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

S. 7 A. 7

Twentieth Extraordinary Session

S E N A T E - A S S E M B L Y

November 16, 2009

IN SENATE -- Introduced by Sens. KLEIN, FOLEY, SAMPSON, ESPADA, KRUEGER, BONACIC -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein, Lentol, Towns, V. Lopez, Titus, Spano, Cook, Brennan, Lancman, O'Donnell, P. Rivera) -- (at request of the Governor) -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property actions and proceedings law, the uniform commercial code, 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 distressed property consultants; 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. Section 1303 of the real property actions and proceedings law, as amended by chapter 472 of the laws of 2008, is amended to read as follows:

S 1303. Foreclosures; required notices. 1. The foreclosing party in a mortgage foreclosure action, [which involves] INVOLVING residential real property [consisting of owner-occupied one-to-four-family dwellings] shall provide notice to [the mortgagor]:

(A) ANY MORTGAGOR IF THE ACTION RELATES TO AN OWNER-OCCUPIED ONE-TO-FOUR FAMILY DWELLING; AND

(B) ANY TENANT OF A DWELLING UNIT in accordance with the provisions of this section [with regard to information and assistance about the foreclosure process].

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

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2. The notice TO ANY MORTGAGOR required by PARAGRAPH (A) OF SUBDIVISION ONE OF this section shall be delivered with the summons and complaint [to commence a foreclosure action]. [The] SUCH notice [required by this section] shall be in bold, fourteen-point type and shall be printed on colored paper that is other than the color of the summons and complaint, and the title of the notice shall be in bold, twenty-point type. The notice shall be on its own page.

3. The notice TO ANY MORTGAGOR required by PARAGRAPH (A) OF SUBDIVISION ONE OF this section shall appear as follows:

Help for Homeowners in Foreclosure

New York State Law requires that we send you this notice about the foreclosure process. Please read it carefully.

Summons and Complaint

You are in danger of losing your home. If you fail to respond to the summons and complaint in this foreclosure action, you may lose your home. Please read the summons and complaint carefully. You should immediately contact an attorney or your local legal aid office to obtain advice on how to protect yourself.

Sources of Information and Assistance

The State encourages you to become informed about your options in foreclosure. In addition to seeking assistance from an attorney or legal aid office, there are government agencies and non-profit organizations that you may contact for information about possible options, including trying to work with your lender during this process.

To locate an entity near you, you may call the toll-free helpline maintained by the New York State Banking Department at [_____] (enter number) or visit the Department's website at [_____] (enter web address).

Foreclosure rescue scams

Be careful of people who approach you with offers to "save" your home. There are individuals who watch for notices of foreclosure actions in order to unfairly profit from a homeowner's distress. You should be extremely careful about any such promises and any suggestions that you pay them a fee or sign over your deed. State law requires anyone offering such services for profit to enter into a contract which fully describes the services they will perform and fees they will charge, and which prohibits them from taking any money from you until they have completed all such promised services.

4. THE NOTICE TO ANY TENANT REQUIRED BY PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION SHALL BE DELIVERED WITHIN TEN DAYS OF THE SERVICE OF THE SUMMONS AND COMPLAINT. SUCH NOTICE SHALL BE IN BOLD, FOURTEEN-POINT TYPE AND SHALL BE PRINTED ON COLORED PAPER THAT IS OTHER THAN THE COLOR OF THE SUMMONS AND COMPLAINT, AND THE TITLE OF THE NOTICE SHALL BE IN BOLD, TWENTY-POINT TYPE. THE NOTICE SHALL BE ON ITS OWN PAGE. FOR BUILDINGS WITH FEWER THAN FIVE DWELLING UNITS, THE NOTICE SHALL BE DELIVERED TO THE TENANT, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND BY FIRST-CLASS MAIL TO THE TENANT'S ADDRESS AT THE PROPERTY IF THE IDENTITY OF THE TENANT IS KNOWN TO THE PLAINTIFF, AND BY FIRST-CLASS MAIL DELIVERED TO "OCCUPANT" IF THE IDENTITY OF THE TENANT IS NOT KNOWN TO THE PLAINTIFF. FOR BUILDINGS WITH FIVE OR MORE DWELLING UNITS, A LEGIBLE COPY OF THE NOTICE SHALL BE POSTED ON THE OUTSIDE OF EACH ENTRANCE AND EXIT OF THE BUILDING.

5. THE NOTICE REQUIRED BY PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION SHALL APPEAR AS FOLLOWS:

NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE

NEW YORK STATE LAW REQUIRES THAT WE PROVIDE YOU THIS NOTICE ABOUT THE FORECLOSURE PROCESS. PLEASE READ IT CAREFULLY.

