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## Protecting Mortgage Borrowers from Coerced Representation by a Lender's Attorney: New Jersey's Attempt May Fall Short Once again

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# Lead Articles

## Protecting Mortgage Borrowers from Coerced Representation by a Lender's Attorney: New Jersey's Attempt May Fall Short Once Again

by Cornelius R. O'Brien

### I. INTRODUCTION

On January 29, 1993, the New Jersey Legislature took a significant step toward protecting mortgage borrowers from being coerced into paying a mortgage lender's legal fees when it amended the "Closed Shop Statute."<sup>1</sup> This amendment, also known as the Attorney Disclosure and Fee Limitation Statute, took effect upon passage. Previously, borrowers in New Jersey were often forced not only to rely upon the legal advice of attorneys hired by lenders when finalizing loan transactions, but also to reimburse lenders for attorneys' fees charged for reviewing documents related to the transaction.

The 1993 amendment to the Closed Shop Statute was designed in part to protect a borrower's right to be represented by legal counsel of the borrower's choice in mortgage loan transactions. The amendment also placed explicit restrictions on a mortgage lender's ability to seek reimbursement from a borrower for legal fees incurred in mortgage transactions secured by New Jersey real estate.<sup>2</sup> By enacting the amendment after nearly two decades of legislative debate, the New Jersey Legislature intended to curb the practice of requiring borrowers to use counsel selected by the lender and the payment of unnecessary or unreasonable legal fees in connection with mortgage loan transactions. However, whether the legislature's intent will be carried out is a question still left unanswered.

### II. HISTORY OF THE CLOSED SHOP STATUTE

The Closed Shop Statute was first enacted in 1975. The statute originally barred mortgage lenders from

requiring borrowers to use attorneys chosen by the lenders in mortgage transactions involving loans on one to four family residences, which would be occupied by the borrower or members of her immediate family.<sup>3</sup>

Prior to passage of the Closed Shop Statute, the approved-attorney requirement was commonly relied upon by most residential mortgage lenders.<sup>4</sup> The attorneys involved in such transactions were referred to as "approved attorneys," and borrowers were frequently permitted only to close the mortgage loan transaction with the help of these lender-approved attorneys.

The use of approved attorneys had the ultimate effect of providing attorneys who specialized in mortgage closings with a steady stream of business as well as providing lenders with a reliable referral source for new mortgage business. While this practice was lucrative for lenders and their approved attorneys, it often cost borrowers unnecessary fees for the re-

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view and processing of loan documents and deprived borrowers of independent legal representation.

The approved-attorney arrangement in New Jersey invariably encouraged lenders and their approved attorneys to refer business to each other.<sup>5</sup> It also raised profound questions among members of the bar regarding a possible conflict of interest between the attorneys' loyalties to the borrower and the lender. In many cases, it was unclear to the borrower whether the attorney represented the lender, the borrower, or both.<sup>6</sup>

Although the practice of approved attorneys holds enormous potential for abuse, its original purpose was sound. Initially, the process of using approved attorneys was designed to ensure that a mortgage loan would be properly closed and the proceeds correctly disbursed according to the lender's closing instructions. The use of an attorney who knew the lender's requirements was considered the most convenient way to achieve this practical goal.

The practice of using approved attorneys has never quite reached that high mark, however. Despite the approved-attorney scheme, many lenders frequently face situations in which closing attorneys or title agents do not fully comply with the lender's closing instructions. For instance, a national residential mortgage lender confided to the author of this article that her company has recently experienced unauthorized deviations from the lender's instructions in the majority of closings by unapproved attorneys or title agents involved in residential mortgage loan transactions. These deviations usually relate to the failure to properly comply with the consumer disclosure requirements of the federal Real Estate Settlement Procedures Act<sup>7</sup> and the implementing regulations contained in federal regulation X.<sup>8</sup>

Although the original Closed Shop Statute required residential mortgage lenders to give borrowers unfettered discretion in selecting an attorney to represent the borrower's interest, the

