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

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Introduced by M. of A. BRENNAN, MILLMAN, HOYT, DINOWITZ, MAISEL, BOYLAND, NOLAN, GREENE, COLTON, ORTIZ, JAFFEE, REILLY, GABRYSZAK, ZEBROWSKI, FIELDS, JACOBS, JOHN, P. RIVERA, WRIGHT, GUNTHER -- Multi-Sponsored by -- M. of A. ALFANO, GLICK, GOTTFRIED, JEFFRIES, KOON, LIFTON, MARKEY, PEOPLES, PHEFFER, SCHIMEL, SWEENEY, WEISENBERG -- read once and referred to the Committee on Banks

AN ACT to amend the banking law and the real property actions and proceedings law, in relation to enacting the "New York sub-prime predatory lending prevention act"

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

Section 1. Short title. This act shall be known as and may be cited as the "New York sub-prime predatory lending prevention act".

S 2. The banking law is amended by adding a new section 6-n to read as follows:

S 6-N. SUB-PRIME HOME LOANS. 1. THE FOLLOWING DEFINITIONS APPLY FOR THE PURPOSES OF THIS SECTION:

(A) "AFFILIATE" MEANS ANY COMPANY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER COMPANY, AS SET FORTH IN THE BANK HOLDING COMPANY ACT OF 1956 (12 U.S.C. S 1841 ET SEQ.), AS AMENDED FROM TIME TO TIME.

(B) "ANNUAL PERCENTAGE RATE" MEANS THE ANNUAL PERCENTAGE RATE FOR THE LOAN CALCULATED ACCORDING TO THE PROVISIONS OF THE FEDERAL TRUTH-IN-LENDING ACT (15 U.S.C. S 1601, ET SEQ.), AND THE REGULATIONS PROMULGATED THEREUNDER BY THE FEDERAL RESERVE BOARD (AS SAID ACT AND REGULATIONS ARE AMENDED FROM TIME TO TIME).

(C) "BONA FIDE LOAN DISCOUNT POINTS" MEANS LOAN DISCOUNT POINTS KNOWINGLY PAID BY THE BORROWER FUNDED THROUGH ANY SOURCE, FOR THE PURPOSE OF REDUCING, AND WHICH IN FACT RESULT IN A BONA FIDE REDUCTION OF, THE INTEREST RATE OR TIME-PRICE DIFFERENTIAL APPLICABLE TO THE LOAN, PROVIDED THAT THE AMOUNT OF THE INTEREST RATE REDUCTION PURCHASED BY THE

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

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DISCOUNT POINTS IS REASONABLY CONSISTENT WITH ESTABLISHED INDUSTRY NORMS AND PRACTICES FOR SECONDARY MORTGAGE MARKET TRANSACTIONS. FOR PURPOSES OF THIS SECTION, IT SHALL BE PRESUMED THAT A POINT IS A BONA FIDE LOAN DISCOUNT POINT IF IT REDUCES THE INTEREST RATE BY A MINIMUM OF TWENTY-FIVE BASIS POINTS PROVIDED ALL OTHER TERMS OF THE LOAN REMAIN THE SAME.

(D) A "SUB-PRIME HOME LOAN" MEANS A HOME LOAN IN WHICH THE TERMS OF THE LOAN EXCEED ONE OR MORE OF THE THRESHOLDS AS DEFINED IN PARAGRAPH (G) OF THIS SUBDIVISION.

(E) "HOME LOAN" MEANS A HOME LOAN, INCLUDING AN OPEN-END CREDIT PLAN, OTHER THAN A REVERSE MORTGAGE TRANSACTION, IN WHICH:

(I) THE PRINCIPAL AMOUNT OF THE LOAN DOES NOT EXCEED THE LESSER OF: (A) CONFORMING LOAN SIZE LIMIT FOR A COMPARABLE DWELLING; OR (B) THREE HUNDRED THOUSAND DOLLARS;

(II) THE BORROWER IS A NATURAL PERSON;

(III) THE DEBT IS INCURRED BY THE BORROWER PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES;

(IV) THE LOAN IS SECURED BY A MORTGAGE OR DEED OF TRUST ON REAL ESTATE UPON WHICH THERE IS LOCATED OR THERE IS TO BE LOCATED A STRUCTURE OR STRUCTURES INTENDED PRINCIPALLY FOR OCCUPANCY OF FROM ONE TO FOUR FAMILIES WHICH IS OR WILL BE OCCUPIED BY THE BORROWER AS THE BORROWER'S PRINCIPAL DWELLING; AND

(V) THE PROPERTY IS LOCATED IN THIS STATE.

