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

7738

2009-2010 Regular Sessions

I N A S S E M B L Y

April 23, 2009

Introduced by M. of A. TOWNS -- (at request of the Banking Department) -- read once and referred to the Committee on Banks

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banking department, collecting assessments and fees, suspending mortgage bankers and brokers for cause and eliminating outdated language and provisions; to amend the real property law, in relation to interest rate increases on mortgage loans after default and to repeal certain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:

Section 1. Section 9-q of the banking law, as added by chapter 1 of the laws of 1994, is amended to read as follows:

S 9-q. Small business and small farm loans. By September thirtieth of [each year] TWO THOUSAND NINE AND TWO THOUSAND ELEVEN, the superintendent shall make a report to the governor, the temporary president of the senate, the speaker of the assembly, the chairman AND RANKING MINORITY MEMBER of the senate standing committee on banks, and the chairman AND RANKING MINORITY MEMBER of the assembly standing committee on banks, of the aggregate outstanding loans made to small businesses and small farms [as reported in the periodic reports of financial condition filed by banking institutions located in this state with the appropriate federal bank regulatory agency] BY BANKING ORGANIZATIONS. The superintendent's report shall be available to the public. For purposes of this section, "banking [institution] ORGANIZATION" means any bank, trust company, savings bank, savings and loan association, CREDIT UNION or branch of a foreign banking corporation the deposits of which are insured by the Federal Deposit Insurance Corporation, which is incorporated, chartered, organized or licensed under the laws 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.

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 Paragraph (ii) of subdivision 1 of section 14 of the banking law is REPEALED.

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

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

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

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

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

3. Nothing in this section shall be construed to prohibit an employee from: (a) obtaining a loan secured by an assignment of his or her deposit in a banking organization, or an assignment or pledge of his or her shares in a savings and loan association or credit union; (b) [obtaining from a savings bank which has established a life insurance department pursuant to article VI-A of this chapter one or more policies of insurance and one or more annuity policies, receiving dividends on such policies and pledging such policies as security for a loan from said banking organization to the extent of the cash surrender value thereof; (c)] accepting dealer financing of an automobile, truck or other personal property for the sole reason that the financing company is chartered under article [XII] TWELVE of this chapter; or [(d)] (C) owning shares of an investment company (mutual fund) that may incidentally invest in the stock of banking institutions, provided that the purpose of the investment portfolio of such investment company may not be to invest primarily or exclusively in the shares of banking [institutions] ORGANIZATIONS. For purposes of this section, investment companies include open-end and closed-end investment companies and unit investment trusts as those terms are defined in an Act of Congress entitled "The Investment Company Act of 1940," as amended.

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

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

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

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

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

S 22. Fingerprints. [(a)] 1. Notwithstanding any other provision of law, every applicant for a license, authorization or registration under articles nine, nine-A, eleven-B, twelve-B, twelve-C, twelve-D, twelve-E and thirteen-B of this chapter and every applicant filing an application to acquire control of any licensee or registrant, as the case may be, under such articles shall submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. The superintendent shall submit such fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees. The superintendent shall request that the division submit such fingerprints to the federal bureau of investigation, together with the processing fees prescribed by such bureau, for the purpose of conducting a criminal history search and returning a report thereon. An applicant shall not be required to submit his or her fingerprints as required by this subdivision if (A) such applicant (i) is already subject to regulation by the department and the applicant has submitted such fingerprints to the department, such fingerprints have been submitted to the division of criminal justice services for the purpose of conducting a criminal history search, and a report of such search has been received by the department from such division; or (ii) is subject to regulation by a federal bank regulatory agency and has submitted such fingerprints to such agency which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; or (iii) is an officer or stockholder of a corporation whose common or preferred stock is registered on a national securities exchange, as provided in an act of congress of the United States entitled the "Securities Exchange Act of 1934", approved June sixth, nineteen hundred thirty-four, as amended, or such other exchange or market system as the superintendent shall approve

by regulation, and has submitted such fingerprints to such exchange or market system which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; provided, however, that the superintendent may subsequently require such applicant to submit his or her fingerprints if the superintendent has a reasonable basis for updating the information or determination resulting from the report of the criminal history search conducted at the request of such federal banking agency, exchange or market system; OR (B) THE SUPERINTENDENT, IN HIS OR HER SOLE DISCRETION, DETERMINES THAT THE CIRCUMSTANCES OTHERWISE WARRANT A WAIVER OF THE REQUIREMENTS OF THIS SECTION.

