

3726--A

2009-2010 Regular Sessions

I N S E N A T E

March 30, 2009

Introduced by Sen. FOLEY -- (at request of the Banking Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to powers of the banking board, restrictions on employees of the banking department, collecting assessments and fees, suspending mortgage bankers and brokers for cause and eliminating outdated language and provisions; to amend the real property law, in relation to interest rate increases on mortgage loans after default and to repeal certain provisions of the banking law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 9-q of the banking law, as added by chapter 1 of
2 the laws of 1994, is amended to read as follows:
3 S 9-q. Small business and small farm loans. By September thirtieth of
4 [each year] TWO THOUSAND NINE AND EVERY SECOND YEAR THEREAFTER, the
5 superintendent shall make a report to the governor, the temporary presi-
6 dent of the senate, the speaker of the assembly, the chairman AND RANK-
7 ING MINORITY MEMBER of the senate standing committee on banks, and the
8 chairman AND RANKING MINORITY MEMBER of the assembly standing committee
9 on banks, of the aggregate outstanding loans made to small businesses
10 and small farms as reported in the periodic reports of financial condi-
11 tion filed by banking institutions located in this state with the appro-
12 priate federal bank regulatory agency. The superintendent's report shall
13 be available to the public. For purposes of this section, "banking
14 institution" means any bank, trust company, savings bank, savings and
15 loan association, or branch of a foreign banking corporation the depos-
16 its of which are insured by the Federal Deposit Insurance Corporation,
17 which is incorporated, chartered, organized or licensed under the laws
18 of this state or any other state or the United States.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD09608-05-9

1 S 2. Paragraph (ii) of subdivision 1 of section 14 of the banking law
2 is REPEALED.

3 S 3. Subdivision 2 of section 14 of the banking law, as amended by
4 chapter 684 of the laws of 1938, is amended to read as follows:

5 2. The board shall consider and make recommendations upon any matter
6 which the superintendent may submit to it for recommendations, and pass
7 upon and determine any matter which he OR SHE shall submit to it for
8 determination. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE SUPER-
9 INTENDENT, WITHOUT PUBLIC NOTICE, MAY MAKE INFORMATIONAL PRESENTATIONS
10 OR BRIEFINGS TO THE BOARD OR ANY MEMBERS THEREOF, IN PERSON OR BY ELEC-
11 TRONIC MEANS, PROVIDED THAT THE INFORMATION PRESENTED IS SUBJECT TO THE
12 CONFIDENTIALITY PROVISIONS OF SUBDIVISION TEN OF SECTION THIRTY-SIX OF
13 THIS ARTICLE AND PROVIDED THAT THE BOARD CONDUCTS NO PUBLIC BUSINESS AT
14 ANY SUCH PRESENTATION OR BRIEFING.

15 S 4. Subdivision 7 of section 14-d of the banking law, as added by
16 chapter 234 of the laws of 1983, is amended to read as follows:

17 7. In this section "banking institution" has the same meaning ascribed
18 to it by section [nine-f] NINE-K of this chapter and "item" has the same
19 meaning ascribed to it by the uniform commercial code.

20 S 5. Subdivision 3 of section 16 of the banking law, as amended by
21 chapter 318 of the laws of 1995, is amended to read as follows:

22 3. Nothing in this section shall be construed to prohibit an employee
23 from: (a) obtaining a loan secured by an assignment of his or her depos-
24 it in a banking organization, or an assignment or pledge of his or her
25 shares in a savings and loan association or credit union; (b) [obtaining
26 from a savings bank which has established a life insurance department
27 pursuant to article VI-A of this chapter one or more policies of insur-
28 ance and one or more annuity policies, receiving dividends on such poli-
29 cies and pledging such policies as security for a loan from said banking
30 organization to the extent of the cash surrender value thereof; (c)]
31 accepting dealer financing of an automobile, truck or other personal
32 property for the sole reason that the financing company is chartered
33 under article [XII] TWELVE of this chapter; or [(d)] (C) owning shares
34 of an investment company (mutual fund) that may incidentally invest in
35 the stock of banking institutions, provided that the purpose of the
36 investment portfolio of such investment company may not be to invest
37 primarily or exclusively in the shares of banking [institutions] ORGAN-
38 IZATIONS. For purposes of this section, investment companies include
39 open-end and closed-end investment companies and unit investment trusts
40 as those terms are defined in an Act of Congress entitled "The Invest-
41 ment Company Act of 1940," as amended.

42 S 6. Subdivision 5 of section 17 of the banking law is REPEALED.

43 S 7. Subdivision 2 of section 17 of the banking law, as amended by
44 section 2 of part 0 of chapter 59 of the laws of 2006, is amended to
45 read as follows:

46 2. All general expenses, including in addition to the direct costs of
47 personal service, the cost of maintenance and operation, the cost of
48 retirement contributions made and workers' compensation premiums paid by
49 the state for or on account of personnel, rentals for space occupied in
50 state owned or state leased buildings and all other direct or indirect
51 costs, incurred in connection with the supervision of any person or
52 entity licensed, registered, or incorporated or otherwise formed pursu-
53 ant to this chapter shall be charged to and paid by them in such
54 proportions as the superintendent shall deem just and reasonable. The
55 provisions of this subdivision shall not be applicable to a bank holding
56 company, as that term is defined in article three-A of this chapter.

1 The superintendent shall require that partial payments of the charges
2 for expenses of each fiscal year [commencing on or after April first,
3 nineteen hundred eighty-three] shall be paid on March tenth of the
4 preceding fiscal year and on June tenth, September tenth and December
5 tenth of the fiscal year, or on such other dates as the superintendent
6 may prescribe. Each such payment shall be equal to twenty-five [per
7 centum] PERCENT of the charges, or such other [per centum] PERCENTAGE or
8 [per centums] PERCENTAGES as the superintendent may prescribe, for the
9 fiscal year as estimated by the superintendent. The balance of the
10 expenses shall be charged and paid upon the determination of the actual
11 amount due. An overpayment of charges resulting from the requirements of
12 this subdivision shall be [refunded or at the option of] APPLIED AGAINST
13 THE NEXT ESTIMATED QUARTERLY ASSESSMENT, IF LESS THAN OR EQUAL TO SUCH
14 AMOUNT, WITH ANY EXCESS REFUNDED TO the assessed [shall be applied as a
15 credit against the charges for the succeeding fiscal year]. As an alter-
16 native, if the estimated annual charge for the fiscal year is equal to
17 or less than the annual minimum assessment set by the superintendent,
18 the superintendent may require full payment to be made on or before
19 September thirtieth or such other date of the fiscal year as the super-
20 intendent may determine.