(F) "POINTS AND FEES" MEANS:

(I) ALL ITEMS LISTED IN 15 U.S.C. S 1605(A)(1) THROUGH (4), EXCEPT INTEREST OR THE TIME-PRICE DIFFERENTIAL;

(II) ALL CHARGES FOR ITEMS LISTED UNDER S 226.4(C)(7) OF TITLE 12 OF THE CODE OF FEDERAL REGULATIONS, AS AMENDED FROM TIME TO TIME, BUT ONLY IF THE LENDER RECEIVES DIRECT OR INDIRECT COMPENSATION IN CONNECTION WITH THE CHARGE OR THE CHARGE IS PAID TO AN AFFILIATE OF THE LENDER; OTHERWISE, THE CHARGES ARE NOT INCLUDED WITHIN THE MEANING OF THE PHRASE "POINTS AND FEES";

(III) ALL COMPENSATION PAID DIRECTLY OR INDIRECTLY TO A MORTGAGE BROKER, INCLUDING A BROKER THAT ORIGINATES A LOAN IN ITS OWN NAME IN A TABLE-FUNDED TRANSACTION, NOT OTHERWISE INCLUDED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH;

(IV) THE COST OF ALL PREMIUMS FINANCED BY THE LENDER, DIRECTLY OR INDIRECTLY, FOR ANY CREDIT LIFE, CREDIT DISABILITY, CREDIT UNEMPLOYMENT, OR CREDIT PROPERTY INSURANCE, OR ANY OTHER LIFE OR HEALTH INSURANCE, OR ANY PAYMENTS FINANCED BY THE LENDER DIRECTLY OR INDIRECTLY FOR ANY DEBT CANCELLATION OR SUSPENSION AGREEMENT OR CONTRACT, EXCEPT THAT INSURANCE PREMIUMS CALCULATED AND PAID ON A MONTHLY BASIS SHALL NOT BE CONSIDERED FINANCED BY THE LENDER.

(G) "THRESHOLDS" MEANS:

(I) THE LOAN CONTAINS A PREPAYMENT PENALTY DUE MORE THAN THIRTY MONTHS AFTER CLOSING, OR IN AN AMOUNT GREATER THAN TWO PERCENT; OR

(II) THE TOTAL POINTS AND FEES EXCEED: FIVE PERCENT OF THE TOTAL LOAN AMOUNT; PROVIDED, THE FOLLOWING DISCOUNT POINTS SHALL BE EXCLUDED FROM THE CALCULATION OF THE TOTAL POINTS AND FEES PAYABLE BY THE BORROWER:

(A) UP TO AND INCLUDING TWO BONA FIDE LOAN DISCOUNT POINTS PAYABLE BY THE BORROWER IN CONNECTION WITH THE LOAN TRANSACTION, BUT ONLY IF THE INTEREST RATE FROM WHICH THE LOAN'S INTEREST RATE WILL BE DISCOUNTED DOES NOT EXCEED BY MORE THAN ONE PERCENTAGE POINT THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING COMPARABLE PERIODS OF MATURITY TO THE LOAN MATURITY MEASURED AS OF THE FIFTEENTH DAY OF THE MONTH IMMEDIATELY PRECEDING THE MONTH IN WHICH THE APPLICATION IS RECEIVED;

(B) ANY AND ALL BONA FIDE LOAN DISCOUNT POINTS FUNDED DIRECTLY OR INDIRECTLY THROUGH A GRANT FROM A FEDERAL, STATE OR LOCAL GOVERNMENT AGENCY OR A 501(C)(3) ORGANIZATION.

(H) "TOTAL LOAN AMOUNT" MEANS THE PRINCIPAL OF THE LOAN MINUS THOSE POINTS AND FEES AS DEFINED IN PARAGRAPH (F) OF THIS SUBDIVISION THAT ARE INCLUDED IN THE PRINCIPAL AMOUNT.

(I) "LENDER" MEANS A MORTGAGE BANKER AS DEFINED IN PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION FIVE HUNDRED NINETY OF THIS CHAPTER OR AN EXEMPT ORGANIZATION AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION FIVE HUNDRED NINETY OF THIS CHAPTER.

(J) "CONFORMING LOAN SIZE LIMIT" MEANS THE LIMIT OF CONFORMING LOANS BASED ON THE MEAN PRICE OF COMPARABLE DWELLINGS AS ESTABLISHED FROM TIME TO TIME BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION.

2. A SUB-PRIME HOME LOAN SHALL BE SUBJECT TO THE FOLLOWING LIMITATIONS:

(A) NO "LOAN FLIPPING". NO LENDER OR MORTGAGE BROKER MAKING OR ARRANGING A HIGH-COST HOME LOAN MAY ENGAGE IN THE UNFAIR ACT OR PRACTICE OF "LOAN FLIPPING". "LOAN FLIPPING" IS MAKING A HOME LOAN TO A BORROWER THAT REFINANCES AN EXISTING HOME LOAN WHEN THE NEW LOAN DOES NOT HAVE A TANGIBLE NET BENEFIT TO THE BORROWER CONSIDERING ALL OF THE CIRCUMSTANCES, INCLUDING THE TERMS OF BOTH THE NEW AND REFINANCED LOANS, THE COST OF THE NEW LOAN, AND THE BORROWER'S SITUATION.

