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

5931--B

2009-2010 Regular Sessions

I N S E N A T E

June 18, 2009

Introduced by Sen. KLEIN -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the real property actions and proceedings law, 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 and notification to tenants of foreclosed properties; 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; to amend the judiciary law, in relation to the assignment of foreclosure actions; to amend part NN of chapter 57 of the laws of 2008, relating to authorizing the New York state mortgage agency to transfer certain moneys; to repeal certain provisions of the civil practice law and rules relating to mandatory settlement conference in residential foreclosure actions; 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 5102 of the civil practice law and rules, as amended by chapter 531 of the laws of 1963, is amended to read as follows:

S 5102. Enforcement of judgment or order awarding possession of real property or a chattel. A judgment or order, or a part thereof, awarding possession of real property or a chattel may be enforced by an execution, which shall particularly describe the property and designate the party to whom the judgment or order awards its possession. The execution shall comply with the provisions of section 5230, except that

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

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it shall direct the sheriff to deliver possession of the property to the party designated. In an action to recover a chattel, where the judgment awards possession of the chattel and in the alternative its value, the execution shall also direct the sheriff, if the chattel cannot be found within his county, to levy upon real and personal property as upon an execution to enforce a money judgment. After the death of a party against whom a judgment or order awarding possession of real property has been obtained, an order granting leave to issue such execution may be granted upon twenty days' notice, to be served in the same manner as a summons, to the occupants of the real property and to the heirs or devisees of the deceased party. IF THE REAL PROPERTY TO BE DELIVERED INCLUDES A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING THE JUDGMENT IN A FORECLOSURE ACTION SHALL PROVIDE THAT ONLY AN OCCUPANT OF SUCH DWELLING UNIT WHO WAS NAMED AS A DEFENDANT IN THE FORECLOSURE ACTION AND WHO WAS SERVED WITH THE NOTICE REQUIRED BY SECTION THIRTEEN HUNDRED THREE OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW MAY BE SUBJECT TO AN EXECUTION DIRECTING DELIVERY OF SUCH DWELLING UNIT AND SUCH OCCUPANT SHALL BE SERVED WITH A NINETY-DAY NOTICE TO QUIT, IN THE MANNER PRESCRIBED IN SECTION SEVEN HUNDRED THIRTY-FIVE OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, PRIOR TO THE EXECUTION OF THAT PART OF THE JUDGMENT THAT DIRECTS DELIVERY OF POSSESSION OF THE DWELLING UNIT.

S 2. Section 1301 of the real property actions and proceedings law is amended by adding a new subdivision 4 to read as follows:

4. THE SUMMONS SHALL CONTAIN A NOTICE ADVISING THAT A TENANT OF A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING WHO IS NOT THE MORTGAGOR HAS THE OPTION TO APPEAR WITHOUT CONTESTING THE MERITS OF THE ACTION, BUT MAY APPEAR SOLELY FOR THE PURPOSE OF RECEIVING THE FURTHER ORDERS OF THE COURT RELATED TO THE DISPOSITION AND SALE OF THE PROPERTY AND DESCRIBING A PROCEDURE TO MAKE SUCH AN APPEARANCE IN THE ACTION.

S 3. 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, (A) which involves residential real property consisting of owner-occupied one-to-four-family dwellings shall provide notice to the mortgagor OR (B) ANY TENANT OF A DWELLING UNIT IN SUCH REAL PROPERTY WHO IS NAMED AS A DEFENDANT IN THE FORECLOSURE ACTION in accordance with the provisions of this section with regard to information and assistance about the foreclosure process.

2. The notice required by this section shall be delivered with the summons and complaint to commence a foreclosure action. The 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 required by this section TO BE GIVEN TO HOMEOWNERS shall INCLUDE INFORMATION ABOUT THE AVAILABILITY OF THE FORECLOSURE DIVERSION PROGRAM AND ITS ABILITY TO ASSIST HOMEOWNERS IN AVOIDING FORECLOSURE AND THE MANDATORY COUNSELING REQUIRED FOR PARTICIPATION IN THE FORECLOSURE DIVERSION PROGRAM. SUCH NOTICE SHALL INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT AND PROVIDED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL AND THE NAMES AND CONTACT INFORMATION FOR ALL NOT-FOR-PROFIT ASSISTANCE PROVIDERS AUTHORIZED BY THE BANKING DEPARTMENT TO PROVIDE HOUSING COUNSELING SERVICES TO HOMEOWNERS AND 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.

BEFORE YOU ATTEND A SETTLEMENT CONFERENCE, YOU ARE STRONGLY URGED TO SCHEDULE AND ATTEND A COUNSELING SESSION BY CALLING THE BANKING DEPARTMENT AT THE FOLLOWING HOTLINE NUMBER: ________________________

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. YOU SHOULD IMMEDIATELY SEEK OUT AN APPROVED LOAN COUNSELOR. A LIST OF APPROVED COUNSELORS CAN BE OBTAINED BY CALLING THE HOTLINE. IF YOU DO NOT ATTEND A COUNSELING SESSION, YOU WILL NOT BE ELIGIBLE TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM. THIS WILL NOT AFFECT YOUR RIGHT TO A SETTLEMENT CONFERENCE, BUT WILL AFFECT YOUR ELIGIBILITY FOR A POSTPONEMENT OF FORECLOSURE UNDER THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM.

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 REQUIRED BY THIS SECTION TO BE GIVEN TO TENANTS SHALL APPEAR AS FOLLOWS:

HELP FOR TENANTS OF BUILDINGS 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. YOU MAY ALSO BE EVICTED FROM YOUR HOME IF YOUR LANDLORD IS FORECLOSED UPON. PLEASE READ THE SUMMONS AND COMPLAINT CAREFULLY.

YOU HAVE THE OPTION TO APPEAR IN THIS FORECLOSURE ACTION WITHOUT CONTESTING THE MERITS OF THE ACTION. YOU MAY APPEAR SOLELY FOR THE PURPOSE OF RECEIVING THE FURTHER ORDERS OF THE COURT RELATED TO THE DISPOSITION AND SALE OF THE PROPERTY. THE SUMMONS DESCRIBES THE MANNER IN WHICH YOU CAN MAKE SUCH AN APPEARANCE.

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 LANDLORD'S LENDER OR A NEW OWNER DURING THIS PROCESS IN ORDER TO PREVENT YOUR EVICTION AND TO ENSURE THAT YOUR DWELLING IS PROPERLY MAINTAINED.