***Despite the approved-attorney scheme, many lenders frequently face situations in which closing attorneys or title agents do not fully comply with the lender's closing instructions.***

statute also provided that it:

shall not preclude a lender from requiring that documents prepared in connection with a mortgage loan transaction prepared by a borrower's attorney to be submitted to the lender's attorney for examination and review and to require the borrower to pay a reasonable fee ... for such service by the lender's attorney ... [and that] the lender shall provide the borrower, at the time a loan commitment is made, a written statement covering the basis of the review fee.<sup>9</sup>

This linguistic ambiguity apparently gave rise to the current approved-attorney schemes and revolving fee schedules. After enactment of the Closed Shop Statute in 1975, a common practice of circumventing the statute's intent evolved. Under this informal practice, lenders and their attorneys began requiring borrowers to pay review fees to lenders' attorneys for the examination of papers already prepared by the borrowers' attorneys.<sup>10</sup>

This circular fee schedule eventually led to a comprehensive inquiry by the New Jersey State Bar Association regarding the ethical practices of mortgage lenders and the use of approved attorneys in mortgage transactions. As a result, the New Jersey Supreme Court Advisory Committee on Professional Ethics issued Opinion 398 in 1978, in which the Committee stated that:

Our Legislature has determined that where a loan is to be se-

cured by a mortgage on a one to four family residence to be resided in by the individual borrower or a member of his family, the borrower shall have the right to be represented in the mortgage transaction by an attorney-at-law of New Jersey of his own selection. While this Committee has no jurisdiction over a lending institution which may choose to disregard the provisions of the law, it is our opinion that any attorney who aids or participates in a course of conduct which is designed to subvert the provisions of the "Closed Shop" statute to the end that borrowers are deprived of their right to independent counsel in residential mortgage transactions of the type above referred to is guilty of unethical conduct.<sup>11</sup>

Subsequently, the Closed Shop Statute was amended to include the Advisory Committee's recommendations, which expanded the scope of the statute's coverage to include not only residential mortgage loans on one to four family dwellings, but on all mortgage loans secured by real estate, including commercial and business loans.<sup>12</sup> The 1978 amendment also attempted to define more narrowly the legal fees that a lender could charge a borrower when the lender's attorney reviewed loan documents already prepared by the borrower's attorney.<sup>13</sup>

***This circular fee schedule eventually led to a comprehensive inquiry by the New Jersey State Bar Association regarding the ethical practices of mortgage lenders and the use of approved attorneys in mortgage transactions.***

The amendment provided that the lender could:

require the borrower to pay a reasonable fee as defined by the Disciplinary Rules of the Code of Professional Responsibility adopted by the New Jersey Supreme Court for ... [document review] by the lender's attorney, provided, however, that the lender shall provide the borrower, at the time a loan commitment is made, a written statement covering the basis of this review fee.<sup>14</sup>

Despite the issuance of Opinion 398 and the subsequent 1978 amendment to the Closed Shop Statute, many lenders and their attorneys continued to do business as usual. Lenders continued to select attorneys to represent them in mortgage loan closings. By contrast, borrowers entering these transactions frequently were not represented by independent counsel. Although borrowers had not selected the attorneys involved in these transactions or even been given a chance to veto the attorneys' participation, borrowers were still often required to reimburse lenders for legal expenses incurred for review of documents by the lenders' attorneys.<sup>15</sup>

This continued practice ultimately led to a second ethics inquiry, and in 1987, the New Jersey Supreme Court Advisory Committee on Professional Ethics issued Opinion 608.<sup>16</sup>

### III. OPINION 608

Although the debate over the use of lender-approved attorneys had raged for nearly ten years, the catalyst which eventually led to the issuance of Opinion 608 came in 1987 from a single New Jersey attorney,<sup>17</sup> who simply asked the Advisory Committee whether the following situation violated the Rules of Professional Conduct:

[An] attorney for a lending institution representing it in a mortgage loan transaction pro-