THE DWELLING WHERE YOUR APARTMENT IS LOCATED IS THE SUBJECT OF A FORECLOSURE PROCEEDING. IF YOU HAVE A LEASE, ARE NOT THE OWNER OF THE RESIDENCE, AND THE LEASE REQUIRES PAYMENT OF RENT THAT AT THE TIME IT WAS ENTERED INTO WAS NOT SUBSTANTIALLY LESS THAN THE FAIR MARKET RENT FOR THE PROPERTY, YOU MAY BE ENTITLED TO REMAIN IN OCCUPANCY FOR THE REMAINDER OF YOUR LEASE TERM. IF YOU DO NOT HAVE A LEASE, YOU WILL BE ENTITLED TO REMAIN IN YOUR HOME UNTIL NINETY DAYS AFTER ANY PERSON OR ENTITY WHO ACQUIRES TITLE TO THE PROPERTY PROVIDES YOU WITH A NOTICE AS REQUIRED BY SECTION 1305 OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW. THE NOTICE SHALL PROVIDE INFORMATION REGARDING THE NAME AND ADDRESS OF THE NEW OWNER AND YOUR RIGHTS TO REMAIN IN YOUR HOME. THESE RIGHTS ARE IN ADDITION TO ANY OTHERS YOU MAY HAVE IF YOU ARE A SUBSIDIZED TENANT UNDER FEDERAL, STATE OR LOCAL LAW OR IF YOU ARE A TENANT SUBJECT TO RENT CONTROL, RENT STABILIZATION OR A FEDERAL STATUTORY SCHEME.

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.

6. The banking department shall prescribe the telephone number and web address to be included in [the] EITHER notice.

[5] 7. The banking department shall post on its website or otherwise make readily available the name and contact information of government agencies or non-profit organizations that may be contacted BY MORTGAGORS for information about the foreclosure process, including maintaining a toll-free helpline to disseminate the information required by this section.

S 1-a. 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], 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 ____.

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 DWELLING, OR A CONDOMINIUM UNIT, 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. Section 9-611 of the uniform commercial code is amended by adding a new subsection (f) to read as follows:

(F) ADDITIONAL PRE-DISPOSITION NOTICE FOR COOPERATIVE INTERESTS.

(1) IN ADDITION TO SUCH OTHER NOTIFICATION AS MAY BE REQUIRED PURSUANT TO SUBSECTION (B) OF THIS SECTION AND SECTION 9-613 OF THIS ARTICLE, A SECURED PARTY WHOSE COLLATERAL CONSISTS OF A RESIDENTIAL COOPERATIVE INTEREST USED BY THE DEBTOR AND WHOSE SECURITY INTEREST IN SUCH COLLATERAL SECURES AN OBLIGATION INCURRED IN CONNECTION WITH FINANCING OR REFINANCING OF THE ACQUISITION OF SUCH COOPERATIVE INTEREST AND WHO PROPOSES TO DISPOSE OF SUCH COLLATERAL AFTER A DEFAULT WITH RESPECT TO SUCH OBLIGATION, SHALL SEND TO THE DEBTOR, NOT LESS THAN NINETY DAYS PRIOR TO THE DATE OF THE DISPOSITION OF THE COOPERATIVE INTEREST, AN ADDITIONAL PRE-DISPOSITION NOTICE AS PROVIDED HEREIN.

(2) THE NOTICE REQUIRED BY THIS SUBSECTION SHALL BE IN BOLD, FOURTEEN-POINT TYPE AND SHALL BE PRINTED ON COLORED PAPER THAT IS OTHER THAN THE COLOR OF THE NOTICE REQUIRED BY SUBSECTION (B) OF THIS SECTION, AND THE TITLE OF THE NOTICE SHALL BE IN BOLD, TWENTY-POINT TYPE. THE NOTICE SHALL BE ON ITS OWN PAGE.

(3) THE NOTICE REQUIRED BY THIS SUBSECTION SHALL APPEAR AS FOLLOWS:

HELP FOR HOMEOWNERS AT RISK OF FORECLOSURE

NEW YORK STATE LAW REQUIRES THAT WE SEND YOU THIS INFORMATION ABOUT THE FORECLOSURE PROCESS. PLEASE READ IT CAREFULLY.

NOTICE

YOU ARE IN DANGER OF LOSING YOUR HOME. YOU ARE IN DEFAULT OF YOUR OBLIGATIONS UNDER THE LOAN SECURED BY YOUR RIGHTS TO YOUR COOPERATIVE APARTMENT. IT IS IMPORTANT THAT YOU TAKE ACTION, IF YOU WISH TO AVOID LOSING YOUR HOME.

SOURCES OF INFORMATION AND ASSISTANCE

THE STATE ENCOURAGES YOU TO BECOME INFORMED ABOUT YOUR OPTIONS, BY SEEKING ASSISTANCE FROM AN ATTORNEY, A LEGAL AID OFFICE, OR A GOVERNMENT AGENCY OR NON-PROFIT ORGANIZATION THAT PROVIDES COUNSELING WITH RESPECT TO HOME FORECLOSURES.

TO LOCATE A HOUSING COUNSELOR NEAR YOU, YOU MAY CALL THE TOLL-FREE HELPLINE MAINTAINED BY THE NEW YORK STATE BANKING DEPARTMENT AT (ENTER NUMBER) OR VISIT THE DEPARTMENT'S WEBSITE AT (ENTER WEB ADDRESS).