TO LOCATE AN ENTITY NEAR YOU, YOU MAY CALL THE TOLL-FREE HELPLINE MAINTAINED BY THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL AT (ENTER NUMBER) OR VISIT THE DIVISION'S WEBSITE AT (ENTER WEB ADDRESS). IF YOUR RENTAL UNIT IS LOCATED IN NEW YORK CITY, YOU MAY ALSO CALL THE HELPLINE MAINTAINED BY THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT AT OR VISIT THE DEPARTMENT'S WEBSITE AT (ENTER WEB ADDRESS).

5. The banking department, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT shall prescribe the telephone number and web address to be included in the APPROPRIATE notice.

[5.] 6. The banking department, THE DIVISION OF HOUSING AND COMMUNITY RENEWAL OR THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT 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, EVICTION PREVENTION, AND REQUIREMENTS FOR THE MAINTENANCE OF PROPERTIES DURING THE PENDENCY OF FORECLOSURE ACTIONS, including maintaining a toll-free helpline to disseminate the information required by this section.

S 4. Subdivisions 1, 2 and 5 of section 1304 of the real property actions and proceedings law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

S 5. The real property actions and proceedings law is amended by adding a new section 1305 to read as follows:

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

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

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

(C) "TENANT" SHALL MEAN ANY PERSON WHO AT THE TIME OF A JUDGMENT OF SALE, OR OTHER DISPOSITION DURING THE PENDENCY OF THE FORECLOSURE, APPEARS AS A LESSEE ON A LEASE OF ONE OR MORE DWELLING UNITS OF A RESI-

DENTIAL REAL PROPERTY THAT IS SUBORDINATE TO THE MORTGAGE ON SUCH RESIDENTIAL REAL PROPERTY; OR WHO IS A PARTY TO AN ORAL OR IMPLIED RENTAL AGREEMENT WITH THE MORTGAGOR AND OBLIGATED TO PAY RENT TO THE MORTGAGOR OR SUCH MORTGAGOR'S REPRESENTATIVE, FOR THE USE OR OCCUPANCY OF ONE OR MORE DWELLING UNITS OF A RESIDENTIAL REAL PROPERTY.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN A MORTGAGE FORECLOSURE ACTION, WHICH INVOLVES RESIDENTIAL REAL PROPERTY DWELLINGS, A PLAINTIFF UPON COMMENCEMENT OF THE ACTION OR DISCONTINUANCE OF THE ACTION, THE PREVAILING PLAINTIFF, A PLAINTIFF TAKING A DEED IN LIEU OF FORECLOSURE, A RECEIVER APPOINTED IN SUCH ACTION, A PURCHASER FROM THE MORTGAGOR OR THE PURCHASER AT A FORECLOSURE SALE PURSUANT TO A JUDGMENT OF FORECLOSURE SHALL PROVIDE NOTICE OF THE DATE OF EVERY SUCH OCCURRENCE TO ANY TENANT RESIDING IN SUCH PROPERTY WITHIN THIRTY DAYS OF THE COMMENCEMENT OF THE ACTION, DISCONTINUANCE OF THE ACTION, JUDGMENT OF FORECLOSURE, APPOINTMENT OF A RECEIVER OR THE CLOSING OF TITLE PURSUANT TO A FORECLOSURE SALE OR OTHER DISPOSITION. THEREAFTER, UNTIL THE CLOSING OF TITLE PURSUANT TO A FORECLOSURE SALE OR OTHER DISPOSITION OF THE PROPERTY, SUCH NOTICE OF EVERY SUCH OCCURRENCE SHALL ALSO BE PROVIDED TO A NEW TENANT AT THE TIME SUCH NEW TENANT ENTERS INTO A LEASE OR OTHER RENTAL AGREEMENT AND THEREAFTER FOR A DWELLING UNIT IN THE PROPERTY.

3. THE NOTICE SHALL ADVISE THE TENANT OF THE OCCURRENCE OF AN EVENT DESCRIBED IN SUBDIVISION TWO OF THIS SECTION, AS WELL AS OF THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PERSON OR ENTITY RESPONSIBLE FOR MAINTENANCE OF THE PROPERTY AND ENTITLED TO COLLECT RENT FROM THE TENANT.

4. FOR BUILDINGS WITH FEWER THAN SIX DWELLING UNITS, THE NOTICE SHALL BE PERSONALLY SERVED UPON THE TENANT, OR SERVED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND ALSO BY FIRST-CLASS MAIL TO THE TENANT'S ADDRESS AT THE PROPERTY. THE NOTICE SHALL BE ACCOMPANIED BY AN ACKNOWLEDGEMENT OF SERVICE THAT SHALL BE SIGNED BY THE TENANT SO SERVED. IF A TENANT REFUSES TO SIGN THE ACKNOWLEDGEMENT OF SERVICE, THE SERVING PARTY MAY FILE WITH A COURT A SWORN AFFIDAVIT STATING THE MANNER IN WHICH THE TENANT WAS SERVED AND THAT THE TENANT REFUSED TO SIGN SUCH ACKNOWLEDGMENT. FOR BUILDINGS WITH SIX OR MORE DWELLING UNITS, A LEGIBLE COPY OF THE NOTICE SHALL BE POSTED AT EACH ENTRANCE AND EXIT OF THE BUILDING.

5. A TENANT WHO IS NOT SERVED BY THE NOTICE REQUIRED BY THIS SECTION WITHIN THE TIME PERIOD FOR SERVICE OF SUCH NOTICE SHALL NOT BE LIABLE FOR ANY RENT FROM THE EXPIRATION OF SUCH TIME PERIOD UNTIL SUCH NOTICE IS DULY SERVED UPON SUCH TENANT.

6. A TENANT ENTITLED TO NOTICE PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT TO AN EXECUTION PURSUANT TO SECTION TWO HUNDRED TWENTY-ONE OF THIS CHAPTER OR SECTION FIFTY-ONE HUNDRED TWO OF THE CIVIL PRACTICE LAW AND RULES OR BE MADE A DEFENDANT OR RESPONDENT IN ANY ACTION OR PROCEEDING SEEKING POSSESSION OF SUCH TENANT'S DWELLING UNIT BROUGHT PURSUANT TO SECTION SEVEN HUNDRED THIRTEEN-B OF THIS CHAPTER UNLESS SUCH TENANT WAS PREVIOUSLY SERVED WITH THE NOTICE REQUIRED BY THIS SECTION. THE NOTICE REQUIRED BY THIS SECTION SHALL BE IN ADDITION TO THE NOTICES TO QUIT REQUIRED BY SECTION TWO HUNDRED TWENTY-ONE AND SECTION SEVEN HUNDRED THIRTEEN-B OF THIS CHAPTER OR SECTION FIFTY-ONE HUNDRED TWO OF THE CIVIL PRACTICE LAW AND RULES.

