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

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Introduced by M. of A. WEINSTEIN, TOWNS, V. LOPEZ, TITUS, SPANO, COOK -- Multi-Sponsored by -- M. of A. BRENNAN, LANCMAN, O'DONNELL, PERRY, P. RIVERA -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, the civil practice law and rules, the banking law and chapter 472 of the laws of 2008 amending the real property actions and proceedings law and other laws relating to foreclosure actions on home mortgage loans, in relation to home mortgage loans; to amend the penal law, in relation to the crime of mortgage fraud; and to amend the real property law, in relation to recording transfers and assignments of mortgages and distressed property consulting contracts; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. Subdivisions 1, 2 and 5 of section 1304 of the real property actions and proceedings law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

1. Notwithstanding any other provision of law, with regard to a [high-cost] home loan[, as such term is defined in section six-l of the banking law, a subprime home loan or a non-traditional home loan] MADE BEFORE SEPTEMBER FIRST, TWO THOUSAND EIGHT, at least ninety days before a lender, AN ASSIGNEE or a mortgage loan servicer commences legal action against the borrower, including mortgage foreclosure, [the] SUCH lender, ASSIGNEE or mortgage loan servicer shall give notice to the borrower in at least fourteen-point type which shall include the following:

"YOU COULD LOSE YOUR HOME. PLEASE READ THE FOLLOWING NOTICE CAREFULLY"

"As of ___, your home loan is ___ days in default. Under New York State Law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of _____ dollars by ____.

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

LBD12043-08-9

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. If you wish, you may also contact us directly at _____ and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait, the fewer options you may have.

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Banking Department's toll-free helpline at 1-877-BANK-NYS (1-877-226-5697) or visit the Department's website at http://www.banking.state.ny.us"

2. Such notice shall be sent by [the] SUCH lender, ASSIGNEE or mortgage loan servicer to the borrower, by registered or certified mail and also by first-class mail to the last known address of the borrower, and if different, to the residence [which] THAT is the subject of the mortgage. SUCH NOTICE SHALL BE SENT BY THE LENDER, ASSIGNEE OR MORTGAGE LOAN SERVICER IN A SEPARATE ENVELOPE FROM ANY OTHER MAILING OR NOTICE. Notice is considered given as of the date it is mailed. The notice shall contain a list of at least five [United States department of housing and urban development approved housing counseling agencies, or other] housing counseling agencies as designated by the division of housing and community renewal, that serve the region where the borrower resides. The list shall include the counseling agencies' last known addresses and telephone numbers. The banking department [and/or] AND the division of housing and community renewal shall make available ON THEIR RESPECTIVE WEBSITES a listing, by region, of such agencies [which the]. THE lender, ASSIGNEE or mortgage loan servicer [may] SHALL use EITHER OF THESE LISTS to meet the requirements of this section.

5. (a) ["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).

(b)] "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 at origination did not exceed the conforming loan size that was in existence at the time of origination for a comparable dwelling as established by the federal national mortgage association;

(ii)] The borrower is a natural person;

[(iii)] (II) The debt is incurred by the borrower primarily for personal, family, or household purposes;

[(iv)] (III) 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] IMPROVED BY A ONE TO FOUR FAMILY DWELL-

ING, OR A CONDOMINIUM UNIT, OR BY ANY CERTIFICATE OF STOCK OR OTHER EVIDENCE OF OWNERSHIP IN, AND A PROPRIETARY LEASE FROM, A CORPORATION, PARTNERSHIP OR OTHER ENTITY FORMED FOR THE PURPOSE OF COOPERATIVE OWNERSHIP OF REAL ESTATE, IN EITHER CASE, USED OR OCCUPIED, OR INTENDED TO BE USED OR OCCUPIED WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS AND WHICH IS OR WILL BE OCCUPIED BY THE BORROWER AS THE BORROWER'S PRINCIPAL DWELLING; and

[(v)] (IV) The property is located in this state.

[(c) "Subprime home loan" for the purposes of this section, means a home loan consummated between January first, two thousand three and September first, two thousand eight in which the terms of the loan exceed the threshold as defined in paragraph (d) of this subdivision. A subprime home loan excludes a transaction to finance the initial construction of a dwelling, a temporary or "bridge" loan with a term of twelve months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within twelve months, or a home equity line of credit.

(d) "Threshold" means, for a first lien mortgage loan, the annual percentage rate of the home loan at consummation of the transaction exceeds three percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity measured as of the fifteenth day of the month in which the loan was consummated; or for a subordinate mortgage lien, the annual percentage rate of the home loan at consummation of the transaction equals or exceeds five percentage points over the yield on treasury securities having comparable periods of maturity on the fifteenth day of the month in which the loan was consummated; as determined by the following rules: if the terms of the home loan offer any initial or introductory period, and the annual percentage rate is less than that which will apply after the end of such initial or introductory period, then the annual percentage rate that shall be taken into account for purposes of this section shall be the rate which applies after the initial or introductory period.

(e) "Non-traditional home loan" shall mean a payment option adjustable rate mortgage or an interest only loan consummated between January first, two thousand three and September first, two thousand eight.

(f) For purposes of determining the threshold, the banking department shall publish on its website a listing of constant maturity yields for U.S. Treasury securities for each month between January first, two thousand three and September first, two thousand eight, as published in the Federal Reserve Statistical Release on selected interest rates, commonly referred to as the H.15 release, in the following maturities, to the extent available in such release: six month, one year, two year, three year, five year, seven year, ten year, thirty year.

(g)] (B) "Lender" means a mortgage banker as defined in paragraph (f) of subdivision one of section five hundred ninety of the banking law or an exempt organization as defined in paragraph (e) of subdivision one of section five hundred ninety of the banking law.

