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

2843--A

2009-2010 Regular Sessions

I N S E N A T E

March 4, 2009

Introduced by Sens. STACHOWSKI, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law and the general business law, in relation to home improvement contractors

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

Section 1. The banking law is amended by adding a new section 595-c to read as follows:

S 595-C. RESTRICTIONS ON RELATIONSHIPS WITH HOME IMPROVEMENT CONTRACTORS. 1. A MORTGAGE BANKER, EXEMPT ORGANIZATION OR MORTGAGE BROKER SHALL NOT PAY A REFERRAL FEE OR OTHER COMPENSATION TO A HOME IMPROVEMENT CONTRACTOR IN CONNECTION WITH THE MAKING OF A MORTGAGE LOAN, UNLESS (A) THE HOME IMPROVEMENT CONTRACTOR IS AN AGENT OR EMPLOYEE OF SUCH MORTGAGE BANKER, EXEMPT ORGANIZATION OR MORTGAGE BROKER (B) SUCH RELATIONSHIP HAS BEEN PREVIOUSLY REPORTED TO THE DEPARTMENT (C) SUCH RELATIONSHIP IS SEPARATELY AND CONSPICUOUSLY DISCLOSED IN WRITING TO THE CONSUMER (D) AND SUCH RELATIONSHIP IS SUBJECT TO ANY ADDITIONAL CONDITIONS OR REQUIREMENTS AS PROVIDED IN REGULATIONS PROMULGATED BY THE BANKING BOARD. FOR PURPOSES OF THIS SUBDIVISION, THE TERM COMPENSATION SHALL NOT MEAN OR INCLUDE THE PAYMENT OF LOAN PROCEEDS FOR WORK PERFORMED OR MATERIALS PURCHASED.

2. IF THE SUPERINTENDENT DETERMINES, IN HIS OR HER SOLE DISCRETION, THAT THERE IS A PATTERN OF BONA FIDE COMPLAINTS OF ABUSIVE PRACTICES INVOLVING A RELATIONSHIP BETWEEN A MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION AND A HOME IMPROVEMENT CONTRACTOR OR CONTRACTORS WITH WHOM IT HAS A FORMAL OR INFORMAL BUSINESS ARRANGEMENT, THE SUPERINTENDENT MAY, AFTER NOTICE AND A HEARING, IMPOSE CONDITIONS ON SUCH

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

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MORTGAGE BANKER, MORTGAGE BROKER OR EXEMPT ORGANIZATION, INCLUDING BUT NOT LIMITED TO: REQUIRING THE TERMINATION OF ANY RELATIONSHIP OR BUSINESS ARRANGEMENT WITH A SPECIFIC CONTRACTOR WHICH HAS RESULTED IN ABUSIVE PRACTICES; REQUIRING VERIFICATION PRIOR TO MAKING ANY LOANS THAT A CONTRACTOR IS LICENSED AND MEETING ANY OTHER REQUIREMENTS OF ANY LOCAL LAWS; OBTAINING A COPY OF THE SIGNED WRITTEN AGREEMENT REQUIRED UNDER SECTION SEVEN HUNDRED SEVENTY-ONE OF THE GENERAL BUSINESS LAW AND VERIFYING THAT THE APPLICANT HAS RECEIVED SUCH A COPY; NOTIFYING THE APPLICANT OF THEIR RIGHT TO CONSULT WITH THE ATTORNEY GENERAL'S OFFICE, CONSUMER PROTECTION BOARD OR BETTER BUSINESS BUREAU TO DETERMINE IF ANY COMPLAINTS HAVE BEEN FILED AGAINST A CONTRACTOR; REQUIRING THE DISCLOSURE OF THE RESPONSIBILITIES OF HOME IMPROVEMENT CONTRACTORS AND THE RIGHTS OF CONSUMERS AND OPTIONS FOR PURSUING REMEDIES IN THE EVENT OF PROBLEMS; REQUIRING THE INSPECTION OF ANY WORK DONE TO DATE; AND ANY OTHER RESTRICTIONS OR CONDITIONS THAT THE SUPERINTENDENT DEEMS NECESSARY AND APPROPRIATE TO PROTECT CONSUMERS.