7. ANY PROVISION OF A LEASE OR RENTAL AGREEMENT PURPORTING TO WAIVE A PROVISION OF THIS SECTION IS NULL AND VOID.

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

S 1306. REGULATORY FILING. 1. EACH LENDER, ASSIGNEE OR MORTGAGE LOAN SERVICER SHALL FILE WITH THE SUPERINTENDENT OF BANKS (SUPERINTENDENT) WITHIN THREE BUSINESS DAYS OF THE MAILING OF THE NOTICE REQUIRED BY SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED FOUR OF THIS ARTICLE THE INFORMATION REQUIRED BY SUBDIVISION TWO OF THIS SECTION. NOTWITHSTANDING ANY OTHER PROVISION OF THE LAWS OF THIS STATE, THIS FILING SHALL BE MADE ELECTRONICALLY AS PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION. 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 INFORMATION AS WILL ENABLE THE SUPERINTENDENT TO ASCERTAIN THE TYPE OF LOAN AT ISSUE. THE SUPERINTENDENT MAY SUBSEQUENTLY REQUEST SUCH FURTHER INFORMATION AS MAY BE REASONABLY NECESSARY TO FACILITATE A REVIEW OF WHETHER THE BORROWER MIGHT BENEFIT FROM COUNSELING OR OTHER FORECLOSURE PREVENTION SERVICES.

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

4. THE INFORMATION PROVIDED TO THE SUPERINTENDENT PURSUANT TO THIS SUBDIVISION SHALL NOT BE SUBJECT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW OR PARAGRAPHS (A), (C) AND (D) OF SUBDIVISION ONE OR SUBDIVISION SIX OF SECTION NINETY-FOUR OF THE PUBLIC OFFICERS LAW. ALL SUCH INFORMATION SHALL BE USED BY THE SUPERINTENDENT EXCLUSIVELY FOR THE PURPOSES OF MONITORING ON A STATEWIDE BASIS THE EXTENT OF FORECLOSURE FILINGS WITHIN THIS STATE, TO PERFORM AN ANALYSIS OF LOAN TYPES WHICH 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 7. 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. WHERE A FINAL JUDGMENT OF FORECLOSURE IS AWARDED TO A MORTGAGEE OF A RESIDENTIAL DWELLING OF ONE TO FOUR FAMILIES AND THE STRUCTURE HAS BEEN RENDERED VACANT OR ABANDONED BY ALL OCCUPANTS WITH A PREVIOUS LEGAL RIGHT TO THE STRUCTURE, IT SHALL BE THE DUTY OF THE MORTGAGEE FROM THE TIME OF VACANCY OR ABANDONMENT OF SUCH STRUCTURE AND JUDGMENT OF FORECLOSURE, WHICHEVER OCCURS LATER, TO MAINTAIN SUCH VACANT STRUCTURES AND EXTERIOR PROPERTY IN A

CLEAN, SAFE, SECURE AND SANITARY CONDITION SO AS NOT TO CAUSE A BLIGHTING PROBLEM OR ADVERSELY AFFECT PUBLIC HEALTH OR SAFETY. ABANDONED MEANS A PROPERTY THAT IS VACANT AS A RESULT OF THE RELINQUISHMENT OF POSSESSION OR CONTROL BY A MORTGAGOR OR THE MORTGAGOR'S ASSIGNS WHETHER OR NOT THE MORTGAGOR OR MORTGAGOR'S ASSIGNS HAVE RELINQUISHED EQUITY AND TITLE. PROPERTY MAY BE DEEMED ABANDONED WHEN THERE IS EVIDENCE OF CONDITIONS, TAKEN SEPARATELY OR AS A WHOLE, THAT WOULD LEAD A REASONABLE PERSON TO CONCLUDE THAT THE PROPERTY WAS ABANDONED INCLUDING, BUT NOT LIMITED TO EVIDENCE OF OVERGROWN OR DEAD VEGETATION, ACCUMULATION OF NEWSPAPERS, CIRCULARS, FLYERS OR MAIL, PAST DUE UTILITY NOTICES, ACCUMULATION OF JUNK, LITTER, TRASH OR DEBRIS, ABSENCE OF WINDOW TREATMENTS SUCH AS BLINDS, CURTAINS OR SHUTTERS, ABSENCE OF FURNISHINGS AND PERSONAL ITEMS, AND STATEMENTS BY NEIGHBORS, DELIVERY AGENTS OR SIMILARLY SITUATED PERSONS THAT THE PROPERTY IS VACANT. VACANT PREMISES MEANS A BUILDING THAT IS NOT LAWFULLY OCCUPIED.

2. THE MINIMUM STANDARD THE MORTGAGEE WILL BE REQUIRED TO MEET IS THAT SET FORTH IN THE NEW YORK STATE PROPERTY MAINTENANCE CODE CHAPTER 3 SS 301.3, 302 (EXCLUDING 302.6), 304.1, 304.3, 304.7, 304.10, 304.12, 304.13, 304.15, 304.16, 304.17, 307.1, AND 308.1.

3. THE MORTGAGEE SHALL HAVE THE RIGHT TO ENTER THE STRUCTURE AND EXTERIOR PROPERTY OR TO CAUSE OTHERS TO ENTER THE SAME FOR THE LIMITED PURPOSE OF INSPECTION, REPAIR AND MAINTENANCE AS REQUIRED BY THIS SECTION, IN ADDITION TO ANY OTHER RIGHT PROVIDED IN THE MORTGAGE NOTE.