21 S 8. Section 22 of the banking law, as amended by chapter 553 of the
22 laws of 2007, is amended to read as follows:

23 S 22. Fingerprints. [(a)] 1. Notwithstanding any other provision of
24 law, every applicant for a license, authorization or registration under
25 articles nine, nine-A, eleven-B, twelve-B, twelve-C, twelve-D, twelve-E
26 and thirteen-B of this chapter and every applicant filing an application
27 to acquire control of any licensee or registrant, as the case may be,
28 under such articles shall submit simultaneously with an application, his
29 or her fingerprints in such form and in such manner as specified by the
30 division of criminal justice services, but in any event, no less than
31 two digit imprints. The superintendent shall submit such fingerprints to
32 the division of criminal justice services for the purpose of conducting
33 a criminal history search and returning a report thereon in accordance
34 with the procedures and requirements established by the division pursu-
35 ant to the provisions of article thirty-five of the executive law, which
36 shall include the payment of the prescribed processing fees. The super-
37 intendent shall request that the division submit such fingerprints to
38 the federal bureau of investigation, together with the processing fees
39 prescribed by such bureau, for the purpose of conducting a criminal
40 history search and returning a report thereon. An applicant shall not be
41 required to submit his or her fingerprints as required by this subdivi-
42 sion if such applicant (i) is already subject to regulation by the
43 department and the applicant has submitted such fingerprints to the
44 department, such fingerprints have been submitted to the division of
45 criminal justice services for the purpose of conducting a criminal
46 history search, and a report of such search has been received by the
47 department from such division WITHIN THE PAST FIVE YEARS; or (ii) is
48 subject to regulation by a federal bank regulatory agency and has
49 submitted such fingerprints to such agency which has had a criminal
50 history search conducted of such individual and has shared such informa-
51 tion or its determination resulting from such search with the depart-
52 ment; or (iii) is an officer or stockholder of a corporation whose
53 common or preferred stock is registered on a national securities
54 exchange, as provided in an act of congress of the United States enti-
55 tled the "Securities Exchange Act of 1934", [approved June sixth, nine-
56 teen hundred thirty-four, as amended,] or such other exchange or market

1 system as the superintendent shall approve by regulation, and has
2 submitted such fingerprints to such exchange or market system which has
3 had a criminal history search conducted of such individual and has
4 shared such information or its determination resulting from such search
5 with the department; provided, however, that the superintendent may
6 subsequently require such applicant to submit his or her fingerprints if
7 the superintendent has a reasonable basis for updating the information
8 or determination resulting from the report of the criminal history
9 search conducted at the request of such federal banking agency, exchange
10 or market system.

11 [(b)] 2. The superintendent shall also, concurrent with an investi-
12 gation of a licensee or registrant, or an authorized individual,
13 pertaining to a violation of this chapter, submit such fingerprints to
14 the division of criminal justice services for the purpose of conducting
15 a criminal history search and returning a report thereon and through the
16 division to the federal bureau of investigation for the purpose of a
17 fingerprint check of such licensee, registrant or authorized individual.

18 [(c)] 3. For purposes of this section, "applicant" shall include a
19 natural person or such principal, officer, director, trustee or stock-
20 holder of any other entity as may be designated by the superintendent.
21 Notwithstanding any other provision of this article, the superintendent
22 shall not access criminal history data or information, unless any agency
23 from which the superintendent receives directly criminal history data or
24 information has entered into a use and dissemination agreement with the
25 superintendent consistent with the provisions of this section.

26 S 9. The second undesignated paragraph of section 23 of the banking
27 law, as amended by section 5 of part 0 of chapter 59 of the laws of
28 2006, is amended to read as follows:

29 At the time of submission of the certificate and accompanying docu-
30 ments an investigation fee as prescribed pursuant to section eighteen-a
31 of this article shall be paid to the superintendent[, to be retained by
32 him or her if the certificate and accompanying documents are filed. If
33 the certificate and accompanying documents are not filed because of
34 defects therein, the investigation fee is to be returned with such
35 papers to the persons from whom they were received].

36 S 10. Section 24 of the banking law, as amended by chapter 684 of the
37 laws of 1938, subdivision 1 as amended by chapter 453 of the laws of
38 1960, subdivision 2 as amended by chapter 419 of the laws of 1996,
39 subdivision 3 as amended by chapter 52 of the laws of 1944 and subdivi-
40 sion 4 as amended by chapter 608 of the laws of 1996, is amended to read
41 as follows:

42 S 24. Investigation by superintendent; refusal or approval; filing
43 certificate. 1. Within ninety days after the date when any organization
44 certificate or private banker's certificate shall have been filed for
45 examination, the superintendent, if he OR SHE shall find after investi-
46 gation and examination of what he OR SHE deems to be the best sources of
47 information [at his command] AVAILABLE that the character, responsibil-
48 ity and general fitness of the person or persons named in such certif-
49 icate are such as to command confidence and warrant belief that the
50 business of the proposed corporation or private banker will be honestly
51 and efficiently conducted in accordance with the intent and purpose of
52 this chapter, and that the public convenience and advantage will be
53 promoted by allowing such proposed corporation or private banker to
54 engage in business, shall submit such certificate to the banking board
55 together with all papers, correspondence and other information in his OR
56 HER possession relating thereto, including the results of [his] THE

1 investigation and his OR HER recommendation in the matter. [Such] AN
2 EXTENSION OF SUCH NINETY DAY period [of ninety days] may be [extended]
3 REQUESTED, by a written [consent] REQUEST executed by a majority of the
4 persons from whom the superintendent received such organization certif-
5 icate or private banker's certificate, for such additional reasonable
6 period of time as may be required for applicants to comply with condi-
7 tions precedent stipulated by the superintendent as being a prerequisite
8 to his OR HER recommendation to the banking board. THE SUPERINTENDENT,
9 IN HIS OR HER SOLE DISCRETION, SHALL DETERMINE WHETHER TO GRANT SUCH AN
10 EXTENSION.

11 2. If [three-fifths of the members of] the BANKING board, after
12 consideration of all relevant information available to them, shall vote
13 for approval, the superintendent, if he OR SHE is still satisfied, upon
14 the considerations set forth in subdivision one of this section, that
15 such proposed corporation or private banker should be permitted to
16 engage in business, shall approve such certificate and endorse upon each
17 of the duplicates the date of such approval. [He] THE SUPERINTENDENT
18 shall forthwith cause notice of such approval to be given to the
19 proposed incorporators or private banker and one of the duplicate
20 certificates [to] SHALL be filed in the office of the department and the
21 other in the office of the clerk of the county in which the principal
22 office of such proposed corporation or private banker is to be located.
23 In a case in which a private banker certificate is submitted to the
24 superintendent for the purpose of continuing the business in connection
25 with a change in its partnership, the superintendent shall approve the
26 private banker certificate without any action by the banking board upon
27 making a determination that the private banker should be permitted to
28 continue its business based upon the considerations set forth in subdivi-
29 sion one of this section.