3. FOR THE PURPOSES OF THIS SECTION:

(A) "HOME IMPROVEMENT" MEANS THE REPAIRING, REMODELING, ALTERING, CONVERTING, OR MODERNIZING OF, OR ADDING TO, RESIDENTIAL PROPERTY AND SHALL INCLUDE, BUT NOT BE LIMITED TO, THE CONSTRUCTION, ERECTION, REPLACEMENT, OR IMPROVEMENT OF DRIVEWAYS, SWIMMING POOLS, SIDING, INSULATION, ROOFING, WINDOWS, TERRACES, PATIOS, LANDSCAPING, FENCES, PORCHES, GARAGES, SOLAR ENERGY SYSTEMS, FLOORING, BASEMENTS, AND OTHER IMPROVEMENTS OF THE RESIDENTIAL PROPERTY AND ALL STRUCTURES OR LAND ADJACENT TO IT. "HOME IMPROVEMENT" SHALL ALSO MEAN THE INSTALLATION OF HOME IMPROVEMENT GOODS OR THE FURNISHING OF HOME IMPROVEMENT SERVICES. "HOME IMPROVEMENT" SHALL NOT INCLUDE:

(1) THE SALE OR CONSTRUCTION OF A NEW HOME;

(2) THE SALE OF GOODS BY A SELLER WHO NEITHER ARRANGES TO PERFORM NOR PERFORMS, DIRECTLY OR INDIRECTLY, ANY WORK OR LABOR IN CONNECTION WITH THE INSTALLATION OR APPLICATION OF THE GOODS;

(3) THE SALE OR INSTALLATION OF APPLIANCES, SUCH AS STOVES, REFRIGERATORS, FREEZERS, ROOM AIR CONDITIONERS, DISHWASHERS, CLOTHES WASHERS OR DRYERS, WHICH ARE DESIGNED TO BE REMOVABLE FROM THE PREMISES WITHOUT MATERIAL ALTERATION THEREOF;

(4) THE SALE OR INSTALLATION OF DECORATIVE GOODS OR SERVICES, SUCH AS DRAPERIES AND CARPETS; OR

(5) THE PERFORMANCE OF REPAIRS, REPLACEMENTS, OR OTHER SERVICES PURSUANT TO AN EXPRESS OR IMPLIED WARRANTY, OR A MAINTENANCE AGREEMENT.

(B) "HOME IMPROVEMENT CONTRACTOR" MEANS A PERSON, FIRM OR CORPORATION WHICH OWNS OR OPERATES A HOME IMPROVEMENT BUSINESS OR WHO UNDERTAKES, OFFERS TO UNDERTAKE OR AGREES TO PERFORM ANY HOME IMPROVEMENT FOR A FEE AND FOR WHOM THE TOTAL CASH PRICE OF ALL OF HIS OR HER HOME IMPROVEMENT CONTRACTS WITH ALL HIS CUSTOMERS EXCEEDS ONE THOUSAND FIVE HUNDRED DOLLARS DURING ANY PERIOD OF TWELVE CONSECUTIVE MONTHS. HOME IMPROVEMENT CONTRACTOR DOES NOT INCLUDE A PERSON, FIRM, CORPORATION, LANDLORD, COOPERATIVE CORPORATION, CONDOMINIUM BOARD OF MANAGERS, JOINT TENANT OR CO-TENANT THAT OWNS, IN WHOLE OR IN PART, THE PROPERTY TO BE IMPROVED.

S 2. Subdivision 1 of section 771 of the general business law is amended by adding a new paragraph (i) to read as follows:

(I) WHERE THE CONTRACTOR IS REFERRING OR RECOMMENDING THE OWNER TO A BANKING INSTITUTION, MORTGAGE BANKER OR OTHER FINANCING ENTITY FOR A LOAN TO BE SECURED BY A MORTGAGE ON OR A SECURITY INTEREST IN THE REAL PROPERTY, THE FOLLOWING NOTICE TO THE OWNER IN CLEAR AND CONSPICUOUS BOLD FACE TYPE: "IF YOU OBTAIN OR USE ANY TYPE OF MORTGAGE LOAN TO

FINANCE THIS PROJECT, YOU COULD LOSE YOUR HOME AND ANY MONEY YOU HAVE PUT INTO IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN."

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided that any such rules and regulations as shall be necessary to implement the provisions of this act are authorized to be promulgated prior to such effective date; and provided that section two of this act shall take effect on the one hundred eightieth day after it shall have become a law.