

RULE ADOPTIONS

BANKING

(a)

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Notice of Readoption

General Provisions

Readoption: N.J.A.C. 3:1

Authority: N.J.S.A. 17:1-8, 17:1-8.1, 17:2A-1 et seq., 17:9-41, 17:9A-1 et seq., 17:9A-9, 17:9A-24a, 17:9A-25.2, 17:9A-316, 17:11C-49 and 89, 17:12B-1 et seq., 17:16F-11, 17:16I-1 et seq., 17:16L-1 et seq., 17:16N-1 et seq., and 31:1-1.

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

Effective Date: January 27, 2022.

New Expiration Date: January 27, 2029.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 3:1 were scheduled to expire on March 11, 2022.

Subchapter 1, Interest and Usury, establishes maximum interest rates on certain types of loans and is promulgated pursuant to N.J.S.A. 31:1-1.

Subchapter 2 specifies procedures for applying to the Department of Banking and Insurance (Department) for bank, savings bank or savings and loan charters, branches, and other types of facilities. It also specifies procedures for publishing notices of applications, as well as procedures for hearings.

Subchapter 3 regulates the making of mortgage loans in disaster areas.

Subchapters 4 and 5 are reserved.

Subchapters 6 and 7 set the fees the Department charges for specified services.

Subchapter 8 is reserved.

Subchapter 9 implements the Home Mortgage Disclosure Act, N.J.S.A. 17:16F-1 et seq.

Subchapter 10 requires a bank, savings bank, or savings and loan association that applies to the Department for a charter, branch, or other facility, and that intends to purchase or lease the real estate for the facility from an affiliated person, to file with its application a detailed real estate application for the purpose of demonstrating to the Commissioner of the Department that the transaction is in the best interest of the institution and that the terms of the transaction are equal to or better than the institution could have received in an arm's length transaction.

Subchapter 11 prohibits banks, savings banks, and savings and loan associations, and their affiliates, from purchasing or making a loan involving a director, executive officer, or affiliated person, unless the terms of the loan are comparable to those prevailing for non-affiliated persons or other employees.

Subchapter 12 regulates multiple party deposit accounts.

Subchapter 13 prohibits a banking institution, holding company, or other lender from requiring a borrower to obtain insurance from an agent controlled by the lender.

Subchapter 14 regulates revolving credit equity loans, including the terms of the agreement, the notification of changes, and the methods of computing interest.

Subchapter 15 requires that banking institutions comply with Federal Regulation CC, 12 CFR 229, or its successor regulation, implementing the Expedited Funds Availability Act, 12 U.S.C. §§ 4001 through 4010.

Subchapter 16 regulates the fees, charges, and obligations related to applications for closed-end residential mortgage loans secured by first liens. In particular, the rules set the requirements for loan applications, lock-in agreements, and commitments, and specify the permissible fees.

Subchapter 17 sets forth the rules for a banking institution to establish an automated teller machine (ATM).

Subchapter 18 prescribes the registration requirements for foreign banks to establish service facilities in this State. In addition, the rules

define the permissible activities that foreign banks may conduct at these locations.

Subchapter 19 regulates consumer checking accounts that must be established by depositories in this State. In addition, these rules provide an application procedure for institutions desiring to establish alternative accounts.

Subchapter 20 establishes under what circumstances the Department may request the Social Security number of an individual.

N.J.A.C. 3:1 Appendix A contains sample forms for joint accounts, payable on death (P.O.D.) accounts, and trust accounts.

The Department of Banking and Insurance (Department) has reviewed these rules and has determined that the rules should be readopted without amendment. The rules are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

(b)

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Notice of Readoption

Registrar and Transfer Agents

Readoption: N.J.A.C. 3:12

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, 17:1C-33 et seq., and 17:16G-213.

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

Effective Date: January 18, 2022.

New Expiration Date: January 18, 2029.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 3:12 were scheduled to expire on February 23, 2022.

The rules implement N.J.S.A. 17:9A-213, which provides that the Commissioner of the Department of Banking and Insurance (Commissioner) establish standards for qualified corporations to act as registrars and transfer agents in the State.