30 3. If [three-fifths of the members of] the banking board shall not
31 vote for approval, or if the superintendent, either prior or subsequent
32 to the submission of such certificate to the board, is not satisfied,
33 upon the considerations set forth in subdivision one of this section,
34 that such proposed corporation or private banker should be permitted to
35 engage in business, the superintendent shall refuse such certificate and
36 shall endorse thereon the date of such refusal and return one of the
37 duplicates to the proposed incorporators or private banker from whom
38 such certificate was received.

39 4. The provisions of this section shall not apply to any organization
40 certificate required to be filed in the office of the superintendent by
41 SECTION ONE HUNDRED THIRTY-SIX, BY section two hundred sixty-b, by
42 section four hundred ten, by section four hundred eleven or by section
43 four hundred eighty-six of this chapter.

44 S 11. Subdivisions 1 and 3 of section 25 of the banking law, subdivi-
45 sion 1 as amended by chapter 512 of the laws of 1977 and subdivision 3
46 as amended by chapter 561 of the laws of 1946, are amended to read as
47 follows:

48 1. If the superintendent shall find that a corporation or private
49 banker, the certificate of which has been approved and filed as provided
50 in section twenty-four of this article, has in good faith complied with
51 all the requirements of law and fulfilled all the conditions precedent
52 to commencing business imposed by this chapter, [he] THE SUPERINTENDENT
53 shall, within ninety days after the date of such approval, [or within
54 such longer period thereafter as he may permit pursuant to the second
55 sentence of this subdivision,] but UNLESS THE SUPERINTENDENT DETERMINES
56 THAT EXTRAORDINARY CIRCUMSTANCES EXIST, in no case after the expiration

1 of that period, issue [under his hand] and EXECUTE UNDER the official
2 seal of the department, in triplicate, an authorization certificate to
3 the person or persons named in such organization certificate or private
4 banker's certificate. [The] NOTWITHSTANDING THE PRECEDING SENTENCE, IF
5 THE SUPERINTENDENT DETERMINES IT IS CONSISTENT WITH THE DECLARATION OF
6 POLICY CONTAINED IN SECTION TEN OF THIS ARTICLE, THE superintendent may
7 extend the period within which he OR SHE may issue the authorization
8 certificate by (I) an additional [sixty] NINETY days, provided, however,
9 that he OR SHE shall have determined that such extension of time is
10 needed for raising capital, for fulfilling any other condition precedent
11 to the commencement of business or for satisfying any other requirement
12 of organization, whether imposed by statute or regulation[, and that
13 such extension is consistent with the declaration of policy contained in
14 section ten of this chapter] OR OTHERWISE, OR (II) SUCH LONGER PERIOD OF
15 TIME HE OR SHE SHALL DEEM APPROPRIATE, PROVIDED, HOWEVER, THAT HE OR SHE
16 SHALL HAVE DETERMINED THAT EXTRAORDINARY CIRCUMSTANCES EXIST. Such
17 authorization certificate shall state that the corporation or private
18 banker named therein has complied with the provisions of this chapter
19 and that it is authorized to transact the business specified therein.
20 Such authorization certificate shall be conclusive evidence that all
21 conditions precedent have been fulfilled and that the corporation has
22 been formed under this chapter, except in an action or special proceed-
23 ing brought by the superintendent or the attorney general. The super-
24 intendent shall cause one of the triplicate authorization certificates
25 to be transmitted to the corporation or private banker thereby author-
26 ized to commence business, another to be filed in the office of the
27 department, and the third to be filed in the county clerk's office in
28 which the organization certificate or the private banker's certificate
29 has been filed. The copies of the authorization certificate filed in the
30 offices of the superintendent and the county clerk shall be attached to
31 the copies of the organization certificate or private banker's certif-
32 icate previously filed and such certificates shall be recorded in the
33 records of incorporation therein.

34 3. Any corporation which shall not commence business within six months
35 after the date on which its authorization certificate is issued by the
36 superintendent shall forfeit its rights and privileges as a corporation
37 and its corporate powers shall cease and determine unless the time with-
38 in which such business may be commenced has been extended by the super-
39 intendent. Upon satisfactory cause being shown, the superintendent may
40 grant [an extension for a period of not more than one year] ONE OR MORE
41 EXTENSIONS. Such extension shall be granted by order executed, transmit-
42 ted and filed in the manner provided for an authorization certificate in
43 subdivision one of this section.

44 S 12. Section 28 of the banking law, as amended by chapter 315 of the
45 laws of 2008, is amended to read as follows:

46 S 28. Change of location; change of designation of principal office;
47 approval or refusal; certificate. Upon receipt by the superintendent of
48 a written application in proper form from any banking organization or
49 foreign corporation for leave to change its place or one of its places
50 of business to another place or from any banking organization for leave
51 to change the designation of its principal office to a branch office and
52 to change the designation of one of its branch offices to its principal
53 office, the superintendent shall, if he or she shall be satisfied that
54 such change may be permitted under the terms of this chapter and that
55 there is no reasonable objection to such change, execute and issue a
56 certificate under the official seal of the department authorizing such

1 change and specifying the date on or after which such change may be
2 made, and shall cause the original of such certificate to be transmitted
3 to the applicant, a copy to be filed in the office of the department and
4 a copy to be filed in the office of the clerk of the county in which the
5 principal office of the applicant is located, provided that if the
6 proposed principal office is in a different county than the county in
7 which the principal office is located at the time of the filing of the
8 application, the superintendent shall cause copies to be filed in the
9 offices of the clerks of both counties. If the superintendent shall [be
10 satisfied in any case that such change is undesirable or inexpedient, he
11 or she shall] refuse such application [and], HE OR SHE SHALL notify the
12 applicant of such determination.

13 S 13. Section 28-a of the banking law, as amended by section 6 of part
14 O of chapter 59 of the laws of 2006, is amended to read as follows:

15 S 28-a. Temporary change of location; approval or refusal; certif-
16 icate. Notwithstanding any provisions of law limiting the number of
17 offices which may be maintained thereby, any banking organization or
18 foreign banking corporation may make a written application to the super-
19 intendent for a temporary change of location of its authorized place or
20 one of its authorized places of business or a portion thereof to another
21 place within the state which shall be as near as practicable to such
22 authorized place of business. At the time of making the application an
23 investigation fee as prescribed pursuant to section eighteen-a of this
24 article shall be paid to the superintendent for each temporary location
25 for which leave to open is sought, except where (1) the applicant would
26 not be required to pay an investigation fee upon the filing of an appli-
27 cation for a change of location under provisions of this chapter other
28 than this section, or (2) said application is necessitated by damage or
29 destruction caused by flood, tidal wave, earthquake, conflagration,
30 tornado, hurricane, cyclone, windstorm or other storm or such other
31 event as shall have been declared a catastrophe by the superintendent.
32 If there is no reasonable objection to such change, and if the super-
33 intendent finds that such change is necessary or desirable during a
34 period of construction, repair, alteration, improvement, or recon-
35 struction of the previously authorized place of business, he or she
36 shall issue AND EXECUTE a certificate under [his or her hand and] the
37 official seal of the department authorizing each such change and speci-
38 fying (a) the period during which such temporary location may be main-
39 tained, (b) the date on or after which such change may be made, and (c)
40 the powers which may be exercised thereat. The superintendent shall
41 cause the original of such certificate to be transmitted to the appli-
42 cant, a copy to be filed in the office of the department and a copy to
43 be filed in the office of the clerk of the county in which the principal
44 office of the applicant is located. If the superintendent shall [be
45 satisfied in any case that a change is undesirable or inexpedient, he or
46 she shall] refuse such application [and], HE OR SHE SHALL notify the
47 applicant of [his or her] SUCH determination. A temporary place of busi-
48 ness occupied pursuant to the provisions of this section shall be closed
49 as soon as practicable, and in no event later than the date specified in
50 its authorization certificate, unless the superintendent shall have
51 extended such time. The banking organization or corporation shall notify
52 the superintendent in writing prior to such closing as to the date it
53 intends to close the temporary place of business.