S 2. The real property actions and proceedings law is amended by adding a new section 1305 to read as follows:

S 1305. NOTICE TO TENANTS. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "RESIDENTIAL REAL PROPERTY" SHALL MEAN REAL PROPERTY LOCATED IN THIS STATE IMPROVED BY ANY BUILDING OR STRUCTURE THAT IS OR MAY BE USED, IN WHOLE OR IN PART, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS, AND SHALL INCLUDE ANY BUILDING OR STRUCTURE USED FOR BOTH RESIDENTIAL AND COMMERCIAL PURPOSES.

(B) "SUCCESSOR IN INTEREST" SHALL MEAN ANY PERSON OR ENTITY WHO OR WHICH ACQUIRES TITLE IN A RESIDENTIAL REAL PROPERTY PURSUANT TO A JUDGMENT OF SALE, OR OTHER DISPOSITION DURING THE PENDENCY OF THE FORECLOSURE PROCEEDING, OR AT ANY TIME THEREAFTER BUT PRIOR TO THE EXPIRATION OF THE TIME PERIOD AS PROVIDED FOR IN SUBDIVISION TWO OF THIS SECTION.

(C) "TENANT" SHALL MEAN ANY PERSON WHO AT THE TIME OF A JUDGMENT OF SALE, OR OTHER DISPOSITION DURING THE PENDENCY OF THE FORECLOSURE, APPEARS AS A LESSEE ON A LEASE OF ONE OR MORE DWELLING UNITS OF A RESIDENTIAL REAL PROPERTY THAT IS SUBORDINATE TO THE MORTGAGE ON SUCH RESIDENTIAL REAL PROPERTY; OR WHO IS A PARTY TO AN ORAL OR IMPLIED RENTAL AGREEMENT WITH THE MORTGAGOR AND OBLIGATED TO PAY RENT TO THE MORTGAGOR OR SUCH MORTGAGOR'S REPRESENTATIVE, FOR THE USE OR OCCUPANCY OF ONE OR MORE DWELLING UNITS OF A RESIDENTIAL REAL PROPERTY.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A TENANT SHALL HAVE THE RIGHT TO REMAIN IN OCCUPANCY OF THE SUBJECT RESIDENTIAL REAL PROPERTY FOR THE REMAINDER OF THE LEASE TERM IN EFFECT, PROVIDED SUCH LEASE REQUIRES THE RECEIPT OF RENT THAT IS NOT SUBSTANTIALLY LESS THAN THE FAIR MARKET RENT FOR THE PROPERTY WITH THE EXCEPTION OF TENANCIES WHICH ARE SUBSIDIZED BY THE FEDERAL GOVERNMENT, THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE OR WHOSE TENANCY IS SUBJECT TO RENT CONTROL, RENT STABILIZATION OR FEDERAL STATUTORY SCHEMES, OR FOR A PERIOD OF NINETY DAYS FROM THE DATE OF THE MAILING OF THE NOTICE REQUIRED BY SUBDIVISION THREE OF THIS SECTION, WHICHEVER IS GREATER, ON THE SAME TERMS AND CONDITIONS AS WERE IN EFFECT AT THE TIME OF ISSUANCE OF THE JUDGEMENT OF SALE, OR IF NO SUCH JUDGMENT WAS ISSUED, UPON THE TERMS AND CONDITIONS AS WERE IN EFFECT AT THE TIME OF TRANSFER OF OWNERSHIP OF SUCH PROPERTY.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A SUCCESSOR IN INTEREST OF RESIDENTIAL REAL PROPERTY SHALL PROVIDE WRITTEN NOTICE TO ALL TENANTS: (A) THAT THEY ARE ENTITLED TO REMAIN IN OCCUPANCY OF SUCH PROPERTY FOR THE REMAINDER OF THE LEASE TERM, OR A PERIOD OF NINETY DAYS FROM THE DATE OF MAILING OF SUCH NOTICE, WHICHEVER IS GREATER, ON THE SAME TERMS AND CONDITIONS AS WERE IN EFFECT AT THE TIME OF ISSUANCE OF THE JUDGMENT OF SALE, OR IF NO SUCH JUDGMENT WAS ISSUED, UPON THE TERMS AND CONDITIONS AS WERE IN EFFECT AT THE TIME OF TRANSFER OF OWNERSHIP OF SUCH PROPERTY; AND (B) OF THE NAME AND ADDRESS OF THE NEW OWNER. ANY PERSON OR ENTITY WHO OR WHICH BECOMES A SUCCESSOR IN INTEREST AFTER THE ISSUANCE OF THE NINETY-DAY NOTICE PROVIDED FOR IN THIS SUBDIVISION, SHALL NOTIFY ALL TENANTS OF ITS NAME AND ADDRESS AND SHALL ASSUME SUCH INTEREST SUBJECT TO THE RIGHT OF THE TENANT TO MAINTAIN POSSESSION AS PROVIDED IN THIS SUBDIVISION.

4. ACCEPTANCE OF RENTAL PAYMENTS BY ANY SUCCESSOR IN INTEREST ON TERMS PROVIDED IN SUBDIVISION THREE OF THIS SECTION SHALL NOT AFFECT THE RIGHT OF THE SUCCESSOR IN INTEREST TO EVICT SUCH TENANT, AS PROVIDED BY LAW, UPON THE EXPIRATION OF THE TIME PERIOD AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION OR EARLIER IF THE TENANT DOES NOT PAY RENT PURSUANT TO ANY LEASE OR ORAL OR IMPLIED RENTAL AGREEMENT IN EFFECT AT THE TIME OF ISSUANCE OF THE JUDGMENT OF FORECLOSURE, OR IF NO SUCH JUDGMENT WAS ISSUED, UPON THE TERMS AND CONDITIONS AS WERE IN EFFECT AT THE TIME OF TRANSFER OF OWNERSHIP OF SUCH PROPERTY.