4. THIS SECTION SHALL BE ENFORCED BY THE MUNICIPALITY IN WHICH THE STRUCTURE IS LOCATED. A VIOLATOR OF THIS SECTION WILL BE FINED PURSUANT TO THAT MUNICIPALITY'S FINE SCHEDULE PURSUANT TO THE NEW YORK STATE PROPERTY MAINTENANCE CODE OR, IF NO SUCH FINE EXISTS, A VIOLATION IS PUNISHABLE WITH A FINE OF UP TO ONE HUNDRED DOLLARS PER DAY, PROVIDED THAT SUCH MUNICIPALITY HAS GIVEN NOTICE OF THE VIOLATION IN WRITING AND BY CERTIFIED MAIL, TO THE MORTGAGEE AND PROVIDED THE MORTGAGEE TWENTY DAYS FROM RECEIPT OF THE NOTICE TO CORRECT THE VIOLATION. THE FINE WOULD NOT BEGIN TO ACCRUE UNTIL EXPIRATION OF TWENTY DAYS.

5. UPON A FAILURE TO CORRECT VIOLATIONS WITHIN TWENTY DAYS OF NOTICE, THE LOCALITY MAY ENTER THE STRUCTURE AND EXTERIOR PROPERTY TO CORRECT THE VIOLATIONS AND BILL MORTGAGEE FOR THE REASONABLE COST OF THE SAME.

6. THIS SECTION SETS FORTH THE MINIMUM OBLIGATIONS AS REQUIRED BY THE NEW YORK STATE PROPERTY MAINTENANCE CODE AND IN NO WAY ABROGATES OR DIMINISHES ANY RIGHTS OR OBLIGATIONS ALREADY ESTABLISHED BY THE LOCAL MUNICIPALITY AND/OR HOMEOWNERS ASSOCIATIONS WITH REGARDS TO VACANT OR ABANDONED PROPERTY.

7. A MORTGAGEE WILL BE RELIEVED OF OBLIGATIONS UNDER THIS SECTION IF AND WHEN OWNERSHIP OF THE PROPERTY IS TRANSFERRED BY DEED TO ANOTHER PARTY OR THE PROPERTY BECOMES LEGALLY OCCUPIED.

S 8. The real property actions and proceedings law is amended by adding a new section 1308 to read as follows:

S 1308. FORECLOSURES; COURT RELIEF. 1. VENUE. IN ANY ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE UNDER THIS ARTICLE A MORTGAGOR NAMED IN SUCH ACTION MAY APPLY FOR RELIEF IN STATE SUPREME COURT PURSUANT TO THIS SECTION.

2. TIMING OF POSTPONEMENT. IF A MORTGAGEE HAS OTHERWISE ESTABLISHED ITS LEGAL RIGHT TO JUDGMENT ON AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE PURSUANT TO THIS CHAPTER, THEN SUCH ACTION SHALL BE HELD IN ABEYANCE BY THE COURT BEFORE WHICH SUCH ACTION IS PENDING FOR A PERIOD OF NINETY DAYS. IF THE MORTGAGOR RECEIVES COUNSELING FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DIVISION AND SUBSEQUENTLY PARTICIPATES IN A SETTLEMENT CONFERENCE, THEN THE COURT BEFORE WHICH

SUCH ACTION IS PENDING SHALL HOLD SUCH ACTION IN ABEYANCE FOR AN ADDITIONAL NINE MONTHS. SUCH ADDITIONAL PERIOD OF TIME IS INTENDED TO PERMIT THE PARTIES TO SETTLE THE ACTION OUTSIDE OF COURT AND TO FORESTALL FORECLOSURE WHEREVER POSSIBLE.

3. PROCESS AND FEES. IF AN ACTION TO FORECLOSE A RESIDENTIAL MORTGAGE HAS BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MAY ASK THE COURT BEFORE WHICH SUCH ACTION IS COMMENCED TO HOLD SUCH ACTION IN ABEYANCE PURSUANT TO SUBDIVISION TWO OF THIS SECTION. MOTIONS ON NOTICE IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES MADE BY THE MORTGAGOR SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR SHALL BE WAIVED. IF A FORECLOSURE ACTION HAS NOT BEEN COMMENCED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, A MORTGAGOR MUST COMMENCE AN ACTION IN STATE SUPREME COURT BY FILING AND SERVING A SUMMONS PURSUANT TO ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES WITH A REQUEST FOR RELIEF PURSUANT TO THE TERMS OF THIS SECTION. IN SUCH CASE, SUCH FILING SHALL BE DEEMED TO HAVE BEEN FILED BY A POOR PERSON PURSUANT TO ARTICLE ELEVEN OF THE CIVIL PRACTICE LAW AND RULES AND ALL FILING AND COURT FEES OTHERWISE APPLICABLE TO SUCH ACTIONS AND PAYABLE BY A MORTGAGOR IN THE FORM OF INDEX AND MOTION FEES SHALL BE WAIVED.

4. PRIMA FACIE CASE. A MORTGAGOR MUST ESTABLISH A PRIMA FACIE CASE IN THE MOTION OR PLEADING. AMENDMENTS TO SUCH MOTION OR PLEADING SHALL BE LIBERALLY GRANTED. SUCH PLEADING MUST ESTABLISH THAT:

A. THE MORTGAGOR IS A NATURAL PERSON; AND

B. THE DEBT IS INCURRED BY THE MORTGAGOR PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES; AND

C. THE LOAN IS SECURED BY A MORTGAGE, SECOND MORTGAGE OR HOME EQUITY LOAN ON REAL PROPERTY WHICH IS IMPROVED WITH A RESIDENTIAL BUILDING CONTAINING ONE TO FOUR DWELLING UNITS; AND