The rules at Subchapter 1 contain definitions of key terms, including "qualified corporation," which is defined as a domestic corporation, or a foreign corporation authorized to transact business in this State that registers with the Department of Banking and Insurance (Department) to act as a registrar, transfer agent, and/or fiscal agent. The rules at Subchapter 1 also explain the effect of the rules on depository institutions.

The rules at Subchapter 2 set forth the application and reporting requirements for qualified corporations and require, when requested, a qualified corporation to provide its most recent financial statement and proof of fidelity insurance. The rules at Subchapter 2 also set forth requirements concerning the annual examination of a qualified corporation's records by a public accountant or certified public accountant. The rules set forth requirements concerning the filing of an annual report with the Commissioner and the examination of the qualified corporation by the Commissioner.

The rules at Subchapter 3 establish capital requirements for qualified corporations, including minimum capital requirements, restrictions on new accounts for deficient capitalization, the maximum time period for deficient capitalization, and restrictions on capital notes or debentures.

The rules at Subchapter 4 establish insurance coverage requirements for qualified corporations, including minimum fidelity insurance coverage and adequate mail insurance. The rules also set forth the requirement that the board of directors of a qualified corporation must review annually the insurance coverages maintained.

Lastly, the rules at Subchapter 5 require qualified corporations to maintain a business location in New Jersey and to maintain and provide for the safekeeping of records, stock certificates, and unclaimed cash

dividends. The rules additionally state that undeliverable stock certificates, unclaimed cash dividends, or any other unclaimed personal property shall be subject to existing State escheat laws. Finally, the rules require a qualified corporation acting as a transfer agent to provide the corporate issuer with a copy of the corporate issuer's transfer transaction journal at least once in a 12-month period.

The Department has reviewed these rules and has determined that the rules should be readopted without amendment. The rules are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

New Jersey Housing and Mortgage Finance Agency Tenant Selection Standards Rules

Adopted Amendments: N.J.A.C. 5:80-7

Proposed: July 19, 2021, at 53 N.J.R. 1187(a).

Adopted: January 4, 2022, by New Jersey Housing and Mortgage Finance Agency, Melanie R. Walter, Executive Director.

Filed: January 27, 2022, as R.2022 d.031, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6).

Authority: N.J.S.A. 55:14K-5.g.

Effective Date: February 22, 2022.

Expiration Date: September 14, 2024.

The New Jersey Housing and Mortgage Finance Agency (Agency) is adopting amendments to the Tenant Selection Standards rules at N.J.A.C. 5:80-7 (Rules), which instruct housing sponsors, owners, and managing agents in the selection of tenants at Agency-financed housing projects. The Rules and these amendments are intended primarily to foster compliance with Federal, State, and local fair housing laws and to eliminate discriminatory practices in the tenant selection process, while also contributing to the economic and physical health of Agency-financed projects.

Summary of Public Comments and Agency Responses:

The Agency received comments from the following persons:

1. Bruce S. Shapiro, Director of RPAC & Regulatory Affairs, New Jersey Realtors (NJR); and
2. Adam Gordon, Executive Director, Fair Share Housing Center (FSHC).

The Agency expresses its appreciation for the thoughtful comments from both NJR and FSHC.

A summary of the comments received, and the Agency's responses follows. The commenters are identified in parentheses following the comment summaries by the numbers appearing before their names above.

1. COMMENT: Clarification is sought as to the amended definition of "minority" at N.J.A.C. 5:80-7.1. It is unclear which group or groups "have historically been subjected to discrimination or disparate treatment." Such groups should be more clearly delineated in the definition to provide greater certainty for landlords and other housing providers. (1)

RESPONSE: The existing definition of "minority" is archaic and, in some respects, offensive. The amended definition is far more inclusive and is self-defined as to persons who have been subjected to discrimination or disparate treatment based upon identifiers set forth in the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10-5.1 et seq. Since those identifiers have been established by statute, the Agency does not believe that a discrete listing in the rule is necessary or warranted. Further, the amended definition incorporates the definitions used by Federal and State agencies charged with the enforcement of civil rights laws in connection with housing, thereby ensuring consistency in its

application. The Agency, therefore, respectfully declines to further pinpoint such groups, as they may vary from time to time and case to case.

