

5931--A

2009-2010 Regular Sessions

I N S E N A T E

June 18, 2009

Introduced by Sen. KLEIN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 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:

1 Section 1. Subdivisions 1, 2 and 5 of section 1304 of the real proper-
2 ty actions and proceedings law, as added by chapter 472 of the laws of
3 2008, are amended to read as follows:
4 1. Notwithstanding any other provision of law, with regard to a [high-
5 cost] home loan[, as such term is defined in section six-1 of the bank-
6 ing law, a subprime home loan or a non-traditional home loan] MADE
7 BEFORE SEPTEMBER FIRST, TWO THOUSAND EIGHT, at least ninety days before
8 a lender, AN ASSIGNEE or a mortgage loan servicer commences legal action
9 against the borrower, including mortgage foreclosure, [the] SUCH lender,
10 ASSIGNEE or mortgage loan servicer shall give notice to the borrower in
11 at least fourteen-point type which shall include the following:
12 "YOU COULD LOSE YOUR HOME. PLEASE READ THE FOLLOWING
13 NOTICE CAREFULLY"
14 "As of ___, your home loan is ___ days in default. Under New York
15 State Law, we are required to send you this notice to inform you that

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

1 you are at risk of losing your home. You can cure this default by making
2 the payment of _____ dollars by _____.
3 If you are experiencing financial difficulty, you should know that
4 there are several options available to you that may help you keep your
5 home. Attached to this notice is a list of government approved housing
6 counseling agencies in your area which provide free or very low-cost
7 counseling. You should consider contacting one of these agencies imme-
8 diately. These agencies specialize in helping homeowners who are facing
9 financial difficulty. Housing counselors can help you assess your finan-
10 cial condition and work with us to explore the possibility of modifying
11 your loan, establishing an easier payment plan for you, or even working
12 out a period of loan forbearance. If you wish, you may also contact us
13 directly at _____ and ask to discuss possible options.

14 While we cannot assure that a mutually agreeable resolution is possi-
15 ble, we encourage you to take immediate steps to try to achieve a resol-
16 ution. The longer you wait, the fewer options you may have.

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

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

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

40 5. (a) ["Annual percentage rate" means the annual percentage rate for
41 the loan calculated according to the provisions of the Federal Truth-in-
42 Lending Act (15 U.S.C. S 1601, et seq.), and the regulations promulgated
43 thereunder by the federal reserve board (as said act and regulations are
44 amended from time to time).

45 (b)] "Home loan" means a [home] loan, including an open-end credit
46 plan, other than a reverse mortgage transaction, in which:

47 (i) [The principal amount of the loan at origination did not exceed
48 the conforming loan size that was in existence at the time of origi-
49 nation for a comparable dwelling as established by the federal national
50 mortgage association;

51 (ii)] The borrower is a natural person;

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

54 [(iv)] (III) The loan is secured by a mortgage or deed of trust on
55 real estate [upon which there is located or there is to be located a
56 structure or structures intended principally for occupancy of from one

1 to four families which is or will be occupied by the borrower as the
2 borrower's principal dwelling] IMPROVED BY A ONE TO FOUR FAMILY DWELL-
3 ING, OR A CONDOMINIUM UNIT, OR BY ANY CERTIFICATE OF STOCK OR OTHER
4 EVIDENCE OF OWNERSHIP IN, AND A PROPRIETARY LEASE FROM, A CORPORATION,
5 PARTNERSHIP OR OTHER ENTITY FORMED FOR THE PURPOSE OF COOPERATIVE OWNER-
6 SHIP OF REAL ESTATE, IN EITHER CASE, USED OR OCCUPIED, OR INTENDED TO BE
7 USED OR OCCUPIED WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR
8 MORE PERSONS AND WHICH IS OR WILL BE OCCUPIED BY THE BORROWER AS THE
9 BORROWER'S PRINCIPAL DWELLING; and