(B) NO LENDING WITHOUT DUE REGARD TO REPAYMENT ABILITY. A LENDER OR MORTGAGE BROKER SHALL NOT MAKE OR ARRANGE A HIGH-COST HOME LOAN WITHOUT DUE REGARD TO REPAYMENT ABILITY, BASED UPON CONSIDERATION OF THE RESIDENT BORROWER OR BORROWERS' CURRENT AND EXPECTED INCOME, CURRENT OBLIGATIONS, EMPLOYMENT STATUS, AND OTHER FINANCIAL RESOURCES (OTHER THAN THE BORROWER'S EQUITY IN THE DWELLING WHICH SECURES REPAYMENT OF THE LOAN), AS VERIFIED BY DETAILED DOCUMENTATION OF ALL SOURCES OF INCOME AND CORROBORATED BY INDEPENDENT VERIFICATION. HOWEVER, A LENDER MAKING A HIGH-COST HOME LOAN SHALL BENEFIT FROM A REBUTTABLE PRESUMPTION THAT THE LOAN WAS MADE WITH DUE REGARD TO REPAYMENT ABILITY IF THE LENDER DEMONSTRATES THAT AT THE TIME THE LOAN IS CONSUMMATED, THE RESIDENT BORROWER OR BORROWERS' TOTAL MONTHLY DEBTS, INCLUDING AMOUNTS OWED UNDER THE LOAN, DO NOT EXCEED FIFTY PERCENT OF THE RESIDENT BORROWER OR BORROWERS' MONTHLY GROSS INCOME; AND THE LENDER FOLLOWS THE RESIDUAL INCOME GUIDELINES ESTABLISHED IN 38 C.F.R. S 36.4337(E) AND VA FORM 26-6393.

(C) NO RECOMMENDATION OF DEFAULT. NO LENDER OR MORTGAGE BROKER MAKING OR ARRANGING FOR A HIGH-COST HOME LOAN MAY RECOMMEND OR ENCOURAGE NONPAYMENT OF AN EXISTING LOAN OR OTHER DEBT PRIOR TO AND IN CONNECTION WITH THE CLOSING OR PLANNED CLOSING OF A HOME LOAN, REGARDLESS OF WHETHER THE NEW RESIDENTIAL MORTGAGE WILL REFINANCE ANY PORTION OF THE EXISTING LOAN OR DEBT.

(D) NO INFLUENCING OF APPRAISERS. A LENDER OR MORTGAGE BROKER SHALL NOT COERCE, INTIMIDATE OR COMPENSATE, AND SHALL NOT IN ANY WAY CONTRIBUTE TO THE COERCION, INTIMIDATION OR COMPENSATION OF ANY REAL PROPERTY APPRAISER FOR THE PURPOSE OF INFLUENCING THEIR INDEPENDENT JUDGMENT WITH RESPECT TO THE VALUE OF REAL ESTATE THAT IS COVERED BY A HOME LOAN OR THAT IS BEING OFFERED AS SECURITY IN ACCORDANCE WITH AN APPLICATION FOR A HOME LOAN.

(E) FINANCING CREDIT INSURANCE. NO LENDER OR MORTGAGE BROKER SHALL REQUIRE OR ALLOW THE ADVANCE COLLECTION OF A PREMIUM FOR ANY DISABILITY, UNEMPLOYMENT, PROPERTY, LIFE OR HEALTH INSURANCE IN CONNECTION WITH ANY HOME LOAN.

(F) LANGUAGE TRANSLATION. IF THE DISCUSSIONS BETWEEN A LENDER OR MORTGAGE BROKER AND A BORROWER REGARDING A HOME LOAN ARE CONDUCTED PRIMARILY

IN A LANGUAGE OTHER THAN ENGLISH, THE LENDER OR MORTGAGE BROKER SHALL, AT LEAST FORTY-EIGHT HOURS PRIOR TO CLOSING, PROVIDE AN ADDITIONAL COPY OF ALL INFORMATION REQUIRED TO BE DISCLOSED TO THE BORROWER UNDER THE FEDERAL TRUTH IN LENDING ACT, 15 U.S.C. 1601 ET SEQ., TRANSLATED INTO THE LANGUAGE IN WHICH DISCUSSIONS WERE PRIMARILY CONDUCTED. THE LENDER SHALL NOT CHARGE A FEE FOR ANY TRANSLATED DOCUMENT REQUIRED BY THIS PARAGRAPH.

(G) FALSE INFORMATION ON CREDIT APPLICATIONS. NO LENDER OR MORTGAGE BROKER, OR ANY LOAN OFFICER OR OTHER EMPLOYEE OF A LENDER OR MORTGAGE BROKER, MAY KNOWINGLY PERMIT, ENCOURAGE OR ASSIST A CONSUMER TO SUBMIT FALSE INFORMATION ON ANY APPLICATION FOR CREDIT. NO LENDER OR MORTGAGE BROKER, OR ANY LOAN OFFICER OR OTHER EMPLOYEE OF A LENDER OR MORTGAGE BROKER MAY KNOWINGLY FALSIFY, OR IN ANY WAY PERMIT, CAUSE OR ENABLE FALSIFIED INFORMATION TO BE INCLUDED ON A CONSUMER'S APPLICATION.

3. (A) SUB-PRIME HOME LOAN MORTGAGES SHALL INCLUDE A LEGEND ON TOP OF THE MORTGAGE IN TWELVE-POINT TYPE STATING "THIS LOAN IS A SUB-PRIME HOME LOAN AND IS SUBJECT TO THE NEW YORK SUB-PRIME PREDATORY LENDING PREVENTION ACT".

