

## ARTICLE 10

### LOAN BROKERS

#### PART 1

#### GENERAL PROVISIONS

##### **§10-101. Short title**

This article may be known and cited as the "Maine Consumer Credit Code - Loan Brokers." [PL 2005, c. 274, §3 (AMD).]

##### SECTION HISTORY

PL 1989, c. 70, §3 (NEW). PL 2005, c. 274, §3 (AMD).

##### **§10-102. Definitions**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [PL 1989, c. 70, §3 (NEW).]

1. "Loan broker" is defined as follows.

A. "Loan broker" means any person who, with respect to the extension of consumer credit by others, provides or offers to provide, in return for the separate payment of money or other valuable consideration, any of the following services:

- (1) Improving a consumer's credit record, history or rating;
- (2) Arranging for or obtaining an extension of credit for a consumer; or
- (3) Providing advice or assistance to a consumer with respect to subparagraph (1) or (2).

"Loan broker" also means any person who serves as a facilitator of a refund anticipation loan or refund anticipation check, whether or not in return for the separate payment of money or other valuable consideration. [PL 2009, c. 248, §2 (AMD).]

B. "Loan broker" does not include:

- (1) A supervised financial organization;
- (2) A supervised lender other than a supervised financial organization, except that, with respect to any transaction in which a supervised lender other than a supervised financial organization is acting solely as a loan broker, section 10-302 applies;
- (3) A person licensed by the Real Estate Commission to the extent that the person is engaged in activities regulated by that commission;
- (4) A person currently admitted to the practice of law in this State;
- (5) Any nonprofit organization exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3) to the extent that the organization's activities are consistent with those set forth in its application for tax exemption to the Internal Revenue Service;
- (6) A consumer reporting agency, as defined in the Fair Credit Reporting Act, Title 10, chapter 209-B;

- (7) An affiliate of a supervised lender when the affiliate provides services described in paragraph A, subparagraph (1), (2) or (3) for or on behalf of that supervised lender and when the affiliate is not compensated by the consumer for those services;
- (8) An employee of a supervised lender or an employee of an affiliate of a supervised lender when the employee provides services described in paragraph A, subparagraph (1), (2) or (3) for or on behalf of that supervised lender or affiliate and when the employee or the affiliate is not compensated by the consumer for those services;
- (9) A person paid by a supervised lender or a consumer to document a loan, attend or conduct a loan closing, disburse loan proceeds or record or file loan documents;
- (10) A person who performs marketing services for a creditor, such as a telemarketer, an advertising agency or a mailing house, when the person is not compensated by the consumer for those services;
- (11) A seller of consumer goods or services that provides services described in paragraph A, subparagraph (1), (2) or (3) in connection with a sale or proposed sale of consumer goods or services by that seller when the seller is not compensated by a consumer for those services; or
- (12) An employee of a seller of consumer goods or services that provides services described in paragraph A, subparagraph (1), (2) or (3) in connection with a sale or proposed sale of consumer goods or services by that seller when the employee or seller is not compensated by a consumer for those services.

For the purposes of this paragraph, "affiliate" has the same meaning as defined in Title 9-B, section 131, subsection 1-A. [PL 2013, c. 588, Pt. C, §2 (AMD).]  
[PL 2013, c. 588, Pt. C, §2 (AMD).]

**2.** "Bona fide 3rd-party fee" means a verifiable fee paid to a 3rd party for a credit report, appraisal, investigation, title examination or survey.  
[PL 1989, c. 70, §3 (NEW).]

**2-A.** "Facilitator of a refund anticipation loan or refund anticipation check" means a person who individually or in conjunction or cooperation with another person:

- A. Solicits the execution of, processes, receives or accepts application or agreement for a refund anticipation loan or refund anticipation check; [PL 2009, c. 248, §3 (NEW).]
- B. Services or collects upon a refund anticipation loan or refund anticipation check; or [PL 2009, c. 248, §3 (NEW).]
- C. Facilitates the making of a refund anticipation loan or refund anticipation check in any other manner. [PL 2009, c. 248, §3 (NEW).]