D. THE REAL PROPERTY SUBJECT TO FORECLOSURE IS THE PRINCIPAL RESIDENCE OF THE MORTGAGOR; AND

E. THE MORTGAGOR OWNS NO OTHER REAL PROPERTY; AND

F. THE REAL PROPERTY IS LOCATED IN THIS STATE.

5. MONTHLY PAYMENT SCHEDULE. IF A PRIMA FACIE CASE HAS BEEN ESTABLISHED, THE COURT OFFICER OR MEDIATOR PRESIDING OVER THE SETTLEMENT CONFERENCE SET FORTH IN RULE THIRTY-FOUR HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES SHALL WORK WITH THE PARTIES TO ESTABLISH THE TERMS OF A MONTHLY PAYMENT SCHEDULE WHICH WILL PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNDER TERMS WHICH ARE EQUITABLE AND JUST. TOWARDS THAT END, THE COURT OFFICER OR MEDIATOR SHALL INQUIRE INTO THE FINANCES OF BOTH THE MORTGAGEE AND THE MORTGAGOR. THE PURPOSE OF SUCH INQUIRY SHALL BE TO DETERMINE THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE MORTGAGEE'S FINANCIAL POSITION AND TO DETERMINE THE AMOUNT WHICH THE MORTGAGOR WILL BE ABLE TO AFFORD. SUCH MONTHLY PAYMENTS SHALL BE APPLIED TO THE PRINCIPAL AND INTEREST UPON THE INDEBTEDNESS. IF THE FINANCIAL CONDITION OF THE MORTGAGOR EXCEEDS THE MINIMUM AMOUNT NECESSARY TO MAINTAIN THE FINANCIAL POSITION OF THE MORTGAGEE, SUCH MONTHLY AMOUNT MAY BE INCREASED BEYOND THE MINIMUM AMOUNT AS DETERMINED WITHIN THE DISCRETION OF THE COURT OFFICER OR MEDIATOR. IT IS WITHIN THE COURT OFFICER'S OR MEDIATOR'S DISCRETION TO DETERMINE WHETHER THE ESTABLISHMENT OF SUCH PAYMENT SCHEDULE IS POSSIBLE UNDER TERMS WHICH ARE EQUITABLE AND JUST. THE PURPOSE OF SUCH MONTHLY PAYMENTS IS TO PRESERVE THE RELATIVE FINANCIAL INTERESTS OF BOTH PARTIES UNTIL A SETTLEMENT CAN BE REACHED BUT IN NO EVENT SHALL SUCH ORDER GOVERN FOR MORE THAN ONE YEAR.

FAILURE TO ADHERE TO THE TERMS OF SUCH SCHEDULE MAY ALSO RESULT IN FORECLOSURE OR LIFTING OF THE ABEYANCE.

6. POSTPONEMENT ORDER. ONCE THE COURT DETERMINES THAT AN EQUITABLE AND JUST PAYMENT SCHEDULE CAN BE ESTABLISHED, IT SHALL ISSUE AN ORDER WHICH SETS FORTH THE TERMS OF SUCH PAYMENT SCHEDULE AND SERVE IT UPON ALL PARTIES TO THE PROCEEDING. SUCH ORDER SHALL SET FORTH A RETURN DATE FOR THE RE-EXAMINATION OF SUCH MATTER AFTER PASSAGE OF THE POSTPONEMENT TIME PERIOD AT A FORMAL HEARING ON NOTICE TO THE PARTIES. THE COURT MAY TAILOR RELIEF AS REQUIRED BY THE FACTS OF EACH CASE THAT FALLS WITHIN THE PURVIEW OF THIS SECTION. HOWEVER, IN NO EVENT SHALL SUCH ORDER POSTPONE FINAL ACTION BEYOND ONE YEAR WITHOUT A RE-EXAMINATION OF THE PARTIES' FINANCIAL CIRCUMSTANCES AFTER FORMAL HEARING ON NOTICE TO THE PARTIES. THE TIME PERIOD OF SUCH ORDER SHALL RUN FROM THE DATE OF THE ENTRY OF SUCH ORDER. SUCH ABEYANCE SHALL NOT BEGIN UNTIL THE FORECLOSURE PROCESS HAS REACHED THE POINT WHERE A FINAL DETERMINATION IS POSSIBLE BUT SHALL BE WITHHELD UNTIL THE POSTPONEMENT PERIOD HAS ELAPSED. ENTITLEMENT TO SUCH ABEYANCE MAY BE ESTABLISHED AT ANY TIME REGARDLESS OF WHETHER FORECLOSURE IS BEING SOUGHT BY THE MORTGAGEE. MULTIPLE POSTPONEMENTS MAY BE GRANTED IN THE DISCRETION OF THE COURT IF WARRANTED BY THE FACTS OF A GIVEN CASE AND THE ECONOMIC CONDITIONS ACROSS THE STATE.

7. CONTINUING JURISDICTION. THE COURT SHALL MAINTAIN CONTINUING JURISDICTION OF THE MATTER UNTIL IT REACHES FINAL RESOLUTION. UPON THE APPLICATION OF EITHER PARTY, PRIOR TO THE EXPIRATION OF THE POSTPONEMENT PERIOD, UPON PRESENTATION OF EVIDENCE THAT THE TERMS FIXED BY THE COURT ARE NO LONGER JUST AND EQUITABLE, THE COURT MAY REVISE AND ALTER SUCH TERMS IN SUCH MANNER AS THE CHANGED CIRCUMSTANCES AND CONDITIONS MAY REQUIRE.

S 9. Section 1311 of the real property actions and proceedings law is amended by adding two new subdivisions 5 and 6 to read as follows:

5. A PERSON MAY NOT BE NAMED AS A PARTY DEFENDANT BY USE OF A PSEUDONYM UNLESS PLAINTIFF HAS SUBMITTED TO THE COURT AN AFFIDAVIT ATTESTING TO THE INQUIRY UNDERTAKEN SO AS TO DEMONSTRATE THAT REASONABLE AND DILIGENT EFFORTS WERE MADE TO ASCERTAIN THE IDENTITY OF SUCH DEFENDANT.

6. THE TENANCY OF A TENANT WHO IS NOT NAMED AS A PARTY DEFENDANT IN THE ACTION SHALL NOT BE AFFECTED IN ANY WAY BY THE JUDGMENT IN THE ACTION. THE INTEREST OF THE PREVAILING PLAINTIFF IN THE ACTION AND ANY PURCHASER PURSUANT TO A FORECLOSURE SALE SHALL BE SUBJECT TO THE INTEREST OF ANY SUCH TENANT.

S 10. The real property actions and proceedings law is amended by adding a new section 1316 to read as follows:

S 1316. THE COURT SHALL NOTIFY THE DEFENDANT OF ANY FORECLOSURE ACTION ON A RESIDENTIAL MORTGAGE LOAN, IN WHICH THE ACTION WAS INITIATED BUT WHERE THE FINAL ORDER OF JUDGMENT WAS NOT ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, THAT SUCH DEFENDANT MAY REQUEST A SETTLEMENT CONFERENCE IN ACCORDANCE WITH RULE THIRTY-FOUR HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 11. Section 1351 of the real property actions and proceedings law is amended by adding a new subdivision 4 to read as follows:

4. THE TENANCY OF A TENANT WHO IS NOT NAMED AS A PARTY DEFENDANT IN THE ACTION SHALL NOT BE AFFECTED IN ANY WAY BY THE JUDGMENT IN THE ACTION. THE INTEREST OF THE PREVAILING PLAINTIFF IN THE ACTION AND ANY PURCHASER PURSUANT TO A FORECLOSURE SALE SHALL BE SUBJECT TO THE INTEREST OF ANY SUCH TENANT.