(B) THE LENDER SHALL REPORT BOTH THE FAVORABLE AND UNFAVORABLE PAYMENT HISTORY OF THE BORROWER TO A NATIONALLY RECOGNIZED CONSUMER CREDIT BUREAU AT LEAST ANNUALLY DURING SUCH PERIOD AS THE LENDER HOLDS OR SERVICES THE SUB-PRIME HOME LOAN.

4. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY PERSON WHO IN BAD FAITH ATTEMPTS TO AVOID THE APPLICATION OF THIS SECTION BY ANY SUBTERFUGE, INCLUDING BUT NOT LIMITED TO SPLITTING OR DIVIDING ANY LOAN TRANSACTION INTO SEPARATE PARTS FOR THE PURPOSE OF EVADING THE PROVISIONS OF THIS SECTION.

5. A LENDER OF A SUB-PRIME HOME LOAN THAT, WHEN ACTING IN GOOD FAITH, FAILS TO COMPLY WITH THE PROVISIONS OF THIS SECTION, WILL NOT BE DEEMED TO HAVE VIOLATED THIS SECTION IF THE LENDER ESTABLISHES THAT EITHER:

(A) WITHIN THIRTY DAYS OF THE LOAN CLOSING AND PRIOR TO THE INSTITUTION OF ANY ACTION UNDER THIS SECTION, THE BORROWER IS NOTIFIED OF THE COMPLIANCE FAILURE, APPROPRIATE RESTITUTION IS MADE, AND WHATEVER ADJUSTMENTS ARE NECESSARY ARE MADE TO THE LOAN TO EITHER, AT THE CHOICE OF THE BORROWER, (I) MAKE THE SUB-PRIME HOME LOAN SATISFY THE REQUIREMENTS OF THIS SECTION, OR (II) CHANGE THE TERMS OF THE LOAN IN A MANNER BENEFICIAL TO THE BORROWER SO THAT THE LOAN IS NO LONGER A SUB-PRIME HOME LOAN SUBJECT TO THE PROVISIONS OF THIS SECTION; OR

(B) THE COMPLIANCE FAILURE RESULTED FROM A BONA FIDE ERROR NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID SUCH ERRORS AND, WITHIN SIXTY DAYS AFTER THE DISCOVERY OF THE COMPLIANCE FAILURE AND PRIOR TO THE INSTITUTION OF ANY ACTION UNDER THIS SECTION OR THE RECEIPT OF WRITTEN NOTICE OF THE COMPLIANCE FAILURE, THE BORROWER IS NOTIFIED OF THE COMPLIANCE FAILURE, APPROPRIATE RESTITUTION IS MADE, AND WHATEVER ADJUSTMENTS ARE NECESSARY ARE MADE TO THE LOAN TO EITHER, AT THE CHOICE OF THE BORROWER, (I) MAKE THE SUB-PRIME HOME LOAN SATISFY THE REQUIREMENTS OF THIS SECTION, OR (II) CHANGE THE TERMS OF THE LOAN IN A MANNER BENEFICIAL TO THE BORROWER SO THAT THE LOAN IS NO LONGER A SUB-PRIME HOME LOAN SUBJECT TO THE PROVISIONS OF THIS SECTION. EXAMPLES OF A BONA FIDE ERROR INCLUDE CLERICAL, CALCULATION, COMPUTER MALFUNCTION AND PROGRAMMING, AND PRINTING ERRORS. AN ERROR OF LEGAL JUDGMENT WITH RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS SECTION IS NOT A BONA FIDE ERROR.

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

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

8. ANY PERSON FOUND BY A PREPONDERANCE OF THE EVIDENCE TO HAVE VIOLATED THIS SECTION SHALL BE LIABLE TO THE BORROWER FOR THE FOLLOWING:

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

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

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

10. IN ADDITION, THE COURT SHALL, AS IT MAY CONSIDER APPROPRIATE:

(A) ISSUE AN ORDER OR INJUNCTION RESCINDING A HOME MORTGAGE LOAN CONTRACT WHICH VIOLATES THIS SECTION, OR BARRING THE LENDER FROM COLLECTING UNDER ANY HOME MORTGAGE LOAN WHICH VIOLATES THIS SECTION;

(B) ISSUE AN ORDER OR INJUNCTION BARRING ANY JUDICIAL OR NONJUDICIAL FORECLOSURE OR OTHER LENDER ACTION UNDER THE MORTGAGE OR DEED OF TRUST SECURING ANY HOME MORTGAGE LOAN WHICH VIOLATES THIS SECTION;

(C) ISSUE AN ORDER OR INJUNCTION REFORMING THE TERMS OF THE HOME MORTGAGE LOAN TO CONFORM TO THIS SECTION;

(D) ISSUE AN ORDER OR INJUNCTION ENJOINING A LENDER FROM ENGAGING IN ANY PROHIBITED CONDUCT; OR

(E) IMPOSE SUCH OTHER RELIEF, INCLUDING INJUNCTIVE RELIEF, AS THE COURT MAY CONSIDER JUST AND EQUITABLE.