If there is no 3rd-party facilitator of a refund anticipation loan or refund anticipation check because a creditor directly solicits the execution of, receives or accepts application or agreement for a refund anticipation loan or refund anticipation check, that creditor is considered a facilitator of a refund anticipation loan or refund anticipation check for purposes of this subsection. For purposes of this subsection, "creditor" means any person who makes a refund anticipation loan or who takes assignment of a refund anticipation loan.

[PL 2009, c. 248, §3 (NEW).]

**3.**  
[PL 2011, c. 427, Pt. B, §14 (RP).]

**4.** "Refund anticipation check" means a check, stored value card or other payment mechanism representing the proceeds of the consumer's tax refund that was issued by a depository institution or

other person that received a direct deposit of the consumer's tax refund or tax credit and for which the consumer has paid a fee or other consideration.

[PL 2009, c. 248, §4 (NEW).]

5. "Refund anticipation loan" means a loan that is secured by or that the creditor arranges to be repaid directly or indirectly from the proceeds of the consumer's income tax refund or tax credits. A refund anticipation loan also includes any sale, assignment or purchase of a consumer's tax refund at a discount or for a fee, whether or not the consumer is required to repay the buyer or assignee if the federal Internal Revenue Service reduces the consumer's tax refund.

[PL 2009, c. 248, §5 (NEW).]

6. "Refund anticipation loan fee" means the charge, fee or other consideration charged or imposed directly or indirectly by the creditor for the making of or in connection with a refund anticipation loan. "Refund anticipation loan fee" includes any charge, fee or other consideration for a deposit account if the deposit account is used for the receipt of the consumer's tax refund to repay the amount owed on the loan.

[PL 2009, c. 248, §6 (NEW).]

7. "Refund anticipation loan interest rate" or "interest rate" means the interest rate based on the creditor's reasonable estimate of the time the refund will be delivered.

[PL 2011, c. 427, Pt. D, §13 (AMD).]

#### SECTION HISTORY

PL 1989, c. 70, §3 (NEW). PL 1991, c. 824, §A10 (AMD). PL 1993, c. 495, §1 (AMD). PL 1997, c. 66, §5 (AMD). PL 2001, c. 371, §6 (AMD). PL 2001, c. 509, §§1,2 (AMD). PL 2005, c. 164, §8 (AMD). PL 2005, c. 274, §4 (AMD). PL 2009, c. 248, §§2-7 (AMD). PL 2011, c. 427, Pt. B, §14 (AMD). PL 2011, c. 427, Pt. D, §13 (AMD). PL 2013, c. 588, Pt. C, §2 (AMD).

## PART 2

### REGISTRATION AND BONDING

#### §10-201. Licensing and renewal licensing

A person desiring to engage or continue in business in this State as a loan broker shall apply to the administrator for a license under this Article as set forth in this section. The administrator may refuse the application if it contains erroneous or incomplete information. A license may not be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant and, when applicable, its partners, officers and directors and, when applicable, the character and fitness of its mortgage loan originators warrant belief that the business will be operated honestly and fairly within the purposes of this Title. [PL 2021, c. 245, Pt. D, §2 (AMD).]

1. **Loan broker whose activities include arranging for or obtaining an extension of credit for a residential mortgage loan.**

[PL 2021, c. 245, Pt. D, §2 (RP).]

2. **Loan broker whose activities do not include arranging for or obtaining an extension of credit for a residential mortgage loan.**

[PL 2021, c. 245, Pt. D, §2 (RP).]

3. **Nationwide mortgage licensing system and registry.** The administrator may require licensing of loan brokers subject to this section through the nationwide mortgage licensing system and registry as defined in section 13-102, subsection 8. The administrator is authorized to participate in the nationwide mortgage licensing system and registry.

[PL 2021, c. 245, Pt. D, §2 (NEW).]