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

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

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

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

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

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

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

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

54 (A) "RESIDENTIAL REAL PROPERTY" SHALL MEAN REAL PROPERTY LOCATED IN
55 THIS STATE IMPROVED BY ANY BUILDING OR STRUCTURE THAT IS OR MAY BE USED,
56 IN WHOLE OR IN PART, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS,

1 AND SHALL INCLUDE ANY BUILDING OR STRUCTURE USED FOR BOTH RESIDENTIAL
2 AND COMMERCIAL PURPOSES.

3 (B) "SUCCESSOR IN INTEREST" SHALL MEAN ANY PERSON OR ENTITY WHO OR
4 WHICH ACQUIRES TITLE IN A RESIDENTIAL REAL PROPERTY PURSUANT TO A JUDG-
5 MENT OF SALE, OR OTHER DISPOSITION DURING THE PENDENCY OF THE FORECLO-
6 SURE PROCEEDING, OR AT ANY TIME THEREAFTER BUT PRIOR TO THE EXPIRATION
7 OF THE TIME PERIOD AS PROVIDED FOR IN SUBDIVISION TWO OF THIS SECTION.

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

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

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

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

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

1 THE FEDERAL GOVERNMENT, THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS
2 STATE; OR (C) ANY TENANT WHOSE TENANCY IS SUBJECT TO RENT CONTROL, RENT
3 STABILIZATION, OR FEDERAL STATUTORY SCHEMES.

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

6 S 1306. REGULATORY FILING. 1. EACH LENDER, ASSIGNEE OR MORTGAGE LOAN
7 SERVICER SHALL FILE WITH THE SUPERINTENDENT OF BANKS (SUPERINTENDENT)
8 WITHIN THREE BUSINESS DAYS OF THE MAILING OF THE NOTICE REQUIRED BY
9 SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE THE
10 INFORMATION REQUIRED BY SUBDIVISION TWO OF THIS SECTION. NOTWITHSTAND-
11 ING ANY OTHER PROVISION OF THE LAWS OF THIS STATE, THIS FILING SHALL BE
12 MADE ELECTRONICALLY AS PROVIDED FOR IN SUBDIVISION THREE OF THIS
13 SECTION. ANY COMPLAINT SERVED IN A PROCEEDING INITIATED PURSUANT TO
14 THIS ARTICLE SHALL CONTAIN, AS A CONDITION PRECEDENT TO SUCH PROCEEDING,
15 AN AFFIRMATIVE ALLEGATION THAT AT THE TIME THE PROCEEDING IS COMMENCED,
16 THE PLAINTIFF HAS COMPLIED WITH THE PROVISIONS OF THIS SECTION.

17 2. EACH FILING DELIVERED TO THE SUPERINTENDENT SHALL BE ON SUCH FORM
18 AS THE SUPERINTENDENT SHALL PRESCRIBE, AND SHALL INCLUDE AT A MINIMUM,
19 THE NAME, ADDRESS, LAST KNOWN TELEPHONE NUMBER OF THE BORROWER, AND THE
20 AMOUNT CLAIMED AS DUE AND OWING ON THE MORTGAGE, AND SUCH INFORMATION AS
21 WILL ENABLE THE SUPERINTENDENT TO ASCERTAIN THE TYPE OF LOAN AT ISSUE.
22 THE SUPERINTENDENT MAY SUBSEQUENTLY REQUEST SUCH FURTHER INFORMATION AS
23 MAY BE REASONABLY NECESSARY TO FACILITATE A REVIEW OF WHETHER THE
24 BORROWER MIGHT BENEFIT FROM COUNSELING OR OTHER FORECLOSURE PREVENTION
25 SERVICES.