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

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

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

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

S 10. Section 24 of the banking law, as amended by chapter 684 of the laws of 1938, subdivision 1 as amended by chapter 453 of the laws of 1960, subdivision 2 as amended by chapter 419 of the laws of 1996, subdivision 3 as amended by chapter 52 of the laws of 1944 and subdivision 4 as amended by chapter 608 of the laws of 1996, is amended to read as follows:

S 24. Investigation by superintendent; refusal or approval; filing certificate. 1. Within ninety days after the date when any organization certificate or private banker's certificate shall have been filed for examination, the superintendent, if he OR SHE shall find after investigation and examination of what he deems to be the best sources of information [at his command] AVAILABLE that the character, responsibility and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed corporation or private banker will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter, and that the public convenience and advantage will be promoted by allowing such proposed corporation or private banker to engage in business, shall submit such certificate to the banking board together with all papers, correspondence and other information in his OR HER

possession relating thereto, including the results of [his] THE investigation and his OR HER recommendation in the matter. [Such] AN EXTENSION OF SUCH NINETY DAY period [of ninety days] may be [extended] REQUESTED, by a written [consent] REQUEST executed by a majority of the persons from whom the superintendent received such organization certificate or private banker's certificate, for such additional reasonable period of time as may be required for applicants to comply with conditions precedent stipulated by the superintendent as being a prerequisite to his OR HER recommendation to the banking board. THE SUPERINTENDENT, IN HIS OR HER SOLE DISCRETION, SHALL DETERMINE WHETHER TO GRANT SUCH AN EXTENSION.

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

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

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

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

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

of that period, issue [under his hand] and EXECUTE UNDER the official seal of the department, in triplicate, an authorization certificate to the person or persons named in such organization certificate or private banker's certificate. [The] NOTWITHSTANDING THE PRECEDING SENTENCE, IF THE SUPERINTENDENT DETERMINES IT IS CONSISTENT WITH THE DECLARATION OF POLICY CONTAINED IN SECTION TEN OF THIS ARTICLE, THE superintendent may extend the period within which he OR SHE may issue the authorization certificate by (I) an additional [sixty] NINETY days, provided, however, that he OR SHE shall have determined that such extension of time is needed for raising capital, for fulfilling any other condition precedent to the commencement of business or for satisfying any other requirement of organization, whether imposed by statute or regulation[, and that such extension is consistent with the declaration of policy contained in section ten of this chapter] OR OTHERWISE, OR (II) SUCH LONGER PERIOD OF TIME HE OR SHE SHALL DEEM APPROPRIATE, PROVIDED, HOWEVER, THAT HE OR SHE SHALL HAVE DETERMINED THAT EXTRAORDINARY CIRCUMSTANCES EXIST. Such authorization certificate shall state that the corporation or private banker named therein has complied with the provisions of this chapter and that it is authorized to transact the business specified therein. Such authorization certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter, except in an action or special proceeding brought by the superintendent or the attorney general. The superintendent shall cause one of the triplicate authorization certificates to be transmitted to the corporation or private banker thereby authorized to commence business, another to be filed in the office of the department, and the third to be filed in the county clerk's office in which the organization certificate or the private banker's certificate has been filed. The copies of the authorization certificate filed in the offices of the superintendent and the county clerk shall be attached to the copies of the organization certificate or private banker's certificate previously filed and such certificates shall be recorded in the records of incorporation therein.