**4. Fees and requirements.** In all cases, whether licensing of loan brokers subject to this section is through the nationwide mortgage licensing system and registry as defined in section 13-102, subsection 8 or otherwise, the administrator may establish, by rule, requirements for licensing, including but not limited to:

A. Background checks for:

- (1) Criminal history through fingerprint or other databases;
- (2) Civil or administrative records;
- (3) Credit history; or
- (4) Any other information determined necessary by the nationwide mortgage licensing system and registry; [PL 2021, c. 245, Pt. D, §2 (NEW).]

B. The payment of fees to apply for or renew licenses, except that the fee for an initial application may not exceed \$1,000 and for a yearly renewal may not exceed \$600. If licensing is through the nationwide mortgage licensing system and registry, an applicant must also pay a nationwide mortgage licensing system and registry processing fee in an amount to be determined by the administrators of the nationwide mortgage licensing system and registry. Renewal applications received after the due date are subject to an additional fee of \$100; [PL 2021, c. 245, Pt. D, §2 (NEW).]

C. The setting or resetting as necessary of renewal or reporting dates; and [PL 2021, c. 245, Pt. D, §2 (NEW).]

D. Other requirements for application for, amendment of or revocation of a license or any other such activities as the administrator considers necessary. [PL 2021, c. 245, Pt. D, §2 (NEW).]  
[PL 2021, c. 245, Pt. D, §2 (NEW).]

A licensed loan broker whose activities include arranging for or obtaining an extension of credit for a residential mortgage loan may conduct business only through a mortgage loan originator who possesses a current, valid license. [PL 2021, c. 245, Pt. D, §2 (AMD).]

The administrator may direct each licensee to file composite annual and quarterly reports relating to all brokered loans arranged or obtained by that licensee. Information contained in annual and quarterly reports is confidential and may be published only in composite form. The administrator may at any time require additional reports if the administrator determines such action necessary to the proper supervision of licensees. [PL 2013, c. 466, §7 (NEW).]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2021, c. 245, Pt. D, §2 (NEW).]

#### SECTION HISTORY

PL 1989, c. 70, §3 (NEW). PL 1993, c. 495, §2 (AMD). PL 2005, c. 164, §9 (AMD). PL 2005, c. 274, §5 (AMD). PL 2005, c. 683, §B4 (RPR). PL 2009, c. 243, §3 (AMD). PL 2011, c. 427, Pt. B, §15 (AMD). PL 2013, c. 466, §7 (RPR). PL 2021, c. 245, Pt. D, §2 (AMD).

#### §10-202. Bond

Each application must be accompanied by evidence of a surety bond, in a form approved by the administrator in the aggregate amount of \$25,000, to run to the State for use by the State and any person or persons who may have a cause of action against a loan broker. Notwithstanding this section, the aggregate amount of a surety bond accompanying the application of a loan broker conducting business solely as a facilitator of a refund anticipation loan or refund anticipation check must be \$10,000. The terms of the bond must run concurrent with the period of time during which the license is in effect. [PL 2009, c. 248, §8 (AMD).]

**SECTION HISTORY**

PL 1989, c. 70, §3 (NEW). PL 1997, c. 727, §B21 (AMD). PL 2005, c. 274, §6 (AMD). PL 2009, c. 248, §8 (AMD).

**PART 3****REGULATION OF PRACTICES****§10-301. Escrow of funds**

Each loan broker shall place fees from consumers, other than bona fide 3rd-party fees, in an escrow account separate from any operating accounts of the business, pending completion of services offered. With respect to loan brokers offering to arrange for or obtain extensions of credit for consumers, or provide advice or assistance to arrange for or obtain extensions of credit, "completion of services offered" means procurement of credit under the terms agreed to by the parties. [PL 2005, c. 274, §7 (AMD).]

**SECTION HISTORY**

PL 1989, c. 70, §3 (NEW). PL 1993, c. 495, §3 (AMD). PL 2005, c. 274, §7 (AMD).