S 12. 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. IF THE PROPERTY TO BE DELIVERED INCLUDES A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING, THE JUDGMENT IN A FORECLOSURE ACTION SHALL PROVIDE THAT ONLY AN OCCUPANT OF SUCH DWELLING UNIT WHO WAS NAMED AS A DEFENDANT IN THE FORECLOSURE ACTION AND WHO WAS SERVED WITH THE NOTICE REQUIRED BY SECTION THIRTEEN HUNDRED THREE OF THIS CHAPTER MAY BE SUBJECT TO AN EXECUTION DIRECTING DELIVERY OF SUCH DWELLING UNIT AND SUCH OCCUPANT SHALL BE SERVED WITH A NINETY-DAY NOTICE TO QUIT, IN THE MANNER PRESCRIBED IN SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS CHAPTER, PRIOR TO THE EXECUTION OF THAT PART OF THE JUDGMENT THAT DIRECTS DELIVERY OF POSSESSION OF THE DWELLING UNIT.

S 13. 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] THE RESPONDENT WHO IS NOT THE OCCUPANT OF A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING.

S 14. The real property actions and proceedings law is amended by adding a new section 713-b to read as follows:

S 713-B. GROUNDS WHERE NO LANDLORD-TENANT RELATIONSHIP EXISTS AFTER FORECLOSURE SALE OF RESIDENTIAL PROPERTY. A SPECIAL PROCEEDING MAY BE MAINTAINED UNDER THIS ARTICLE TO OBTAIN POSSESSION OF A DWELLING UNIT LOCATED IN A RESIDENTIAL BUILDING AFTER A NINETY-DAY NOTICE TO QUIT HAS BEEN SERVED UPON THE RESPONDENT IN THE MANNER PRESCRIBED IN SECTION SEVEN HUNDRED THIRTY-FIVE OF THIS ARTICLE, UPON THE FOLLOWING GROUND: THE PROPERTY HAS BEEN SOLD IN FORECLOSURE AND RESPONDENT WAS NAMED AS A DEFENDANT IN THE FORECLOSURE ACTION AND WAS SERVED WITH THE NOTICE REQUIRED BY SECTION THIRTEEN HUNDRED THREE OF THIS CHAPTER 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 THE RESPONDENT.

S 15. Rule 3408 of the civil practice law and rules is REPEALED and a new rule 3408 is added to read as follows:

RULE 3408. MANDATORY SETTLEMENT CONFERENCE IN RESIDENTIAL FORECLOSURE ACTIONS. 1. IN ANY RESIDENTIAL FORECLOSURE ACTION IN WHICH THE DEFENDANT IS A RESIDENT OF THE PROPERTY SUBJECT TO FORECLOSURE, THE COURT SHALL HOLD A MANDATORY CONFERENCE WITHIN NINETY 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.

2. THE COURT SHALL CAUSE A NOTICE TO BE SENT TO THE PARTIES BY CERTIFIED MAIL INFORMING THEM OF THE DATE, TIME, AND LOCATION OF THE CONFERENCE, AND INFORMING THE HOMEOWNER OF HIS OR HER OPTION OF PARTICIPATION IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM. THE NOTICE SHALL INCLUDE THE HOTLINE ESTABLISHED BY THE BANKING DEPARTMENT AND A STATEMENT THAT THE HOMEOWNER MUST COMPLETE A COUNSELING SESSION PRIOR TO HIS OR HER SCHEDULED SETTLEMENT CONFERENCE IN ORDER TO PARTICIPATE IN THE RESIDENTIAL MORTGAGE FORECLOSURE DIVERSION PROGRAM.

3. IF THE HOMEOWNER COMPLETES A COUNSELING SESSION WITH A COUNSELOR FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE BANKING DEPARTMENT, SUCH COUNSELOR SHALL SEND A LOAN MODIFICATION PROPOSAL TO THE FORECLOSING PARTY AT LEAST TEN DAYS PRIOR TO THE SETTLEMENT CONFERENCE. THE FORECLOSING PARTY SHALL, PRIOR TO THE SETTLEMENT CONFERENCE, REVIEW THE MODIFICATION PROPOSAL AND MAKE A GOOD FAITH EFFORT TO REACH A RESOLUTION WITH THE HOMEOWNER.

4. AT THE INITIAL CONFERENCE HELD PURSUANT TO THIS SECTION, ANY DEFENDANT CURRENTLY APPEARING PRO SE, SHALL BE DEEMED TO HAVE MADE A MOTION TO PROCEED AS A POOR PERSON UNDER SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER. THE COURT SHALL DETERMINE WHETHER SUCH PERMISSION SHALL BE GRANTED PURSUANT TO STANDARDS SET FORTH IN SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER. IF THE COURT APPOINTS DEFENDANT COUNSEL PURSUANT TO SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TWO OF THIS CHAPTER, IT SHALL ADJOURN THE CONFERENCE TO A DATE CERTAIN FOR APPEARANCE OF COUNSEL AND SETTLEMENT DISCUSSIONS PURSUANT TO SUBDIVISION ONE OF THIS SECTION, AND OTHERWISE SHALL PROCEED WITH THE CONFERENCE.