54 S 14. Subdivision 2 of section 28-b of the banking law is REPEALED.

55 S 15. Subdivision 5 of section 28-b of the banking law, as added by
56 chapter 361 of the laws of 1984, is amended to read as follows:

1 5. The banking board is hereby authorized and empowered[, by a three-
2 fifths vote of all its members,] to promulgate rules and regulations
3 effectuating the provisions of this section, including any rules and
4 regulations providing that the assessment of banking institutions
5 referred to in subdivision three of this section shall be made on a
6 graduated numerical basis.

7 S 16. Section 39 of the banking law is amended by adding a new subdi-
8 vision 7 to read as follows:

9 7. WHEN ANY PROVISION OF THIS CHAPTER REQUIRES THAT BOOKS AND RECORDS
10 BE MAINTAINED, SUCH REQUIREMENT MAY BE SATISFIED BY MAINTENANCE OF
11 ORIGINAL PAPERS OR OTHER RECORDS, PHOTOGRAPHIC REPRODUCTIONS, OR RECORDS
12 STORED IN ELECTRONIC STORAGE MEDIA. AS USED IN THIS CHAPTER, "ELECTRONIC
13 STORAGE MEDIA" MEANS ANY DIGITAL STORAGE MEDIUM OR SYSTEM THAT MEETS THE
14 FOLLOWING CONDITIONS:

15 (A) IT MUST PRESERVE THE RECORDS EXCLUSIVELY IN NON-REWRITABLE,
16 NON-ERASABLE FORMAT;

17 (B) IT MUST VERIFY AUTOMATICALLY THE QUALITY AND ACCURACY OF THE STOR-
18 AGE MEDIA RECORDING PROCESS;

19 (C) IT MUST HAVE THE CAPACITY TO READILY DOWNLOAD INDEXES AND RECORDS
20 PRESERVED ON THE ELECTRONIC STORAGE MEDIA TO ANY MEDIUM ACCEPTABLE TO
21 THE SUPERINTENDENT; AND

22 (D) IT MUST BE IMMEDIATELY READABLE ON EQUIPMENT AT ALL TIMES AVAIL-
23 ABLE TO THE SUPERINTENDENT FOR EXAMINATION OF SUCH RECORDS.

24 S 17. Subdivision 1 of section 75-g of the banking law, as designated
25 by section 4-a of part A of chapter 57 of the laws of 1998 and as added
26 by chapter 9 of the laws of 1996, is amended to read as follows:

27 1. Within one year after the effective date of this article, and each
28 year thereafter, every banking institution which has an automated teller
29 machine facility which is in operation on such date and such date every
30 year thereafter shall submit a written report to the department on a
31 form prescribed by the superintendent, certifying that such automated
32 teller machine facility is in compliance with the provisions of this
33 article or any variance or exemption that has been granted, or if such
34 facility is not in compliance with such provisions, such report shall
35 state the manner in which such facility fails to meet such requirements,
36 the reasons for such non-compliance and a plan to remedy any such non-
37 compliance.

38 NOTWITHSTANDING ARTICLE THREE OF THE STATE TECHNOLOGY LAW
39 OR ANY OTHER LAW TO THE CONTRARY, THE SUPERINTENDENT MAY REQUIRE THAT
40 ANY REPORTS REQUIRED BY THIS SUBDIVISION BE MADE BY ELECTRONIC MEANS IF
41 HE OR SHE DEEMS IT NECESSARY TO ENSURE THE EFFICIENT AND EFFECTIVE
42 ADMINISTRATION OF THIS ARTICLE.

43 S 18. The closing paragraph of section 42 of the banking law, as
44 amended by chapter 684 of the laws of 1938, is amended to read as
45 follows:

46 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, THE SUPER-
47 INTENDENT MAY VARY OR WAIVE ANY SUCH PUBLICATION REQUIREMENTS, IF HE OR
48 SHE SHALL DETERMINE THAT SUCH VARIATION OR WAIVER IS NECESSARY BECAUSE
49 OF UNUSUAL AND EXTRAORDINARY CIRCUMSTANCES AND CONSIDERATION OF THE
50 MATTER IS IN THE PUBLIC INTEREST. Every such statement after having been
51 so posted for one week shall be placed on file and kept in the office of
52 the department. All such statements shall be public documents and at all
53 reasonable times shall be open to public inspection.

54 S 19. Subdivision 1 of section 229 of the banking law, as amended by
55 chapter 1 of the laws of 1984, is amended to read as follows:

56 1. This article applies to every savings bank and shall not apply to
any other banking organization except to such extent, if any, as may be

1 specified in any article of this chapter governing such banking organ-
2 ization; provided, however, that in the case of stock-form savings
3 banks, this article applies to every such organization except that the
4 banking board, consistent with the declaration of policy described in
5 section fourteen-e of this chapter, shall be empowered to deem inappli-
6 cable to stock-form savings banks, sections two hundred thirty, [two
7 hundred thirty-one,] two hundred thirty-two, two hundred thirty-three,
8 subdivisions one and two of section two hundred thirty-four, two hundred
9 forty-three, two hundred forty-four, two hundred forty-five, two hundred
10 forty-six, two hundred forty-six-a, two hundred forty-seven, two hundred
11 forty-eight, two hundred forty-nine, two hundred fifty, two hundred
12 fifty-one and two hundred fifty-two of this chapter.

13 S 20. Subdivision 1 of section 413 of the banking law, as amended by
14 chapter 300 of the laws of 1994, is amended to read as follows:

15 1. With the prior approval of the superintendent, a New York savings
16 and loan holding company or a subsidiary thereof or a New York savings
17 association may acquire control of an out-of-state savings and loan
18 holding company or an out-of-state savings association, and an out-of-
19 state savings and loan holding company or a subsidiary thereof or an
20 out-of-state savings association may acquire control of a New York
21 savings and loan holding company or a New York savings association
22 subject to regulations to be adopted by the banking board. [The terms
23 and conditions prescribed by such regulations shall be substantially
24 similar to those contained in section one hundred forty-two-b of this
25 chapter governing reciprocal interstate acquisitions by bank holding
26 companies.]