5. THE RIGHTS CONFERRED UPON A TENANT BY SUBDIVISION TWO OF THIS SECTION SHALL BE IN ADDITION TO ANY OTHER RIGHTS OF SUCH TENANT, UNDER LAW, INCLUDING THOSE RIGHTS CONFERRED UPON: (A) ANY TENANT NOT NAMED IN THE FORECLOSURE ACTION; OR (B) ANY TENANT WHOSE TENANCY IS SUBSIDIZED BY THE FEDERAL GOVERNMENT, THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS

STATE; OR (C) ANY TENANT WHOSE TENANCY IS SUBJECT TO RENT CONTROL, RENT STABILIZATION, OR FEDERAL STATUTORY SCHEMES.

S 3. The real property actions and proceedings law is amended by adding a new section 1306 to read as follows:

S 1306. REGULATORY FILING. 1. EACH LENDER, ASSIGNEE OR MORTGAGE LOAN SERVICER SHALL FILE WITH THE SUPERINTENDENT OF BANKS (SUPERINTENDENT) WITHIN THREE BUSINESS DAYS OF THE MAILING OF THE NOTICE REQUIRED BY SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE THE INFORMATION REQUIRED BY SUBDIVISION TWO OF THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAWS OF THIS STATE, THIS FILING SHALL BE MADE ELECTRONICALLY AS PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION.

2. EACH FILING DELIVERED TO THE SUPERINTENDENT SHALL BE IN SUCH FORM AND SUBSTANCE AS THE SUPERINTENDENT SHALL PRESCRIBE, AND SHALL INCLUDE AT A MINIMUM, THE NAME, ADDRESS, LAST KNOWN TELEPHONE NUMBER OF THE BORROWER, AND THE AMOUNT CLAIMED AS DUE AND OWING ON THE MORTGAGE, THE LOAN CONTRACT, MORTGAGE NOTE AND ANY RIDER, AND SUCH OTHER INFORMATION AS SUCH SUPERINTENDENT MAY REQUIRE. THE SUPERINTENDENT MAY SUBSEQUENTLY REQUEST SUCH FURTHER INFORMATION AS MAY BE REASONABLY NECESSARY TO FACILITATE A REVIEW OF WHETHER THE BORROWER MIGHT BENEFIT FROM COUNSELING OR OTHER FORECLOSURE PREVENTION SERVICES.

3. WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THIS SUBDIVISION, OR SUCH LATER TIME AS THE SUPERINTENDENT MAY DETERMINE, THE SUPERINTENDENT SHALL DEVELOP WITH THE ASSISTANCE OF THE COMMISSIONER OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL, AN ELECTRONIC DATABASE THAT SHALL BE CAPABLE OF RECEIVING ALL FILINGS REQUIRED BY THIS SECTION.

4. THE INFORMATION PROVIDED TO THE SUPERINTENDENT PURSUANT TO THIS SUBDIVISION SHALL NOT BE SUBJECT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR PARAGRAPHS (A), (C) AND (D) OF SUBDIVISION ONE OR SUBDIVISION SIX OF SECTION NINETY-FOUR OF THE PUBLIC OFFICERS LAW. ALL SUCH INFORMATION SHALL BE USED BY THE SUPERINTENDENT EXCLUSIVELY FOR THE PURPOSES OF MONITORING ON A STATEWIDE BASIS THE EXTENT OF FORECLOSURE FILINGS WITHIN THIS STATE, TO PERFORM AN ANALYSIS OF LOAN TYPES WHICH ENDED UP IN FORECLOSURE AND DIRECTING AS APPROPRIATE AVAILABLE PUBLIC AND PRIVATE FORECLOSURE PREVENTION AND COUNSELING SERVICES TO BORROWERS AT RISK OF FORECLOSURE. THE SUPERINTENDENT MAY SHARE INFORMATION CONTAINED IN THE DATABASE WITH HOUSING COUNSELING AGENCIES DESIGNATED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL AS WELL AS WITH OTHER STATE AGENCIES WITH JURISDICTION OVER HOUSING, FOR THE PURPOSE OF COORDINATING OR SECURING HELP FOR BORROWERS AT RISK OF FORECLOSURE.

5. THE SUPERINTENDENT IS HEREBY AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS AS SHALL BE NECESSARY TO IMPLEMENT THE PURPOSES OF THIS SECTION.

S 4. The real property actions and proceedings law is amended by adding a new section 1307 to read as follows:

S 1307. DUTY TO MAINTAIN FORECLOSED PROPERTY. 1. A PLAINTIFF IN A FORECLOSURE ACTION WHO OBTAINS A JUDGMENT OF FORECLOSURE AND SALE PURSUANT TO SECTION THIRTEEN HUNDRED FIFTY-ONE OF THIS ARTICLE, INVOLVING RESIDENTIAL REAL PROPERTY, AS DEFINED IN SECTION THIRTEEN HUNDRED FIVE OF THIS ARTICLE, THAT IS VACANT, OR BECOMES VACANT AFTER THE ISSUANCE OF SUCH JUDGMENT, OR IS OCCUPIED BY A TENANT, AS DEFINED UNDER SECTION THIRTEEN HUNDRED FIVE OF THIS ARTICLE, SHALL MAINTAIN SUCH PROPERTY UNTIL SUCH TIME AS OWNERSHIP HAS BEEN TRANSFERRED THROUGH THE CLOSING OF TITLE IN FORECLOSURE, OR OTHER DISPOSITION, AND THE DEED FOR SUCH PROPERTY HAS BEEN DULY RECORDED.

2. SUCH PLAINTIFF SHALL HAVE THE RIGHT TO PEACEABLY ENTER UPON SUCH PROPERTY, OR TO CAUSE OTHERS TO PEACEABLY ENTER UPON THE PROPERTY FOR THE LIMITED PURPOSE OF INSPECTIONS, REPAIRS AND MAINTENANCE AS REQUIRED BY THIS SECTION, OR AS OTHERWISE ORDERED BY COURT; PROVIDED, HOWEVER, THAT IF THE PROPERTY IS OCCUPIED BY A TENANT, AT LEAST SEVEN DAYS NOTICE MUST BE GIVEN TO SUCH TENANT.