**§10-302. Requirement for written agreement**

Each agreement between a consumer and a loan broker must be in writing, dated and signed by the consumer and must include the following: [PL 2005, c. 274, §8 (AMD).]

1. A full and detailed description of the services to be performed for the consumer, including all guarantees and all promises of full or partial refund of fees paid, whether or not services are completed, and the length of time for which the agreement remains in effect before return of the fees for nonperformance can be required by the consumer; [PL 1993, c. 495, §4 (AMD).]

2. The terms and conditions of payment, including the total of all payments to be made by the consumer or by any other person or entity, whether to the loan broker or to some other person; and [PL 2007, c. 273, Pt. A, §29 (AMD); PL 2007, c. 273, Pt. A, §41 (AFF).]

3. The following notice:

NOTICE TO CONSUMER: Do not sign this agreement before you read it. You are entitled to a copy of this agreement.

[PL 1989, c. 70, §3 (NEW).]

**SECTION HISTORY**

PL 1989, c. 70, §3 (NEW). PL 1993, c. 495, §4 (AMD). PL 2005, c. 274, §§8,9 (AMD). PL 2007, c. 273, Pt. A, §29 (AFF). PL 2007, c. 273, Pt. A, §41 (AMD).

**§10-303. Requirement for written disclosure**

Before any agreement is entered into, or before any money is paid by a consumer, whichever occurs first, the loan broker shall provide the consumer with written disclosure of material consumer protections, including the following: [PL 2005, c. 274, §10 (AMD).]

1. The existence and purpose of the surety bond on file with the State, and the procedure for instituting an action against that bond; [PL 1989, c. 70, §3 (NEW).]

2. The requirement that all fees from the consumer, other than bona fide 3rd-party fees, be placed in an escrow account; and  
[PL 1989, c. 70, §3 (NEW).]

3. The requirement for a written, signed agreement between the parties.  
[PL 1989, c. 70, §3 (NEW).]

#### SECTION HISTORY

PL 1989, c. 70, §3 (NEW). PL 2005, c. 274, §10 (AMD).

#### **§10-303-A. Good faith and fair dealing**

1. A loan broker shall, in addition to duties imposed by other statutes or at common law:

A. Act in good faith and with fair dealing in any transaction, practice or course of business in connection with the brokering or making of any mortgage loan; [PL 2007, c. 273, Pt. A, §30 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

B. Safeguard and account for any money handled for the borrower; [PL 2007, c. 273, Pt. A, §30 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

C. Follow reasonable and lawful instructions from the borrower; [PL 2007, c. 273, Pt. A, §30 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

D. Use reasonable skill, care and diligence; [PL 2007, c. 273, Pt. A, §30 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

E. Timely and clearly disclose to the borrower material information that might reasonably affect the borrower's rights, interests or ability to receive the borrower's intended benefit from the residential mortgage loan, including the total compensation the broker would receive from any of the loan options the broker presents to the borrower; and [PL 2007, c. 273, Pt. A, §30 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

F. Make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges and repayment terms of the loan.  
[PL 2007, c. 273, Pt. A, §30 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

[PL 2007, c. 273, Pt. A, §30 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

2. The duties and standards of care created in this section may not be waived or modified.  
[PL 2007, c. 273, Pt. A, §30 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

#### SECTION HISTORY

PL 2007, c. 273, Pt. A, §30 (NEW). PL 2007, c. 273, Pt. A, §41 (AFF).

#### **§10-304. Advertising**

1. A loan broker may not engage in this State in false or misleading advertising concerning the terms and conditions of any services or assistance offered.  
[PL 2005, c. 274, §11 (AMD).]

2. This section imposes no liability on the owner or personnel of any medium in which an advertisement appears or through which it is disseminated.  
[PL 1989, c. 70, §3 (NEW).]

3. A loan broker shall include its license number in all print advertising in this State.  
[PL 2005, c. 274, §11 (NEW).]