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

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

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

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

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

S 28-a. Temporary change of location; approval or refusal; certificate. Notwithstanding any provisions of law limiting the number of offices which may be maintained thereby, any banking organization or foreign banking corporation may make a written application to the superintendent for a temporary change of location of its authorized place or one of its authorized places of business or a portion thereof to another place within the state which shall be as near as practicable to such authorized place of business. At the time of making the application an investigation fee as prescribed pursuant to section eighteen-a of this article shall be paid to the superintendent for each temporary location for which leave to open is sought, except where (1) the applicant would not be required to pay an investigation fee upon the filing of an application for a change of location under provisions of this chapter other than this section, or (2) said application is necessitated by damage or destruction caused by flood, tidal wave, earthquake, conflagration, tornado, hurricane, cyclone, windstorm or other storm or such other event as shall have been declared a catastrophe by the superintendent. If there is no reasonable objection to such change, and if the superintendent finds that such change is necessary or desirable during a period of construction, repair, alteration, improvement, or reconstruction of the previously authorized place of business, he or she shall issue AND EXECUTE a certificate under [his or her hand and] the official seal of the department authorizing each such change and specifying (a) the period during which such temporary location may be maintained, (b) the date on or after which such change may be made, and (c) the powers which may be exercised thereat. The superintendent shall cause the original of such certificate to be transmitted to the applicant, a copy to be filed in the office of the department and a copy to be filed in the office of the clerk of the county in which the principal office of the applicant is located. If the superintendent shall [be satisfied in any case that a change is undesirable or inexpedient, he or she shall] refuse such application [and], HE OR SHE SHALL notify the applicant of [his or her] SUCH determination. A temporary place of business occupied pursuant to the provisions of this section shall be closed as soon as practicable, and in no event later than the date specified in its authorization certificate, unless the superintendent shall have extended such time. The banking organization or corporation shall notify the superintendent in writing prior to such closing as to the date it intends to close the temporary place of business.

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

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

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

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

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

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

(B) IT MUST VERIFY AUTOMATICALLY THE QUALITY AND ACCURACY OF THE STORAGE MEDIA RECORDING PROCESS;

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

(D) IT MUST BE IMMEDIATELY READABLE ON EQUIPMENT AT ALL TIMES AVAILABLE TO THE SUPERINTENDENT FOR EXAMINATION OF SUCH RECORDS.

S 17. The closing paragraph of section 42 of the banking law, as amended by chapter 684 of the laws of 1938, is amended to read as follows:

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, THE SUPERINTENDENT MAY VARY OR WAIVE ANY SUCH PUBLICATION REQUIREMENTS, IF HE OR SHE SHALL DETERMINE THAT CONSIDERATION OF THE MATTER IS IN THE PUBLIC INTEREST. Every such statement after having been so posted for one week shall be placed on file and kept in the office of the department. All such statements shall be public documents and at all reasonable times shall be open to public inspection.

S 18. Subdivision 1 of section 229 of the banking law, as amended by chapter 1 of the laws of 1984, is amended to read as follows:

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 specified in any article of this chapter governing such banking organization; provided, however, that in the case of stock-form savings banks, this article applies to every such organization except that the banking board, consistent with the declaration of policy described in section fourteen-e of this chapter, shall be empowered to deem inapplicable to stock-form savings banks, sections two hundred thirty, [two hundred thirty-one,] two hundred thirty-two, two hundred thirty-three, subdivisions one and two of section two hundred thirty-four, two hundred forty-three, two hundred forty-four, two hundred forty-five, two hundred forty-six, two hundred forty-six-a, two hundred forty-seven, two hundred forty-eight, two hundred forty-nine, two hundred fifty, two hundred fifty-one and two hundred fifty-two of this chapter.