3. THE MUNICIPALITY IN WHICH SUCH RESIDENTIAL REAL PROPERTY IS LOCATED, ANY TENANT LAWFULLY IN POSSESSION, AND A BOARD OF MANAGERS OF A CONDOMINIUM IN WHICH THE PREMISES ARE LOCATED OR A HOMEOWNERS ASSOCIATION IF SAID PREMISES ARE SUBJECT TO THE RULES AND REGULATIONS OF SUCH AN ASSOCIATION, SHALL HAVE THE RIGHT TO ENFORCE THE OBLIGATIONS DESCRIBED IN THIS SECTION AFTER AT LEAST SEVEN DAYS NOTICE TO THE PLAINTIFF IN THE FORECLOSURE ACTION. ANY ENTITY ACTING PURSUANT TO THIS SUBDIVISION SHALL HAVE A CAUSE OF ACTION AGAINST THE PLAINTIFF IN THE FORECLOSURE ACTION TO RECOVER COSTS INCURRED AS A RESULT OF MAINTAINING THE PROPERTY.

4. IN THE EVENT THE MORTGAGOR OF THE PROPERTY COMMENCES A PROCEEDING IN BANKRUPTCY COURT PRIOR TO THE COMPLETION OF THE PUBLIC AUCTION ORDERED IN THE JUDGMENT OF SALE, THE DUTIES CREATED BY THIS SECTION SHALL BE SUSPENDED DURING THE PENDENCY OF THE BANKRUPTCY PROCEEDING OR UNTIL SUCH TIME AS AN ORDER HAS BEEN ENTERED IN THAT PROCEEDING LIFTING OR REMOVING THE AUTOMATIC STAY OF THE FORECLOSURE SALE.

5. FOR THE PURPOSES OF THIS SECTION "MAINTAIN" SHALL MEAN KEEPING THE SUBJECT PROPERTY IN A MANNER THAT IT DOES NOT POSE A BLIGHT OR NUISANCE, OR CREATE A BLIGHTING INFLUENCE UPON NEIGHBORING PROPERTIES; PROVIDED, HOWEVER, THAT IF THE PROPERTY IS OCCUPIED BY A TENANT, THEN SUCH PROPERTY MUST ALSO BE MAINTAINED IN A SAFE AND HABITABLE CONDITION.

6. NOTHING CONTAINED IN THIS SECTION SHALL DIMINISH IN ANY WAY THE OBLIGATIONS PURSUANT TO ANY STATE OR LOCAL LAW OF THE MORTGAGOR OF THE PROPERTY OR A RECEIVER OF RENTS AND PROFITS APPOINTED IN AN ACTION TO FORECLOSE A MORTGAGE TO MAINTAIN THE PROPERTY PRIOR TO THE CLOSING OF TITLE PURSUANT TO A FORECLOSURE SALE.

S 5. Section 221 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended to read as follows:

S 221. Compelling delivery of possession of real property. Where a judgment affecting the title to, or the possession, enjoyment or use of, real property allots to any person a distinct parcel of real property, or contains a direction for the sale of real property, or confirms such an allotment or sale, it also may direct the delivery of the possession of the property to the person entitled thereto, SUBJECT TO THE RIGHTS AND OBLIGATIONS SET FORTH IN SECTION THIRTEEN HUNDRED FIVE OF THIS CHAPTER.

If a party, or his representative or successor, who is bound by the judgment, withholds possession from the person thus declared to be entitled thereto, the court, by order, in its discretion, besides punishing the disobedience as a contempt, may require the sheriff to put that person into possession. Such an order shall be executed as if it were an execution for the delivery of the possession of the property.

S 6. Subdivision 5 of section 713 of the real property actions and proceedings law, as amended by chapter 642 of the laws of 1976, is amended to read as follows:

5. [The] SUBJECT TO THE RIGHTS AND OBLIGATIONS SET FORTH IN SECTION THIRTEEN HUNDRED FIVE OF THIS CHAPTER, THE property has been sold in foreclosure and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to him.

S 7. Subdivision (a) of rule 3408 of the civil practice law and rules, as added by chapter 472 of the laws of 2008, is amended and four new subdivisions (d), (e), (f) and (g) are added to read as follows:

(a) In any residential foreclosure action involving a [high-cost] home loan [consummated between January first, two thousand three and September first, two thousand eight, or a subprime or nontraditional home loan, as those terms are defined under section thirteen hundred four of the real property actions and proceedings law] AS SUCH TERM IS DEFINED IN SECTION THIRTEEN HUNDRED FOUR OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, in which the defendant is a resident of the property subject to foreclosure, the court shall hold a mandatory conference within sixty days after the date when proof of service is filed with the county clerk, or on such adjourned date as has been agreed to by the parties, for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited to determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, and for whatever other purposes the court deems appropriate.

(D) UPON THE FILING OF A REQUEST FOR JUDICIAL INTERVENTION IN ANY ACTION PURSUANT TO THIS SECTION, THE COURT SHALL SEND EITHER A COPY OF SUCH REQUEST OR THE DEFENDANT'S NAME, ADDRESS AND TELEPHONE NUMBER (IF AVAILABLE) TO A HOUSING COUNSELING AGENCY OR AGENCIES ON A LIST DESIGNATED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL FOR THE JUDICIAL DISTRICT IN WHICH THE DEFENDANT RESIDES. SUCH INFORMATION SHALL BE USED BY THE DESIGNATED HOUSING COUNSELING AGENCY OR AGENCIES EXCLUSIVELY FOR THE PURPOSE OF MAKING THE HOMEOWNER AWARE OF HOUSING COUNSELING AND FORECLOSURE PREVENTION SERVICES AND OPTIONS AVAILABLE TO THEM. THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, IN COORDINATION WITH THE SUPERINTENDENT OF BANKS, SHALL PROMULGATE RULES AND REGULATIONS THAT GOVERN THE DISSEMINATION AND USE OF SUCH INFORMATION BY DESIGNATED HOUSING COUNSELING AGENCIES.