27 S 21. Subdivision 2 of section 460 of the banking law, as added by
28 chapter 608 of the laws of 1996, is amended to read as follows:

29 2. Earnings from all sources for the period for which a dividend is to
30 be paid[, except as provided in section four hundred fifty-eight of this
31 article,] may be credited to the profit and loss account of the credit
32 union and the following items shall be charged against such account in
33 the determination of the amount available for dividends to shareholders:

34 (a) All expenses paid or incurred by the credit union in the manage-
35 ment of its affairs, the collection of its debts or the transaction of
36 its business.

37 (b) The interest paid or accrued on debts owed by the credit union.

38 (c) All losses incurred on loans in excess of the allowance for loan
39 loss account.

40 (d) Any interest collected in advance shall be considered unearned at
41 the end of the fiscal period, and shall be set aside in an account
42 called "unearned interest".

43 The credit balance of the profit and loss account as thus determined
44 shall constitute the undivided profits of the credit union at the close
45 of such period, and shall be applicable to the payment of dividends
46 except as provided in subdivision three of this section.

47 S 22. Paragraph (1) of subdivision 8 of section 609 of the banking
48 law, as amended by chapter 684 of the laws of 1938, is amended to read
49 as follows:

50 (1) Within sixty days after a plan pursuant to this subdivision has
51 become effective with respect to any bank[, OR trust company [or indus-
52 trial bank], there shall be called in accordance with its by-laws a
53 meeting of its stockholders who shall elect directors who shall succeed
54 the former directors. The directors so elected shall elect officers who
55 shall succeed the former officers. Directors in office at the date of
56 such meeting may be elected at such meeting to succeed themselves and

1 the directors elected at such meeting may elect officers then serving to
2 succeed themselves. [Notwithstanding the requirements as to ownership of
3 capital stock contained in section one hundred sixteen or section three
4 hundred three of this chapter, the] THE directors of such bank[,] OR
5 trust company [or industrial bank] holding office at the time that such
6 plan becomes effective may continue to hold office as directors, until
7 their successors are elected and shall have qualified.

8 S 23. Section 4002 of the banking law, as added by chapter 321 of the
9 laws of 1992, subdivisions (a) and (b) as amended and subdivision (d) as
10 added by chapter 302 of the laws of 2003, is amended to read as follows:

11 S 4002. Fingerprints. [(a)] 1. Notwithstanding any other provisions of
12 law, every incorporator of a corporation shall, in addition to any other
13 requirements which may be imposed by the superintendent, submit simul-
14 taneously with an application, his or her fingerprints in such form and
15 in such manner as specified by the division of criminal justice
16 services, but in any event, no less than two digit imprints. Every
17 applicant filing an application to acquire control of any bank holding
18 company under section one hundred forty-two of this chapter or of any
19 banking institution under sections one hundred forty-three-a and one
20 hundred forty-three-b of this chapter shall, in addition to any other
21 requirements which may be imposed by the superintendent, submit simul-
22 taneously with an application, his or her fingerprints in such form and
23 in such manner as specified by the division of criminal justice
24 services, but in any event, no less than two digit imprints. The super-
25 intendent shall submit the fingerprints to the division of criminal
26 justice services for the purpose of conducting a criminal history search
27 and returning a report thereon in accordance with the procedures and
28 requirements established by the division pursuant to the provisions of
29 article thirty-five of the executive law, which shall include the
30 payment of the prescribed processing fees. The superintendent shall
31 request that the division submit such fingerprints to the federal bureau
32 of investigation, together with the processing fees prescribed by such
33 bureau, for the purpose of conducting a criminal history search and
34 returning a report thereon.

35 [(b)] 2. The superintendent shall also, concurrent with an investi-
36 gation of an incorporator of a corporation pertaining to a violation of
37 this chapter, submit such fingerprints to the division of criminal
38 justice services for the purpose of conducting a criminal history search
39 and returning a report thereon and through the division to the federal
40 bureau of investigation for the purpose of a fingerprint check of such
41 incorporator.

42 [(c)] 3. For purposes of this section, "incorporator" shall include a
43 natural person or such principal, officer, director, trustee or stock-
44 holder of any other entity as may be designated by the superintendent.
45 Notwithstanding any other provision of this article, the superintendent
46 shall not access criminal history data or information, unless any agency
47 from which the superintendent receives directly criminal history data or
48 information has entered into a use and dissemination agreement with the
49 superintendent consistent with the provisions of this section.

50 [(d)] 4. An applicant shall not be required to submit his or her fing-
51 erprints as required by subdivision [(a)] ONE of this section if such
52 applicant (i) is already subject to regulation by the department and the
53 applicant has submitted such fingerprints to the department, such fing-
54 erprints have been submitted to the division of criminal justice
55 services for the purpose of conducting a criminal history search, and a
56 report of such search has been received by the department from such

1 division WITHIN THE PAST FIVE YEARS; or (ii) is subject to regulation by
2 a federal bank regulatory agency and has submitted such fingerprints to
3 such agency which has had a criminal history search conducted of such
4 individual and has shared such information or its determination result-
5 ing from such search with the department; or (iii) is an officer or
6 stockholder of a corporation whose common or preferred stock is regis-
7 tered on a national securities exchange, as provided in an act of
8 congress of the United States entitled the "Securities Exchange Act of
9 1934", [approved June sixth, nineteen hundred thirty-four, as amended,]
10 or such other exchange or market system as the superintendent shall
11 approve by regulation, and has submitted such fingerprints to such
12 exchange or market system which has had a criminal history search
13 conducted of such individual and has shared such information or its
14 determination resulting from such search with the department; provided,
15 however, that the superintendent may subsequently require such applicant
16 to submit sets of fingerprints if the superintendent has a reasonable
17 basis for updating the information or determination resulting from the
18 report of the criminal history search conducted at the request of such
19 federal banking agency, exchange or market system.

20 S 24. Subdivision 8 of section 5004 of the banking law, as added by
21 chapter 849 of the laws of 1964, is amended to read as follows:

22 8. When the consideration for shares has been paid in full, the
23 subscriber shall be entitled to all the rights and privileges of a hold-
24 er of such shares and to a certificate representing his shares, and such
25 shares shall be fully paid and, subject to sections [one hundred thir-
26 teen-a, one hundred thirteen-b,] one hundred fourteen[, three hundred
27 five, three hundred five-a, three hundred six, three hundred twenty-two,
28 three hundred twenty-two-a] and three hundred twenty-three of this chap-
29 ter, shall be nonassessable.