11. (A) ANY PERSON FOUND TO HAVE KNOWINGLY AND DELIBERATELY VIOLATED ANY PROVISION OF THIS SECTION MAY BE CRIMINALLY LIABLE FOR A FINE OF LESS THAN FIVE THOUSAND DOLLARS, COMMUNITY SERVICE OF NOT MORE THAN FIVE HUNDRED HOURS OR IMPRISONMENT NOT EXCEEDING SIX MONTHS, OR ANY COMBINATION THEREOF.

(B) FOR ANY SECOND OR SUBSEQUENT VIOLATION HE OR SHE MAY BE CRIMINALLY LIABLE FOR A FINE OF LESS THAN TEN THOUSAND DOLLARS, COMMUNITY SERVICE OF NOT MORE THAN ONE THOUSAND HOURS OR IMPRISONMENT NOT EXCEEDING TWELVE MONTHS, OR ANY COMBINATION THEREOF.

12. IT IS A VIOLATION OF THIS SECTION FOR ANY PERSON TO ATTEMPT IN BAD FAITH TO AVOID THE PROVISIONS OF THIS SECTION BY DIVIDING ANY LOAN TRANSACTION INTO SEPARATE PARTS OR STRUCTURING A RESIDENTIAL MORTGAGE LOAN TRANSACTION AS AN OPEN-END LOAN FOR THE PURPOSE OF EVADING THE PROVISIONS OF THIS SECTION WHEN THE LOAN WOULD HAVE BEEN A HIGH-RATE MORTGAGE HAD IT BEEN STRUCTURED AS A CLOSED-END LOAN OR BY ENGAGING IN ANY OTHER SUBTERFUGE WITH THE INTENT OF EVADING ANY PROVISION OF THIS SECTION.

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

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

15. THE REMEDIES PROVIDED IN THIS SECTION ARE NOT INTENDED TO BE THE EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER OF A SUB-PRIME HOME LOAN.

16. IN ANY ACTION BY AN ASSIGNEE TO ENFORCE A LOAN AGAINST A BORROWER IN DEFAULT MORE THAN SIXTY DAYS OR IN FORECLOSURE, A BORROWER MAY ASSERT ANY CLAIMS IN RECOUPMENT AND DEFENSES TO PAYMENT UNDER THE PROVISIONS OF THIS SECTION AND WITH RESPECT TO THE LOAN, WITHOUT TIME LIMITATIONS, THAT THE BORROWER COULD ASSERT AGAINST THE ORIGINAL LENDER OF THE LOAN.

17. NO LENDER MAY MAKE OR CAUSE TO MAKE, DIRECTLY OR INDIRECTLY, ANY FALSE, DECEPTIVE OR MISLEADING STATEMENT OR REPRESENTATION IN CONNECTION WITH A RESIDENTIAL LOAN TRANSACTION INCLUDING, BUT NOT LIMITED TO, A FALSE, DECEPTIVE OR MISLEADING STATEMENT OR REPRESENTATION REGARDING THE BORROWER'S ABILITY TO QUALIFY FOR ANY MORTGAGE PRODUCT.

18. (A) ALL LENDERS AND MORTGAGE BROKERS OFFERING SUB-PRIME HOME LOAN PRODUCTS SHALL FILE AN ELECTRONIC REPORT WITH THE DEPARTMENT DETAILING EACH LOAN AGREEMENT.

(B) SUCH LENDERS AND MORTGAGE BROKERS SHALL FILE A REPORT WITH THE DEPARTMENT IN INSTANCES OF LOAN DEFAULT OR FORECLOSURE WITHIN THIRTY DAYS OF SUCH DEFAULT OR DISCLOSURE. THE DEPARTMENT SHALL DEVELOP RULES AND REGULATIONS FOR SUCH REPORTS AND MAKE SUMMARY TABLES BY LENDER AND BROKER AVAILABLE ON THE DEPARTMENT'S OFFICIAL WEBSITE.

19. LENDERS AND MORTGAGE BROKERS SHALL FILE A REPORT WITH THE DEPARTMENT THAT DETAILS THE NUMBER OF HIGH-COST HOME LOANS THEY HAVE MADE OVER THE PAST FIVE YEARS AND THE NUMBER OF SUCH LOANS THAT HAVE ENDED IN DEFAULT OR FORECLOSURE. THIS DATA SHALL BE PROVIDED STATEWIDE, BY COUNTY, AND ZIP CODE. THE DEPARTMENT SHALL BE REQUIRED TO PRODUCE AND POST THIS DATA TO ITS OFFICIAL STATE WEBSITE IN A SEARCHABLE FORM.