#### SECTION HISTORY

PL 1989, c. 70, §3 (NEW). PL 2005, c. 274, §11 (AMD).

**§10-305. Rulemaking**

The administrator may adopt reasonable rules pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, and in accordance with this article governing loan brokers. [PL 2005, c. 274, §12 (AMD).]

**SECTION HISTORY**

PL 1989, c. 70, §3 (NEW). PL 2005, c. 274, §12 (AMD).

**§10-306. Privacy of consumer financial information**

A loan broker shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the loan broker is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [PL 2005, c. 274, §13 (AMD).]

**SECTION HISTORY**

PL 2001, c. 262, §A3 (NEW). PL 2005, c. 274, §13 (AMD).

**§10-307. Real estate settlement procedures**

A loan broker and its mortgage loan originators shall comply with the provisions of 12 United States Code, Section 2601 et seq., the federal Real Estate Settlement Procedures Act of 1974 and its implementing regulation, Regulation X, 12 Code of Federal Regulations, Section 1024.1 et seq. [PL 2013, c. 464, §12 (AMD).]

**SECTION HISTORY**

PL 2007, c. 273, Pt. A, §31 (NEW). PL 2007, c. 273, Pt. A, §41 (AFF). PL 2007, c. 466, Pt. B, §9 (AMD). PL 2007, c. 466, Pt. B, §10 (AFF). PL 2011, c. 427, Pt. B, §16 (AMD). PL 2013, c. 464, §12 (AMD).

**§10-307-A. Application of truth in lending limits**

A loan broker and its mortgage loan originators shall comply with the provisions of the Federal Truth in Lending provisions of Article 8-A and any rules adopted in accordance with that Article. [PL 2011, c. 427, Pt. A, §16 (NEW).]

**SECTION HISTORY**

PL 2011, c. 427, Pt. A, §16 (NEW).

**§10-308. False information on application for credit**

A loan broker or any mortgage loan originator of a loan broker may not knowingly permit, encourage or assist a consumer to submit false information on any application for credit, nor may a loan broker or mortgage loan originator of a loan broker knowingly falsify such information on a consumer's application. [PL 2011, c. 427, Pt. B, §17 (AMD).]

**SECTION HISTORY**

PL 2007, c. 273, Pt. A, §32 (NEW). PL 2007, c. 273, Pt. A, §41 (AFF). PL 2011, c. 427, Pt. B, §17 (AMD).

### **§10-309. Rate locks**

If a loan broker collects a fee from a consumer to lock in a certain interest rate for a certain length of time, that loan broker shall: [PL 2007, c. 273, Pt. A, §33 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

1. Take steps that are necessary to actually secure or guarantee the specified rate for the appropriate length of time;

[PL 2007, c. 273, Pt. A, §33 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

2. Select a time period within which the loan can reasonably be expected to close; and  
[PL 2007, c. 273, Pt. A, §33 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

3. Use good faith efforts to close the loan within the rate lock period.  
[PL 2007, c. 273, Pt. A, §33 (NEW); PL 2007, c. 273, Pt. A, §41 (AFF).]

### **SECTION HISTORY**

PL 2007, c. 273, Pt. A, §33 (NEW). PL 2007, c. 273, Pt. A, §41 (AFF).

### **§10-310. Requirements related to refund anticipation loan and refund anticipation check**

1. A facilitator of a refund anticipation loan or refund anticipation check shall make the following disclosures in accordance with this section.

A. A facilitator of a refund anticipation loan or refund anticipation check shall prominently display a schedule showing the current fees for a refund anticipation loan or refund anticipation check at its place of business. Each fee schedule must include at least 5 examples of refund anticipation loans in different amounts ranging from \$300 to \$5,000. [PL 2009, c. 248, §9 (NEW).]