(E) THE COURT SHALL SEND A NOTICE TO PARTIES ADVISING THEM OF THE TIME AND PLACE OF THE SETTLEMENT CONFERENCE, THE PURPOSE OF THE CONFERENCE AND THE REQUIREMENTS OF THIS SECTION. THE NOTICE SHALL BE IN A FORM PRESCRIBED BY THE OFFICE OF COURT ADMINISTRATION, OR, AT THE DISCRETION OF THE OFFICE OF COURT ADMINISTRATION, THE ADMINISTRATIVE JUDGE OF THE JUDICIAL DISTRICT IN WHICH THE ACTION IS PENDING, AND SHALL ADVISE THE PARTIES OF THE DOCUMENTS THAT THEY SHOULD BRING TO THE CONFERENCE. FOR THE PLAINTIFF, SUCH DOCUMENTS SHALL INCLUDE, BUT ARE NOT LIMITED TO, THE LOAN CONTRACT, THE PAYMENT HISTORY, AN ITEMIZATION OF THE AMOUNTS NEEDED TO CURE AND PAY OFF THE LOAN, AND THE MORTGAGE NOTE AND RIDER. IF THE PLAINTIFF IS NOT THE OWNER OF THE MORTGAGE NOTE, THE PLAINTIFF SHALL PROVIDE THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE MORTGAGE NOTE OWNER. FOR THE DEFENDANT, SUCH DOCUMENTS SHALL INCLUDE, BUT ARE NOT LIMITED TO, PROOF OF CURRENT INCOME SUCH AS THE TWO MOST RECENT PAY STUBS AND MOST RECENT TAX RETURN.

(F) BOTH THE PLAINTIFF AND DEFENDANT SHALL NEGOTIATE IN GOOD FAITH TO DETERMINE WHETHER A MUTUALLY AGREEABLE RESOLUTION IS POSSIBLE.

(G) THE PLAINTIFF MUST FILE A NOTICE OF DISCONTINUANCE AND VACATUR OF THE LIS PENDENS WITHIN ONE HUNDRED TWENTY DAYS AFTER ANY SETTLEMENT AGREEMENT OR LOAN MODIFICATION IS FULLY EXECUTED.

S 7-a. Section 3-a of chapter 472 of the laws of 2008, amending the real property actions and proceedings law and other laws relating to

foreclosure actions on home mortgage loans, is amended to read as follows:

S 3-a. For any foreclosure action on a [residential mortgage] HOME loan AS DEFINED BY SECTION 1304 OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, in which the action was initiated prior to September 1, 2008 but where the final order of judgment has not [yet] been issued, the court shall request each plaintiff to identify whether the loan in foreclosure is a subprime home loan as defined in section 1304 of the real property actions and proceedings law AS IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION or is a high-cost home loan as defined in section 6-l of the banking law.

If the loan is a subprime home loan AS THAT TERM IS USED IN THE PRECEDING PARAGRAPH or high-cost home loan, the court shall notify the defendant that if he or she is a resident of such property, he or she may request a settlement conference.

FOR ANY FORECLOSURE ACTION ON A HOME LOAN THAT IS NOT A SUBPRIME HOME LOAN OR A HIGH-COST HOME LOAN (AS THOSE TERMS ARE USED IN THE PRECEDING PARAGRAPHS), IN WHICH THE FORECLOSURE ACTION WAS INITIATED PRIOR TO THE DATE THAT SUCH FORECLOSURE ACTION BECAME SUBJECT TO THE PROVISIONS OF RULE 3408 OF THE CIVIL PRACTICE LAW AND RULES BUT WHERE THE FINAL ORDER OF JUDGMENT HAS NOT BEEN ISSUED, THE COURT SHALL NOTIFY THE DEFENDANT THAT IF HE OR SHE IS A RESIDENT OF SUCH PROPERTY, HE OR SHE MAY REQUEST A SETTLEMENT CONFERENCE.

If the defendant requests a conference, the court shall hold such conference as soon as practicable for the purpose of holding settlement discussions pertaining to the rights and obligations of the parties under the mortgage loan documents, including but not limited to, determining whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to, and for whatever other purposes the court deems appropriate.

At any conference held pursuant to this section, the plaintiff shall appear in person or by counsel, and if appearing by counsel, such counsel shall be fully authorized to dispose of the case. The defendant shall appear in person or by counsel. If the defendant is appearing pro se, the court shall advise the defendant of the nature of the action and his or her rights and responsibilities as a defendant. Where appropriate, the court may permit a representative of the plaintiff to attend the settlement conference telephonically or by video-conference.

S 8. Intentionally omitted.

S 9. Paragraph (e) of subdivision 1 of section 6-1 of the banking law, as added by chapter 626 of the laws of 2002 and subparagraph (i) as amended by chapter 552 of the laws of 2007, is amended to read as follows:

(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 AT ORIGINATION does not exceed the conforming loan size limit for a comparable dwelling as established from time to time by the federal national mortgage association;

(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 fami-

lies which is or will be occupied by the borrower as the borrower's principal dwelling] IMPROVED BY A ONE TO FOUR FAMILY DWELLING, OR BY A CONDOMINIUM UNIT, OR BY ANY CERTIFICATE OF STOCK OR OTHER EVIDENCE OF OWNERSHIP IN, AND A PROPRIETARY LEASE FROM, A CORPORATION, PARTNERSHIP OR OTHER ENTITY FORMED FOR THE PURPOSE OF COOPERATIVE OWNERSHIP OF REAL ESTATE, IN EITHER CASE USED OR OCCUPIED OR INTENDED TO BE USED OR OCCUPIED, WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS AND WHICH IS OR WILL BE OCCUPIED BY THE BORROWER AS THE BORROWER'S PRINCIPAL DWELLING; and

(v) The property is located in this state.

