property the potable water supply for which is a private well located on the property, or (2) any other real property the potable water supply for which is a well that has less than 15 service connections or that does not regularly serve an average of at least 25 individuals daily at least 60 days out of the year, shall include a provision requiring, as a condition of the sale, the testing of that water supply for at least the parameters prescribed pursuant to sections 3 and 4 of this act. b. Closing of title on the sale of the real property shall not occur unless both the buyer and the seller have received and reviewed a copy of the water test results. At closing, the buyer and seller both shall certify in writing that they have received and reviewed the water test results. [N.J. Stat. Ann. § 58:12A-27]



State	Foreclosure Procedure	Typical Timelines
NJ	<p>JUDICIAL VS. NONJUDICIAL</p> <ul style="list-style-type: none">- Foreclosures in New Jersey are Judicial. <p>JUDICIAL FORECLOSURE</p> <ul style="list-style-type: none">- Foreclosing party must send notice of intention to foreclose, by registered or certified mail, to borrower 30 days before filing a foreclosure lawsuit. The foreclosing party then serves borrower summons and complaint.- A complaint must be filed in the Superior Court in the county where the mortgaged property is located.- A Lis Pendens must also be filed, which is effective for 5 years from the date of filing.¹- A Summons and Complaint must be served on each Mortgagor and any parties who have an interest in the Mortgaged Property.- The foreclosing party must mail the borrower a notice 14 days before applying for final judgment giving one final chance to cure the default. The Borrower may then get an additional 45 days to cure the default if the Borrower responds to the notice.- Upon the issuance of a judgment of foreclosure and writ of execution, the writ is transmitted to the sheriff in the county where the real property is situated and after publishing an advertisement, a public sale is conducted.- The successful bidder receives a sheriff's deed.- The Plaintiff's attorney must submit affidavits certifying that diligent inquiry has been made by the Plaintiff with respect to factual assertions made within the complaint.² <p><u>Notice of Foreclosure Mediation</u></p> <ul style="list-style-type: none">- A Notice of Foreclosure Mediation must be provided on 3 separate occasions for residential foreclosures:<ul style="list-style-type: none">a. Notice of Foreclosure Mediation is attached to the Summons and Complaint when served on the defendant homeowner.b. Notice of Foreclosure Mediation is served by the Administrative Office of the Courts within 60 days after service of the complaint .c. Notice of Foreclosure Mediation must be attached to the Notice of Motion for Final Judgment.³	<p>Judicial Foreclosure</p> <ul style="list-style-type: none">- 8 – 24 months depending on the county and whether the action is contested.
	<p><u>Foreclosure Bid Requirements</u></p> <ul style="list-style-type: none">- Minimum allowed bid is \$100.- The foreclosing lienholder may make a credit bid up to the amount due on the foreclosure judgment plus interest , costs and the sheriff's fee.- Non-foreclosure judgment holders must give a deposit of 10% to 20% of the sale price in cash or by certified check. The balance of the bid price must be paid within a specified time period or the bidder may forfeit its deposit and be responsible for the difference in the amount received from a later sale.- In most counties the successful bidder may assign the bid prior to the sheriff's preparation of the deed. This saves one level of transfer fees because the sheriff deeds the Mortgaged Property directly to the assignee. <p>REDEMPTION</p> <ul style="list-style-type: none">- There is a 10-day redemption period after a foreclosure sale (subject to the I.R.S. 120-day right of redemption with respect to I.R.S. tax liens).- If a bankruptcy filing occurs within the 10-day redemption period, the redemption period is extended for 60 days.⁴- If a judgment is entered for any balance of the debt following the foreclosure and sale of the Mortgaged Property, the person against whom the judgment is entered may redeem the Property by paying the full amount of the judgment, interest and costs and all reasonable expenses the Purchaser incurred within 6 months of the entry of judgment for the balance of the debt.⁵- The redemption price = the full amount of the mortgage debt plus the costs of the foreclosure action, fees and costs of sale, and interest from the date of the sale.⁶ <p>DEFICIENCIES</p> <ul style="list-style-type: none">- In a residential foreclosure a deficiency action may only be made on a note or bond following a foreclosure of the mortgage when foreclosure does not satisfy the obligations evidenced by the note or bond, and only against a person who was made a party to the foreclosure action.- A Notice of Intent to File a Deficiency Action must be filed with the County Clerk or Register.- Simultaneously with the prosecution of a foreclosure action, a creditor may commence and prosecute an action on the Note when the underlying debt is secured for a business or commercial purpose.⁷	

¹ N.J.S.A. 2A: 15-6 and 2A: 15-11.

² N.J. Court Rule 4:64-1(a)(2) and (3). N.J. Court Rule4:64-2(d). N.J. Court Rule 1:4-8(a).

³ N.J. Court Rule 4:4-4 N.J. Court Rule 4:64-1 *et seq.*

⁴ 11 U.S.C. 108(b).

⁵ N.J.S.A. 2A:50-4.

⁶ N.J.S.A. 2A:50-4.

⁷ *See* N.J.S.A. 2A:50-2.3.

Foreign Registration Required?	Discussion
<p>Yes If Corporation</p> <p>No If LLC</p>	<p>Corporations</p> <ul style="list-style-type: none"> ■ No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. A foreign corporation may be authorized to do in this State any business which may be done lawfully in this State by a domestic corporation, to the extent that it is authorized to do such business in the jurisdiction of its incorporation, but no other business. [N.J.S.A. 14A:13-3(1)] ■ No foreign corporation transacting business in this State without a certificate of authority shall maintain any action or proceeding in any court of this State, until such corporation shall have obtained a certificate of authority. [N.J.S.A. 14A:13-11(1)] ■ Without excluding other activities which may not constitute transacting business in this State, a foreign corporation shall not be considered to be transacting business in this State, for the purposes of this act, by reason of carrying on in this State any one or more of the following activities. [N.J.S.A. 14A:13-3(2)] <ol style="list-style-type: none"> 1. Maintaining, defending or otherwise participating in any action or proceeding, whether judicial, administrative, arbitral or otherwise, or effecting the settlement thereof or the settlement of claims or disputes; 2. Holding meetings of its directors or shareholders; 3. Maintaining bank accounts or borrowing money, with or without security, even if such borrowings are repeated and continuous transactions and even if such security has a situs in this State; 4. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities. <p>Limited Liability Companies</p> <ul style="list-style-type: none"> ■ Before doing business in this State, a foreign limited liability company shall obtain a certificate of authority to transact business in this State. [N.J.S.A. 42:2C-58] ■ A foreign limited liability company transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State. [N.J.S.A. 42:2C-65(a)] ■ Activities of a foreign limited liability company which do not constitute transacting business in this State within the meaning of this section include: [N.J.S.A. 42:2C-59(a)]