***Although borrowers had not selected the attorneys involved in these transactions or even been given a chance to veto the attorneys' participation, borrowers were still often required to reimburse lenders for legal expenses incurred for review of documents by the lenders' attorneys.***

poses to perform the title search, provide for insuring the title and presumably prepare the note, mortgage, and other closing papers. The attorney will bill the lender for such services. The lender, in turn, will bill the borrower for that work and advise the borrower that the attorney will close the mortgage loan at the attorney's offices and that the borrower may secure his own attorney to represent him if he chooses.<sup>18</sup>

The Advisory Committee determined that the approved-attorney scheme violated the Rules of Professional Conduct. The Advisory Committee regarded "the proposed plan as a scheme to avoid the provisions of ... [the Closed Shop Statute], which prohibit a lending institution from requiring a borrower of a loan secured by a mortgage to employ the services of the lender's counsel or an attorney specified by the lender." The Advisory Committee then referred the inquirer to Opinion 398, in which the committee stated that any attorney who aids a lender in defeating the purposes of the Closed Shop Statute is engaging in unethical conduct.<sup>19</sup>

In a notice to the New Jersey Bar accompanying the supplement to Opinion 608, the Advisory Committee referred back to its earlier position in Opinion 608, stating that it was "improper for an attorney represent-

ing a lending institution to prepare papers incident to a mortgage loan transaction and bill the lender for such services, where the lender will pass the costs on to the borrower for the work."<sup>20</sup>

Following the publication of Opinion 608, however, the Advisory Committee received dozens of requests for reconsideration.<sup>21</sup> The committee agreed to reconsider Opinion 608 and held the opinion in "abeyance" during an eighteen-month period of reconsideration. After soliciting comments from members of the New Jersey Bar Association, the Advisory Committee issued a supplement to Opinion 608 on June 1, 1989.<sup>22</sup> The supplement quoted thirty-three excerpts of correspondence from members of the Bar received regarding Opinion 608.<sup>23</sup> The comments generally criticized various ambiguities in the language of the Closed Shop Statute and the Advisory Committee's earlier interpretation of the statute.<sup>24</sup>

In the supplement to Opinion 608, the Advisory Committee stood firm on the position articulated in Opinion 608. The committee also declined to comment on criticisms raised by members of the New Jersey Bar regarding the opinion.<sup>25</sup> The Advisory Committee concluded the debate by stating "that any dissatisfaction with the [Closed Shop Statute] ... will have to be resolved by resort to the Legislature and any questions regarding its interpretation by resort to our Supreme Court."<sup>26</sup>

Appeals to the New Jersey Supreme Court quickly followed the committee's decision, but they languished before the court during nearly four years of indecision.<sup>27</sup>

Then, on January 29, 1993, the New Jersey Legislature spoke again when it passed the amendment to the Closed Shop Statute.<sup>28</sup> The Advisory Committee immediately reported to the supreme court that it believed the amendment "superseded" Opinion 608.<sup>29</sup> Relying largely on the Advisory Committee's conclusion that the

amendment superseded Opinion 608, the supreme court held that all appeals pending before it at the time concerning Opinion 608 were now moot.<sup>30</sup> Then on March 12, 1993, at the direction of the court, the Advisory Committee published a formal notice to the bar advising that Opinion 608 had been superseded by the amendment.<sup>31</sup>

Although many individuals thought the amendment would be a legislative solution to the ongoing controversy regarding the Closed Shop Statute<sup>32</sup> and the practice of circular attorneys' fees, the amendment may simply have set the stage for a new round of controversy regarding a lender's right to seek reimbursement from borrowers for the lender's legal expenses.

#### IV. THE 1993 AMENDMENT: THE ATTORNEY DISCLOSURE AND FEE LIMITATION STATUTE

The 1993 amendment, also known as the Attorney Disclosure and Fee Limitation Statute, provides that any "banking institution, other financial institution or other lender, which is licensed or authorized under the laws of this State or of the United States to engage in the business of making loans ... or which has an office in this State for that purpose"<sup>33</sup> must comply with the requirements of the statute.<sup>34</sup>

Although this definition appears to spell out who must comply with the statute and would appear to include all lenders making loans in New Jersey, the definition may be construed to exclude those lenders who make loans in New Jersey but whose offices are outside of the state.