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

31 4. THE INFORMATION PROVIDED TO THE SUPERINTENDENT PURSUANT TO THIS
32 SUBDIVISION SHALL NOT BE SUBJECT TO ARTICLE SIX OF THE PUBLIC OFFICERS
33 LAW OR PARAGRAPHS (A), (C) AND (D) OF SUBDIVISION ONE OR SUBDIVISION SIX
34 OF SECTION NINETY-FOUR OF THE PUBLIC OFFICERS LAW. ALL SUCH INFORMATION
35 SHALL BE USED BY THE SUPERINTENDENT EXCLUSIVELY FOR THE PURPOSES OF
36 MONITORING ON A STATEWIDE BASIS THE EXTENT OF FORECLOSURE FILINGS WITHIN
37 THIS STATE, TO PERFORM AN ANALYSIS OF LOAN TYPES WHICH WERE THE SUBJECT
38 OF A PRE-FORCLOSURE NOTICE AND DIRECTING AS APPROPRIATE AVAILABLE PUBLIC
39 AND PRIVATE FORECLOSURE PREVENTION AND COUNSELING SERVICES TO BORROWERS
40 AT RISK OF FORECLOSURE. THE SUPERINTENDENT MAY SHARE INFORMATION
41 CONTAINED IN THE DATABASE WITH HOUSING COUNSELING AGENCIES DESIGNATED BY
42 THE DIVISION OF HOUSING AND COMMUNITY RENEWAL AS WELL AS WITH OTHER
43 STATE AGENCIES WITH JURISDICTION OVER HOUSING, FOR THE PURPOSE OF COOR-
44 DINATING OR SECURING HELP FOR BORROWERS AT RISK OF FORECLOSURE.

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

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

50 S 1307. DUTY TO MAINTAIN FORECLOSED PROPERTY. 1. A PLAINTIFF IN A
51 FORECLOSURE ACTION WHO OBTAINS A JUDGMENT OF FORECLOSURE AND SALE PURSU-
52 ANT TO SECTION THIRTEEN HUNDRED FIFTY-ONE OF THIS ARTICLE, INVOLVING
53 RESIDENTIAL REAL PROPERTY, AS DEFINED IN SECTION THIRTEEN HUNDRED FIVE
54 OF THIS ARTICLE, THAT IS VACANT, OR BECOMES VACANT AFTER THE ISSUANCE OF
55 SUCH JUDGMENT, OR IS OCCUPIED BY A TENANT, AS DEFINED UNDER SECTION
56 THIRTEEN HUNDRED FIVE OF THIS ARTICLE, SHALL MAINTAIN SUCH PROPERTY

1 UNTIL SUCH TIME AS OWNERSHIP HAS BEEN TRANSFERRED THROUGH THE CLOSING OF
2 TITLE IN FORECLOSURE, OR OTHER DISPOSITION, AND THE DEED FOR SUCH PROP-
3 ERTY HAS BEEN DULY RECORDED.

4 2. SUCH PLAINTIFF SHALL HAVE THE RIGHT TO PEACEABLY ENTER UPON SUCH
5 PROPERTY, OR TO CAUSE OTHERS TO PEACEABLY ENTER UPON THE PROPERTY FOR
6 THE LIMITED PURPOSE OF INSPECTIONS, REPAIRS AND MAINTENANCE AS REQUIRED
7 BY THIS SECTION, OR AS OTHERWISE ORDERED BY COURT; PROVIDED, HOWEVER,
8 THAT IF THE PROPERTY IS OCCUPIED BY A TENANT, AT LEAST SEVEN DAYS NOTICE
9 MUST BE GIVEN TO SUCH TENANT, UNLESS EMERGENCY REPAIRS ARE REQUIRED IN
10 WHICH CASE REASONABLE NOTICE SHALL BE PROVIDED TO THE TENANT.