B. A facilitator of a refund anticipation loan or refund anticipation check shall post the following notice to consumers: "When you take out a refund anticipation loan, you are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. You can get your refund in 8 to 15 days without paying any extra fees and taking out a refund anticipation loan. You can have your tax return filed electronically and your refund deposited directly into your own bank account without obtaining a refund anticipation loan or paying fees for an extra product." [PL 2009, c. 248, §9 (NEW).]

C. At the time a person applies for a refund anticipation loan or refund anticipation check, the facilitator of a refund anticipation loan or refund anticipation check shall disclose, on a form separate from the application, the refund anticipation loan fee or refund anticipation check fee; the fee for tax preparation or any other fee; the time within which the proceeds of the refund anticipation loan or refund anticipation check will be paid if the loan or check is approved; and, in the case of a refund anticipation loan, if it is the practice of the facilitator to demand repayment upon delivery of the refund, the annual percentage rate based on the facilitator's reasonable estimate of the time the refund will be delivered. [PL 2011, c. 427, Pt. D, §14 (AMD).]

D. Prior to the consummation of the refund anticipation loan or refund anticipation check transaction, the facilitator of a refund anticipation loan or refund anticipation check shall also provide a copy of the completed loan or check application and agreement and, for a refund anticipation loan, the disclosures required by Article 8-A. [PL 2011, c. 427, Pt. D, §14 (AMD).]

E. If a person applies for a refund anticipation loan, the facilitator of a refund anticipation loan or refund anticipation check shall orally inform the applicant that the product is a loan that lasts only one to 2 weeks, that the applicant is liable for the full amount of the loan if the anticipated tax



refund is less than expected, the amount of any loan fees and the interest rate for the loan. If a person applies for a refund anticipation check, the facilitator of a refund anticipation loan or refund anticipation check shall orally inform the applicant of any check fee and that the applicant can receive a refund without a loan or extra fees if the refund is filed electronically and the applicant chooses direct deposit to the applicant's own bank account. [PL 2009, c. 248, §9 (NEW).]

[PL 2011, c. 427, Pt. D, §14 (AMD).]

2. A facilitator of a refund anticipation loan or refund anticipation check is prohibited from engaging in any of the following activities.

A. A facilitator of a refund anticipation loan or refund anticipation check may not assess or impose any fee, charge or other consideration in the making of a refund anticipation loan or refund anticipation check unless that fee, charge or other consideration is included in the disclosed refund anticipation loan fee and the refund anticipation loan interest rate charged by the creditor or bank that provides the loan or check. In addition, any such fee, charge or other consideration, from whatever source, must be disclosed on the written agreement required by section 10-302. A facilitator of a refund anticipation loan or refund anticipation check may charge a fee for tax preparation if the same fee in the same amount is charged to customers who do not receive a refund anticipation loan, refund anticipation check or any other tax-related financial product. [PL 2009, c. 248, §9 (NEW).]

B. A facilitator of a refund anticipation loan or refund anticipation check may not engage in unfair or deceptive acts or practices in the facilitating of a refund anticipation loan or refund anticipation check, including making any oral statements contradicting any of the information required to be disclosed under this Article. [PL 2009, c. 248, §9 (NEW).]

C. A facilitator of a refund anticipation loan or refund anticipation check may not threaten to take any action prohibited by this Article in facilitating a refund anticipation loan or refund anticipation check. [PL 2009, c. 248, §9 (NEW).]

D. A facilitator of a refund anticipation loan or refund anticipation check may not directly or indirectly arrange for any 3rd party to charge any interest, fee or charge related to a refund anticipation loan or refund anticipation check, including but not limited to charges for insurance, check cashing or attorney's fees or other collection costs. [PL 2009, c. 248, §9 (NEW).]

E. A facilitator of a refund anticipation loan or refund anticipation check may not include any of the following provisions in a refund anticipation loan application or agreement:

- (1) A hold-harmless clause;
- (2) A confession-of-judgment clause;
- (3) A waiver of the right to a jury trial in any action;
- (4) Any assignment of or order for payment of wages or other compensation for services;
- (5) An agreement that the consumer will not assert any claim or defense arising out of the contract or seek any remedies pursuant to this Title;
- (6) A waiver of any requirement of this Article;
- (7) A waiver of the right to injunctive, declaratory or other equitable relief or relief on a classwide basis; or
- (8) A requirement that any aspect of a resolution of a dispute between the parties to the agreement be kept confidential. [PL 2009, c. 248, §9 (NEW).]