Foreign Registration Required?	Discussion
	<ol style="list-style-type: none"> 1. Maintaining, defending, or settling an action or proceeding; 2. Carrying on any activity concerning its internal affairs, including holding meetings of its members or managers; 3. Maintaining accounts in financial institutions; 4. Maintaining offices or agencies for the transfer, exchange, and registration of the company's own securities or maintaining trustees or depositories with respect to those securities; 5. Selling through independent contractors; 6. Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts; 7. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property; 8. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired; 9. Conducting an isolated transaction that is completed within 30 days and is not in the course of similar transactions; and 10. Transacting business in interstate commerce. <p>■ The ownership in New Jersey of income-producing real property or tangible personal property, other than property excluded under subsection a. of this section, constitutes transacting business in this State. [N.J.S.A. 42:2C-59(b)]</p>

NEW JERSEY

New Jersey Business Purpose Mortgage Loan Late Fee Restrictions

Late Fee Restrictions
No Restrictions ¹

¹ In New Jersey, late charges for business purpose mortgage loans are not specifically addressed in New Jersey mortgage law or regulations. The Commissioner of Banking’s office has taken the position that late charges are permissible.



Licensing Requirements for Business Purpose Mortgage Loans

NEW JERSEY

LO License Required? (LO Activities include taking an application and negotiating loan)	Broker License Required?	Mortgage Lender License?	License to Buy Loan Required? (Assumes MSRs are Not Purchased)	License to Sell Loan Required?	License to Buy & Hold MSRs? (Assumes Buyer Not Servicer)	License to Service?
No	Yes	No	No	No	No	No
<p>NEW JERSEY RESIDENTIAL MORTGAGE LENDING ACT</p> <p>A Mortgage Loan Originator License is not required under the New Jersey Residential Mortgage Lending Act to originate a mortgage loan.</p> <p>A license is required only if the mortgage loan is:</p> <ul style="list-style-type: none">- For personal, family or household use, and- Secured by a 1-to-4 family dwelling.¹	<p>NEW JERSEY PROFESSIONS AND OCCUPATIONS TITLE.</p> <p>REAL ESTATE BROKER LICENSE</p> <p>A Real Estate Broker License is required by statute if the mortgage loan is secured by any real estate.²</p> <p>The NJ Department of Banking and Insurance confirmed orally that a Real Estate Broker license is required to broker business purpose mortgage loans secured by real property in New Jersey.³</p> <p>Also, the Department's web site states that persons who broker mortgage loans secured by commercial real estate must be licensed as New Jersey real estate brokers.⁴</p> <p>No</p> <p>NEW JERSEY RESIDENTIAL MORTGAGE LENDING ACT</p> <p>A Residential Mortgage Broker License is NOT required under the New Jersey Residential Mortgage Lending Act to broker a mortgage loan.</p> <p>A license is required only if the mortgage loan is:</p> <ul style="list-style-type: none">- For personal, family or household	<p>NEW JERSEY RESIDENTIAL MORTGAGE LENDING ACT</p> <p>A Residential Mortgage Lender License under the New Jersey Residential Mortgage Lending Act is not required to make a mortgage loan.</p> <p>A license is required only if the mortgage loan is:</p> <ul style="list-style-type: none">- For personal, family or household use, and- Secured by a 1-to-4 family dwelling⁶				<p>(1) A Residential Mortgage Servicer License is not required under the Mortgage Servicers Licensing Act to service a mortgage loan unless the mortgage loan is:</p> <ul style="list-style-type: none">■ Made to a natural person,■ For personal, family or household use, and■ Secured by a 1-to-6 family dwelling.⁷



Licensing Requirements for Business Purpose Mortgage Loans
NEW JERSEY

LO License Required? (LO Activities include taking an application and negotiating loan)	Broker License Required?	Mortgage Lender License?	License to Buy Loan Required? (Assumes MSRs are Not Purchased)	License to Sell Loan Required?	License to Buy & Hold MSRs? (Assumes Buyer Not Servicer)	License to Service?
	use, and - Secured by a 1-to-4 family dwelling ⁵ No NEW JERSEY LOAN BROKER STATUTE. New Jersey has a separate loan broker statute that does not require licensing. This statute applies only to credit that is for personal, family or household use.					

¹ NEW JERSEY MORTGAGE LOAN ORIGINATOR

LICENSE REQUIREMENT

An individual must obtain a Mortgage Loan Originator license or transitional license under the Residential Mortgage Lending Act before acting as a mortgage loan originator. [N.J.S.A. 17:11C-54(c)(1)(a)]

Except as provided below, a licensed Mortgage Loan Originator must be (a) employed by only one business licensee and subject to the direct supervision and control of that licensee, or (b) employed by or under written agreement with only one exempt company and is subject to the direct supervision and control of that exempt person. [N.J.S.A. 17:11C-54(c)(1)(b)]

No individual may act as a loan processor or underwriter who is an independent contractor or employed by an independent contractor without first obtaining a mortgage loan originator license under this act, except as provided in subsection d. of this section

DEFINITIONS

Mortgage Loan Originator. “Mortgage loan originator” means any individual, not exempt under section 5 of this act and licensed pursuant to the provisions of this act, and any individual who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a **residential mortgage loan application**, or offers or negotiates terms of a **residential mortgage loan**. [N.J.S.A. 17:11C-53]