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (F) BOTH THE PLAINTIFF AND DEFENDANT SHALL NEGOTIATE IN GOOD FAITH TO
56 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 6-1 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;

1 (iii) The debt is incurred by the borrower primarily for personal,
2 family, or household purposes;

3 (iv) The loan is secured by a mortgage or deed of trust on real estate
4 [upon which there is located or there is to be located a structure or
5 structures intended principally for occupancy of from one to four fami-
6 lies which is or will be occupied by the borrower as the borrower's
7 principal dwelling] IMPROVED BY A ONE TO FOUR FAMILY DWELLING, OR BY A
8 CONDOMINIUM UNIT, OR BY ANY CERTIFICATE OF STOCK OR OTHER EVIDENCE OF
9 OWNERSHIP IN, AND A PROPRIETARY LEASE FROM, A CORPORATION, PARTNERSHIP
10 OR OTHER ENTITY FORMED FOR THE PURPOSE OF COOPERATIVE OWNERSHIP OF REAL
11 ESTATE, IN EITHER CASE USED OR OCCUPIED OR INTENDED TO BE USED OR OCCU-
12 PIED, WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS
13 AND WHICH IS OR WILL BE OCCUPIED BY THE BORROWER AS THE BORROWER'S PRIN-
14 CIPAL DWELLING; and

15 (v) The property is located in this state.

16 S 10. Paragraphs (r) and (s) of subdivision 2 of section 6-1 of the
17 banking law, as added by chapter 472 of the laws of 2008, are amended to
18 read as follows:

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

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

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

40 (d) "Home loan" means a [home] loan, including an open-end credit
41 plan, other than a reverse mortgage transaction, in which:

42 (i) The principal amount of the loan AT ORIGINATION does not exceed
43 the conforming loan size limit for a comparable dwelling as established
44 from time to time by the federal national mortgage association;

45 (ii) The borrower is a natural person;

46 (iii) The debt is incurred by the borrower primarily for personal,
47 family, or household purposes;

48 (iv) The loan is secured by a mortgage or deed of trust on real estate
49 [upon which there is located or there is to be located a structure or
50 structures intended principally for occupancy of from one to four fami-
51 lies which is or will be occupied by the borrower as the borrower's
52 principal dwelling] IMPROVED BY A ONE TO FOUR FAMILY DWELLING, OR BY A
53 CONDOMINIUM UNIT, OR BY ANY CERTIFICATE OF STOCK OR OTHER EVIDENCE OF
54 OWNERSHIP IN, AND A PROPRIETARY LEASE FROM, A CORPORATION, PARTNERSHIP
55 OR OTHER ENTITY FORMED FOR THE PURPOSE OF COOPERATIVE OWNERSHIP OF REAL
56 ESTATE, IN EITHER CASE, USED OR OCCUPIED OR INTENDED TO BE USED OR OCCU-

1 PIED, WHOLLY OR PARTLY, AS THE HOME OR RESIDENCE OF ONE OR MORE PERSONS
2 AND WHICH IS OR WILL BE OCCUPIED BY THE BORROWER AS THE BORROWER'S PRIN-
3 CIPAL DWELLING; and

4 (v) The property is located in this state.

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

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

26 S 12. Subdivisions 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of
27 section 6-m of the banking law, as added by chapter 472 of the laws of
28 2008, are amended to read as follows:

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

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

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

53 (b) In determining a borrower's ability to repay a subprime home loan,
54 the lender or mortgage broker shall take reasonable steps to verify the
55 accuracy and completeness of information provided by or on behalf of the

1 borrower using tax returns, payroll receipts, bank records, reasonable
2 alternative methods, or reasonable third-party verification.

3 (c) In determining a borrower's ability to repay a subprime home loan
4 according to its terms when the loan has an adjustable rate feature, the
5 lender or mortgage broker shall calculate the monthly payment amount for
6 principal and interest by assuming (i) the loan proceeds are fully
7 disbursed on the date of the loan closing, (ii) the loan is to be repaid
8 in substantially equal monthly amortizing payments of principal and
9 interest over the entire term of the loan, with no balloon payment, and
10 (iii) the interest rate over the entire term of the loan is a fixed rate
11 equal to the fully indexed rate at the time of the loan closing, without
12 considering any initial discounted rate.