ONE OF THESE PERSONS OR ORGANIZATIONS MAY BE ABLE TO HELP YOU, INCLUDING TRYING TO WORK WITH YOUR LENDER TO MODIFY THE LOAN TO MAKE IT MORE AFFORDABLE.

FORECLOSURE RESCUE SCAMS

BE CAREFUL OF PEOPLE WHO APPROACH YOU WITH OFFERS TO "SAVE" YOUR HOME. THERE ARE INDIVIDUALS WHO WATCH FOR NOTICES OF FORECLOSURE ACTIONS OR COLLATERAL SALES IN ORDER TO UNFAIRLY PROFIT FROM A HOMEOWNER'S DISTRESS. YOU SHOULD BE EXTREMELY CAREFUL ABOUT ANY SUCH PROMISES AND ANY SUGGESTIONS THAT YOU PAY THEM A FEE OR SIGN ANY PAPERS THAT TRANSFER RIGHTS OF ANY KIND TO YOUR COOPERATIVE APARTMENT. STATE LAW REQUIRES ANYONE OFFERING SUCH SERVICES FOR PROFIT TO ENTER INTO A CONTRACT WHICH FULLY DESCRIBES THE SERVICES THEY WILL PERFORM AND FEES THEY WILL CHARGE, AND WHICH PROHIBITS THEM FROM TAKING ANY MONEY FROM YOU UNTIL THEY HAVE COMPLETED ALL SUCH PROMISED SERVICES.

(4) THE BANKING DEPARTMENT SHALL PRESCRIBE THE TELEPHONE NUMBER AND WEB ADDRESS TO BE INCLUDED IN THE NOTICE.

(5) THE BANKING DEPARTMENT SHALL POST ON ITS WEBSITE OR OTHERWISE MAKE READILY AVAILABLE THE NAME AND CONTACT INFORMATION OF GOVERNMENT AGENCIES OR NON-PROFIT ORGANIZATIONS THAT MAY BE CONTACTED FOR INFORMATION ABOUT THE FORECLOSURE PROCESS, INCLUDING MAINTAINING A TOLL-FREE HELPLINE TO DISSEMINATE THE INFORMATION REQUIRED BY THIS SUBSECTION.

S 3. The opening paragraph of subsection (a) of section 9-620 of the uniform commercial code, as added by chapter 84 of the laws of 2001, is amended and a new subsection (h) is added to read as follows:

Except as otherwise provided in [subsection] SUBSECTIONS (g) AND (H), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(H) SPECIAL PROVISIONS FOR COOPERATIVE INTERESTS. A SECURED PARTY WHOSE COLLATERAL CONSISTS OF A RESIDENTIAL COOPERATIVE INTEREST USED BY THE DEBTOR AND WHOSE SECURITY INTEREST IN SUCH COLLATERAL SECURES AN OBLIGATION INCURRED IN CONNECTION WITH FINANCING OR REFINANCING OF THE ACQUISITION OF SUCH COOPERATIVE INTEREST AND WHO CHOOSES TO ACCEPT THAT COOPERATIVE INTEREST IN FULL SATISFACTION OF THE DEBTOR'S OBLIGATION MAY DO SO.

(1) IF THE SECURED PARTY SENDS A PROPOSAL TO TAKE THE COOPERATIVE INTEREST IN FULL SATISFACTION OF THE DEBTOR'S OBLIGATION, THE PROPOSAL SHALL BE ACCOMPANIED BY A NOTICE IN THE FORM AND MANNER PRESCRIBED IN SUBSECTION (F) OF SECTION 9-611 OF THIS SUBPART, UNLESS THE SECURED PARTY HAS PREVIOUSLY SENT THE DEBTOR SUCH NOTICE. A DEBTOR CONSENTS TO AN ACCEPTANCE OF A COOPERATIVE INTEREST IN FULL SATISFACTION OF THE OBLIGATION IT SECURES ONLY IF THE DEBTOR AGREES TO THE TERMS OF THE PROPOSAL IN A RECORD AUTHENTICATED AFTER DEFAULT.

(2) A DEBTOR MAY PROPOSE TO THE SECURED PARTY THAT IT TAKE THE COOPERATIVE INTEREST IN FULL SATISFACTION OF THE OBLIGATION IT SECURES. THE PROPOSAL SHALL BE INEFFECTIVE UNLESS THE SECURED PARTY CONSENTS TO THE PROPOSAL IN AN AUTHENTICATED RECORD.