“Residential Mortgage Loan” means any loan primarily for personal, family, or household purposes that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(w) of the Truth in Lending Act, Pub.L. 90-321 (15 U.S.C. s. 1602(w)), or residential real estate upon which is constructed or intended to be constructed a dwelling. [N.J.S.A. 17:11C-53]

Residential Real Estate. “Residential real estate” means any real property located in this State, upon which is constructed or intended to be constructed a dwelling as defined in section 103(w) of the Truth in Lending Act. [N.J.S.A. 17:11C-53]

Dwelling. "Dwelling" means a residential structure or mobile home that contains 1-to-4-family housing units, or individual units of condominiums or cooperatives. (Section 103(v) of the Truth in Lending Act)

Borrower. “Borrower” means any individual applying for a loan from a licensee licensed under this act, whether or not the loan is granted, and any individual who has actually obtained a loan. [N.J.S.A. 17:11C-53]

² NEW JERSEY REAL ESTATE BROKER

LICENSE REQUIREMENT – REAL ESTATE BROKER

No person shall engage either directly or indirectly in the business of a real estate broker, broker-salesperson, or salesperson, temporarily or otherwise, and no person shall advertise or represent himself as being authorized to act as a real estate broker, broker-salesperson, or or referral agent, or to engage in any of the activities described in R.S.45:15-3, without being licensed so to do as hereinafter provided.” [N.J. Stat. Ann. § 45:15-1]

DEFINITIONS

“**Real Estate Broker**” means, in part, a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof . . . **negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others.** [N.J.S.A. 45:15-3]

LICENSE REQUIREMENT – REAL ESTATE SALESPERSON

No license as a broker shall be granted to a general partnership or corporation unless at least one of the partners or officers of said general partnership or corporation qualifies as and holds a license as a broker to transact business in the name and on behalf of said general partnership or corporation as its authorized broker and no such authorized broker shall act as a broker on his own individual account unless he is also licensed as a broker in his individual name; the license of said general partnership or corporation shall cease if at least one partner or officer does not hold a license as its authorized broker at all times. [N.J.S.A. 45:15-9(a)]

No license as a broker shall be granted to a limited partnership unless its general partner qualifies as and holds a license as a broker to transact business in the name of and on behalf of the limited partnership. In the event that a corporation is a general partner of a limited partnership, no license as a broker shall be granted to the limited partnership unless the corporation is licensed as a broker and one of the officers of the corporation qualifies as and holds a license as the corporation's authorized broker. [N.J.S.A. 45:15-9(a)]

DEFINITIONS

“**Real Estate Salesperson**” means, in part, as “ any natural person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed or contracted by and operates under the supervision of a licensed real estate broker . . [and who] **offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate. . .**” [N.J.S.A. 45:15-3]

³ Call with Tyrone Hodges on January 5, 2022 confirmed that the New Jersey Department of Banking and Insurance requires a person to obtain a Real Estate Broker License to take an application for, and negotiate the terms of, a business purpose mortgage loan secured by real property in New Jersey. Mr. Hodges may be reached at t.hodges@dobi.nj.gov

⁴“ See Question 17 of the New Jersey Department of Banking & Insurance Real Estate Frequently Asked Questions located at https://www.state.nj.us/dobi/division_rec/recfaqs.htm

- “Persons and firms who **broker loans secured by mortgages on commercial real estate** for compensation must be licensed as New Jersey real estate brokers. Individuals licensed as a real estate broker-salesperson or salesperson may engage in such activity, but only if it is done under the authority of and through the brokerage firm with which they are licensed. Like all other real estate brokerage activity, a broker-salesperson's or salesperson's compensation for such activity must be paid by the broker through whom they are licensed, rather than by a party to the commercial mortgage transaction.” Commercial real estate is not defined.

⁵ NEW JERSEY MORTGAGE BROKER

LICENSE REQUIREMENT

No person may act as a Residential Mortgage Broker unless it obtains a license under the Residential Mortgage Lending Act. A person licensed as a residential mortgage lender may act as a broker, if proper disclosure is made. The department will issue licenses which specify whether a business licensee is licensed as a residential mortgage lender or broker. [N.J.S.A. 17:11C-54(a)(1)]

DEFINITIONS

Residential Mortgage Broker. “Residential mortgage broker” means any person, not exempt under section 5 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a **residential mortgage loan application** for others, or negotiates, places or sells for others, or offers to take an application for, negotiate, place or sell, **residential mortgage loans** in the **primary market** for others. [N.J.S.A. 17:11C-53]

Residential Mortgage Loan. “Residential mortgage loan” means any loan primarily for personal, family, or household purposes that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(w) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(w)), or residential real estate upon which is constructed or intended to be constructed a dwelling. [N.J.S.A. 17:11C-53]

Residential Real Estate. “Residential real estate” means any real property located in this State, upon which is constructed or intended to be constructed a dwelling as defined in section 103(w) of the Truth in Lending Act. [N.J.S.A. 17:11C-53]

Dwelling. "Dwelling" means a residential structure or mobile home that contains 1-to-4-family housing units, or individual units of condominiums or cooperatives. (Section 103(v) of the Truth in Lending Act)

Primary Market. “Primary market” means the market wherein residential mortgage loans are originated between a residential mortgage lender and a borrower, whether or not through a residential mortgage broker or other conduit, and shall NOT include the sale or acquisition of a residential mortgage loan after the mortgage loan is closed. [N.J.S.A. 17:11C-53]

Borrower. “Borrower” means any individual applying for a loan from a licensee licensed under this act, whether or not the loan is granted, and any individual who has actually obtained a loan. [N.J.S.A. 17:11C-53]

⁶ NEW JERSEY MORTGAGE LENDER

LICENSE REQUIREMENT

No person may act as a Residential Mortgage Lender unless it obtains a license under the Residential Mortgage Lending Act. A person licensed as a residential mortgage lender may act as a broker, if proper disclosure is made. The department will issue licenses which specify whether a business licensee is licensed as a residential mortgage lender or broker. [N.J.S.A. 17:11C-54(a)(1)]