30 S 25. Paragraph (b) of subdivision 1 of section 591 of the banking
31 law, as amended by chapter 164 of the laws of 2003, is amended to read
32 as follows:

33 (b) [The] AS PROVIDED IN SECTION TWENTY-TWO OF THIS CHAPTER, THE fing-
34 erprints of the applicant[, which may be submitted to the division of
35 criminal justice services and the federal bureau of investigation for
36 state and national criminal history record checks];

37 S 26. Subdivision 1 of section 592-a of the banking law, as amended by
38 section 18 of part D-1 of chapter 109 of the laws of 2006, is amended to
39 read as follows:

40 1. Upon the filing of an application for registration, if the super-
41 intendent shall find that the financial responsibility, experience,
42 character, and general fitness of the applicant, and of the members
43 thereof if the applicant is a co-partnership or association, and of the
44 officers and directors thereof if the applicant is a corporation, are
45 such as to command the confidence of the community and to warrant belief
46 that the business will be operated honestly, fairly, and efficiently
47 within the purpose of this article, the superintendent shall thereupon
48 register the applicant as a mortgage broker on a roll maintained for
49 that purpose at the banking department, and issue a certificate attest-
50 ing to such registration in duplicate. If the superintendent shall not
51 so find, the superintendent shall not register such applicant, and shall
52 notify the applicant of the denial. The superintendent shall transmit
53 one copy of such certificate to the applicant and file another in the
54 office of the banking department. Upon receipt of such certificate a
55 mortgage broker shall be authorized to engage in the business of [plac-
56 ing] SOLICITING, processing [and], PLACING, OR negotiating mortgage

1 loans. Such registration shall remain in full force and effect until it
2 is surrendered by the [licensee] REGISTRANT or revoked or suspended as
3 hereinafter provided, [except that such registration, notwithstanding
4 any provisions of subdivision five of section seventeen of this chapter
5 to the contrary, shall expire upon the registrant's failure to pay the
6 required assessment charged pursuant to such section seventeen thirty
7 days after the date or dates such payment or payments are due. If the
8 registrant fails to pay such charged assessment by the date or dates
9 such payment or payments are due, then the registrant shall be required
10 to pay, in addition, a late fee in the amount of one hundred dollars.
11 Such registration shall be reinstated if the registrant pays such
12 assessment charged and any applicable late fees and/or interest within
13 sixty days of such expiration] OR TERMINATED IN ACCORDANCE WITH SUBDIVI-
14 SION TWO OF SECTION FIVE HUNDRED NINETY-FIVE OF THIS ARTICLE. The super-
15 intendent shall approve or deny every application for registration here-
16 under within ninety days from the filing of a complete application
17 provided, however, that failure to act within the prescribed period
18 shall not be deemed approval of any such application.

19 S 27. Section 595 of the banking law, as amended by chapter 571 of
20 the laws of 1986, paragraph (c) of subdivision 1 as amended and para-
21 graph (d) of subdivision 1 as added by chapter 164 of the laws of 2003,
22 subdivision 2 as amended by chapter 121 of the laws of 1993, subdivision
23 3 as amended by chapter 516 of the laws of 1996, subdivisions 4, 5 and 6
24 as amended and subdivisions 4-a and 7-a as added by chapter 400 of the
25 laws of 1993, is amended to read as follows:

26 S 595. Grounds for suspension or revocation of license, or suspension
27 or deletion of name from mortgage broker roll. 1. [The] IN ADDITION TO
28 THE AUTHORITY SET FORTH IN SUBDIVISION TWO OF THIS SECTION, THE super-
29 intendent may SUSPEND OR revoke any license to engage in the business of
30 a mortgage banker issued pursuant to this article or SUSPEND OR delete
31 the name of a mortgage broker from the roll of mortgage brokers regis-
32 tered pursuant to this article if he OR SHE shall find AFTER NOTICE AND
33 A HEARING, that:

34 (a) Through a course of conduct, the licensee or registrant has
35 violated any provisions of this article, or any rule or regulation
36 promulgated by the banking board, or any rule or regulation prescribed
37 by the superintendent under and within the authority of this article or
38 of any other law, rule or regulation of this state or the federal
39 government;

40 (b) Any fact or condition exists which, if it had existed at the time
41 of the original application for such license or registration, would have
42 warranted the superintendent in refusing originally to issue such
43 license;

44 (c) The commission by a licensee or registrant of a crime against the
45 laws of this state or any other state or of the United States involving
46 moral turpitude or fraudulent or dishonest dealing, or the entry of a
47 final judgment against a licensee or registrant in a civil action upon
48 grounds of fraud, misrepresentation or deceit;

49 (d) As a part of such determination regarding suspension or revoca-
50 tion, the superintendent is authorized to require the fingerprinting of
51 any licensee or registrant. Such fingerprints shall be submitted to the
52 division of criminal justice services for a state criminal history
53 record check, as defined in subdivision one of section three thousand
54 thirty-five of the education law, and may be submitted to the federal
55 bureau of investigation for a national criminal history record check.

1 2. (A) The superintendent may, [on] FOR good cause [shown], WITHOUT
2 NOTICE OR A HEARING, or where there is a substantial risk of public
3 harm, [suspend] ISSUE AN ORDER SUSPENDING any license or delete the name
4 of any registrant for a period not exceeding [thirty] NINETY days, pend-
5 ing investigation. "Good cause", as used in this subdivision, shall
6 exist only when the licensee or registrant has defaulted or is likely to
7 default in performing its financial engagements or engages in dishonest
8 or inequitable practices which may cause substantial harm to the persons
9 afforded the protection of this article.

10 (B) ANY MORTGAGE BROKER REGISTRATION SHALL TERMINATE UPON THE REGIS-
11 TRANT'S FAILURE TO PAY THE REQUIRED ASSESSMENT CHARGED PURSUANT TO
12 SECTION SEVENTEEN OF THIS CHAPTER WITHIN THIRTY DAYS AFTER THE DATE OR
13 DATES SUCH PAYMENT OR PAYMENTS ARE DUE. IF THE REGISTRANT FAILS TO PAY
14 SUCH CHARGED ASSESSMENT BY THE DATE OR DATES SUCH PAYMENT OR PAYMENTS
15 ARE DUE, THEN THE REGISTRANT SHALL BE REQUIRED TO PAY, IN ADDITION, A
16 LATE FEE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH REGISTRATION SHALL
17 BE REINSTATED IF THE REGISTRANT PAYS SUCH ASSESSMENT CHARGED AND ANY
18 APPLICABLE LATE FEES WITHIN SIXTY DAYS OF SUCH TERMINATION. THE SUPER-
19 INTENDENT MAY, IN HIS OR HER SOLE DISCRETION, WITHOUT NOTICE OR A HEAR-
20 ING, ISSUE AN ORDER SUSPENDING THE LICENSE OF ANY MORTGAGE BANKER UPON
21 THE FAILURE OF SUCH LICENSEE TO MAKE ANY PAYMENTS REQUIRED BY THIS CHAP-
22 TER.