The Attorney Disclosure and Fee Limitation Statute requires lenders who issue mortgage loans secured by either commercial or residential real estate in New Jersey to make certain disclosures regarding the use of an attorney and the borrower's obligation to reimburse the lender for attorneys' fees.<sup>35</sup> In addition, the statute prohibits any lender from requiring a borrower to employ the services of the lender's counsel or an attorney chosen

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by the lender in connection with a loan secured by real estate or personal property located in New Jersey.<sup>36</sup> Other provisions of the statute, which are not addressed in this article, also apply to loans secured by personal property and unsecured loans.<sup>37</sup>

#### V. ATTORNEY FEE DISCLOSURE FOR COMMERCIAL LOANS SECURED BY NEW JERSEY REAL ESTATE<sup>38</sup>

For commercial loans<sup>39</sup> secured by New Jersey real estate, a lender is now required under the 1993 statute to give a residential borrower two different disclosures. First, prior to a borrower's acceptance of a written loan commitment, the lender must advise the borrower in writing that: (1) the interests of the borrower and the lender are or may be different and may conflict; (2) the lender's attorney represents only the lender; and (3) the borrower is advised to employ a New Jersey licensed attorney of the borrower's choice<sup>40</sup> (herein referred to as a "right to counsel notice").

Second, the lender must disclose in writing as part of a written-loan commitment (or within ten days of the issuance of a written-loan commitment): (1) the basis for calculating any lender's attorneys' fees for which the borrower will be required to reimburse the lender, and (2) a "good faith estimate" of the lender's attorneys'

fees (good faith estimate).<sup>41</sup> If the good faith estimate of legal charges will be "materially exceeded," the lender must notify the borrower at the time the lender becomes aware of the increase.<sup>42</sup> However, the statute does not define the meaning of the term "materially exceeded," which is likely to prove troublesome in the future.

Failure to advise a borrower that the good faith estimate will be exceeded will preclude the lender from seeking reimbursement for attorneys' fees in excess of the estimate. However, the failure of the lender to give the borrower a good faith estimate initially or to advise the borrower of any increase in the estimate will not affect the validity or enforceability of the loan commitment, the loan, or the security for the loan.<sup>43</sup>

The 1993 statute requires lenders to give the right to counsel notice and to offer a good faith estimate "if a lender makes a written offer to a borrower to make a loan secured by real property located in ... [New Jersey]...."<sup>44</sup> But, what if a lender agrees to make a loan without issuing a written commitment? A genuine issue requiring a legal determination may arise because the statute is silent on which disclosures are expressly required where no written-loan commitment has been issued by a lender.

***Although this definition appears to spell out who must comply with the statute and would appear to include all lenders making loans in New Jersey, the definition may be construed to exclude those lenders who make loans in New Jersey but whose offices are outside of the state.***

Although the statute literally demands disclosure only where a written-loan commitment is issued, prudent lenders are offering disclosures even where no written loan commitment is issued.

**VI. ATTORNEY FEE DISCLOSURE FOR CONSUMER LOANS SECURED BY NEW JERSEY REAL ESTATE<sup>45</sup>**

As with commercial loans secured on New Jersey real estate, a lender must give a borrower, in a consumer loan<sup>46</sup> transaction secured by a residential first mortgage<sup>47</sup> on New Jersey real estate, a right to counsel notice and a good faith estimate if a written loan commitment is issued.<sup>48</sup> However, for consumer mortgage loan transactions, a lender can only seek reimbursement for attorneys' fees for the review of loan documents prepared or submitted by the borrower (or the borrower's attorney) or in cases where the borrower (or borrower's attorney) requests the lender's attorney to undertake additional work to further the closing of the transaction.<sup>49</sup>