S 10. Paragraphs (r) and (s) of subdivision 2 of section 6-l of the banking law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

(r) No prepayment penalties. [No] NOTWITHSTANDING PARAGRAPH B OF SUBDIVISION THREE OF SECTION 5-501 OF THE GENERAL OBLIGATIONS LAW, NO prepayment penalties or fees shall be charged or collected on a high-cost home loan. A prepayment penalty in a high-cost home loan shall be unenforceable.

(s) No abusive yield spread premiums. In arranging a high-cost home loan, the mortgage broker shall, at the time of application, disclose the exact amount and methodology of DETERMING total compensation that the broker will receive. Such amount may be paid as direct compensation from the lender, direct compensation from the borrower, or a combination of the two. The provisions of this paragraph shall not restrict the ability of a borrower to utilize a yield spread premium in order to offset any up front costs by accepting a higher interest rate. If the borrower chooses this option, any compensation from the lender [which] THAT exceeds the [exact] amount of total compensation owed to the broker must be credited to the borrower. The superintendent shall prescribe the form that such disclosure shall take. This provision shall not restrict a broker from accepting a lesser amount OF COMPENSATION.

S 11. Paragraph (d) of subdivision 1 and paragraphs (l) and (n) of subdivision 2 of section 6-m of the banking law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

(d) "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 AT ORIGINATION does not exceed the conforming loan size limit for a comparable dwelling as established from time to time by the federal national mortgage association;

(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] IMPROVED BY A ONE TO FOUR FAMILY DWELLING, OR BY A CONDOMINIUM UNIT, OR BY ANY CERTIFICATE OF STOCK OR OTHER EVIDENCE OF OWNERSHIP IN, AND A PROPRIETARY LEASE FROM, A CORPORATION, PARTNERSHIP OR OTHER ENTITY FORMED FOR THE PURPOSE OF COOPERATIVE OWNERSHIP OF REAL ESTATE, IN EITHER CASE, USED OR OCCUPIED OR INTENDED TO BE USED OR OCCUPIED, WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS AND WHICH IS OR WILL BE OCCUPIED BY THE BORROWER AS THE BORROWER'S PRINCIPAL DWELLING; and

(v) The property is located in this state.

(l) Prohibited payments to mortgage BANKERS AND brokers. In making or arranging a subprime home loan, no lender, MORTGAGE BANKER or mortgage broker shall accept or give any fee, kickback, thing of value, portion, split or percentage of charges, other than as payment for goods or facilities that were actually furnished or services that were actually performed. Such payment must be reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed.

(n) No abusive yield spread premiums. In arranging a subprime home loan, the mortgage broker shall, at the time of application, disclose the exact amount and methodology for determining the total compensation that the broker will receive. Such amount may be paid as direct compensation from the lender, direct compensation from the borrower, or a combination of the two. The provisions of this paragraph shall not restrict the ability of a borrower to utilize a yield spread premium in order to offset any upfront costs by accepting a higher interest rate. If the borrower chooses this option, any compensation from the lender [which] THAT exceeds the exact amount of total compensation owed to the broker must be credited to the borrower. The superintendent shall prescribe the form that such disclosure shall take. This paragraph shall not restrict a broker from accepting a lesser amount OF COMPENSATION.

S 12. Subdivisions 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of section 6-m of the banking law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

3. CERTAIN LOAN PROVISIONS RENDERED VOID. Any provision in a subprime home loan that violates subdivision two of this section shall be rendered void.

4. [No arrangement of certain subprime loans] ABILITY TO REPAY. No lender or mortgage broker shall make or arrange a subprime home loan unless the lender or mortgage broker reasonably and in good faith believes at the time [the loan is consummated] OF THE LOAN CLOSING that one or more of the borrowers, when considered individually or collectively, has the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. If a lender or mortgage broker making or arranging a subprime home loan knows that one or more home loans secured by the same real property will be made contemporaneously to the same borrower with the subprime home loan being made or arranged by that lender or mortgage broker, the lender or mortgage broker making or arranging the subprime home loan must document the borrower's ability to repay the combined payments of all loans on the same real property.

(a) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan according to the loan terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the borrower's credit history, current and expected income, current obligations, employment status, and other financial resources other than the borrower's equity in the real property that secures repayment of the subprime home loan.

(b) In determining a borrower's ability to repay a subprime home loan, the lender or mortgage broker shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the borrower using tax returns, payroll receipts, bank records, reasonable alternative methods, or reasonable third-party verification.

(c) In determining a borrower's ability to repay a subprime home loan according to its terms when the loan has an adjustable rate feature, the lender or mortgage broker shall calculate the monthly payment amount for

principal and interest by assuming (i) the loan proceeds are fully disbursed on the date of the loan closing, (ii) the loan is to be repaid in substantially equal monthly amortizing payments of principal and interest over the entire term of the loan, with no balloon payment, and (iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering any initial discounted rate.

(d) A lender or mortgage broker's analysis of a borrower's ability to repay a subprime home loan may utilize reasonable commercially recognized underwriting standards and methodologies, including automated underwriting systems, provided the standards and methodologies comply with the provisions of this section.

5. REQUIRED LEGEND. Subprime home loan mortgages shall include a legend on top of the mortgage in twelve-point type stating that the mortgage is a subprime home loan subject to this section.

6. EVASION OF STATUTORY REQUIREMENTS. 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.

7. GOOD FAITH ERROR. A lender of a subprime home loan that, when acting in good faith, fails to comply with the provisions of this section, shall not be deemed to have violated this section if, prior to the institution of any action and before the borrower is prejudiced, the lender notifies the borrower of the compliance failure, appropriate restitution is made, and whatever adjustments that are necessary are made to the loan to make the loan satisfy the requirements of this section.

8. ENFORCEMENT. The attorney general or the superintendent may enforce the provisions of this section.

9. DAMAGES. Any person found by a preponderance of the evidence to have violated this section shall be liable to the borrower of a subprime home loan for actual damages.

10. ATTORNEYS FEES. A court may also award reasonable attorneys' fees to a prevailing borrower in a foreclosure action.

11. EQUITABLE RELIEF. A borrower may be granted injunctive, declaratory and such other equitable relief as the court deems appropriate in an action to enforce compliance with this section.