5. AT ANY CONFERENCE HELD PURSUANT TO THIS SECTION, THE PLAINTIFF SHALL APPEAR IN PERSON OR BY COUNSEL. ANY PERSON REPRESENTING THE PLAINTIFF SHALL HAVE FULL SETTLEMENT AUTHORITY, INCLUDING THE AUTHORITY TO DISPOSE OF THE CASE AND TO ENTER INTO OR APPROVE A LOAN MODIFICATION OR WORKOUT AGREEMENT. THE DEFENDANT-MORTGAGOR SHALL APPEAR IN PERSON OR BY COUNSEL. SUCH APPEARANCE AND PARTICIPATION BY THE DEFENDANT-MORTGAGOR SHALL NOT CONSTITUTE AN APPEARANCE IN THE ACTION NOR SHALL IT BE DEEMED TO BE A WAIVER, IN WHOLE OR IN PART, OF ANY DEFENSES, JURISDICTIONAL OR OTHERWISE, THAT THE DEFENDANT-MORTGAGOR MAY HAVE TO THE ACTION. ANY AND ALL STATEMENTS MADE, WHETHER ORAL OR WRITTEN, AND ANY OR ALL INFORMATION EXCHANGED AT THE CONFERENCE, SHALL BE SOLELY FOR THE PURPOSES OF RESOLUTION AND SETTLEMENT AND SHALL NOT BE DEEMED TO BE THE ADMISSIONS OF ANY PARTY WITH RESPECT TO THE UNDERLYING ACTION. 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 PLAINTIFF OR THE PLAINTIFF'S REPRESENTATIVE TO ATTEND THE SETTLEMENT CONFERENCE TELEPHONICALLY OR BY VIDEO-CONFERENCE. UNTIL ALL THE PROVISIONS AND PROCEDURES OF THE SETTLEMENT CONFERENCE ARE CONCLUDED, THE MORTGAGEE SHALL BE PRECLUDED FROM FILING A MOTION FOR SUMMARY JUDGMENT OR ORDER OF REFERENCE OR OTHERWISE PROCEEDING WITH THE FORECLOSURE CASE. THE FAILURE OF THE PLAINTIFF TO APPEAR AT A SCHEDULED CONFERENCE WITHOUT GOOD CAUSE OR APPEARANCE BY A REPRESENTATIVE WITHOUT FULL AUTHORITY TO ENTER INTO A SETTLEMENT, MODIFICATION OR WORKOUT AGREEMENT SHALL SUBJECT THE PLAINTIFF AND/OR

COUNSEL TO APPROPRIATE REMEDIAL ACTION INCLUDING BUT NOT LIMITED TO DEFAULT, NON-SUIT OR DISMISSAL WITH PREJUDICE.

6. BOTH PARTIES MUST HAVE ANY SUPPORTING DOCUMENTATION WITH THEM AT THE TIME OF THE CONFERENCE. IF THE HOMEOWNER ATTENDED A COUNSELING SESSION WITH AN APPROVED COUNSELOR, SUCH COUNSELOR MUST HAVE GIVEN A LOAN MODIFICATION PROPOSAL TO THE FORECLOSING PARTY AT LEAST TEN DAYS PRIOR TO THE SETTLEMENT CONFERENCE.

7. THE COURT SHALL PRESIDE OVER THE CONFERENCE IN AN EFFORT TO ESTABLISH A REPAYMENT PLAN THAT IS ACCEPTABLE TO THE LENDER THAT ALLOWS THE HOMEOWNER TO REMAIN IN THE HOME.

8. AFTER THE SETTLEMENT CONFERENCE, THE COURT SHALL PRODUCE A REPORT FINALIZING AND DETAILING ANY TERMS AND CONDITIONS THAT HAVE BEEN AGREED UPON BY THE PARTIES. SUCH REPORT SHALL BE MADE PART OF THE RECORD FOR THE ACTION.

S 16. Section 3-a of chapter 472 of the laws of 2008, amending the real property actions and proceedings law and other laws relating to foreclosure actions on home mortgage loans, is amended to read as follows:

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

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

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

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

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

S 17. Paragraph (e) of subdivision 1 of section 6-1 of the banking law, as added by chapter 626 of the laws of 2002 and subparagraph (i) as amended by chapter 552 of the laws of 2007, is amended to read as follows:

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

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

(ii) The borrower is a natural person;

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

(iv) The loan is secured by a mortgage or deed of trust on real estate [upon which there is located or there is to be located a structure or structures intended principally for occupancy of from one to four 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 18. Paragraphs (r) and (s) of subdivision 2 of section 6-l of the banking law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

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

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

S 19. Paragraph (d) of subdivision 1 and paragraphs (l) and (n) of subdivision 2 of section 6-m of the banking law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

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

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

(ii) The borrower is a natural person;

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

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

(v) The property is located in this state.

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

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

S 20. Subdivisions 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of section 6-m of the banking law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 21. The banking law is amended by adding a new section 6-n to read as follows:

S 6-N. COUNSELING OF MORTGAGEES. 1. THE DEPARTMENT SHALL ESTABLISH A PROCEDURE TO COUNSEL HOMEOWNERS WHOSE PROPERTY IS SUBJECT TO OR ABOUT TO BECOME SUBJECT TO FORECLOSURE.

2. A COUNSELOR FROM A NOT-FOR-PROFIT ASSISTANCE PROVIDER APPROVED BY THE DEPARTMENT SHALL MEET WITH ALL HOMEOWNERS PRIOR TO THEIR SCHEDULED SETTLEMENT CONFERENCE. THE COUNSELOR SHALL ALSO CONSULT WITH THE FORECLOSING PARTY OR SUCH PARTY'S REPRESENTATIVE AND ATTEMPT TO FORMULATE A REPAYMENT SCHEDULE THAT IS ACCEPTABLE TO BOTH THE HOMEOWNER AND THE FORECLOSING PARTY. IF THE PARTIES AGREE, THEY SHALL FILE A CERTIFICATE OF RESOLUTION WITH THE COURT OF JURISDICTION.

3. IF THE COUNSELOR IS UNABLE TO NEGOTIATE AN ACCEPTABLE RESOLUTION, THE PARTIES SHALL FILE A CERTIFICATE OF PARTICIPATION WITH THE COURT OF JURISDICTION AND THE SCHEDULED SETTLEMENT CONFERENCE SHALL PROCEED.

S 22. Paragraphs (a) and (d) of subdivision 1 of section 590 of the banking law, as added by chapter 571 of the laws of 1986, are amended to read as follows:

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

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

S 23. 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 24. Paragraphs (b) and (b-1) of subdivision 2 of section 590 of the banking law, paragraph (b) as amended and paragraph (b-1) as added by chapter 472 of the laws of 2008, are amended to read as follows:

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

(b-1) No person, partnership, association, corporation or other entity shall engage in the business of servicing mortgage loans with respect to any property located in this state without first being registered with the superintendent as a mortgage loan servicer in accordance with the registration procedure provided by such regulations as may be prescribed by the superintendent. The superintendent may refuse to register a mortgage loan servicer on the same grounds that he or she may refuse to issue a registration certificate to a mortgage broker pursuant to subdivision two of section five hundred ninety-two-a of this article. The registration provisions of this subdivision shall not apply to any exempt organization, mortgage banker, or mortgage broker or any person or entity which shall be exempted in accordance with regulations prescribed by the superintendent hereunder; provided that such exempt organization, mortgage banker, mortgage broker, or exempted person notifies the superintendent that it is acting as a mortgage loan servicer in this state and complies with any regulation applicable to mortgage loan servicers, promulgated by the banking board or prescribed by the superintendent with respect to mortgage loan servicers. THE SUPERINTENDENT MAY REQUIRE ALL REGISTRATIONS AND NOTIFICATIONS TO BE MADE THROUGH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. AN APPLICATION TO BECOME A REGISTERED MORTGAGE LOAN SERVICER OR ANY APPLICATION WITH RESPECT TO A MORTGAGE LOAN SERVICER SHALL BE ACCOMPANIED BY A FEE AS PRESCRIBED PURSUANT TO SECTION EIGHTEEN-A OF THIS CHAPTER. ANY FEE ESTABLISHED PURSUANT TO THIS SUBDIVISION MAY BE COLLECTED BY AND INCLUDE A PROCESSING FEE CHARGED BY THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY. ANY SUCH PROCESSING FEES SHALL NOT BE REMITTED TO THE SUPERINTENDENT AND SHALL NOT BE DEEMED REVENUE PURSUANT TO THIS CHAPTER OR THE STATE FINANCE LAW.

S 25. 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 26. Subdivisions 1, 2 and 4 of section 187.00 of the penal law, as added by chapter 472 of the laws of 2008, are amended to read as follows:

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.

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 27. 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 28. The judiciary law is amended by adding a new section 2-c to read as follows:

S 2-C. INDIVIDUAL ASSIGNMENTS. THE UNIFIED COURT SYSTEM, IN ACCORDANCE WITH THEIR INDIVIDUAL ASSIGNMENT SYSTEM, SHALL ENSURE THAT ALL CAUSES OF ACTION TO FORECLOSE ON REAL PROPERTY SHALL BE ASSIGNED TO THE SAME JUDGE OR JUDGES, TO THE EXTENT PRACTICABLE.

S 29. 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 30. Sections 1 and 2 of part NN of chapter 57 of the laws of 2008, relating to authorizing the New York state mortgage agency to transfer certain moneys, as amended by section 1 of part B of chapter 2 of the laws of 2009, are amended to read as follows:

Section 1. Notwithstanding any other provision of law, and provided that the reserves in the project pool insurance-account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the agency) required to accomplish the purposes of such account, the board of directors of the state of New York mortgage agency, shall, as soon as practicable but not later than July 1, 2008, transfer a sum not to exceed one hundred million dollars from the project pool insurance account of the mortgage insurance fund as follows: a sum not to exceed fifty-four million dollars to the New York state housing finance agency for its Mitchell Lama Rehabilitation and Preservation Program and its All Affordable Program; a sum not to exceed six million dollars to the Long Island Housing Partnership for its Homeownership and Economic Stabilization for Long Island Program; a sum not to exceed twenty-five million dollars to the New York state housing trust fund corporation (the "corporation") for the provision of [subprime] foreclosure prevention services as provided in section two of this act; and a sum not to exceed fifteen million dollars to the corporation for the greater Catskills flood remediation program as provided in section three of this act.

S 2. Within the amounts transferred to the corporation pursuant to section one of this act for [subprime] foreclosure prevention services, the corporation shall, in consultation with the division of housing and community renewal, the banking department and the office of court administration, develop and administer a [subprime] foreclosure prevention services program which shall provide assistance related to foreclosure prevention to homeowners who entered into [subprime or unconventional] mortgages, including grants and aid to non-profit organizations to provide counseling, mediation, legal representation, and negotiation on behalf of borrowers facing default or foreclosure, training and support for counselors, mediators, and lawyers regarding such assistance to homeowners, and credit counseling. Such assistance shall only be offered to borrowers who are natural persons who hold a [subprime or unconventional] home loan that is secured by a mortgage or deed of trust on real estate upon which there is located a structure or structures intended principally for occupancy of from one to four families and which is occupied by the borrower as the borrower's principal dwelling and is located in this state. [For purposes of this section, "subprime or unconventional mortgage" shall mean: for a first lien loan, one that has an annual percentage rate of three or more percentage points above the yield on treasury securities of comparable maturity measured as of the fifteenth day of the month immediately preceding the month in which the application for the loan is received by the lender; for a subordinate lien loan, one that has an annual percentage rate of five or more percentage points above the yield on treasury securities of comparable maturity measured as of the fifteenth day of the month immediately preceding the month in which the application for the loan is received by the lender; or a mortgage that is a "nontraditional mortgage" as such term is described in the "Interagency Guidance on Nontraditional Mortgage Product Risks" issued September 29, 2006, and published in 71 Federal Register, 58609, on October 4, 2006, as updated.] The corporation shall develop application procedures for non-profit agencies to use to apply for funds to carry out the provisions of this section, criteria for evaluating such applications, including criteria that would encourage collaborative applications by multiple non-profit agencies, and criteria for use by the non-profits that receive assistance pursuant to this section to rank applications for assistance from eligible homeowners for the provisions of [subprime] foreclosure prevention services, and which shall consider the need for assistance and opportunity to successfully restructure the applicable mortgage to allow the homeowner to continue to occupy the home. The corporation, in consultation with the division of housing and community renewal, the banking department, and the office of court administration, shall submit a report to the governor, the speaker of the assembly, and the temporary president of the senate on or before December 31, 2008, on the implementation of this act. Such report shall include, but not be limited to, for each provider receiving funds under this act, a description of such provider's contract amount, the specific foreclosure prevention activities performed by such provider, and the number of persons and households served by each provider and the number of requests for assistance that could not be granted. The report shall also include an analysis of mortgage defaults in the state, the causes of such defaults, the unmet needs that exist in the state due to defaults on loans, foreclosures of homes, rates of foreclosures, the need for direct assistance to homeowners, and the ability of homeowners to successfully comply with mortgage terms or negotiate changes in their mortgages in order to remain in their homes.

S 31. 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 32. This act shall take effect immediately; provided, however, that:

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

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

c. Section six 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 seven of this act shall take effect on the ninetieth day after it shall have become a law and shall expire and be deemed repealed 5 years after such date;

e. Section fifteen of this act shall take effect on the ninetieth day after this act shall have become a law and shall apply to legal actions filed on or after such date;

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

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

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

i. Sections one, two, three, eight, nine, ten, eleven, fourteen, twenty-one and twenty-eight of this act shall take effect on the ninetieth day after this act shall have become a law.