20. THE FOLLOWING INFORMATION SHALL BE DISCLOSED AND PROVIDED AT LEAST THREE BUSINESS DAYS PRIOR TO CLOSING A HIGH-COST HOME LOAN:

(A) THE ANNUAL PERCENTAGE RATE;

(B) THE AMOUNT OF THE REGULAR MONTHLY (OR OTHER PERIODIC) PAYMENT AND THE AMOUNT OF ANY BALLOON PAYMENT;

(C) FOR VARIABLE RATE LOANS, A STATEMENT THAT THE INTEREST RATE AND MONTHLY PAYMENT MAY INCREASE, AND THE AMOUNT OF THE MAXIMUM MONTHLY PAYMENT BASED UPON THE MAXIMUM INTEREST RATE;

(D) A COPY OF THE REPORT REQUIRED BY SUBDIVISION NINETEEN OF THIS SECTION, INCLUDING DATA FOR THE RELEVANT COUNTY AND ZIP CODE; AND

(E) CONTACT INFORMATION FOR THE DEPARTMENT INCLUDING THE INTERNET ADDRESS TO ACCESS THE DEPARTMENT'S POSTINGS OF INFORMATION ON HIGH-COST MORTGAGES PURSUANT TO SUBDIVISIONS EIGHTEEN AND NINETEEN OF THIS SECTION; AND

(F) A NOTICE THAT READS AS FOLLOWS: "YOU ARE NOT REQUIRED TO COMPLETE THIS AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR HAVE SIGNED A LOAN APPLICATION. IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE A MORTGAGE ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU HAVE PUT INTO IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN."

21. THE PROVISIONS OF THIS SECTION SHALL BE SEVERABLE, AND IF ANY PHRASE, CLAUSE, SENTENCE, OR PROVISION IS DECLARED TO BE INVALID, OR IS PREEMPTED BY FEDERAL LAW OR REGULATION, THE VALIDITY OF THE REMAINDER OF THIS SECTION SHALL NOT BE AFFECTED THEREBY. IF ANY PROVISION OF THIS SECTION IS DECLARED TO BE INAPPLICABLE TO ANY SPECIFIC CATEGORY, TYPE, OR KIND OF POINTS AND FEES, THE PROVISIONS OF THIS SECTION SHALL NONETHELESS CONTINUE TO APPLY WITH RESPECT TO ALL OTHER POINTS AND FEES.

S 3. Section 1302 of the real property actions and proceedings law is amended by adding a new subdivision 3 to read as follows:

3. ANY COMPLAINT SERVED IN A PROCEEDING INITIATED PURSUANT TO THIS ARTICLE RELATING TO A SUB-PRIME HOME LOAN, AS DEFINED IN SECTION SIX-N OF THE BANKING LAW, MUST CONTAIN AN AFFIRMATIVE ALLEGATION, WHICH ALLEGATION MUST BE PROVEN TO THE SATISFACTION OF THE COURT BEFORE ENTRY OF

JUDGMENT BY DEFAULT OR OTHERWISE, THAT THE PLAINTIFF MORTGAGE BANKER OR EXEMPT ORGANIZATION HAS COMPLIED WITH ALL OF THE PROVISIONS OF SECTION FIVE HUNDRED NINETY-FIVE-A AND SECTION SIX-N OF THE BANKING LAW.

S 4. The banking law is amended by adding a new section 590-c to read as follows:

S 590-C. DUTIES OF MORTGAGE BANKERS AND MORTGAGE BROKERS. 1. IN THE CASE OF A MORTGAGE LOAN, A MORTGAGE BANKER OR MORTGAGE BROKER SHALL BE DEEMED TO HAVE A FIDUCIARY RELATIONSHIP WITH THE CONSUMER AND HE OR SHE SHALL BE SUBJECT TO ALL REQUIREMENTS FOR FIDUCIARIES OTHERWISE APPLICABLE UNDER STATE OR FEDERAL LAW.

2. EACH MORTGAGE BANKER OR MORTGAGE BROKER SHALL WITH RESPECT TO EACH MORTGAGE LOAN IN WHICH HE OR SHE IS INVOLVED:

(A) ACT WITH REASONABLE SKILL, CARE AND DILIGENCE; AND

(B) ACT IN GOOD FAITH AND WITH FAIR DEALING IN ANY TRANSACTION, PRACTICE OR COURSE OF BUSINESS ASSOCIATED WITH THE MORTGAGE LOAN.

3. (A) EACH MORTGAGE BANKER OR MORTGAGE BROKER SHALL, BEFORE ENTERING INTO OR OTHERWISE FACILITATING ANY MORTGAGE LOAN, VERIFY THE REASONABLE ABILITY OF THE BORROWER TO PAY THE PRINCIPAL AND INTEREST ON THE LOAN AND ANY REAL ESTATE TAXES AND HOMEOWNERS INSURANCE FEES AND PREMIUMS.

(B) IN THE CASE OF A MORTGAGE LOAN WITH RESPECT TO WHICH THE APPLICABLE RATE OF INTEREST MAY VARY, FOR PURPOSES OF PARAGRAPH (A) OF THIS SUBDIVISION, THE ABILITY TO PAY SHALL BE DETERMINED BASED ON THE MAXIMUM POSSIBLE MONTHLY PAYMENT THAT COULD BE DUE FROM THE BORROWER DURING THE FIRST SEVEN YEARS OF THE LOAN TERM, WHICH SHALL BE CALCULATED BY:

(I) USING THE MAXIMUM INTEREST RATE ALLOWABLE UNDER THE LOAN; AND

(II) ASSUMING NO DEFAULT BY THE BORROWER, A REPAYMENT SCHEDULE WHICH ACHIEVES FULL AMORTIZATION OVER THE LIFE OF THE LOAN.

