

1240

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. LANCMAN -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to enacting the "disclosure in lending act"

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

1 Section 1. This act shall be known and may be cited as the "disclosure
2 in lending act".
3 S 2. The banking law is amended by adding a new section 6-n to read as
4 follows:
5 S 6-N. DISCLOSURE TO BORROWERS. 1. FOR PURPOSES OF THIS SECTION, THE
6 TERM "SUB-PRIME MORTGAGE" MEANS FOR MORTGAGES SECURED BY A FIRST LIEN ON
7 A DWELLING, THE TERM MEANS A MORTGAGE FOR WHICH THE APR IS GREATER THAN
8 THREE PERCENTAGE POINTS ABOVE THE YIELD ON UNITED STATES TREASURY SECURITIES
9 HAVING COMPARABLE PERIODS OF MATURITY, AS OF THE FIFTEENTH DAY OF
10 THE PRECEDING MONTH IF THE RATE IS SET BETWEEN THE FIRST AND THE FOUR-
11 TEENTH DAY OF THE MONTH AND AS OF THE FIFTEENTH DAY OF THE CURRENT MONTH
12 IF THE RATE IS SET ON OR AFTER THE FIFTEENTH DAY.
13 FOR MORTGAGES SECURED BY A SUBORDINATE LIEN ON A DWELLING, THE TERM
14 MEANS A MORTGAGE FOR WHICH THE APR IS GREATER THAN FIVE PERCENTAGE
15 POINTS ABOVE THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING
16 COMPARABLE PERIODS OF MATURITY, AS OF THE FIFTEENTH DAY OF THE PRECEDING
17 MONTH IF THE RATE IS SET BETWEEN THE FIRST AND THE FOURTEENTH DAY OF THE
18 MONTH AND AS OF THE FIFTEENTH DAY OF THE CURRENT MONTH IF THE RATE IS
19 SET ON OR AFTER THE FIFTEENTH DAY.
20 2. THE TERM "MORTGAGE BROKER" MEANS A PERSON WHO, FOR COMPENSATION OR
21 IN ANTICIPATION OF COMPENSATION, ARRANGES OR NEGOTIATES, OR ATTEMPTS TO
22 ARRANGE OR NEGOTIATE, HOME MORTGAGE LOANS OR COMMITMENTS FOR SUCH LOANS,
23 OR REFERS APPLICANTS OR PROSPECTIVE APPLICANTS TO CREDITORS, OR SELECTS
24 OR OFFERS TO SELECT CREDITORS TO WHOM REQUESTS FOR CREDIT MAY BE MADE.

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

LBD01050-01-9

1 3. EVERY MORTGAGE BROKER AND LENDER SHALL PROVIDE A DISCLOSURE TO
2 BORROWERS OF THE TRUE COSTS AND OBLIGATIONS OF LOANS AND MORTGAGES IN A
3 FORMAT TO BE ESTABLISHED BY THE DEPARTMENT. SUCH DISCLOSURE SHALL
4 INCLUDE, BUT NOT BE LIMITED TO, A CLEAR DEPICTION, CHART OR TABLE OF THE
5 BORROWER'S PRE-ARM RESET AND POST-ARM RESET MONTHLY PAYMENTS, THE ANNUAL
6 PROPERTY TAX, INSURANCE PAYMENTS, INFORMATION ON THE RECOMMENDED AMOUNT
7 OF MONTHLY INCOME WHICH A BORROWER SHOULD HAVE IN ORDER TO ASSUME SUCH
8 MORTGAGE, TAX AND INSURANCE OBLIGATIONS AND THE DEPARTMENT WEBSITE DEDI-
9 CATED TO EXPLAINING THE RISKS OF SUB-PRIME MORTGAGES. SUCH DEPICTION,
10 CHART OR TABLE SHALL BE PRESENTED TO THE BORROWER IN WRITING AT THE TIME
11 OF EACH OFFER AND AT LEAST SIXTY DAYS PRIOR TO CLOSING.

12 4. THE DEPARTMENT SHALL ESTABLISH A WEBSITE DEDICATED TO EXPLAINING
13 THE RISKS OF SUB-PRIME MORTGAGES. IT SHALL INCLUDE A CALCULATOR WHERE
14 BORROWERS MAY ENTER RELEVANT MORTGAGE PAYMENT AND INCOME INFORMATION TO
15 DETERMINE WHETHER THE MORTGAGE IS WITHIN ESTABLISHED GUIDELINES FOR SUCH
16 BORROWER'S BUDGET.

17 5. LENDERS AND MORTGAGE BROKERS MAKING OR BROKERING SUB-PRIME MORT-
18 GAGES SHALL HAVE A PROMINENT LINK ON THEIR WEBSITE TO THE DEPARTMENT'S
19 SUB-PRIME WEBPAGE.