DEFINITIONS

Residential Mortgage Lender. “Residential mortgage lender” means any person, not exempt under section 5 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application, or offers, negotiates, originates, or acquires residential mortgage loans in the **primary market**. The term “residential mortgage lender” also means, with respect to a business licensee, a **correspondent mortgage lender**, unless the provisions of this act clearly indicate otherwise. [N.J.S.A. 17:11C-53]

Residential Mortgage Loan. “Residential mortgage loan” means any loan primarily for personal, family, or household purposes that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(w) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(w)), or residential real estate upon which is constructed or intended to be constructed a dwelling. [N.J.S.A. 17:11C-53]

Residential Real Estate. “Residential real estate” means any real property located in this State, upon which is constructed or intended to be constructed a dwelling as defined in section 103(w) of the Truth in Lending Act. [N.J.S.A. 17:11C-53]

Dwelling. "Dwelling" means a residential structure or mobile home that contains 1-to-4-family housing units, or individual units of condominiums or cooperatives. (Section 103(v) of the Truth in Lending Act)

Primary Market. “Primary market” means the market wherein residential mortgage loans are originated between a residential mortgage lender and a borrower, whether or not through a residential mortgage broker or other conduit, and shall NOT include the sale or acquisition of a residential mortgage loan after the mortgage loan is closed. [N.J.S.A. 17:11C-53]

Borrower. “Borrower” means any individual applying for a loan from a licensee licensed under this act, whether or not the loan is granted, and any individual who has actually obtained a loan. [N.J.S.A. 17:11C-53]

⁷ NEW JERSEY MORTGAGE SERVICER

LICENSE REQUIREMENT

No person shall act as a mortgage servicer, directly or indirectly, without first obtaining a license under section 4 of this act from the commissioner for its main office, which shall be designated by the mortgage servicer, and each branch office where business is conducted, unless the person is exempt from licensure pursuant to subsection b. of this section. [N.J.S.A. 17:16F–29(a)]

DEFINITIONS

Mortgage Servicer. “Mortgage servicer” means:

- any person, wherever located, who, **for the person or on behalf of the holder** of a residential mortgage loan,
 - receives payments of principal and interest in connection with a residential mortgage loan,
 - records the payments on the person's books and records and

-
- performs the other administrative functions as may be necessary to properly carry out the mortgage holder's obligations under the mortgage agreement including, when applicable, the receipt of funds from the mortgagor to be held in escrow for payment of real estate taxes and insurance premiums and the distribution of the funds to the taxing authority and insurance company; and
 - includes a person who makes payments to borrowers pursuant to the terms of a home equity conversion mortgage or reverse mortgage. [N.J.S.A. 17:16F–28]

Residential Mortgage Loan. “Residential mortgage loan” means a loan made to a natural person or persons to whom credit is offered or extended primarily for personal, family or household purposes which is secured by a mortgage constituting a lien upon real property located in this State on which there is erected or to be erected a structure containing one, two, three, four, five, or six dwelling units, a portion of which structure may be used for nonresidential purposes, in the making of which the mortgagee relies primarily upon the value of the mortgaged property. [N.J.S.A. 17:16F–28]

STATUTORY RESTRICTIONS

1. Loan That:

- Is made to a borrower that is not a corporation,
- Is Secured by a 1-to-6 Family Dwelling, and
- Has an Interest Rate Greater Than 6.0% Per Annum. [N.J.S.A. 46:10B-1]

Amount of Prepayment	Time Restriction	Dollar/Percentage Restriction
Prepayment in Full	Prohibited at any time*	Prohibited in any amount*
Partial Prepayment \leq 33 1/3 % of face amount of loan**	During any 6-month period	Prohibited in any amount
Partial Prepayment > 33 1/3% of face amount of loan **	During any 6-month period	Allowed in any amount for the portion of the partial prepayment that exceeds 33 1/3% of the face amount of loan

* LLCs and LLPs also have an argument that the prohibition against a prepayment penalty does not apply to loans made by these entities.

** Partial prepayments must be in increments of \$50.

Text of Statute.

Prepayment [in full] of a "Mortgage Loan" may be made by or on behalf of a mortgagor at any time without penalty. [N.J.S.A. 46:10B-2]

A mortgagor shall have the right, during any 6 month period beginning with the date of the mortgage loan, to pay, without charge or penalty, an additional sum of \$50.00, or multiples thereof, on account of the principal amount owing on a mortgage loan, provided that the additional sums so paid and the principal payments required to be made by the terms of such mortgage loan during such 6 month period do not together exceed in any such 6 month period 33 1/3 % of the face amount of such mortgage loan. The right to make additional payments as provided by this section shall not be cumulative, and to the extent that it is not exercised during any 6 month period, shall lapse. [N.J.S.A. 46:10B-3]

"Mortgage Loan" means a loan secured by an interest in real property consisting of land upon which is erected or to be erected, in whole or in part with the proceeds of such loan, a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes and upon which interest is taken or contracted for at a rate in excess of \$6.00 for the forbearance of \$100.00 for a year. [N.J.S.A. 46:10B-1(a)]

"Mortgagor" includes any person other than a corporation liable for the payment of a mortgage loan, and the owner of the real property which secures the payment of a mortgage loan. [N.J.S.A. 46:10B-1(b)]

"Prepayment" of a mortgage loan means the payment in full of the balance owing on a mortgage loan at any time prior to the time limited for the final payment of such loan in an instrument evidencing such loan. [N.J.S.A. 46:10B-1(c)]

Discussion

Any holder of a mortgage loan or agent acting on behalf of the holder of a mortgage loan who shall knowingly demand and receive prepayment fees, except as provided in this act, shall be liable to the mortgagor for the return of the whole amount of the prepayment fees so received, plus interest thereon from the date of such receipt at the rate of 6% per annum. [N.J.S.A. 46:10B-5]

Exemption From Prepayment Penalty Prohibition.