F. A facilitator of a refund anticipation loan or refund anticipation check may not take or arrange for a creditor to take a security interest in any property of the consumer other than the proceeds of

the consumer's tax refund to secure payment of a refund anticipation loan. [PL 2009, c. 248, §9 (NEW).]

G. A facilitator of a refund anticipation loan or refund anticipation check may not directly or indirectly engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee. [PL 2009, c. 248, §9 (NEW).]

H. A facilitator of a refund anticipation loan or refund anticipation check may not refer, facilitate or solicit consumers on behalf of a 3rd party engaged in check cashing for a fee or permit 3rd-party check cashing for a fee in any place of business in which refund anticipation loans or refund anticipation checks are facilitated. [PL 2009, c. 248, §9 (NEW).]

I. A facilitator of a refund anticipation loan or refund anticipation check may not facilitate any refund anticipation loan that is secured by or that the creditor arranges to be repaid directly from the proceeds of the consumer's state tax refund. [PL 2009, c. 248, §9 (NEW).]

J. A facilitator of a refund anticipation loan or refund anticipation check may not make a misrepresentation of fact in obtaining or attempting to obtain a registration as a facilitator. [PL 2009, c. 248, §9 (NEW).]

K. A facilitator of a refund anticipation loan or refund anticipation check may not advertise or market a refund anticipation loan without including in the advertising or marketing materials a disclosure that the product is a loan and that tax refunds can be obtained without a loan or extra fees if tax returns are electronically filed with direct deposit. [PL 2009, c. 248, §9 (NEW).]

L. A facilitator of a refund anticipation loan or refund anticipation check may not advertise or market a refund anticipation check without including in the advertising or marketing materials a disclosure that there is a fee associated with the check and that tax refunds can be obtained without a loan or extra fees if tax returns are electronically filed with direct deposit. [PL 2009, c. 248, §9 (NEW).]

[PL 2009, c. 248, §9 (NEW).]

## SECTION HISTORY

PL 2009, c. 248, §9 (NEW). PL 2011, c. 427, Pt. D, §14 (AMD).

## PART 4

### REMEDIES AND PENALTIES

#### §10-401. Effects of violations on rights of parties

Any loan broker or mortgage loan originators of any loan broker that violate any provision of this Title or any rule issued by the administrator, or that through any unfair, unconscionable or deceptive practice cause actual damage to a consumer, are subject to the following: [PL 2011, c. 427, Pt. B, §18 (AMD).]

1. After notice and hearing, a cease and desist order from the administrator;  
[PL 1989, c. 70, §3 (NEW).]

2. After notice and hearing, forfeiture of such portion of the required bond as proportionately may make aggrieved parties whole;  
[PL 1989, c. 70, §3 (NEW).]

3. A civil action, by the administrator through the Attorney General, after which a court may assess a civil penalty of not more than \$5,000;  
[PL 1993, c. 495, §5 (AMD).]

4. A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the loan broker or its mortgage loan originators in an amount determined by the court, plus costs of the action together with reasonable attorney's fees; and  
[PL 2011, c. 427, Pt. B, §19 (AMD).]

5. Revocation, suspension or nonrenewal of its license.  
[PL 2005, c. 274, §14 (AMD).]

#### SECTION HISTORY

PL 1989, c. 70, §3 (NEW). PL 1993, c. 495, §5 (AMD). PL 2005, c. 164, §§10,11 (AMD). PL 2005, c. 274, §14 (AMD). PL 2005, c. 683, §§B5,6 (AMD). PL 2011, c. 427, Pt. B, §§18, 19 (AMD).

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