S 19. Subdivision 1 of section 413 of the banking law, as amended by chapter 300 of the laws of 1994, is amended to read as follows:

1. With the prior approval of the superintendent, a New York savings and loan holding company or a subsidiary thereof or a New York savings association may acquire control of an out-of-state savings and loan holding company or an out-of-state savings association, and an out-of-state savings and loan holding company or a subsidiary thereof or an

out-of-state savings association may acquire control of a New York savings and loan holding company or a New York savings association subject to regulations to be adopted by the [banking board. The terms and conditions prescribed by such regulations shall be substantially similar to those contained in section one hundred forty-two-b of this chapter governing reciprocal interstate acquisitions by bank holding companies] SUPERINTENDENT.

S 20. Subdivision 2 of section 460 of the banking law, as added by chapter 608 of the laws of 1996, is amended to read as follows:

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

(a) All expenses paid or incurred by the credit union in the management of its affairs, the collection of its debts or the transaction of its business.

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

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

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

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

S 21. Paragraph (l) of subdivision 8 of section 609 of the banking law, as amended by chapter 684 of the laws of 1938, is amended to read as follows:

(l) Within sixty days after a plan pursuant to this subdivision has become effective with respect to any bank[,] OR trust company [or industrial bank], there shall be called in accordance with its by-laws a meeting of its stockholders who shall elect directors who shall succeed the former directors. The directors so elected shall elect officers who shall succeed the former officers. Directors in office at the date of such meeting may be elected at such meeting to succeed themselves and the directors elected at such meeting may elect officers then serving to succeed themselves. [Notwithstanding the requirements as to ownership of capital stock contained in section one hundred sixteen or section three hundred three of this chapter, the] THE directors of such bank[,] OR trust company [or industrial bank] holding office at the time that such plan becomes effective may continue to hold office as directors, until their successors are elected and shall have qualified.

S 22. Section 4002 of the banking law, as added by chapter 321 of the laws of 1992, subdivisions (a) and (b) as amended and subdivision (d) as added by chapter 302 of the laws of 2003, is amended to read as follows:

S 4002. Fingerprints. [(a)] 1. Notwithstanding any other provisions of law, every incorporator of a corporation shall, in addition to any other requirements which may be imposed by the superintendent, submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. Every applicant filing an application to acquire control of any bank holding company under section one hundred forty-two of this chapter or of any banking institution under sections one hundred forty-three-a and one

hundred forty-three-b of this chapter shall, in addition to any other requirements which may be imposed by the superintendent, submit simultaneously with an application, his or her fingerprints in such form and in such manner as specified by the division of criminal justice services, but in any event, no less than two digit imprints. The superintendent shall submit the fingerprints to the division of criminal justice services for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees. The superintendent shall request that the division submit such fingerprints to the federal bureau of investigation, together with the processing fees prescribed by such bureau, for the purpose of conducting a criminal history search and returning a report thereon.

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

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

[(d)] 4. An applicant shall not be required to submit his or her fingerprints as required by subdivision [(a)] ONE of this section if (A) such applicant (i) is already subject to regulation by the department and the applicant has submitted such fingerprints to the department, such fingerprints have been submitted to the division of criminal justice services for the purpose of conducting a criminal history search, and a report of such search has been received by the department from such division WITHIN THE PAST FIVE YEARS; or (ii) is subject to regulation by a federal bank regulatory agency and has submitted such fingerprints to such agency which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; or (iii) is an officer or stockholder of a corporation whose common or preferred stock is registered on a national securities exchange, as provided in an act of congress of the United States entitled the "Securities Exchange Act of 1934", [approved June sixth, nineteen hundred thirty-four, as amended,] or such other exchange or market system as the superintendent shall approve by regulation, and has submitted such fingerprints to such exchange or market system which has had a criminal history search conducted of such individual and has shared such information or its determination resulting from such search with the department; provided, however, that the superintendent may subsequently require such applicant to submit sets of fingerprints if the superintendent has a reasonable basis for updating the information or determination resulting from the report of the criminal history search conducted at the request of such federal banking agency, exchange or market system; OR (B) THE SUPER-

INTENDENT, IN HIS OR HER SOLE DISCRETION, DETERMINES THAT THE CIRCUMSTANCES OTHERWISE WARRANT A WAIVER OF THE REQUIREMENTS OF THIS SECTION.