This act [Prepayment Law] shall not apply to loans secured by a mortgage on real property the prepayment of which is governed by any other statute of this State or of the United States, nor shall it apply to any loans, secured by mortgage on real property, made pursuant to any statute of this State or of the United States expressly authorizing interest charges in excess of 6% per annum. [N.J.S.A. § 46:10B-9] (Emphasis added)

The New Jersey Civil Usury Law expressly authorizes a lender to charge in excess of 6% per annum for loans secured by a 1-to-6 family dwelling.¹

However, the United States District Court, third circuit, for the District of New Jersey held that "[i]t is unlikely, to say the least, that the New Jersey Legislature would draft a statutory provision that was void from the moment it was written. In order to avoid such an anomalous result and to give meaning to all sections of the Law, the Court interprets the phrase "secured by a mortgage on real property" used in section § 10B-9 to encompass only those loans which are NOT "mortgage loans" as defined in § 10B-1. Under this interpretation, section 10B-9 applies to loans secured by an interest in real property which does NOT contain a structure containing between one and six units. *Shinn v. Encore Mortg. Services, Inc.*, 96 F.Supp.2d 419, at 421 (May 8, 2000)

A corporation, LLC and LLP may NOT assert civil usury as a defense (may charge up to the 50% criminal usury limit). [N.J.S.A. 31:1-6]

CASE LAW

The prepayment penalty restrictions in N.J.S.A. 46:10B-1 and 2 do not apply to an individual guarantor of a commercial loan made to a corporation. [*Lopresti v. Wells Fargo Bank, N.A.*, 88 A.3d 944, N.J. Super. 311 (2014)]

- A borrower does not have the right, under New Jersey law, to prepay a commercial loan, unless the documents afford that right. Because a lender has the right to refuse to allow a borrower to prepay a loan and to rely on collecting the interest contracted for, the lender is entitled to charge a penalty to the borrower for the privilege of prepayment.² New Jersey law recognizes prepayment fees as valid and enforceable if the loan document expressly provides for the prepayment fee.³
- Prepayment premiums are designed to protect a lender against potential losses it may incur if a loan is paid earlier than contracted for. "The primary purpose of these clauses is to protect the mortgagee against the loss of a favorable interest yield.... Prepayment may also result in further losses, such as the administrative and legal costs of making a new loan ... and in some cases additional tax liability."⁴
- Essentially, prepayment fees are nothing more than liquidated damages clauses. The lender has committed itself to leave its funds outstanding for a fixed period at a given interest yield, and to suffer the market rate risk inherent in this position. If rates rise after the loan has been made, the value of the loan to the lender will fall accordingly. This risk is inherent in the role of a fixed-interest lender, and it is only partially mitigated by the inclusion of a due-on-sale clause. In return for absorbing the risk of rising rates, the lender wants "call protection": some assurance that if market rates fall, the borrower will not merely prepay the loan and refinance at a lower rate. From the lender's viewpoint, a prepayment is a derogation of the right to earn the agreed yield for the full term even if extrinsic rates drop. In other words, the borrower breaches its obligation to keep the loan in effect for its full term.⁵
- The Superior Court of New Jersey, Appellate Division, held that a lender who accelerates loan may nevertheless collect a prepayment premium if the terms of the prepayment premium in the promissory note clearly and unambiguously allow the prepayment premium upon acceleration and there is no evidence of unreasonableness or sharp practices.⁶

Discussion

- A prepayment premium cannot be charged if the prepayment is the result of the property having been taken by eminent domain.⁷ A prepayment premium cannot be charged if the prepayment results from destruction of the property by casualty such as fire and insurance proceeds are used to pay the loan.⁸

SUMMARY OF PREPAYMENT PENALTIES FOR ALL NEW JERSEY MORTGAGE LOANS

Property Type	Type of Prepayment	Type of Borrower	Interest Rate	Time Restrictions	Dollar/Percentage Restrictions
N/A	N/A	Corporation ¹	N/A	Allowed at any time	Allowed in any amount
1-to-6 family dwelling	N/A	Any other than corporation	6% or less	Allowed at any time	Allowed in any amount
1-to-6 family dwelling	Prepayment in full	Any other than corporation	More than 6%	Prohibited at any time	Prohibited in any amount
1-to-6 family dwelling	Partial Prepayment \leq 33 1/3 % of face amount of loan**	Any other than a corporation	More than 6%	During any 6-month period	Prohibited in any amount
1-to-6 family dwelling	Partial Prepayment > 33 1/3% of face amount of loan	Any other than a corporation	More than 6%	During any 6-month period	Allowed in any amount for the portion of the partial prepayment that exceeds 33 1/3% of the face amount of loan
7 + dwelling units	N/A	N/A	N/A	Allowed at any time	Allowed in any amount
Commercial Property	N/A	N/A	N/A	Allowed at any time	Allowed in any amount

¹ The maximum rate of interest to be charged on loans secured by a first lien on real property on which there is erected or to be erected a structure containing 1-to-6 dwelling units, a portion of which structure may be used for nonresidential purposes, shall be at least six percent per annum but not more than the Monthly Index of Long Term United States Government Bond Yields, compiled by the Board of Governors of the Federal Reserve

¹ An LLC and an LLP has an argument that the LLC or LLP has no restriction on prepayment penalties.

System and as published by said Board of Governors in the monthly Federal Reserve Bulletin, for the second preceding calendar month plus an additional 3.5 percent per annum rounded off to the nearest quarter of one percent per annum. Such interest shall be calculated in accordance with N.J.S.A. 31:1–1, as amended. [N.J.A.C. 3:1–1.1(b)(1)]

² *Westmark Commercial Mortg. Fund IV v. Teenform Associates, L.P.*, 362 N.J. Super. 336, 827 A.2d 1154, Superior Court of New Jersey, Appellate Division (July 22, 2003).

³ *Mony Life Ins. Co. v. Paramus Parkway Bldg, Ltd.*, 364 N.J. Super. 92, 105 (N.J. Super. Ct. App. Div. 2003).

⁴ *Id.*, citing *United States v. Harris*, 246 F.3d 566, 573, (6th Cir.2001).

⁵ *Id.* citing *Whitman, Mortgage Prepayment Clause: An Economic and Legal Analysis*, 40 *U.C.L.A. L.Rev.* 851, 871–72 (1993).]