23 (C) THE SUPERINTENDENT MAY, IN HIS OR HER SOLE DISCRETION, WITHOUT
24 NOTICE OR A HEARING, ISSUE AN ORDER SUSPENDING ANY LICENSE OR REGISTRA-
25 TION ISSUED PURSUANT TO THIS ARTICLE: (I) THIRTY DAYS AFTER THE DATE THE
26 LICENSEE OR REGISTRANT FAILS TO FILE ANY REPORT REQUIRED TO BE FILED BY
27 IT WITH THE SUPERINTENDENT PURSUANT TO THE AUTHORITY PROVIDED BY SECTION
28 FIVE HUNDRED NINETY-SEVEN OF THIS ARTICLE; (II) IMMEDIATELY UPON NOTICE
29 TO THE SUPERINTENDENT THAT ANY REQUIRED SURETY BOND OR LINE OF CREDIT IS
30 BEING CANCELED OR IS EXPIRING, IF THE LICENSEE OR REGISTRANT HAS NOT
31 PROVIDED THE SUPERINTENDENT WITH PROOF OF A REPLACEMENT BOND OR LINE OF
32 CREDIT SATISFACTORY TO THE SUPERINTENDENT; (III) IMMEDIATELY UPON NOTICE
33 TO THE SUPERINTENDENT THAT A LICENSEE OR REGISTRANT HAS FILED A PETITION
34 IN BANKRUPTCY; OR (IV) AT LEAST THIRTY DAYS AFTER THE LICENSEE OR REGIS-
35 TRANT HAS HAD FILED AGAINST IT A PETITION IN BANKRUPTCY.

36 3. IF THE SUPERINTENDENT HAS ISSUED AN ORDER SUSPENDING A LICENSE OR
37 REGISTRATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS
38 SECTION, SUCH LICENSE MAY BE REINSTATED IF THE SUPERINTENDENT DETER-
39 MINES, IN HIS OR HER SOLE DISCRETION AFTER INVESTIGATION, THAT GOOD
40 CAUSE THEREFOR DID NOT EXIST OR NO LONGER EXISTS. IF THE SUPERINTENDENT
41 HAS ISSUED AN ORDER SUSPENDING A LICENSE ISSUED PURSUANT TO PARAGRAPH
42 (B) OR (C) OF SUBDIVISION TWO OF THIS SECTION, SUCH LICENSE OR REGISTRA-
43 TION MAY BE REINSTATED, IF THE SUPERINTENDENT DETERMINES, IN HIS OR HER
44 SOLE DISCRETION, THAT THE LICENSEE OR REGISTRANT HAS CURED ALL DEFICIEN-
45 CIES SET FORTH IN SUCH ORDER BY THE CLOSE OF BUSINESS NINETY DAYS AFTER
46 THE DATE OF SUCH SUSPENSION ORDER, INCLUDING, WITHOUT LIMITATION, MAKING
47 ANY OVERDUE PAYMENT, HAVING ANY SUCH BANKRUPTCY PETITION DISMISSED OR
48 HAVING SUCH BOND REINSTATED. OTHERWISE, UNLESS THE SUPERINTENDENT HAS,
49 IN HIS OR HER SOLE DISCRETION, EXTENDED A SUSPENSION PURSUANT TO PARA-
50 GRAPH (B) OR (C) OF SUBDIVISION TWO OF THIS SECTION, THE LICENSE OF SUCH
51 LICENSEE OR REGISTRATION OF SUCH REGISTRANT SHALL BE DEEMED TO BE AUTO-
52 MATICALLY TERMINATED BY OPERATION OF LAW AT THE CLOSE OF BUSINESS ON
53 SUCH NINETIETH DAY.

54 4. Except as provided in subdivision two of this section, no license
55 or registration shall be revoked or suspended except after notice and a
56 hearing thereon. Any order of suspension issued after notice and a hear-

1 ing may include as a condition of reinstatement that the licensee or
2 registrant make restitution to consumers of fees or other charges which
3 have been improperly charged or collected as determined by the super-
4 intendent.

5 [4. Any] 5. WITH THE PRIOR APPROVAL OF THE SUPERINTENDENT, ANY licen-
6 see or registrant may surrender any license or certificate by delivering
7 to the superintendent written notice that it thereby surrenders such
8 license or certificate, but such surrender shall not affect such
9 licensee's or registrant's civil or criminal liability for acts commit-
10 ted prior to such surrender. [If such surrender is made after the issu-
11 ance by the superintendent of a statement of charges and notice of hear-
12 ing, the superintendent may proceed against the licensee or registrant
13 as if such surrender had not taken place.]

14 [4-a. An expiration] 6. A TERMINATION of registration in accordance
15 with THIS section [five hundred ninety-two-a of this article] shall not
16 affect such registrant's civil or criminal liability for acts committed
17 prior to such [expirations] TERMINATION. If such [expiration] TERMI-
18 NATION occurs after the issuance by the superintendent of a statement of
19 charges and notice of hearing, the superintendent may proceed against
20 the registrant as if such [expiration] TERMINATION had not taken place.

21 [5] 7. No revocation, suspension, surrender or [expiration] TERMI-
22 NATION of any license or certificate shall impair or affect the obli-
23 gation of any preexisting lawful contract between the licensee or regis-
24 trant and any person.

25 [6] 8. Every license or registration issued pursuant to this article
26 shall remain in force and effect until the same shall have [expired]
27 TERMINATED in accordance with [section five hundred ninety-two-a of this
28 article] SUBDIVISION THREE OF THIS SECTION or shall have been surren-
29 dered, revoked or suspended in accordance with any other provisions of
30 this article, but the superintendent shall have authority to reinstate a
31 suspended license or certificate or to issue a new license or certif-
32 icate to a licensee or registrant whose license or registration shall
33 have been TERMINATED OR revoked if no fact or condition then exists
34 which would have warranted the superintendent in refusing originally to
35 issue such license or registration under this article.

36 [7] 9. Whenever the superintendent shall revoke or suspend a license
37 or registration issued pursuant to this article, he shall forthwith
38 execute in duplicate a written order to that effect. The superintendent
39 shall file one copy of such order in the office of the department of
40 banking and shall forthwith serve the other copy upon the licensee or
41 registrant. Any such order may be reviewed in the manner provided by
42 article seventy-eight of the civil practice law and rules. Such applica-
43 tion for review as authorized by this section must be made within thirty
44 days from the date of such order of suspension or revocation.

45 [7-a] 10. Whenever a registration shall have [expired] TERMINATED in
46 accordance with [section five hundred ninety-two-a of] this article, the
47 superintendent shall notify the registrant that the registration has
48 [expired] TERMINATED and that the registrant may not engage in the busi-
49 ness of soliciting, processing, placing or negotiating a mortgage loan
50 or offering to solicit, process, place or negotiate a mortgage loan in
51 this state.

52 [8] 11. Any hearing held pursuant to the provisions of this section
53 shall be noticed, conducted and administered in compliance with the
54 state administrative procedure act.