S 4. 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 AS A RESULT OF A JUDGMENT OF FORECLOSURE AND 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 THE NOTICE REQUIRED BY SUBDIVISION FOUR OF SECTION THIRTEEN HUNDRED THREE OF THIS ARTICLE 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 AT SUCH TIME 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 OF A UNIT NOT SUBJECT TO RENT CONTROL OR RENT STABILIZATION SHALL HAVE THE RIGHT TO REMAIN IN OCCUPANCY OF THE UNIT OF THE SUBJECT RESIDENTIAL REAL PROPERTY WHERE HE OR SHE RESIDES ON THE DATE OF MAILING OF THE NOTICE REQUIRED BY SUBDIVISION THREE OF THIS SECTION FOR THE GREATER OF: (A) A PERIOD OF NINETY DAYS FROM THE DATE OF THE MAILING OF SUCH NOTICE; OR (B) FOR THE REMAINDER OF THE LEASE TERM; PROVIDED THAT IF A SUCCESSOR IN INTEREST WHO ACQUIRES TITLE TO SUCH RESIDENTIAL REAL PROPERTY INTENDS TO OCCUPY A SINGLE UNIT AS HIS OR HER PRIMARY RESIDENCE AND THE UNIT IS NOT SUBJECT TO A FEDERAL OR STATE STATUTORY SYSTEM OF SUBSIDY OR OTHER FEDERAL OR STATE STATUTORY SCHEME, THE SUCCESSOR MAY LIMIT FOR ONE UNIT ONLY, THE TENANT'S RIGHT OF OCCUPANCY TO NINETY DAYS. FOR A LEASE TO QUALIFY UNDER THIS SUBDIVISION, THE TENANT UNDER SUCH LEASE MAY NOT BE THE OWNER OF THE RESIDENTIAL REAL PROPERTY, AND SUCH LEASE MUST REQUIRE THE PAYMENT OF RENT FOR SUCH UNIT THAT IS NOT SUBSTANTIALLY LESS THAN THE FAIR MARKET RENT FOR THE UNIT, UNLESS THE UNIT IS SUBJECT TO FEDERAL OR STATE STATUTORY SYSTEM OF SUBSIDY OR OTHER FEDERAL OR STATE STATUTORY SCHEME. A TENANT UNDER PARAGRAPH (A) OR (B) OF THIS SUBDIVISION SHALL CONTINUE SUCH TENANCY UNDER THE SAME TERMS AND CONDITIONS AS WERE IN EFFECT AT THE TIME OF ENTRY OF THE JUDGMENT OF FORECLOSURE AND SALE, OR IF NO SUCH JUDGMENT WAS ENTERED, UPON THE TERMS AND CONDITIONS THAT WERE IN EFFECT AT THE TIME OF THE TRANSFER OF OWNERSHIP OF SUCH PROPERTY. FOR PURPOSES OF THIS SECTION, "FAIR MARKET RENT" SHALL MEAN RENT FOR A UNIT OF RESIDENTIAL REAL PROPERTY OF SIMILAR SIZE, LOCATION AND CONDITION.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND CONSISTENT WITH SUBDIVISION TWO OF THIS SECTION, 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 ENTRY OF THE JUDGMENT OF FORECLOSURE AND SALE, OR IF NO SUCH JUDGMENT WAS ENTERED, 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 5. The real property actions and proceedings law is amended by adding a new section 1306 to read as follows:

S 1306. FILING WITH SUPERINTENDENT. 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 OR SUBSECTION (F) OF SECTION 9-611 OF THE UNIFORM COMMERCIAL CODE 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. ANY COMPLAINT SERVED IN A PROCEEDING INITIATED PURSUANT TO THIS ARTICLE SHALL CONTAIN, AS A CONDITION PRECEDENT TO SUCH PROCEEDING, AN AFFIRMATIVE ALLEGATION THAT AT THE TIME THE PROCEEDING IS COMMENCED, THE PLAINTIFF HAS COMPLIED WITH THE PROVISIONS OF THIS SECTION.

2. EACH FILING DELIVERED TO THE SUPERINTENDENT SHALL BE ON SUCH FORM 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, AND SUCH OTHER INFORMATION AS WILL ENABLE THE SUPERINTENDENT TO ASCERTAIN THE TYPE OF LOAN AT ISSUE. THE SUPERINTENDENT MAY SUBSEQUENTLY REQUEST SUCH READILY AVAILABLE 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 WERE THE SUBJECT OF A PRE-FORECLOSURE NOTICE 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 6. 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 MORTGAGE 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 ABANDONED BY THE MORTGAGOR BUT 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; PROVIDED, HOWEVER, THAT IF A MUNICIPALITY OR GOVERNMENTAL ENTITY HOLDS A MORTGAGE SUBORDINATE TO ONE OR MORE MORTGAGES ON THE RESIDENTIAL REAL PROPERTY, THE MUNICIPALITY OR GOVERNMENTAL ENTITY SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

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, UNLESS EMERGENCY REPAIRS ARE REQUIRED IN WHICH CASE REASONABLE NOTICE SHALL BE PROVIDED TO THE 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 IN ANY COURT OF COMPETENT JURISDICTION AFTER AT LEAST SEVEN DAYS NOTICE TO THE PLAINTIFF IN THE FORECLOSURE ACTION UNLESS EMERGENCY REPAIRS ARE REQUIRED. ANY ENTITY ACTING PURSUANT TO THIS SUBDIVISION SHALL HAVE A CAUSE OF ACTION IN ANY COURT OF COMPETENT JURISDICTION AGAINST THE PLAINTIFF IN THE FORECLOSURE ACTION TO RECOVER COSTS INCURRED AS A RESULT OF MAINTAINING THE PROPERTY. THE AUTHORITY PROVIDED BY THIS SUBDIVISION SHALL BE IN ADDITION TO, AND SHALL NOT BE DEEMED TO DIMINISH OR REDUCE, ANY RIGHTS OF THE PARTIES DESCRIBED IN THIS SECTION UNDER EXISTING LAW AGAINST THE MORTGAGOR OF SUCH PROPERTY FOR FAILURE TO MAINTAIN SUCH 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 IS CONSISTENT WITH THE STANDARDS SET FORTH IN THE NEW YORK PROPERTY MAINTENANCE CODE CHAPTER 3 SECTIONS 301, 302 (EXCLUDING 302.2, 302.6 AND 302.8), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 307.1, AND 308.1; 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. A PLAINTIFF SHALL BE RELIEVED OF ITS RESPONSIBILITIES TO MAINTAIN THE RESIDENTIAL REAL PROPERTY THAT IS THE SUBJECT OF A FORECLOSURE ACTION FOR THE PERIOD THAT A RECEIVER OF SUCH PROPERTY IS SERVING.