⁶ *Id.* In so deciding, the court stated that “we can perceive no reason why the debtor should be relieved of the terms of the contract freely entered into. The terms were clear and unambiguous, the parties clearly experienced and sophisticated in loan transactions of this type. The certainty of the remedy provided by the clause undoubtedly affected the pricing of the loan. If we were to deem the clause unenforceable, we would be providing defendants with a better contract than they were able to negotiate for themselves; we decline to do so.”

⁷ *Id.*

⁸ *Id.*

New Jersey Referral Fee Restrictions

Type of Referring Party	Fee Restrictions
Unlicensed Person	<ul style="list-style-type: none"> - Referring Party's activities must be limited to arranging an introduction between the Borrower and Lender. - Referring Party cannot be involved in any role in the negotiation of the loan, no matter how slight. - Otherwise, Referring Party must first obtain a Real Estate Broker or Salesperson License under the New Jersey Real Estate License Act and the referral fee will be prohibited.¹
Licensed Real Estate Broker or Salesperson	<ul style="list-style-type: none"> - A real estate licensee may not solicit or accept a fee merely for referring a customer or client to a lender or mortgage broker.²

¹ NEW JERSEY REAL ESTATE BROKER AND SALESPERSON LICENSE REQUIREMENTSLicense Requirements

No person shall engage either directly or indirectly in the business of a real estate broker, broker-salesperson, or salesperson, temporarily or otherwise, and no person shall advertise or represent himself as being authorized to act as a real estate broker, broker-salesperson, or salesperson, or to engage in any of the activities described in R.S.45:15-3, without being licensed so to do as hereinafter provided. [N.J.S.A. 45:15-1]

Definitions

"Real Estate Broker" means a person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, . . . negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others. [N.J.S.A. 45:15-3]

"Real Estate Salesperson" means any natural person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed or contracted by and operates under the supervision of a licensed real estate broker and offers or attempts to **negotiate a loan secured or to be secured by a mortgage** or other encumbrance upon or transfer of real estate. [N.J.S.A. 45:15-3]

The New Jersey Real Estate Commission has interpreted "offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage" to allow real estate licensees to broker commercial mortgages.

Furthermore, a "Referral Agent" who works for a "Real Estate Referral Company" is prohibited from negotiating, offering, attempting to, or agreeing to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of any real estate. [N.J.A.C. 11:5-6.10(d)(9)]

² NEW JERSEY PROHIBITION AGAINST REAL ESTATE BROKER OR SALESPERSON ACCEPTING A REFERRAL FEE

Any real estate licensee who solicits or accepts any fee, kickback, compensation or thing of value merely for referring a customer or client to a lender, mortgage broker, or other provider of related services, shall be subject to sanction by the Commission for engaging in conduct demonstrating unworthiness, bad faith and dishonesty. Any compensation received by a real estate licensee, pursuant to N.J.A.C. 11:5-7.1(e), for services in related transactions must be for services actually performed by the licensee beyond mere referral. Compliance with the anti-kickback provisions of the Federal Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2607, the regulations thereunder, or any opinion regarding RESPA issued by the Federal Department of Housing and Urban Development will be considered to be in compliance with this subsection.

[N.J. Admin. Code § 11:5-7.2(a)]

Any compensation paid by a real estate broker to a referral agent shall be limited to compensation for referring prospective consumers of real estate brokerage services to the broker. **Real estate brokers are prohibited from offering incentives to the referral agents, salespersons or broker-salespersons licensed under them for merely referring clients or customers to a particular lender, mortgage broker or other provider of related services.** Any compensation paid by a real estate broker to a salesperson or broker-salesperson for services in transactions related to a sale or rental transaction must be for services actually performed by the salesperson beyond mere referral to a mortgage lender, mortgage broker or other provider of related services. For example, a real estate broker who provides in-house mortgage services may compensate a salesperson licensed with that broker who performs actual mortgage services. However, the broker is prohibited from offering bonuses or any extra consideration of any kind to licensees of his or her firm for merely referring buyers to the in-house mortgage service or any particular lender or mortgage broker. For example, a real estate broker shall not offer or pay a salesperson a higher commission rate on a real estate transaction because the mortgage is placed through the in-house mortgage service or affiliated lender. A broker shall not award prizes or bonuses to salespersons based upon the number of customer referrals made to the in-house mortgage service or to a particular lender.

[N.J. Admin. Code § 11:5-7.2(b)]



Table Funding of New Jersey Business Purpose Mortgage Loans: Permissibility and Restrictions

State	Is Table Funding Allowed in the State?	Does Broker Need New License to Table Fund?	Discussion
NEW JERSEY	Yes	No	<p>NEW JERSEY RESIDENTIAL MORTGAGE LENDING ACT ("MORTGAGE LICENSING LAW")</p> <ul style="list-style-type: none">- The New Jersey Mortgage Licensing Law does not apply to a mortgage lender or mortgage broker making any kind of business purpose mortgage loan. <p>NEW JERSEY PROFESSIONS AND OCCUPATIONS TITLE ("REAL ESTATE BROKER LICENSING LAW")</p> <ul style="list-style-type: none">- A person must obtain a real estate broker license under the Real Estate Broker Licensing Law to negotiate a loan secured by any real estate- The Real Estate Broker Law is silent as to table funding- No mortgage lending license is required to make a business purpose mortgage loan, because the Real Estate Licensing Law does not regulate mortgage lending, and the Mortgage Licensing Law exempts business purpose mortgage loans.- No new license is required for a real estate broker to table fund do not apply to business purpose mortgage loans

STATUTES LIMITING INTEREST RATES

(1) Criminal Usury Limit (No Exemptions are Available) [N.J.S.A. § 2C:21-19]

Type of Borrower	Loan Purpose
Individual	30% per annum
Corporation, LLC, or LLP	50% per annum

Statutory Text.

A person is guilty of criminal usury when not being authorized or permitted by law to do so, he:

- Loans or agrees to loan, directly or indirectly, any money or other property at a rate exceeding the maximum rate permitted by law; or
- Takes, agrees to take, or receives any money or other property as interest on the loan or on the forbearance of any money or other interest in excess of the maximum rate permitted by law.