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

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

21 6. EVASION OF STATUTORY REQUIREMENTS. The provisions of this section
22 shall apply to any person who [in bad faith] attempts to avoid the
23 application of this section by any subterfuge, including but not limited
24 to, splitting or dividing any loan transaction into separate parts for
25 the purpose of evading the provisions of this section.

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

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

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

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

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

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

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

51 14. SEVERABILITY. The provisions of this section shall be severable,
52 and if any phrase, clause, sentence, or provision is declared to be
53 invalid, or is preempted by federal law or regulation, the validity of
54 the remainder of this section shall not be affected thereby. If any
55 provision of this section is declared to be inapplicable to any specific
56 category, type, or kind of points and fees with respect to a home loan,

1 the provisions of this section shall nonetheless continue to apply with
2 respect to all other points and fees.

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

6 (a) "Mortgage loan" shall mean a loan to a natural person made prima-
7 rily for personal, family or household use, [primarily] secured by
8 either a mortgage OR DEED OF TRUST on residential real property [or
9 certificates], ANY CERTIFICATE of stock or other evidence of ownership
10 [interests] in, and proprietary [leases] LEASE from, [corporations or
11 partnerships] A CORPORATION OR PARTNERSHIP formed for the purpose of
12 cooperative ownership of residential real property OR, IF DETERMINED BY
13 THE BANKING BOARD BY REGULATION, SHALL INCLUDE SUCH A LOAN SECURED BY A
14 SECURITY INTEREST ON A MANUFACTURED HOME;

15 (d) "Soliciting, processing, placing or negotiating a mortgage loan"
16 shall mean for compensation or gain, either directly or indirectly,
17 accepting or offering to accept an application for a mortgage loan,
18 assisting or offering to assist in the processing of an application for
19 a mortgage loan, soliciting or offering to solicit a mortgage loan on
20 behalf of a third party or negotiating or offering to negotiate the
21 terms or conditions of a mortgage loan with a lender on behalf of a
22 third party; PROVIDED THAT, FOR PURPOSES OF THIS SECTION, A BONA FIDE
23 NOT-FOR-PROFIT ORGANIZATION THAT OFFERS COUNSELING OR ADVICE TO HOMEOWN-
24 ERS IN FORECLOSURE OR LOAN DEFAULT WITH A LOAN MODIFICATION OR REFINANC-
25 ING SHALL NOT BE DEEMED TO BE SOLICITING, PROCESSING, PLACING OR NEGOTI-
26 ATING A MORTGAGE LOAN FOR COMPENSATION OR GAIN;

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

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

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

36 (b) No person, partnership, association, corporation or other entity
37 shall engage in the business of soliciting, processing, placing or nego-
38 tiating a mortgage loan or offering to solicit, process, place or nego-
39 tiate a mortgage loan in this state without first being registered with
40 the superintendent as a mortgage broker in accordance with the registra-
41 tion procedure provided in this article and by such regulations as may
42 be promulgated by the banking board or prescribed by the superintendent.
43 The registration provisions of this subdivision shall not apply to any
44 exempt organization [or], mortgage banker OR MORTGAGE LOAN SERVICER. No
45 real estate broker or salesman, as defined in section four hundred forty
46 of the real property law, shall be deemed to be engaged in the business
47 of a mortgage broker if he does not accept a fee, directly or indirect-
48 ly, for services rendered in connection with the solicitation, process-
49 ing, placement or negotiation of a mortgage loan. No attorney-at-law who
50 solicits, processes, places or negotiates a mortgage loan incidental to
51 his legal practice shall be deemed to be engaged in the business of a
52 mortgage broker. The registration provisions of this subdivision shall
53 not apply to any person or entity which shall be exempted in accordance
54 with regulations promulgated by the banking board hereunder.

