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

1240

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

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

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

Section 1. This act shall be known and may be cited as the "disclosure in lending act".

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

S 6-N. DISCLOSURE TO BORROWERS. 1. FOR PURPOSES OF THIS SECTION, THE TERM "SUB-PRIME MORTGAGE" MEANS FOR MORTGAGES SECURED BY A FIRST LIEN ON A DWELLING, THE TERM MEANS A MORTGAGE FOR WHICH THE APR IS GREATER THAN THREE PERCENTAGE POINTS ABOVE THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING COMPARABLE PERIODS OF MATURITY, AS OF THE FIFTEENTH DAY OF THE PRECEDING MONTH IF THE RATE IS SET BETWEEN THE FIRST AND THE FOURTEENTH DAY OF THE MONTH AND AS OF THE FIFTEENTH DAY OF THE CURRENT MONTH IF THE RATE IS SET ON OR AFTER THE FIFTEENTH DAY.

FOR MORTGAGES SECURED BY A SUBORDINATE LIEN ON A DWELLING, THE TERM MEANS A MORTGAGE FOR WHICH THE APR IS GREATER THAN FIVE PERCENTAGE POINTS ABOVE THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING COMPARABLE PERIODS OF MATURITY, AS OF THE FIFTEENTH DAY OF THE PRECEDING MONTH IF THE RATE IS SET BETWEEN THE FIRST AND THE FOURTEENTH DAY OF THE MONTH AND AS OF THE FIFTEENTH DAY OF THE CURRENT MONTH IF THE RATE IS SET ON OR AFTER THE FIFTEENTH DAY.

2. THE TERM "MORTGAGE BROKER" MEANS A PERSON WHO, FOR COMPENSATION OR IN ANTICIPATION OF COMPENSATION, ARRANGES OR NEGOTIATES, OR ATTEMPTS TO ARRANGE OR NEGOTIATE, HOME MORTGAGE LOANS OR COMMITMENTS FOR SUCH LOANS, OR REFERS APPLICANTS OR PROSPECTIVE APPLICANTS TO CREDITORS, OR SELECTS OR OFFERS TO SELECT CREDITORS TO WHOM REQUESTS FOR CREDIT MAY BE MADE.

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

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

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

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

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

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

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

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

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

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

10. 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.

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

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

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

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

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

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.