For the purposes of this section and notwithstanding any law of this State which permits as a maximum interest rate a rate or rates agreed to by the parties of the transaction, any loan or forbearance with an interest rate which exceeds 30% per annum shall not be a rate authorized or permitted by law, except if the loan or forbearance is made to a corporation, limited liability company or limited liability partnership any rate not in excess of 50% per annum shall be a rate authorized or permitted by law.

(2) Interest and Usury: General Civil Usury Rate Unless a Rate Below Applies. [N.J.S.A. § 31:1-1(a) and N.J.A.C. § 3:1-1.1(a)]

Type of Loan	General Civil Usury Rate
Business Purpose Mortgage	16% per annum (Unless a rate shown below applies)

Statutory Text.

Except as herein and otherwise provided by law, no person shall, upon contract, take, directly or indirectly for loan of any money, wares, merchandise, goods and chattels, above the value of \$6.00 for the forbearance of \$100.00 for a year, or when there is a written contract specifying a rate of interest, no person shall take above the value of \$16.00 for the forbearance of \$100.00 for a year. [N.J.S.A. § 31:1-1(a)]

Discussion

Regulatory Text.

The maximum rate of interest to be charged, or taken or received upon a loan of any money, wares, merchandise, goods and chattels shall be six percent per annum, or shall be 16 percent per annum when there is a written contract specifying a rate of interest, except as herein or otherwise provided by law. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended. [N.J.A.C. § 3:1-1.1(a)]

(3) Usury Limit: Loan that is made to:

- A Corporation,
- An LLC or
- An LLP [N.J.S.A. 31:1-6]

Type of Loan	General Civil Usury Rate
Corporation, LLC, or LLP	50% per annum

Statutory Text.

No corporation, limited liability company or limited liability partnership shall plead or set up the defense of usury to any action brought against it to recover damages or enforce a remedy on any obligation executed by said corporation, limited liability company or limited liability partnership. [N.J.S.A. 31:1-6]

May charge up to the criminal usury limit.

(4) Interest and Usury: A Loan that is:

- Secured by a first lien on a 1-to-6 family dwelling. [N.J.A.C. § 3:1-1.1(b)]

Property Type	Lien	Usury Restrictions
1-to-6 family	First	Monthly Index of Federal Reserve's Long Term U.S. Gov. Bond Yields for the 2nd preceding calendar month plus an + 3.5 % rounded to nearest 0.25% But at least 6% per annum

Statutory Text.

Notwithstanding the limitations of subsection (a) of this section, the Commissioner of Banking may by regulations adopted, amended and rescinded from time to time, provide that the value which may be taken for any loan secured by a first lien on real property as described in paragraph (1) of this subsection shall be a value more than \$6.00 but not more than the Monthly Index of Long Term United States Government Bond Yields, compiled by the Board of Governors of the Federal Reserve System and as published by said Board of Governors in the monthly Federal Reserve Bulletin

Discussion

, for the second preceding calendar month plus an additional 8% per annum rounded off to the nearest quarter of 1% per annum. Within the limits as provided by this subsection, and if he finds it to be in the best interests of the citizens and economy of this State, the commissioner may establish:

1. A rate of interest secured by real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes. The commissioner may establish different rates for such loans based upon the ratio of the loan to the appraised value of the real property. With respect to loans covered by this subsection, the commissioner may by regulation provide that any mortgage commitment outstanding as of the date of an increase in the rate set by the commissioner shall be extended from that date for a period not to exceed 60 days, provided that such extension shall not apply to any commitment which expires beyond the extension period so established.
2. If for any reason no such index of long term bonds is compiled or published for any 1 or more months, the commissioner shall determine and publish such an index based upon available statistics.
[N.J.A.C. § 3:1-1.1(b)]

Regulatory Text.

The maximum rate of interest to be charged on loans secured by a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, shall be at least six percent per annum but not more than the Monthly Index of Long Term United States Government Bond Yields, compiled by the Board of Governors of the Federal Reserve System and as published by said Board of Governors in the monthly Federal Reserve Bulletin, for the second preceding calendar month plus an additional 3.5 percent per annum rounded off to the nearest quarter of one percent per annum. Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended. [N.J.A.C. 3:1-1.1]

(5) Interest and Usury: A Loan that is:

- **Greater than \$50,000, and**
- **NOT secured by a first lien on a 1-to-6 family dwelling. [N.J.S.A. 31:1-1(e) and N.J.A.C. 3:1-1.1(c)(1)]**

Type of Borrower	Property Type	Lien	Loan Amount	Usury Restrictions
Corporation, LLC, or LLP	1-to-6 Family	Junior	> \$50,000	50% per annum
Individual	1-to-6 Family	Junior	> \$50,000	30% per annum
Corporation, LLC, or LLP	7 + dwelling units	N/A	> \$50,000	50% per annum
Individual	7 + dwelling units	N/A	> \$50,000	30% per annum
Corporation, LLC, or LLP	Commercial Property	N/A	> \$50,000	50% per annum
Individual	Commercial Property	N/A	> \$50,000	30% per annum

Discussion

Statutory Text.

Notwithstanding the provisions of § 31:1-1(a) or (b), contracts for the following classes or types of loans may provide for any rate of interest which the parties agree upon, and interest at any such rate may be taken, notwithstanding that it exceeds a rate limited by paragraph (a) or (b) of this section:

1. Loans in the amount of \$50,000.00 or more, except loans where the security given is a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes. The rate of interest stated in such contract upon the origination of such loans may be taken notwithstanding that payments thereon reduce the amount outstanding to less than \$50,000.00. [N.J.S.A. 31:1-1(e)]

Regulatory Text.