55 S 28. Section 254-b of the real property law, as added by chapter 119
56 of the laws of 1974, is amended to read as follows:

1 S 254-b. Limitation on late charges AND INCREASED INTEREST RATE. 1.
2 If a bond or note, or the mortgage on real property, heretofore or here-
3 after made, improved by a one to six family residence occupied by the
4 owner, securing the payment of [same] SUCH BOND OR NOTE, or a note
5 representing a loan for the purpose of financing the purchase of an
6 ownership interest in, and proprietary lease from, a corporation or
7 partnership formed for the purpose of the cooperative ownership of resi-
8 dential real estate, contains a provision whereby the mortgagee or lend-
9 er retains the right to collect a late charge on any instalment which
10 has become due and remains unpaid, such charge on any such delinquent
11 instalment, regardless of the period it remains in default, shall not
12 exceed and shall only be enforced to the extent of two percent of such
13 delinquent instalment; provided, however, that no charge shall be
14 imposed on any instalment paid within fifteen days after the due date.
15 No such late charge shall be deducted from any regular instalment
16 payment by the mortgagor or borrower, but shall be separately charged
17 and collected by the mortgagee or lender. In the absence of a specific
18 provision in a bond, note or mortgage no late charge on any delinquent
19 instalment shall be assessed or collected. The term "instalment" shall
20 include amounts representing interest, amortization of principal and
21 payments in respect of insurance premiums, taxes and utility charges if
22 the bond, note or mortgage provides for collection thereof by the mort-
23 gagee.

24 2. NO BOND OR NOTE, OR THE MORTGAGE ON REAL PROPERTY IMPROVED BY A
25 ONE TO SIX FAMILY RESIDENCE OCCUPIED BY THE OWNER, SECURING THE PAYMENT
26 OF SUCH BOND OR NOTE, OR A NOTE REPRESENTING A LOAN FOR THE PURPOSE OF
27 FINANCING THE PURCHASE OF AN OWNERSHIP INTEREST IN, AND PROPRIETARY
28 LEASE FROM, A CORPORATION OR PARTNERSHIP FORMED FOR THE PURPOSE OF THE
29 COOPERATIVE OWNERSHIP OF RESIDENTIAL REAL ESTATE MAY CONTAIN A PROVISION
30 WHICH INCREASES THE INTEREST RATE AFTER DEFAULT. THIS PROVISION DOES NOT
31 APPLY TO INTEREST RATE CHANGES IN A VARIABLE RATE LOAN OTHERWISE
32 CONSISTENT WITH THE PROVISIONS OF THE LOAN DOCUMENTS; PROVIDED THAT THE
33 CHANGE IN THE INTEREST RATE IS NOT TRIGGERED BY THE EVENT OF DEFAULT OR
34 THE ACCELERATION OF THE INDEBTEDNESS.

35 3. The provisions in this section shall not apply to any loan or
36 forbearance insured by the federal housing commissioner or for which a
37 commitment to insure has been made by the federal housing commissioner
38 or to any loan or forbearance insured or guaranteed pursuant to the
39 provisions of an act of congress entitled "Servicemen's Readjustment Act
40 of 1944", or to the extent the provisions of this section are inconsis-
41 tent with any other federal law or regulation.

42 [3] 4. If any provision of this section, or the application of such
43 provision to any individual, company, corporation, or circumstance,
44 shall be held invalid, the remainder of this section, and the applica-
45 tion of such section to individuals, companies, corporations, or circum-
46 stances other than those to which it is held invalid, shall not be
47 affected thereby.

48 S 29. Section 9001-a of the banking law, as added by chapter 321 of
49 the laws of 1992, subdivisions (a) and (b) as amended and subdivision
50 (d) as added by chapter 302 of the laws of 2003, is amended to read as
51 follows:

52 S 9001-a. Fingerprints. [(a)] 1. Notwithstanding any other provision
53 of law, every incorporator of a corporation shall, in addition to any
54 other requirements which may be imposed by the superintendent, submit
55 simultaneously with an application, his or her fingerprints in such form
56 and in such manner as specified by the division of criminal justice

1 services, but in any event, no less than two digit imprints. The super-
2 intendent shall submit the fingerprints to the division of criminal
3 justice services for the purpose of conducting a criminal history search
4 and returning a report thereon in accordance with the procedures and
5 requirements established by the division pursuant to the provisions of
6 article thirty-five of the executive law, which shall include the
7 payment of the prescribed processing fees. The superintendent shall
8 request that the division submit such fingerprints to the federal bureau
9 of investigation, together with the processing fees prescribed by such
10 bureau, for the purpose of conducting a criminal history search and
11 returning a report thereon.

12 [(b)] 2. The superintendent shall also, concurrent with an investi-
13 gation of an incorporator of a corporation pertaining to a violation of
14 this chapter, submit such fingerprints to the division of criminal
15 justice services for the purpose of conducting a criminal history search
16 and returning a report thereon and through the division to the federal
17 bureau of investigation for the purpose of a fingerprint check of such
18 incorporator.

19 [(c)] 3. For purposes of this section, "incorporator" shall include a
20 natural person or such principal, officer, director, trustee or stock-
21 holder of any other entity as may be designated by the superintendent.
22 Notwithstanding any other provision of this article, the superintendent
23 shall not access criminal history data or information, unless any agency
24 from which the superintendent receives directly criminal history data or
25 information has entered into a use and dissemination agreement with the
26 superintendent consistent with the provisions of this section.

27 [(d)] 4. An applicant shall not be required to submit his or her fing-
28 erprints as required by subdivision [(a)] ONE of this section if such
29 applicant (i) is already subject to regulation by the department and the
30 applicant has submitted such fingerprints to the department, such fing-
31 erprints have been submitted to the division of criminal justice
32 services for the purpose of conducting a criminal history search, and a
33 report of such search has been received by the department from such
34 division WITHIN THE PAST FIVE YEARS; or (ii) is subject to regulation by
35 a federal bank regulatory agency and has submitted such fingerprints to
36 such agency which has had a criminal history search conducted of such
37 individual and has shared such information or its determination result-
38 ing from such search with the department; or (iii) is an officer or
39 stockholder of a corporation whose common or preferred stock is regis-
40 tered on a national securities exchange, as provided in an act of
41 congress of the United States entitled the "Securities Exchange Act of
42 1934", [approved June sixth, nineteen hundred thirty-four, as amended,]
43 or such other exchange or market system as the superintendent shall
44 approve by regulation, and has submitted such fingerprints to such
45 exchange or market system which has had a criminal history search
46 conducted of such individual and has shared such information or its
47 determination resulting from such search with the department; provided,
48 however, that the superintendent may subsequently require such applicant
49 to submit such fingerprints if the superintendent has a reasonable basis
50 for updating the information or determination resulting from the report
51 of the criminal history search conducted at the request of such federal
52 banking agency, exchange or market system.

53 S 30. This act shall take effect immediately; provided that section
54 twenty-eight of this act shall only apply to loans made after the effec-
55 tive date of this act.