12. REMEDIES NOT EXCLUSIVE. The remedies provided in this section are not intended to be the exclusive remedies available to a borrower of a subprime home loan.

13. DEFENSE TO FORECLOSURE. In any action by a lender or assignee to enforce a loan against a borrower in default more than sixty days or in foreclosure, a borrower may assert as a defense, any violation of this section.

14. SEVERABILITY. 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 with respect to a home loan, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees.

S 13. Paragraphs (a) and (d) of subdivision 1 of section 590 of the banking law, as added by chapter 571 of the laws of 1986, are amended to read as follows:

(a) "Mortgage loan" shall mean a loan to a natural person made primarily for personal, family or household use, [primarily] secured by either a mortgage OR DEED OF TRUST on residential real property [or certificates], ANY CERTIFICATE of stock or other evidence of ownership [interests] in, and proprietary [leases] LEASE from, [corporations or partnerships] A CORPORATION OR PARTNERSHIP formed for the purpose of cooperative ownership of residential real property OR, IF DETERMINED BY THE BANKING BOARD BY REGULATION, SHALL INCLUDE SUCH A LOAN SECURED BY A SECURITY INTEREST ON A MANUFACTURED HOME, AND SHALL INCLUDE ANY REFINANCE OR MODIFICATION OF ANY SUCH EXISTING LOAN, UNLESS SUCH REFINANCE OR MODIFICATION WAS NEGOTIATED OR FACILITATED BY A BONA FIDE NOT-FOR-PROFIT ORGANIZATION THAT OFFERS COUNSELING OR ADVICE TO HOMEOWNERS IN FORECLOSURE OR LOAN DEFAULT;

(d) "Soliciting, processing, placing or negotiating a mortgage loan" shall mean for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan on behalf of a third party or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a lender on behalf of a third party; PROVIDED THAT, FOR PURPOSES OF THIS SECTION, A BONA FIDE NOT-FOR-PROFIT ORGANIZATION THAT OFFERS COUNSELING OR ADVICE TO HOMEOWNERS IN FORECLOSURE OR LOAN DEFAULT WITH A LOAN MODIFICATION OR REFINANCING SHALL NOT BE DEEMED TO BE SOLICITING, PROCESSING, PLACING OR NEGOTIATING A MORTGAGE LOAN FOR COMPENSATION OR GAIN;

S 14. Paragraphs (c) and (d) of subdivision 3 of section 590 of the banking law are relettered paragraphs (d) and (e), and a new paragraph (c) is added to read as follows:

(C) SUCH RULES AND REGULATIONS UNDER THIS ARTICLE REGARDING THE ORIGINATION, SALE OR SERVICING OF MANUFACTURED HOME LOANS AS MAY BE NECESSARY AND APPROPRIATE FOR THE PROTECTION OF CONSUMERS;

S 15. Paragraphs (b) and (b-1) of subdivision 2 of section 590 of the banking law, paragraph (b) as amended and paragraph (b-1) as added by chapter 472 of the laws of 2008, are amended to read as follows:

(b) No person, partnership, association, corporation or other entity shall 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 without first being registered with the superintendent as a mortgage broker in accordance with the registration procedure provided in this article and by such regulations as may be promulgated by the banking board or prescribed by the superintendent. The registration provisions of this subdivision shall not apply to any exempt organization [or], mortgage banker OR MORTGAGE LOAN SERVICER. No real estate broker or salesman, as defined in section four hundred forty of the real property law, shall be deemed to be engaged in the business of a mortgage broker if he does not accept a fee, directly or indirectly, for services rendered in connection with the solicitation, processing, placement or negotiation of a mortgage loan. No attorney-at-law who solicits, processes, places or negotiates a mortgage loan incidental to his legal practice shall be deemed to be engaged in the business of a mortgage broker. The registration provisions of this subdivision shall not apply to any person or entity which shall be exempted in accordance with regulations promulgated by the banking board hereunder.

(b-1) No person, partnership, association, corporation or other entity shall engage in the business of servicing mortgage loans with respect to any property located in this state without first being registered with

the superintendent as a mortgage loan servicer in accordance with the registration procedure provided by such regulations as may be prescribed by the superintendent. The superintendent may refuse to register a mortgage loan servicer on the same grounds that he or she may refuse to issue a registration certificate to a mortgage broker pursuant to subdivision two of section five hundred ninety-two-a of this article. The registration provisions of this subdivision shall not apply to any exempt organization, mortgage banker, or mortgage broker or any person or entity which shall be exempted in accordance with regulations prescribed by the superintendent hereunder; provided that such exempt organization, mortgage banker, mortgage broker, or exempted person notifies the superintendent that it is acting as a mortgage loan servicer in this state and complies with any regulation applicable to mortgage loan servicers, promulgated by the banking board or prescribed by the superintendent with respect to mortgage loan servicers. THE SUPERINTENDENT MAY REQUIRE ALL REGISTRATIONS AND NOTIFICATIONS TO BE MADE THROUGH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. AN APPLICATION TO BECOME A REGISTERED MORTGAGE LOAN SERVICER OR ANY APPLICATION WITH RESPECT TO A MORTGAGE LOAN SERVICER SHALL BE ACCOMPANIED BY A FEE AS PRESCRIBED PURSUANT TO SECTION EIGHTEEN-A OF THIS CHAPTER. ANY FEE ESTABLISHED PURSUANT TO THIS SUBDIVISION MAY BE COLLECTED BY AND INCLUDE A PROCESSING FEE CHARGED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. ANY SUCH PROCESSING FEES SHALL NOT BE REMITTED TO THE SUPERINTENDENT AND SHALL NOT BE DEEMED REVENUE PURSUANT TO THIS CHAPTER OR THE STATE FINANCE LAW.