S 23. Subdivision 8 of section 5004 of the banking law, as added by chapter 849 of the laws of 1964, is amended to read as follows:

8. When the consideration for shares has been paid in full, the subscriber shall be entitled to all the rights and privileges of a holder of such shares and to a certificate representing his shares, and such shares shall be fully paid and, subject to sections [one hundred thirteen-a, one hundred thirteen-b,] one hundred fourteen[, three hundred five, three hundred five-a, three hundred six, three hundred twenty-two, three hundred twenty-two-a] and three hundred twenty-three of this chapter, shall be nonassessable.

S 24. Subdivision 1 of section 592-a of the banking law, as amended by section 18 of part D-1 of chapter 109 of the laws of 2006, is amended to read as follows:

1. Upon the filing of an application for registration, if the superintendent shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a co-partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of this article, the superintendent shall thereupon register the applicant as a mortgage broker on a roll maintained for that purpose at the banking department, and issue a certificate attesting to such registration in duplicate. If the superintendent shall not so find, the superintendent shall not register such applicant, and shall notify the applicant of the denial. The superintendent shall transmit one copy of such certificate to the applicant and file another in the office of the banking department. Upon receipt of such certificate a mortgage broker shall be authorized to engage in the business of [placing] SOLICITING, processing, PLACING, [and] OR negotiating mortgage loans. Such registration shall remain in full force and effect until it is surrendered by the [licensee] REGISTRANT or revoked or suspended as hereinafter provided, [except that such registration, notwithstanding any provisions of subdivision five of section seventeen of this chapter to the contrary, shall expire upon the registrant's failure to pay the required assessment charged pursuant to such section seventeen thirty days after the date or dates such payment or payments are due. If the registrant fails to pay such charged assessment by the date or dates such payment or payments are due, then the registrant shall be required to pay, in addition, a late fee in the amount of one hundred dollars. Such registration shall be reinstated if the registrant pays such assessment charged and any applicable late fees and/or interest within sixty days of such expiration] OR TERMINATED IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION FIVE HUNDRED NINETY-FIVE OF THIS ARTICLE. The superintendent shall approve or deny every application for registration hereunder within ninety days from the filing of a complete application provided, however, that failure to act within the prescribed period shall not be deemed approval of any such application.

S 25. Section 595 of the banking law, as amended by chapter 571 of the laws of 1986, 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 superintendent may revoke any license to engage in the business of a mortgage banker issued pursuant to this article or delete the name of a mortgage broker from the roll of mortgage brokers registered pursuant to this article if he shall find 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 banking board, 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;

(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 HEARING, or where there is a substantial risk of public harm, suspend any license or delete the name of any registrant for a period not exceeding [thirty] NINETY 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 OR IN THE CIRCUMSTANCES COVERED BY PARAGRAPH (B) OR (C) OF THIS SUBDIVISION.

(B) ANY MORTGAGE BROKER REGISTRATION NOTICE SHALL TERMINATE UPON THE REGISTRANT'S FAILURE TO PAY THE REQUIRED ASSESSMENT CHARGED PURSUANT TO SECTION SEVENTEEN OF THIS CHAPTER WITHIN THIRTY DAYS AFTER THE DATE OR DATES SUCH PAYMENT OR PAYMENTS ARE DUE. IF THE REGISTRANT FAILS TO PAY SUCH CHARGED ASSESSMENT BY THE DATE OR DATES SUCH PAYMENT OR PAYMENTS ARE DUE, THEN THE REGISTRANT SHALL BE REQUIRED TO PAY, IN ADDITION, A LATE FEE IN THE AMOUNT OF TWENTY-FIVE DOLLARS. SUCH REGISTRATION SHALL BE REINSTATED IF THE REGISTRANT PAYS SUCH ASSESSMENT CHARGED AND ANY APPLICABLE LATE FEES WITHIN SIXTY DAYS OF SUCH TERMINATION. THE SUPERINTENDENT MAY, IN HIS OR HER SOLE DISCRETION, UPON NOTICE BUT WITHOUT A HEARING, SUSPEND THE LICENSE OF ANY MORTGAGE BANKER UPON THE FAILURE OF SUCH LICENSEE TO MAKE ANY PAYMENTS REQUIRED BY THIS CHAPTER.