The reality in most New Jersey consumer mortgage loan transactions, however, is that the lender prepares the loan documents. The consumer has little or no leverage to negotiate changes in the documents and must agree to them or reject the loan. Moreover, the New Jersey Mortgage Processing Regulations<sup>50</sup> specifically prohibit a lender from seeking reimbursement from a borrower for document preparation and processing fees on most residential first mortgage loans.<sup>51</sup>

However, the Attorney Disclosure and Fee Limitation Statute defines "loan documents" to mean "a promissory note, loan agreement, mortgage, affidavit of title, power of attorney, survey and survey affidavit, title documents and searches and commitments for title insurance and modification of any promissory note, mortgage or loan agreement."<sup>52</sup> Because the definition of "loan documents" can include documents that are ordinarily submitted by third parties to the lender on behalf of

the borrower (i.e., survey and title documents), it is unclear whether a lender may seek reimbursement under the statute from a borrower for the portion of the lender's attorney's fee that can be attributed to the attorney's review of survey and title documents.

**VII. RESIDENTIAL SECOND MORTGAGE LOAN EXCEPTION<sup>53</sup>**

Residential mortgage loans originated under the New Jersey Secondary Mortgage Loan Act<sup>54</sup> and similar secondary mortgage loans<sup>55</sup> are not subject to the Attorney Disclosure and Fee Limitation Statute.<sup>56</sup> Although the Secondary Mortgage Loan Act has its own provisions relating to the disclosure and imposition of legal fees on borrowers,<sup>57</sup> many second or subordinate lien mortgage lenders, such as national and state chartered banks and savings banks, are exempt from the coverage of the Secondary Mortgage Loan Act.<sup>58</sup>

**VIII. GENERAL ATTORNEY FEE RESTRICTIONS<sup>59</sup>**

The Attorney Disclosure and Fee Limitation Statute does not permit attorneys' fees or other charges which are otherwise limited by other applicable laws.<sup>60</sup> Additionally, if a borrower is required to reimburse a lender for any portion of the lender's attorney's fees or expenses, all such fees and expenses must be reasonable as defined by the Rules of Professional Conduct adopted by the New Jersey Supreme Court.<sup>61</sup>

**IX. UNRESOLVED ISSUES**

Although the Attorney Disclosure and Fee Limitation Statute has superseded Opinion 608, it has also raised a number of new questions, such as: Which lenders are covered by the statute? What should a lender do where no written-loan commitment is issued by the lender? Precisely what legal fees now can be reimbursed in a consumer mortgage loan transaction?

*Despite nearly 20 years of legislation, litigation, and advisory opinions, the Closed Shop Statute and its amendments still have not conclusively foreclosed all the loopholes in the approved-attorney practice and the practice by lenders of imposing a charge on residential mortgage borrowers for the lender's legal expenses.*

What does the term "materially exceeded" mean?

How will these and other questions concerning the statute be answered? As the Advisory Committee stated when it issued the supplement to Opinion 608, "[t]he position of our Committee is that any dissatisfaction with the statute will have to be resolved by resort to the Legislature and any questions regarding its interpretation by resort to our Supreme Court."<sup>62</sup> So continues the saga of Opinion 608.

**X. CONCLUSION**

Despite nearly 20 years of legislation, litigation, and advisory opinions, the Closed Shop Statute and its amendments still have not conclusively foreclosed all the loopholes in the approved-attorney practice and the practice by lenders of imposing a charge on residential mortgage borrowers for the lender's legal expenses. The mere fact that lenders impose a separate legal fee on unsophisticated residential mortgage borrowers has a chilling effect on a borrower paying for independent legal counsel to represent the borrower, in what is probably one of the most significant financial transactions a consumer may face in a lifetime. ♦