S 16. Section 595-a of the banking law is amended by adding a new subdivision 5 to read as follows:

5. NO LICENSEE OR REGISTRANT ENGAGING IN ANY ACTIVITIES CONSTITUTING THE BUSINESS OF A DISTRESSED PROPERTY CONSULTANT, AS DESCRIBED IN SECTION TWO HUNDRED SIXTY-FIVE-B OF THE REAL PROPERTY LAW, SHALL CHARGE FOR OR ACCEPT PAYMENT FOR REAL PROPERTY CONSULTING SERVICES AS DEFINED IN SUCH SECTION BEFORE THE FULL COMPLETION OF SUCH SERVICES.

S 17. Subdivisions 2 and 4 of section 187.00 of the penal law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

2. "Residential mortgage loan" means a loan or agreement to extend credit, including the renewal [or], refinancing OR MODIFICATION of any such loan, made to a person, which loan is primarily secured by either A mortgage, deed of trust, or other lien upon any interest in residential real property or ANY certificate of stock or other evidence of ownership in, AND A PROPRIETARY LEASE FROM, a corporation or partnership formed for the purpose of cooperative ownership of residential real property.

4. "Residential mortgage fraud" is committed by [any] A person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be used in soliciting an applicant for [a residential mortgage loan], [or in] applying for, [the] underwriting [of,] or closing [of] a residential mortgage loan, or [in documents filed] FILING with a county clerk of any county in the state arising out of and related to the closing of a residential mortgage loan, any written statement which [he or she knows to]:

(a) [contain] CONTAINS materially false information concerning any fact material thereto; or

(b) [conceal] CONCEALS, for the purpose of misleading, information concerning any fact material thereto.

S 18. Intentionally omitted.

S 19. The real property law is amended by adding a new section 291-i to read as follows:

S 291-I. RECORDING OF TRANSFERS AND ASSIGNMENTS OF MORTGAGES. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, EVERY TRANSFER OR ASSIGNMENT OF THE OWNERSHIP OF A MORTGAGE NOTE SHALL BE RECORDED WITH THE COUNTY CLERK OR CITY REGISTER WITHIN TWENTY BUSINESS DAYS AFTER SUCH TRANSFER OR ASSIGNMENT. THE TRANSFER OR ASSIGNMENT SHALL BE RECORDED BY ADDING AN OWNERSHIP TRANSFER DOCUMENT TO THE EXISTING RECORD. THIS DOCUMENT SHALL INCLUDE THE CURRENT NAME, ADDRESS AND PHONE NUMBER OF THE NEW OWNER AND THE DATE OF TRANSFER OR ASSIGNMENT. AN AGENT MAY RECORD SUCH ASSIGNMENT OR TRANSFER BUT THE RECORDED OWNERSHIP TRANSFER DOCUMENT SHALL INCLUDE THE CURRENT NAME, ADDRESS AND PHONE NUMBER OF THE OWNER OF THE NOTE.

2. FAILURE TO RECORD SUCH TRANSFER OR ASSIGNMENT SHALL BE A VIOLATION OF SECTION FORTY-FOUR-A OF THE BANKING LAW. ENTITIES SUBJECT TO THE JURISDICTION OF THE BANKING DEPARTMENT SHALL BE SUBJECT TO ENFORCEMENT BY THE SUPERINTENDENT OF BANKS. ENTITIES NOT SUBJECT TO THE JURISDICTION OF THE BANKING DEPARTMENT SHALL BE SUBJECT TO ENFORCEMENT BY THE ATTORNEY GENERAL.

S 20. Subparagraphs (i) and (vii) of paragraph (e) of subdivision 1 and paragraph (b) of subdivision 2 of section 265-b of the real property law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

(i) an attorney admitted to practice in the state of New York WHEN THE ATTORNEY IS DIRECTLY PROVIDING CONSULTING SERVICES TO A HOMEOWNER IN THE COURSE OF HIS OR HER REGULAR LEGAL PRACTICE;

(vii) a person licensed as a mortgage banker or registered as a mortgage broker or registered as a mortgage loan servicer as defined in article twelve-D of the banking law, PROVIDED THAT NO SUCH PERSON SHALL TAKE ANY UPFRONT FEE IN CONJUNCTION WITH ACTIVITIES CONSTITUTING THE BUSINESS OF A DISTRESSED PROPERTY CONSULTANT;

(b) charging for or accepting ANY payment for consulting services before the full completion of ALL such services, INCLUDING A PAYMENT TO BE PLACED IN ESCROW PENDING THE COMPLETION OF SUCH SERVICES;

S 21. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 22. This act shall take effect immediately; provided, however, that:

a. Section one of this act shall take effect on the thirtieth day after this act shall have become a law and shall apply to legal actions commenced on or after such date;

b. Sections two, five and six of this act shall take effect on the thirtieth day after this act shall have become a law and shall apply to residential real property to which title is acquired on or after such date;

c. Section three of this act shall take effect on the sixtieth day after this act shall have become a law and shall apply to notices required by section 1304 of the real property actions and proceedings law mailed on or after such date;

d. Section four of this act shall take effect on the one hundred twentieth day after it shall have become a law;

e. Section seven of this act shall take effect on the thirtieth day after this act shall have become a law and shall apply to legal actions filed on or after such date; provided, however that the amendment to subdivision (a) of rule 3408 of the civil practice law and rules, as provided in section seven of this act shall expire and be deemed repealed 5 years after such effective date;

f. Section eleven of this act shall take effect on the sixtieth day after this act shall have become a law;

g. Section thirteen of this act shall take effect on the ninetieth day after this act shall have become a law; provided that a person who is not exempt from registration may continue to engage in mortgage loan modification activities after such date if he or she: (i) was engaged in soliciting or negotiating mortgage loan modifications prior to the date this act shall have become a law; (ii) has filed an application for registration with the superintendent of banks; and (iii) has received confirmation that such application is informationally complete, but only until he or she receives notice from the superintendent that such application has been denied;

h. Section fifteen of this act shall take effect on the same date and in the same manner as section 8 of chapter 472 of the laws of 2008, takes effect.