Contracts for the following classes or types of loans may lawfully provide for any rate of interest which the parties agree upon, and interest at any such rate may lawfully be taken:

1. Loans in the amounts of \$50,000 or more, except loans where the security given is a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes. The rate of interest stated in such contract upon the origination of such loans may be taken notwithstanding that payments thereon reduce the amount outstanding to less than \$50,000. [N.J.A.C. 3:1-1.1(c)(1)]

However, subject to criminal usury limits

(6) Interest and Usury : Alternative Rate for a Loan that exceeds other rates allowed by § 31:1-1 and that:

- **Is made for a business or agricultural purpose, and**
- **Is \$1,000 or more: [N.J.S.A. 31:1-1(g)]**

Loan Purpose	Loan Amount	Alternative Usury Restriction if Lender Exceeds Other Rates Allowed by § 31:1-1
Business or Agricultural Purpose	> \$1,000	5% + discount rate on 90-day commercial paper at Federal Reserve Bank of NY on loan date

Statutory Text.

Discussion

Notwithstanding any other provisions of N.J.S.A. § 31:1-1, if the applicable rate prescribed in this § 31:1-1(e) exceeds the rate a person would be permitted to charge in the absence of this § 31:1-1(e), the rate of interest which may be taken on a loan for a business or agricultural purpose in the amount of \$1,000.00 or more may not exceed 5% in excess of the discount rate, including any surcharge thereon, or any 90-day commercial paper in effect at the Federal Reserve Bank of New York on the day when such loan is made. [N.J.S.A. 31:1-1(g)]

(7) Regulations for Interest and Usury: Alternative Rate for a Loan:

- **When the Discount Rate on NY Federal Reserve's 90-Day Commercial Paper exceeds 7%, and**
- **That is NOT secured by a first lien on a 1-to-6 family dwelling. [N.J.A.C. 3:1-1.2]**

Property Type	Lien	Discount Rate on 90-Day Commercial Paper at NY Fed. Res. Bk. On Loan > 7%?	Alternative Usury Restrictions if Interest Rate Exceeds Other Rates Allowed by § 31:1-1 or § 31:1-1.1
1-to-6 family	Junior	Yes	1% + discount rate on 90-day commercial paper at NY Fed. Res. Bank on loan date
7 + dwelling units	N/A	Yes	1% + discount rate on 90-day commercial paper at NY Fed. Res. Bank on loan date
Commercial Property	N/A	Yes	1% + discount rate on 90-day commercial paper at NY Fed. Res. Bank on loan date

Regulatory Text.

Notwithstanding any provisions of N.J.S.A. § 31:1-1 or N.J.A.C. § 3:1-1.1 and except as otherwise provided by law, any person may charge a rate of interest on any loan which rate does not exceed one percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank of New York on the date of the loan, at any time when that discount rate exceeds seven percent. Nothing in this subsection shall authorize any person to make any loan which is not authorized by law, nor shall anything in this subsection apply to loans secured by a first lien on real estate on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may also be used for non-residential purposes. Additionally, nothing in this subsection (a) shall be applicable to the exceptions contained in N.J.S.A. 31:1-1(e) and N.J.A.C. 3:1-1.1(c). [N.J.A.C. 3:1-1.2]

COMPOUND INTEREST

A lender may compound interest for any commercial loan as long as the written loan agreement contains a express contractual provision for compound interest.¹

DEFAULT INTEREST

The New Jersey Supreme Court held that default interest and late charges are reasonable liquidated damages for a default by a borrower on a commercial mortgage.²

PENALTIES FOR USURY VIOLATIONS

Civil Usury: If a higher rate of interest is reserved or taken than allowed by the law, the lender must forfeit interest. Only the principal may be recovered, and no more. If any premium or illegal interest is paid to the lender, the sums paid shall be deducted from the amount that may be due, and recovery had for the balance only. [N.J.S.A. 31:1-3]



NEW JERSEY USURY RESTRICTIONS

Discussion

Criminal Usury: Criminal usury is a crime of the second degree if the rate of interest on any loan made to any person exceeds 50% per annum or the equivalent rate for a longer or shorter period. It is a crime of the third degree if the interest rate on any loan made to any person except a corporation, limited liability company or limited liability partnership does not exceed 50% per annum but the amount of the loan or forbearance exceeds \$1,000.00. Otherwise, making a loan to any person in violation of subsections a.(1) and a.(2) of this section is a disorderly persons offense. [N.J.S.A. 2C:21-19(a)]³

EXECUTIVE SUMMARY OF ALL NEW JERSEY USURY RESTRICTIONS

Type of Borrower	Property Type	Lien	Loan Amount	Usury Restrictions*
Corporation, LLC, or LLP	N/A	N/A	N/A	50% per annum
Individual	1-to-6 family dwelling	First	N/A	Monthly Index of Federal Reserve's Long Term U.S. Gov. Bond Yields for the 2nd preceding calendar month plus an + 3.5 % rounded to nearest 0.25% But at least 6% per annum
Individual	1-to-6 family dwelling	Junior	\$50,000 or more	30% per annum
Individual	1-to-6 family dwelling	Junior	Less than \$50,000	16% per annum
Individual	7 + dwelling units	N/A	\$50,000 or more	30% per annum
Individual	7 + dwelling units	N/A	Less than \$50,000	16% per annum
Individual	Commercial Property	N/A	50,000 or more	30% per annum
Individual	Commercial Property	N/A	Less than \$50,000	16% per annum

* If a loan's interest rate exceeds a rate described above, the lender may charge an alternative rate equal to 5% + discount rate on 90-day commercial paper at Federal Reserve Bank of NY on the loan date (subject to criminal usury limits).

¹ *Shadow Lawn Saving and Lan Assoc.*, 190 N.J. Super. At 317; *Abramowitz v Washington Cemetary Assoc.*, 139 N.J. Eq.293 (N.J. Ch. T. 1947).

² *Metlife Capital Financial Corporation v. Washington Avenue Associates LP*, No. A-34, Sept. Term 1998 (NJ Sup. Ct., June 30, 1999)

³ Any person who knowingly engages in the business of making loans or forbearances in violation of subsection a. of this section is guilty of a crime of the second degree and, notwithstanding the provisions of N.J.S. 2C:43-3, shall be subject to a fine of not more than \$250,000.00 and any other appropriate disposition authorized by N.J.S. 2C:43-2b. [N.J.S.A. 2C:21-19(b)]