S T A T E O F N E W Y O R K

5450

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to suspending the license of mortgage bankers and brokers for cause

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

Section 1. Section 595 of the banking law, as amended by chapter 571 of the laws of 1986, paragraph (a) of subdivision 1 as further amended by section 104 of part A of chapter 62 of the laws of 2011, paragraph (c) of subdivision 1 as amended and paragraph (d) of subdivision 1 as added by chapter 164 of the laws of 2003, subdivision 2 as amended by chapter 121 of the laws of 1993, subdivision 3 as amended by chapter 516 of the laws of 1996, subdivisions 4, 5 and 6 as amended and subdivisions 4-a and 7-a as added by chapter 400 of the laws of 1993, is amended to read as follows:

S 595. Grounds for suspension or revocation of license, or suspension or deletion of name from mortgage broker roll. 1. [The] IN ADDITION TO THE AUTHORITY SET FORTH IN SUBDIVISION TWO OF THIS SECTION, THE superintendent may SUSPEND OR revoke any license to engage in the business of a mortgage banker issued pursuant to this article or SUSPEND OR delete the name of a mortgage broker [from the roll of mortgage brokers] OR A MORTGAGE LOAN SERVICER registered pursuant to this article (EACH REFERRED TO IN THIS SECTION AS A REGISTRANT) if he OR SHE shall find AFTER NOTICE AND A HEARING, that:

(a) Through a course of conduct, the licensee or registrant has violated any provisions of this article, or any rule or regulation promulgated by the superintendent of financial services, or any rule or regulation prescribed by the superintendent under and within the authority of this article or of any other law, rule or regulation of this state or the federal government;

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

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

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

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

2. (A) The superintendent may, [on] FOR good cause [shown], WITHOUT NOTICE OR A HEARING, or where there is a substantial risk of public harm, [suspend] ISSUE AN ORDER SUSPENDING any license or [delete the name of any registrant] REGISTRATION ISSUED PURSUANT TO THIS ARTICLE for a period not exceeding [thirty] SIXTY days, pending investigation. "Good cause", as used in this subdivision, shall exist only when the licensee or registrant has defaulted or is likely to default in performing its financial engagements or engages in dishonest or inequitable practices which may cause substantial harm to the persons afforded the protection of this article.

(B) THE SUPERINTENDENT MAY, IN HIS OR HER SOLE DISCRETION, WITHOUT A HEARING, ISSUE A NOTICE SUSPENDING THE LICENSE OR REGISTRATION OF ANY MORTGAGE BANKER OR MORTGAGE LOAN SERVICER THIRTY DAYS AFTER THE DATE OR DATES IT FAILS TO MAKE ANY PAYMENTS REQUIRED BY THIS CHAPTER.

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

3. IF THE SUPERINTENDENT HAS ISSUED AN ORDER SUSPENDING A LICENSE OR REGISTRATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, SUCH LICENSE OR REGISTRATION MAY BE REINSTATED IF THE SUPERINTENDENT DETERMINES, IN HIS OR HER SOLE DISCRETION AFTER INVESTIGATION, THAT GOOD CAUSE THEREFOR DID NOT EXIST OR NO LONGER EXISTS. IF THE SUPERINTENDENT HAS ISSUED AN ORDER OR NOTICE SUSPENDING A LICENSE OR REGISTRATION PURSUANT TO PARAGRAPH (B) OR PARAGRAPH (C) OF SUBDIVISION TWO OF THIS SECTION, SUCH LICENSE OR REGISTRATION MAY BE REINSTATED, IF THE SUPERINTENDENT DETERMINES, IN HIS OR HER SOLE DISCRETION, THAT THE LICENSEE OR REGISTRANT HAS CURED ALL DEFICIENCIES SET FORTH IN SUCH SUSPENSION ORDER OR THE NOTICE BY THE CLOSE OF BUSINESS NINETY DAYS AFTER THE DATE OF SUCH SUSPENSION ORDER OR NOTICE, INCLUDING, WITHOUT LIMITATION, MAKING ANY OVERDUE PAYMENT, HAVING ANY SUCH BANKRUPTCY PETI-

TION DISMISSED OR HAVING SUCH BOND REINSTATED OR REPLACED. OTHERWISE, UNLESS THE SUPERINTENDENT HAS, IN HIS OR HER SOLE DISCRETION, EXTENDED A SUSPENSION PURSUANT TO PARAGRAPH (B) OR PARAGRAPH (C) OF SUBDIVISION TWO OF THIS SECTION, SUCH LICENSE OR REGISTRATION SHALL BE DEEMED TO BE AUTOMATICALLY TERMINATED BY OPERATION OF LAW AT THE CLOSE OF BUSINESS ON SUCH NINETIETH DAY.

4. Except as provided in subdivision two of this section, no license or registration shall be revoked or suspended except after notice and a hearing thereon. Any order of suspension issued after notice and a hearing may include as a condition of reinstatement that the licensee or registrant make restitution to consumers of fees or other charges which have been improperly charged or collected as determined by the superintendent.

[4. Any] 5. WITH THE PRIOR APPROVAL OF THE SUPERINTENDENT, ANY licensee or registrant UNDER THIS ARTICLE may surrender any license or [certificate] REGISTRATION by delivering to the superintendent written notice that it thereby surrenders such license or [certificate] REGISTRATION, but such surrender shall not affect such licensee's or registrant's civil or criminal liability for acts committed prior to such surrender. [If such surrender is made after the issuance by the superintendent of a statement of charges and notice of hearing, the superintendent may proceed against the licensee or registrant as if such surrender had not taken place.

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

[5] 7. No revocation, suspension, surrender or [expiration] TERMINATION of any license or [certificate] REGISTRATION shall impair or affect the obligation of any preexisting lawful contract between the licensee or registrant and any person.

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

[7] 9. Whenever the superintendent shall revoke or suspend a license or registration issued pursuant to this article OTHER THAN PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, he OR SHE shall forthwith execute in duplicate a written order to that effect. The superintendent shall file one copy of such order in the office of the department of banking and shall forthwith serve the other copy upon the licensee or registrant. Any such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules. Such application for review as authorized by this section must be made

within thirty days from the date of such order of suspension or revocation.

[7-a] 10. Whenever a registration OR LICENSE shall have [expired] TERMINATED in accordance with [section five hundred ninety-two-a of] this article, the superintendent shall notify the registrant OR LICENSEE that the registration OR LICENSE has [expired] TERMINATED and that the registrant OR LICENSEE may not engage in [the business of soliciting, processing, placing or negotiating a mortgage loan or offering to solicit, process, place or negotiate a mortgage loan] ANY ACTIVITY REQUIRING REGISTRATION OR A LICENSE in this state.

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

S 2. This act shall take effect immediately.