(C) THE SUPERINTENDENT, IN HIS OR HER SOLE DISCRETION, UPON NOTICE BUT WITHOUT A HEARING, MAY SUSPEND 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 A LICENSEE OR REGISTRANT HAS FILED A PETITION IN BANKRUPTCY; OR (IV) UPON NOTICE 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 FOR GOOD CAUSE PURSUANT TO 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 ORDER BY THE CLOSE OF BUSINESS NINETY DAYS AFTER THE DATE OF SUCH SUSPENSION ORDER, INCLUDING, WITHOUT LIMITATION, MAKING ANY OVERDUE PAYMENT, HAVING ANY SUCH BANKRUPTCY PETITION DISMISSED OR HAVING SUCH BOND REINSTATED. OTHERWISE, UNLESS THE SUPERINTENDENT HAS, IN HIS OR HER SOLE DISCRETION, EXTENDED SUCH SUSPENSION, THE LICENSE OF SUCH LICENSEE OR REGISTRATION OF SUCH REGISTRANT SHALL BE DEEMED TO BE AUTOMATICALLY TERMINATED BY OPERATION OF LAW AT THE CLOSE OF BUSINESS ON SUCH DATE.

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 may surrender any license or certificate by delivering to the superintendent written notice that it thereby surrenders such license or certificate, 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] 6. An expiration of registration in accordance with section five hundred ninety-two-a of this article shall not affect such registrant's civil or criminal liability for acts committed prior to such expirations. If such expiration occurs after the issuance by the superintendent of a statement of charges and notice of hearing, the superintendent may proceed against the registrant as if such expiration had not taken place.

[5] 7. No revocation, suspension, surrender or [expiration] TERMINATION of any license or certificate 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 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 or to issue a new license or certificate 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, he 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] EXCEPT FOR ORDERS ISSUED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, 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 shall have [expired] TERMINATED in accordance with [section five hundred ninety-two-a of] this article, the superintendent shall notify the registrant that the registration has [expired] TERMINATED and that the registrant 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 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 26. Section 254-b of the real property law, as added by chapter 119 of the laws of 1974, is amended to read as follows:

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

2. NO BOND OR NOTE, OR THE MORTGAGE ON REAL PROPERTY, HERETOFORE OR HEREAFTER MADE, IMPROVED BY A ONE TO SIX FAMILY RESIDENCE OCCUPIED BY THE OWNER, SECURING THE PAYMENT OF SUCH BOND OR NOTE, OR A NOTE REPRESENTING A LOAN FOR THE PURPOSE OF FINANCING THE PURCHASE OF AN OWNERSHIP INTEREST IN, AND PROPRIETARY LEASE FROM, A CORPORATION OR PARTNERSHIP FORMED FOR THE PURPOSE OF THE COOPERATIVE OWNERSHIP OF RESIDENTIAL REAL ESTATE MAY CONTAIN A PROVISION WHICH INCREASES THE INTEREST RATE AFTER DEFAULT. THIS PROVISION DOES NOT APPLY TO INTEREST RATE CHANGES IN A

VARIABLE RATE LOAN OTHERWISE CONSISTENT WITH THE PROVISIONS OF THE LOAN DOCUMENTS; PROVIDED THAT THE CHANGE IN THE INTEREST RATE IS NOT TRIGGERED BY THE EVENT OF DEFAULT OR THE ACCELERATION OF THE INDEBTEDNESS.

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

[3] 4. If any provision of this section, or the application of such provision to any individual, company, corporation, or circumstance, shall be held invalid, the remainder of this section, and the application of such section to individuals, companies, corporations, or circumstances other than those to which it is held invalid, shall not be affected thereby.

S 27. This act shall take effect immediately.