2. COMMENT: The definition of "minority" should contain a cross-reference with the Division on Civil Right (DCR) as to how a "minority group" is defined. (1)

RESPONSE: The definition does contain a cross-reference to DCR. However, as of this time, DCR has not defined either "minority" or "minority group."

3. COMMENT: Under the amendment at N.J.A.C. 5:80-7.3(b)4i concerning prior or current tenant involvement in civil actions, a prospective tenant cannot be rejected because she or he has been sued by a prior landlord. The commenter asks, if under the amendment, a landlord can consider whether a prospective tenant was sued by a previous landlord for nonpayment of rent or other wrongful conduct, especially if the tenant lost the case and was evicted, expressing concern that if a landlord inquires into the circumstances of civil actions involving a prospective tenant-as is permitted under the amendment — and subsequently rejects the tenant, the landlord will be in violation of the rule. (1)

RESPONSE: The amendment is intended to strike a balance between the right of a prospective tenant to fair consideration of his or her application and the right and obligation of a landlord to undertake diligent tenant selection. Subparagraph (b)4i provides that landlords may properly consider litigation between a prospective tenant and former landlord where the former landlord has prevailed, but it does preclude the denial of a tenant's application solely because a lawsuit has been filed by a former landlord against him or her. For purposes of clarification, the Agency is inserting the word "solely" into the second sentence of subparagraph (b)i upon adoption, so that it states: "A tenant may not be rejected solely because he or she has sued or been sued by a prior landlord or has participated in a class action lawsuit against a landlord."

4. COMMENT: Regarding the proposed amendment at N.J.A.C. 5:80-7.3(b)4ii concerning involvement with the criminal justice system, clarification and specific definitions are sought as to the following terms applied with respect to "serious crimes and felonies"; "serious crimes"; "remote in time"; "lesser offenses"; "tenant's youth"; and "decades past." (1)

RESPONSE: The term "serious crimes" is further described in the rule as including "crimes of violence, domestic abuse, or the manufacture or distribution of illicit substances." The Agency does not believe an exhaustive listing of offenses that may be considered by a landlord is necessary or warranted, particularly considering that Federal and various State and foreign jurisdictions-under which crimes may have been committed by prospective tenants — likely use different terminology and may assign different degrees of criminality than New Jersey. Additionally, the Agency notes the provisions of the recently enacted Fair Chance in Housing Act (FCHA), N.J.S.A. 46:8-52 et seq., particularly N.J.S.A. 46:8-56, which lists the types of records that may and may not be considered by prospective landlords.

With respect to the terms "remote in time," "lesser offenses," and "tenant's youth," the Agency believes that a reasonable reading of each, rather than a strict definition or categorization, is appropriate. It is neither desirable nor practical to exhaustively define each of those terms. Additionally, the Agency again refers to N.J.S.A. 46:8-56, which clarifies those terms, and the way landlords may properly consider them in evaluating prospective tenants.

The Agency agrees with the commenter that the term "in decades past" is not clear and notes that it may be subject to an ambiguity. Therefore, the Agency is changing the term to "more than 10 years ago" upon adoption.

5. COMMENT: Regarding the proposed amendment at N.J.A.C. 5:80-7.3(b)4ii with respect to "minor offenses," clarification and specific delineations are sought for the phrases "[c]onvictions for minor offenses" and "in the prospective tenant's youth or in decades past." (1)

RESPONSE: For the reasons expressed in the Response to Comment 4, the Agency does not believe it is necessary or practical to further define or spell out those acts constituting "minor offenses" or the specific age at which a "prospective tenant's youth" ends. However, as noted in that response, the Agency agrees that the term "in decades past" is not clear and may be subject to an ambiguity. Therefore, the Agency is changing the term to "more than 10 years ago" upon adoption.