20 6. THE ATTORNEY GENERAL, THE SUPERINTENDENT, OR ANY PARTY TO A
21 SUB-PRIME HOME MORTGAGE MAY ENFORCE THE PROVISIONS OF THIS SECTION.

22 7. A PRIVATE ACTION AGAINST THE LENDER OR MORTGAGE BROKER PURSUANT TO
23 THIS SECTION MUST BE COMMENCED WITHIN SIX YEARS OF ORIGINATION OF THE
24 SUB-PRIME HOME MORTGAGE.

25 8. ANY LENDER OR MORTGAGE BROKER FOUND BY A PREPONDERANCE OF THE
26 EVIDENCE TO HAVE VIOLATED THIS SECTION SHALL BE LIABLE TO THE BORROWER
27 FOR THE FOLLOWING:

28 (A) ACTUAL DAMAGES, INCLUDING CONSEQUENTIAL AND INCIDENTAL DAMAGES;
29 AND

30 (B) STATUTORY DAMAGES OF FIVE THOUSAND DOLLARS PER VIOLATION OR TWICE
31 THE AMOUNT OF POINTS AND FEES AND CLOSING COSTS AS DEFINED IN THIS
32 SECTION, WHICHEVER IS GREATER.

33 9. A COURT MAY ALSO AWARD REASONABLE ATTORNEYS' FEES TO A PREVAILING
34 BORROWER.

35 10. A BORROWER MAY BE GRANTED INJUNCTIVE, DECLARATORY AND SUCH OTHER
36 EQUITABLE RELIEF AS THE COURT DEEMS APPROPRIATE IN AN ACTION TO ENFORCE
37 COMPLIANCE WITH THIS SECTION.

38 11. UPON A FINDING BY THE COURT OF AN INTENTIONAL VIOLATION BY THE
39 LENDER OR MORTGAGE BROKER OF THIS SECTION, OR REGULATION THEREUNDER, THE
40 HOME MORTGAGE AGREEMENT SHALL BE RENDERED VOID, AND THE LENDER SHALL
41 HAVE NO RIGHT TO COLLECT, RECEIVE OR RETAIN ANY PRINCIPAL, INTEREST, OR
42 OTHER CHARGES WHATSOEVER WITH RESPECT TO THE MORTGAGE, AND THE BORROWER
43 MAY RECOVER ANY PAYMENTS MADE UNDER THE AGREEMENT.

44 12. UPON A JUDICIAL FINDING THAT A SUB-PRIME HOME MORTGAGE VIOLATES
45 ANY PROVISION OF THIS SECTION, WHETHER SUCH VIOLATION IS RAISED AS AN
46 AFFIRMATIVE CLAIM OR AS A DEFENSE, THE MORTGAGE TRANSACTION MAY BE
47 RESCINDED. SUCH REMEDY OF RESCISSION SHALL BE AVAILABLE AS A DEFENSE
48 WITHOUT TIME LIMITATION.

49 13. THE REMEDIES PROVIDED IN THIS SECTION ARE NOT INTENDED TO BE THE
50 EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER OF A SUB-PRIME HOME MORTGAGE.

51 14. IN ANY ACTION BY AN ASSIGNEE TO ENFORCE A MORTGAGE AGAINST A
52 BORROWER IN DEFAULT MORE THAN SIXTY DAYS OR IN FORECLOSURE, A BORROWER
53 MAY ASSERT ANY CLAIMS IN RECOUPMENT AND DEFENSES TO PAYMENT UNDER THE
54 PROVISIONS OF THIS SECTION AND WITH RESPECT TO THE MORTGAGE, WITHOUT
55 TIME LIMITATIONS, THAT THE BORROWER COULD ASSERT AGAINST THE ORIGINAL
56 LENDER OR MORTGAGE BROKER OF THE MORTGAGE.

1 15. THE PROVISIONS OF THIS SECTION SHALL BE SEVERABLE, AND IF ANY
2 PHRASE, CLAUSE, SENTENCE, OR PROVISION IS DECLARED TO BE INVALID, OR IS
3 PREEMPTED BY FEDERAL LAW OR REGULATION, THE VALIDITY OF THE REMAINDER OF
4 THIS SECTION SHALL NOT BE AFFECTED THEREBY. IF ANY PROVISION OF THIS
5 SECTION IS DECLARED TO BE INAPPLICABLE TO ANY SPECIFIC CATEGORY, TYPE,
6 OR KIND OF POINTS AND FEES, THE PROVISIONS OF THIS SECTION SHALL NONE-
7 THELESS CONTINUE TO APPLY WITH RESPECT TO ALL OTHER POINTS AND FEES.
8 S 3. This act shall take effect on the one hundred eightieth day after
9 it shall have become a law; provided, however, that effective immediate-
10 ly, the addition, amendment and/or repeal of any rule or regulation
11 necessary for the implementation of this act on its effective date are
12 authorized and directed to be made and completed on or before such
13 effective date.