(C) FOR PURPOSES OF PARAGRAPH (A) OF THIS SUBDIVISION, A MORTGAGE BANKER OR MORTGAGE BROKER SHALL BASE A DETERMINATION OF THE ABILITY TO PAY ON:

(I) DOCUMENTATION OF THE INCOME AND FINANCIAL RESOURCES OF THE BORROWER, INCLUDING TAX RETURNS, PAYROLL RECEIPTS, BANK RECORDS, OR OTHER SIMILARLY RELIABLE DOCUMENTS; AND

(II) THE DEBT-TO-INCOME RATIO AND RESIDUAL INCOME OF THE BORROWER, AS DETERMINED UNDER SECTION 36.4337 OF TITLE 38 OF THE CODE OF FEDERAL REGULATIONS, OR ANY SUCCESSOR THERETO.

(D) A STATEMENT PROVIDED BY THE BORROWER OF THE INCOME AND FINANCIAL RESOURCES OF THE BORROWER, WITHOUT OTHER DOCUMENTATION REFERRED TO IN PARAGRAPH (C) OF THIS SUBDIVISION, IS NOT SUFFICIENT VERIFICATION FOR PURPOSES OF ASSESSING THE ABILITY OF THE CONSUMER TO PAY.

4. (A) IN THE CASE OF A RATE SPREAD MORTGAGE TRANSACTION, THE OBLIGOR SHALL BE REQUIRED TO MAKE MONTHLY PAYMENTS INTO AN ESCROW ACCOUNT ESTABLISHED BY THE MORTGAGE BANKER FOR THE PURPOSE OF PAYING TAXES, HAZARD INSURANCE PREMIUMS, AND, IF APPLICABLE, FLOOD INSURANCE PREMIUMS.

(B) THIS SUBDIVISION DOES NOT APPLY IN ANY CASE IN WHICH THE MORTGAGE BANKER REASONABLY BELIEVES THAT, FOLLOWING THE LOAN CLOSING, THE OBLIGOR SHALL BE REQUIRED, OR SHALL CONTINUE TO BE REQUIRED, TO MAKE ESCROW PAYMENTS DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION ON THE PROPERTY SECURING THE LOAN IN CONNECTION WITH ANOTHER LOAN SECURED BY THE SAME PROPERTY.

(C) IN ANY CASE IN WHICH A MORTGAGE BROKER SELLS OR DELIVERS A RATE SPREAD MORTGAGE LOAN TO A LENDER, THE LENDER SHALL BE LIABLE FOR THE ACTS, OMISSIONS AND REPRESENTATIONS MADE BY THE MORTGAGE BROKER IN CONNECTION WITH SUCH MORTGAGE LOAN.

(D) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "RATE SPREAD MORTGAGE TRANSACTION" MEANS A HOME MORTGAGE LOAN THAT HAS AN ANNUAL PERCENT-

AGE RATE OF INTEREST THAT EQUALS OR EXCEEDS THE RATE THAT WOULD REQUIRE REPORTING UNDER THE HOME MORTGAGE DISCLOSURE ACT (12 U.S.C. 2801 ET SEQ.) AS A RATE SPREAD LOAN, WITHOUT REGARD TO WHETHER SUCH LOAN IS OTHERWISE SUBJECT TO THE HOME MORTGAGE DISCLOSURE ACT.

5. (A) IN CONNECTION WITH A MORTGAGE LOAN, A MORTGAGE BANKER OR MORTGAGE BROKER MAY NOT STEER, COUNSEL, OR DIRECT A CONSUMER TO RATES, CHARGES, PRINCIPAL AMOUNT, OR PREPAYMENT TERMS THAT ARE NOT REASONABLY ADVANTAGEOUS TO THE CONSUMER, IN LIGHT OF ALL OF THE CIRCUMSTANCES ASSOCIATED WITH THE TRANSACTION, INCLUDING THE CHARACTERISTICS OF THE PROPERTY THAT SECURES OR WILL SECURE THE EXTENSION OF CREDIT AND THE LOAN TERMS FOR WHICH THE CONSUMER QUALIFIES.

(B) IF UNABLE TO SUGGEST, OFFER, OR RECOMMEND TO A CONSUMER A REASONABLY ADVANTAGEOUS HOME LOAN, A MORTGAGE BANKER OR MORTGAGE BROKER SHALL:

(I) BASED ON THE INFORMATION REASONABLY AVAILABLE AND USING THE SKILL, CARE, AND DILIGENCE REASONABLY EXPECTED FOR A MORTGAGE BANKER OR MORTGAGE BROKER, ORIGINATE OR OTHERWISE FACILITATE A REASONABLY ADVANTAGEOUS HOME MORTGAGE LOAN BY ANOTHER CREDITOR TO A CONSUMER, IF PERMITTED BY AND IN ACCORDANCE WITH ALL OTHERWISE APPLICABLE LAW; OR

(II) DISCLOSE TO A CONSUMER:

(A) THAT THE CREDITOR DOES NOT OFFER A MORTGAGE LOAN THAT WOULD BE REASONABLY ADVANTAGEOUS TO A CONSUMER, BUT THAT OTHER CREDITORS MAY OFFER SUCH A LOAN; AND

(B) THE REASONS THAT THE PRODUCTS AND SERVICES OFFERED BY THE MORTGAGE BANKER OR MORTGAGE BROKER ARE NOT AVAILABLE TO OR REASONABLY ADVANTAGEOUS FOR THE CONSUMER.