## ENDNOTES

- 1 1993 N.J. Laws c.33 §1 (codified at N.J. Stat. Ann. §§ 46:10A-6 (West 1994). *See also* N.J. Stat. Ann. §§ 17:16P-1, 17:16P-2 (West 1994)).
- 2 N.J. Stat. Ann. §§ 46:10A-6, 17:16P-2 (West 1994).
- 3 *See* N.J. Stat. Ann. § 46:10A-6 (West 1975); *see also* In re Dolan, 384 A.2d 1076 (N.J. 1978).
- 4 *See* Client's Sec. Fund v. Security Title and Guar. Co., 624 A.2d 90 (N.J. 1993).
- 5 *Id.*
- 6 *See e.g.*, New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion 608, 120 N.J.L.J. 1112 (1987) and Supplement to Opinion 608, 123 N.J.L.J. 1368 (1989) (Attorney for Mortgage Lender Performing Services for Borrower); New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion 398, 101 N.J.L.J. 578 (1978) (Regarding the Application of the New Jersey State Bar Association for Advice Concerning Ethical Practices in Mortgage Transactions); New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion 243, 95 N.J.L.J. 1145 (1972) (Representing Mortgagor and Mortgagee, Vendor and Vendee); New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion 119, 90 N.J.L.J. 749 (1967) (Borrower's Payment of Fees Charged Lender); New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion 100, 89 N.J.L.J. 696 (1966) (Representing Conflicts of Interests in Real Estate Transactions); and, In re Kamp, 194 A.2d 236 (N.J. 1963). However, a detailed examination of conflicts of interest is beyond the scope of this article.
- 7 12 U.S.C.A. § 2601 (West 1994).
- 8 24 C.F.R. § 3500.1 (1993).
- 9 N.J. Stat. Ann. § 46:10A-6 (West 1978).
- 10 New Jersey Supreme Court Advisory Committee on Professional Ethics Opinion 608, 120 N.J.L.J. 1112 (1987). This statement was also annexed to the 1978 New Jersey Assembly Bill No. 104 (reprinted in the Supplement to Opinion 608 of the New Jersey Supreme Court Advisory Committee of Professional Ethics).
- 11 New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion 398, 101 N.J.L.J. 578 (1978).
- 12 *See* 1978 N.J. Laws c. 65, § 2 (codified at N.J. Stat. Ann. § 46:10A-6 (West 1978)).
- 13 1978 N.J. Laws c.65, § 2.
- 14 *Id.*

- 15 *See* Russ Bleemer, *Solution Near on Bank Lawyers' Fees*, 132 N.J.L.J. 781 (1992).
- 16 New Jersey Supreme Court Advisory Committee on Professional Ethics, Opinion 608, 120 N.J.L.J. 1112 (1987).
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 New Jersey Supreme Court Advisory Committee on Professional Ethics Supplement to Opinion 608, 123 N.J.L.J. 1368 (1989). Notice to the New Jersey Bar Association accompanying the Supplement to Opinion 608 (June 1, 1989).
- 21 *Id.*
- 22 *Id.*
- 23 *Id.* at 1368-69.
- 24 *Id.*
- 25 *See id.* at 1369.
- 26 *Id.*
- 27 In re the Advisory Committee on Professional Ethics Opinion 608 as Supplemented, 570 A.2d 958 (N.J. 1989); In re the Advisory Committee on Professional Ethics Opinion 608 as Supplemented, 569 A.2d 1346 (N.J. 1989). *See also* Bleemer, *supra* note 15.
- 28 1993 N.J. Laws 1993 c.33, §1. *See* N.J. Stat. Ann. § 46:10A-6 (West 1994).
- 29 *See* In the Matter of Opinion 608 of the Advisory Committee on Professional Ethics, 627 A.2d 1127 (N.J. 1993).
- 30 *Id.*
- 31 Dubin, *Advisory Committee on Professional Ethics Opinion 608 Superseded*, 127 N.J.L.J. 1078 (1993).
- 32 *See* Bleemer, *supra* note 15.
- 33 N.J. Stat. Ann. §§ 46:10A-6a, 17:16P-1a, 17:16P-2a (West 1994).
- 34 N.J. Stat. Ann. §§ 46:10A-6, 17:16P-1, 17:16P-2 (West 1994).
- 35 N.J. Stat. Ann. § 46:10A-6 (West 1994).
- 36 N.J. Stat. Ann. §§ 46:10A-6a, 17:16P-1a, 17:16P-2a (West 1994).
- 37 *See* N.J. Stat. Ann. §§ 17:16P-1, 17:16P-2 (West 1994).
- 38 *See* N.J. Stat. Ann. § 46:10A-6 (West 1994).
- 39 The term "commercial loan" is not explicitly used in 1993 N.J. Laws c.33. For purposes of this article, the term commercial loan is used to describe any loan secured by New Jersey real estate that is *not* made "primarily for personal, family or household purposes ... [and] on which the principal structure is a one-to-four family residence[,] or ... on which a one-to-four family residence is to be the principal structure to be constructed with the use of the loan proceeds." N.J. Stat. Ann. § 46:10A-6d (West 1994).
- 40 N.J. Stat. Ann. § 46:10A-6b (West 1994).
- 41 N.J. Stat. Ann. § 46:10A-6c (West 1994).
- 42 *Id.*