55 (b-1) No person, partnership, association, corporation or other entity
56 shall engage in the business of servicing mortgage loans with respect to

1 any property located in this state without first being registered with
2 the superintendent as a mortgage loan servicer in accordance with the
3 registration procedure provided by such regulations as may be prescribed
4 by the superintendent. The superintendent may refuse to register a mort-
5 gage loan servicer on the same grounds that he or she may refuse to
6 issue a registration certificate to a mortgage broker pursuant to subdivi-
7 sion two of section five hundred ninety-two-a of this article. The
8 registration provisions of this subdivision shall not apply to any
9 exempt organization, mortgage banker, or mortgage broker or any person
10 or entity which shall be exempted in accordance with regulations
11 prescribed by the superintendent hereunder; provided that such exempt
12 organization, mortgage banker, mortgage broker, or exempted person noti-
13 fies the superintendent that it is acting as a mortgage loan servicer in
14 this state and complies with any regulation applicable to mortgage loan
15 servicers, promulgated by the banking board or prescribed by the super-
16 intendent with respect to mortgage loan servicers. THE SUPERINTENDENT
17 MAY REQUIRE ALL REGISTRATIONS AND NOTIFICATIONS TO BE MADE THROUGH THE
18 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. AN APPLICATION TO
19 BECOME A REGISTERED MORTGAGE LOAN SERVICER OR ANY APPLICATION WITH
20 RESPECT TO A MORTGAGE LOAN SERVICER SHALL BE ACCOMPANIED BY A FEE AS
21 PRESCRIBED PURSUANT TO SECTION EIGHTEEN-A OF THIS CHAPTER. ANY FEE
22 ESTABLISHED PURSUANT TO THIS SUBDIVISION MAY BE COLLECTED BY AND INCLUDE
23 A PROCESSING FEE CHARGED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND
24 REGISTRY. ANY SUCH PROCESSING FEES SHALL NOT BE REMITTED TO THE SUPER-
25 INTENDENT AND SHALL NOT BE DEEMED REVENUE PURSUANT TO THIS CHAPTER OR
26 THE STATE FINANCE LAW.

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

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

34 S 17. Subdivisions 1, 2 and 4 of section 187.00 of the penal law, as
35 added by chapter 472 of the laws of 2008, are amended to read as
36 follows:

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

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

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

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

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

5 S 18. The penal law is amended by adding a new section 187.01 to read
6 as follows:

7 S 187.01 LIMITATION ON PROSECUTION.

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

14 S 19. Subparagraphs (i) and (vii) of paragraph (e) of subdivision 1
15 and paragraph (b) of subdivision 2 of section 265-b of the real property
16 law, as added by chapter 472 of the laws of 2008, are amended to read as
17 follows:

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

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

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

29 S 20. Severability clause. If any clause, sentence, paragraph, section
30 or part of this act shall be adjudged by any court of competent juris-
31 diction to be invalid, such judgment shall not affect, impair or invali-
32 date the remainder thereof, but shall be confined in its operation to
33 the clause, sentence, paragraph, section or part thereof directly
34 involved in the controversy in which such judgment shall have been
35 rendered.

36 S 21. This act shall take effect immediately; provided, however, that:

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

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

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

48 d. Section four of this act shall take effect on the one hundred twen-
49 tieth day after it shall have become a law;

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

1 f. Section eleven of this act shall take effect on the sixtieth day
2 after this act shall have become a law;
3 g. Section thirteen of this act shall take effect on the ninetieth day
4 after this act shall have become a law; provided that a person who is
5 not exempt from registration may continue to engage in mortgage loan
6 modification activities after such date if he or she: (i) was engaged in
7 soliciting or negotiating mortgage loan modifications prior to the date
8 this act shall have become a law; (ii) has filed an application for
9 registration with the superintendent of banks; and (iii) has received
10 confirmation that such application is informationally complete, but only
11 until he or she receives notice from the superintendent that such appli-
12 cation has been denied;
13 h. Section fifteen of this act shall take effect on the same date and
14 in the same manner as section 8 of chapter 472 of the laws of 2008,
15 takes effect.