7. 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.

8. THIS SECTION SHALL NOT PREEMPT, REDUCE OR LIMIT ANY RIGHTS OR OBLIGATIONS IMPOSED BY ANY LOCAL LAWS WITH RESPECT TO PROPERTY MAINTENANCE AND THE LOCALITY'S ABILITY TO ENFORCE THOSE LAWS.

S 7. 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 8. 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 9. 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 five new subdivisions (d), (e), (f), (g) and (h) 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.

(E) THE COURT SHALL PROMPTLY 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 SHOULD INCLUDE, BUT ARE NOT LIMITED TO, THE PAYMENT HISTORY, AN ITEMIZATION OF THE AMOUNTS NEEDED TO CURE AND PAY OFF THE LOAN, AND THE MORTGAGE AND NOTE. IF THE PLAINTIFF IS NOT THE OWNER OF THE MORTGAGE AND NOTE, THE PLAINTIFF SHALL PROVIDE THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LEGAL OWNER OF THE MORTGAGE AND NOTE. FOR THE DEFENDANT, SUCH DOCUMENTS SHOULD INCLUDE, BUT ARE NOT LIMITED TO, PROOF OF CURRENT INCOME SUCH AS THE TWO MOST RECENT PAY STUBS, MOST RECENT TAX RETURN AND MOST RECENT PROPERTY TAX STATEMENTS.

(F) BOTH THE PLAINTIFF AND DEFENDANT SHALL NEGOTIATE IN GOOD FAITH TO REACH A MUTUALLY AGREEABLE RESOLUTION, INCLUDING A LOAN MODIFICATION, IF POSSIBLE.

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

(H) A PARTY TO A FORECLOSURE ACTION MAY NOT CHARGE, IMPOSE, OR OTHERWISE REQUIRE PAYMENT FROM THE OTHER PARTY FOR ANY COST, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, FOR APPEARANCE AT OR PARTICIPATION IN THE SETTLEMENT CONFERENCE.

S 10. 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] ANY DEFENDANT WHO IS THE BORROWER UNDER THE LOAN 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 WHO IS A BORROWER UNDER THE HOME LOAN 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 10-a. 1. The chief administrator of the courts shall, within 90 days of the enactment of this chapter, promulgate such additional rules as may be necessary to ensure the just and expeditious processing of all settlement conferences authorized hereunder. Such court rules shall ensure, among other things, that each judge, judicial hearing officer or referee who is overseeing a settlement conference as authorized herein, shall have the necessary authority and power to fulfill the mandates of this act. This shall include, but not be limited to, ensuring that each party fulfils its legal obligation to negotiate in good faith and seeing that conferences not be unduly delayed or subject to willful dilatory tactics so that the rights of both parties may be adjudicated in a timely manner. Such rules may include granting additional authority to sanction the egregious behavior of a counsel or party.

2. The chief administrator of the courts shall submit a report no later than the first of November of each year to the governor, temporary president of the senate, the speaker of the assembly, the chair of the senate judiciary committee, the chair of the senate banks committee, the chair of the senate housing committee, the chair of the assembly judiciary committee, the chair of the assembly banks committee and the chair of the assembly housing committee on the adequacy and effectiveness of the settlement conferences authorized hereunder which shall include, but

not be limited to the number of adjournments, defaults, discontinuances, dismissals, conferences held, and the number of defendants appearing with and without counsel.

S 11. Subdivision 1 of section 6-f of the banking law, as amended by chapter 1 of the laws of 1983, is amended to read as follows:

1. Notwithstanding any inconsistent provision of this chapter or any other law of this state, the banking board is authorized to adopt such rules or regulations as shall permit banks, trust companies, foreign banking corporations licensed to maintain a branch or agency in this state, savings banks, savings and loan associations, credit unions and persons and entities engaging in the business described in section five hundred ninety of [article twelve-d of] this chapter to make residential mortgage loans and cooperative apartment unit loans which provide for (a) periodic readjustments of the rate of interest charged for the loan or successive terms of the loan or (b) terms of loan which are shorter than the term of the mortgage or (c) repayment of the principal amount of the loan by regular payments which are not equal in amount throughout the term of the mortgage or (d) THE LENDER THEREOF TO RECEIVE A SHARE IN THE FUTURE APPRECIATION OF THE PROPERTY SERVING AS SECURITY FOR THE LOAN UNDER THE CIRCUMSTANCES SET FORTH IN THE FOLLOWING SENTENCE OR (E) any combination of paragraphs (a), (b) [and], (c) [above] AND (D) OF THIS SUBDIVISION, subject to the provisions of subdivision two of this section. WHERE THE LENDER OR HOLDER OF A RESIDENTIAL MORTGAGE LOAN OR COOPERATIVE APARTMENT UNIT LOAN ENTERS INTO A WRITTEN AGREEMENT WITH THE BORROWER UNDER WHICH THE LENDER OR HOLDER CONDITIONALLY REDUCES AN AMOUNT OF PRINCIPAL OF SUCH LOAN IN ORDER TO ASSIST A BORROWER AT RISK OF FORECLOSURE TO AVOID SUCH FORECLOSURE, THE LENDER OR HOLDER MAY ENTER INTO A WRITTEN AGREEMENT (A "SHARED APPRECIATION AGREEMENT") WITH THE BORROWER UNDER WHICH THE LENDER SHALL BE ENTITLED TO SHARE IN THE APPRECIATION OF THE MARKET VALUE OF THE REAL PROPERTY OR COOPERATIVE SHARES AND PROPRIETARY LEASE SECURING SUCH LOAN BETWEEN THE EFFECTIVE DATE OF SUCH REDUCTION IN PRINCIPAL AMOUNT UNTIL THE DATE WHEN THE PROPERTY IS SOLD, PROVIDED THAT THE AMOUNT THE LENDER IS ENTITLED TO RECEIVE UNDER SUCH SHARED APPRECIATION AGREEMENT SHALL BE THE LESSER OF (I) THE AMOUNT OF SUCH REDUCTION IN PRINCIPAL, PLUS INTEREST ON SUCH AMOUNT FROM THE DATE OF SUCH REDUCTION TO THE DATE OF PAYMENT AT THE SAME RATE OF INTEREST AS APPLIES TO THE REMAINING PRINCIPAL AMOUNT OF THE RESIDENTIAL MORTGAGE LOAN, AND (II) FIFTY PERCENT OF THE AMOUNT OF SUCH APPRECIATION. SUCH AMOUNTS SHALL BE PAYABLE WHEN THE MORTGAGOR SELLS THE RESIDENTIAL REAL PROPERTY OR COOPERATIVE SHARES AND PROPRIETARY LEASE THAT SECURE THE LOAN. SUCH SHARED APPRECIATION AGREEMENT SHALL EXPRESSLY AND CONSPICUOUSLY BEAR A LEGEND AT THE TOP OF THE AGREEMENT IN AT LEAST FOURTEEN-POINT TYPE WHICH SHALL INCLUDE THE FOLLOWING: "IN THIS AGREEMENT, YOU ARE GIVING AWAY SOME OF ANY FUTURE INCREASE IN VALUE OF YOUR HOME. PLEASE READ CAREFULLY." FOR PURPOSES OF THIS SUBDIVISION, THE APPRECIATION OF THE PROPERTY SHALL BE MEASURED AS THE DIFFERENCE, IF POSITIVE, BETWEEN THE GROSS SALES PROCEEDS (NET OF ANY REASONABLE REAL ESTATE COMMISSION) OF THE SALE OF THE PROPERTY AND THE VALUE OF THE PROPERTY AT THE TIME OF THE CLOSING OF THE SHARED APPRECIATION MORTGAGE, AS DETERMINED BY AN APPRAISAL BY AN INDEPENDENT NEW YORK STATE LICENSED REAL ESTATE APPRAISER. RECOVERY OF SUCH REDUCTION IN THE PRINCIPAL AMOUNT SHALL NOT BE DEEMED TO BE INTEREST FOR ANY PURPOSE OF THE LAWS OF THIS STATE.

ANY SHARED APPRECIATION AGREEMENT SHALL BE ACCOMPANIED BY A NOTICE, WHICH SHALL BE ON A SEPARATE PAGE FROM THE SHARED APPRECIATION AGREEMENT AND SHALL CONTAIN THE FOLLOWING HEADING IN BOLD, FOURTEEN-POINT TYPE:

"IMPORTANT DISCLOSURES ABOUT THE CONTRACT IN WHICH YOU AGREE TO GIVE AWAY A PART OF ANY FUTURE INCREASE IN VALUE OF YOUR HOME. PLEASE READ CAREFULLY." THE NOTICE SHALL INCLUDE THE FOLLOWING DISCLOSURES:

(1) A STATEMENT THAT THE LENDER WILL BE ENTITLED TO SHARE IN ANY APPRECIATION OF THE MARKET VALUE OF THE MORTGAGED PROPERTY THAT OCCURS BETWEEN THE TIME OF THE LOAN MODIFICATION AND THE TIME THE PROPERTY IS SOLD, UP TO THE AMOUNT OF PRINCIPAL FORBORNE PLUS INTEREST ON SUCH AMOUNT AT THE APPLICABLE RATE OF INTEREST ON THE MORTGAGE BUT IN NO EVENT MORE THAN FIFTY PERCENT OF THE AMOUNT OF SUCH APPRECIATION, AND PROVIDING AT LEAST THREE EXAMPLES OF HOW SUCH SHARED APPRECIATION MAY AFFECT THE BORROWER AT THE TIME THE BORROWER SELLS THE MORTGAGED PROPERTY, SUCH EXAMPLES TO INCLUDE (A) NO APPRECIATION IN THE VALUE OF THE MORTGAGED PROPERTY, (B) APPRECIATION OF TWENTY PERCENT AND (C) APPRECIATION OF FIFTY PERCENT;

(2) A STATEMENT ADVISING THE BORROWER TO SEEK INDEPENDENT COUNSELING FROM A LAWYER, A HUD-CERTIFIED MORTGAGE COUNSELOR OR A TAX ADVISOR REGARDING (A) THE TRADE-OFF BETWEEN A CURRENT REDUCTION IN THE SIZE OF THE MORTGAGE, VERSUS THE PROMISE TO GIVE UP PART OF THE FUTURE APPRECIATION OF THE HOME, AND (B) THE TAX CONSEQUENCES OF THE PRINCIPAL FORGIVENESS AND SHARED APPRECIATION AGREEMENT, AND PROVIDING A LIST OF THE NAMES AND CONTACT INFORMATION OF FIVE HUD-CERTIFIED MORTGAGE COUNSELORS IN THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED OR, IF THERE ARE FEWER THAN FIVE SUCH COUNSELORS IN THAT COUNTY, THE LIST MAY INCLUDE COUNSELORS IN ONE OR MORE NEIGHBORING COUNTIES;

(3) A STATEMENT ON THE POTENTIAL EFFECT OF THE SHARED APPRECIATION AGREEMENT ON ANY FUTURE REFINANCING OF THE MORTGAGE AND THE POTENTIAL EFFECT OF ANY PREPAYMENT OR REFINANCING OF THE MORTGAGE ON THE APPRECIATION SHARING AGREEMENT; AND

(4) SUCH OTHER DISCLOSURES AS THE BANKING BOARD MAY REQUIRE.

S 12. 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 OR A LOAN MADE OR FULLY OR PARTIALLY GUARANTEED BY THE STATE OF NEW YORK MORTGAGE AGENCY, in which:

(i) The principal amount of the loan AT ORIGINATION does not exceed the conforming loan size limit (INCLUDING ANY APPLICABLE SPECIAL LIMIT FOR JUMBO MORTGAGES) 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.

S 13. 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] WITHIN THREE DAYS AFTER RECEIPT OF AN APPLICATION, disclose the exact amount and methodology of 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 IF PERMITTED BY APPLICABLE LAW. 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 PERMITTED BY APPLICABLE LAW. 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 14. Paragraphs (b), (c) and (d) of subdivision 1, paragraphs (j), (l) and (n) of subdivision 2 and paragraph (c) of subdivision 4 of section 6-m of the banking law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

(b) "Fully indexed rate" means: (I) FOR AN ADJUSTABLE RATE LOAN BASED ON AN INDEX, the [index rate that would have applied at the time of the closing had the initial interest rate been determined by the application of the same interest rate formula, (for example, an interest rate index plus or minus a margin) that applies under the terms of the loan documents to subsequent interest rate adjustments, disregarding any limitations on the amount by which the interest rate may change at any one time] ANNUAL PERCENTAGE RATE CALCULATED USING THE INDEX RATE ON THE LOAN ON THE DATE THE LENDER PROVIDES THE "GOOD FAITH ESTIMATE" REQUIRED UNDER 12 USC S2601 ET SEQ. PLUS THE MARGIN TO BE ADDED TO IT AFTER THE EXPIRATION OF ANY INTRODUCTORY PERIOD OR PERIODS; OR (II) FOR A FIXED RATE LOAN, THE ANNUAL PERCENTAGE RATE ON THE LOAN DISREGARDING ANY INTRODUCTORY RATE OR RATES AND ANY INTEREST RATE CAPS THAT LIMIT HOW QUICKLY THE CONTRACTUAL INTEREST RATE MAY BE REACHED CALCULATED AT THE TIME THE LENDER ISSUES ITS COMMITMENT.

(c) [A] "Subprime home loan" means a home loan in which [the fully indexed annual percentage rate] THE INITIAL INTEREST RATE OR THE FULLY-INDEXED RATE, WHICHEVER IS HIGHER, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) [as] posted in the week prior to the week [when] IN WHICH the lender [receives a completed application. A] PROVIDES THE "GOOD FAITH ESTIMATE" REQUIRED UNDER 12 USC S2601 ET SEQ. THE TERM "subprime home loan" excludes a transaction to finance the initial construction of a dwelling, I.E., A CONSTRUCTION

ONLY LOAN, 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 BUT SHALL INCLUDE ANY LOAN, HOWEVER STRUCTURED, THAT THEREAFTER IS CONVERTED INTO A PERMANENT LOAN.