- 43 *Id.*
- 44 N.J. Stat. Ann. §§ 46:10A-6b, c (West 1994).
- 45 *See* N.J. Stat. Ann. § 46:10A-6 (West 1994).
- 46 The term "consumer loan" is not explicitly used in 1993 N.J. Laws c.33. For purposes of this article, the term consumer loan is used to describe any loan secured by New Jersey real estate which is "primarily for personal, family or household purposes...[and] on which the principle structure is a one-to-four family residence is to be the principle structure to be construed with the use of the land proceeds." N.J. Stat. Ann. § 46:10A-6d (West 1994).
- 47 1993 N.J. Laws c.33 does "not apply to secondary mortgage loans ... which are made pursuant to P.L. 1970, c. 205 (C. 17: 11A-34 et seq.), [the N.J. Secondary Mort. Loan Act], section 24 of P.L. 1948, c. 67 (C. 17:9A-24), [the N. J. Banking Act], or section 155 of P.L. 1963, c. 144 (C. 17:12b-155), [the N. J. Savings and Loan Act], or ... similar secondary mortgage loans made by lenders pursuant to other authority." N.J. Stat. Ann. § 46:10A-6g(1)(West 1994).
- 48 *See* N.J. Stat. Ann. §§ 46:10A-6b, c (West 1994).
- 49 N.J. Stat. Ann. § 46:10A-6d (West 1994).
- 50 N.J.A.C. § 3:1-16 (1993).
- 51 *See* N.J.A.C. § 3:1-16.2(a)7xv (1993), which explicitly prohibits document preparation and processing fees on closed-end mortgage loans that are secured by a first mortgage on a one to six family dwelling, (a portion of which may be used for nonresidential purposes). However, N.J. Stat. Ann. § 3:1-16.2(a)7v (1993) does provide that a lender may charge "[o]utside counsels' fees as permitted by N.J. Stat. Ann. § 46:10A-6 (West 1994).
- 52 N.J. Stat. Ann. § 46:10A-6d (West 1994).
- 53 *See* N.J. Stat. Ann. § 46:10A-6g(1) (West 1994).
- 54 N.J. Stat. Ann. § 17:11A-34 (West 1994).
- 55 *See* N.J. Stat. Ann. § 46:10A-6 (West 1994).
- 56 *See* N.J. Stat. Ann. § 46:10A-6g(2) (West 1994).
- 57 *See* N.J. Stat. Ann. 17:11A-46g(1) (West 1994).
- 58 *See* N.J. Stat. Ann. § 17:11A-34 (West 1994).
- 59 *See* N.J. Stat. Ann. §§ 46:10A-6, 17:16P-1, 17:16P-2 (West 1994).
- 60 N.J. Stat. Ann. §§ 46:10A-6g(2), 17:16P-1d, 17:16P-2b (West 1994).
- 61 N.J. Stat. Ann. §§ 46:10A-6f, 17:16P-1c and 17:16P-2a (West 1994).
- 62 Supplement to Opinion 608, 123 N.J.L.J. 1368, 1369 (1989).