(C) IN CONNECTION WITH A MORTGAGE LOAN, A MORTGAGE BANKER OR MORTGAGE BROKER MAY NOT:

(I) MISCHARACTERIZE THE CREDIT HISTORY OF A CONSUMER OR THE HOME LOANS AVAILABLE TO A CONSUMER;

(II) MISCHARACTERIZE OR SUBORN MISCHARACTERIZATION OF THE APPRAISED VALUE OF THE PROPERTY SECURING THE EXTENSION OF CREDIT; OR

(III) IF UNABLE TO SUGGEST, OFFER, OR RECOMMEND TO A CONSUMER A REASONABLY ADVANTAGEOUS MORTGAGE LOAN, DISCOURAGE A CONSUMER FROM SEEKING A HOME MORTGAGE LOAN FROM ANOTHER CREDITOR OR WITH ANOTHER MORTGAGE BANKER OR MORTGAGE BROKER.

(D) NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO PROHIBIT A MORTGAGE BANKER OR MORTGAGE BROKER FROM PROVIDING A CONSUMER WITH ACCURATE, UNBIASED, GENERAL INFORMATION ABOUT HOME MORTGAGE LOANS, UNDERWRITING STANDARDS, WAYS TO IMPROVE CREDIT HISTORY, OR ANY OTHER MATTER RELEVANT TO A CONSUMER.

6. (A) NO MORTGAGE BANKER OR MORTGAGE BROKER MAY ENTER INTO A MORTGAGE LOAN WITH RESPECT TO WHICH THE MORTGAGE BANKER OR MORTGAGE BROKER HAS REASON TO BELIEVE THAT, WITH RESPECT TO THE APPRAISAL OF THE VALUE OF THE PROPERTY SECURING THE LOAN:

(I) THE APPRAISER FAILED TO ACT IN GOOD FAITH AND FAIR DEALING WITH RESPECT TO THE CONSUMER IN CONNECTION WITH THE APPRAISAL;

(II) THE APPRAISAL WAS CONDUCTED OTHER THAN IN ACCORDANCE WITH ALL APPLICABLE STATE AND FEDERAL STANDARDS REQUIRED OF CERTIFIED APPRAISERS, OR WAS OTHERWISE NOT ACCURATE AND REASONABLE;

(III) THE APPRAISER HAD A DIRECT OR INDIRECT INTEREST IN THE PROPERTY OR THE TRANSACTION;

(IV) THE APPRAISER CHARGED, SOUGHT, OR RECEIVED COMPENSATION FOR THE APPRAISAL, AND THE APPRAISAL WAS NOT COVERED BY A QUALIFYING BOND; OR

(V) THE APPRAISAL ORDER OR ANY OTHER COMMUNICATION IN ANY FORM INCLUDES THE REQUESTED LOAN AMOUNT OR ANY ESTIMATE OF VALUE FOR THE PROPERTY TO SERVE AS COLLATERAL, EITHER EXPRESSED OR IMPLIED.

(B) NO MORTGAGE BANKER OR MORTGAGE BROKER MAY, WITH RESPECT TO A HOME MORTGAGE LOAN, IN ANY WAY:

(I) SEEK TO INFLUENCE AN APPRAISER OR OTHERWISE TO ENCOURAGE A TARGETED VALUE IN ORDER TO FACILITATE THE MAKING OR PRICING OF THE MORTGAGE LOAN; OR

(II) SELECT AN APPRAISER ON THE BASIS OF AN EXPECTATION THAT SUCH APPRAISER WOULD PROVIDE A TARGETED VALUE IN ORDER TO FACILITATE THE MAKING OR PRICING OF THE MORTGAGE LOAN.

(C) IT SHALL NOT BE A DEFENSE TO ENFORCEMENT OF THE REQUIREMENTS OF THIS SUBDIVISION THAT THE MORTGAGE BANKER OR MORTGAGE BROKER USED ANOTHER PERSON IN THE APPRAISAL PROCESS OR TO REVIEW THE APPRAISAL PROCESS.

(D) IN ANY CASE IN WHICH AN APPRAISAL IS PERFORMED IN CONNECTION WITH A MORTGAGE LOAN, THE MORTGAGE ORIGINATOR SHALL PROVIDE A COPY OF THE APPRAISAL REPORT TO AN APPLICANT FOR A MORTGAGE LOAN, WHETHER CREDIT IS GRANTED, DENIED, OR THE APPLICATION WAS WITHDRAWN.

S 5. Subdivision 1 of section 14 of the banking law is amended by adding a new paragraph (r) to read as follows:

(R) TO CREATE AND MAINTAIN A LIST DISCLOSING BORROWER'S RIGHTS ON THE DEPARTMENT'S WEBSITE.

S 6. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply only to loans for which application is made on or after such effective date; provided, however, that the superintendent of banks is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date on or before such date.