(i) The comparable duration for a home loan shall be determined as follows: for an adjustable or variable home loan with an initial rate that is fixed for less than three years, the Freddie Mac survey result for a one-year adjustable rate mortgage; for an adjustable or variable home loan with an initial rate that is fixed for at least three years, the Freddie Mac survey result for a five-year hybrid adjustable rate mortgage; for a fixed rate home loan with a term of fifteen years or less, the Freddie Mac survey result for a fifteen-year fixed rate mortgage; and for a fixed rate home loan with a term of more than fifteen years, the Freddie Mac survey result for a thirty-year fixed rate mortgage. The superintendent may prescribe by regulation a different comparable duration standard as necessary or appropriate to reflect changes in the terms and types of mortgages included in the Freddie Mac survey.

(ii) Notwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if the superintendent determines that by statute, rule or regulation, different thresholds for determining underwriting standards for subprime loans become applicable to nationally chartered lending institutions, or the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary to achieve parity between such nationally chartered institutions and banking organizations, mortgage banks and mortgage brokers in this state or to alleviate such unduly negative effects. Such determination shall promptly be published on the website of the banking department.

(d) "Home loan" means a [home] loan, including an open-end credit plan, other than a reverse mortgage transaction OR A LOAN MADE OR FULLY OR PARTIALLY GUARANTEED BY THE STATE OF NEW YORK MORTGAGE AGENCY, in which:

(i) The principal amount of the loan AT ORIGINATION does not exceed the conforming loan size limit (INCLUDING ANY APPLICABLE SPECIAL LIMIT FOR JUMBO MORTGAGES) 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.

(j) No lending without [counseling disclosure and list of counselors] PROVIDING INFORMATION ON THE AVAILABILITY OF COUNSELING. A lender or

mortgage broker must deliver, place in the mail, fax or electronically transmit the following notice in at least twelve point type to the borrower of a subprime home loan at the time of application: "You should consider financial counseling prior to executing loan documents. The enclosed list of counselors is provided by the New York State Banking Department." In the event of a telephone application, the disclosures must be made immediately after receipt of the application by telephone. Such disclosure shall be on a separate form. In order to utilize an electronic transmission, the lender or broker must first obtain either written or electronically transmitted permission from the borrower. A list of approved counselors, available from the New York state banking department, shall be provided to the borrower by the lender or the mortgage broker at the time that this disclosure is given.

(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] WITHIN THREE DAYS AFTER RECEIPT OF AN 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 IF PERMITTED BY APPLICABLE LAW. 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 PERMITTED BY APPLICABLE LAW. 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.

(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 HIGHER OF THE INITIAL INTEREST RATE OR the fully indexed rate at the time of the loan closing, without considering any initial discounted rate.

S 15. 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 ERRORS. 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 16. Paragraph (a) of subdivision 1 of section 590 of the banking law, as added by chapter 571 of the laws of 1986, is 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;

S 17. 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 18. 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 indirect-

ly, 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 19. 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 20. Section 187.00 of the penal law, as added by chapter 472 of the laws of 2008, is amended to read as follows:

S 187.00 Definitions.

As used in this article:

1. "Person" means any individual or entity [other than an individual who applies for a residential mortgage loan and intends to occupy such residential property which such mortgage secures unless such person acts as an accessory to an individual or entity in committing any crime defined in this article].

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.

3. "Residential real property" means real property improved by a one-to-four family dwelling, or a residential unit in a building including units owned as condominiums or on a cooperative basis, used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such dwellings are to be constructed.

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 21. The penal law is amended by adding a new section 187.01 to read as follows:

S 187.01 LIMITATION ON PROSECUTION.

NO INDIVIDUAL WHO APPLIES FOR A RESIDENTIAL MORTGAGE LOAN AND INTENDS TO OCCUPY SUCH RESIDENTIAL PROPERTY WHICH SUCH MORTGAGE SECURES SHALL BE HELD LIABLE UNDER THIS ARTICLE PROVIDED, HOWEVER, ANY SUCH INDIVIDUAL WHO ACTS AS AN ACCESSORY TO AN INDIVIDUAL OR ENTITY IN COMMITTING ANY CRIME DEFINED IN THIS ARTICLE MAY BE CHARGED AS AN ACCESSORY TO SUCH CRIME.

S 22. 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 23. Nothing in this act shall be construed as restricting any rights or causes of action the parties to a mortgage, lease or other agreement concerning real property may otherwise have under New York law.

S 24. 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 25. This act shall take effect immediately; provided, however, that:

a. Sections one, one-a, two and three of this act shall take effect on the thirtieth day after this act shall have become a law and shall apply to notices required on or after such date; provided, however, that section one-a of this act shall expire and be deemed repealed 5 years after such effective date;

b. Sections four, seven and eight of this act shall take effect on the thirtieth day after this act shall have become a law and shall apply to actions where a judgment of foreclosure and sale is issued on or after such date;

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

e. Section nine of this act shall take effect on the sixtieth 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 amendments to subdivision (a) of rule 3408 of the civil practice law and rules made by such section shall expire and be deemed repealed 5 years after such effective date;

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

g. Section sixteen of this act shall take effect on the sixtieth day after this act shall have become a law.