

S. 7

A. 7

Twentieth Extraordinary Session

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

November 16, 2009

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

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

AN ACT to amend the real property actions and proceedings law, the uniform commercial code, the civil practice law and rules, the banking law and chapter 472 of the laws of 2008 amending the real property actions and proceedings law and other laws relating to foreclosure actions on home mortgage loans, in relation to home mortgage loans; to amend the penal law, in relation to the crime of mortgage fraud; and to amend the real property law, in relation to distressed property consultants; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. Section 1303 of the real property actions and proceedings
2 law, as amended by chapter 472 of the laws of 2008, is amended to read
3 as follows:
4 S 1303. Foreclosures; required notices. 1. The foreclosing party in a
5 mortgage foreclosure action, [which involves] INVOLVING residential real
6 property [consisting of owner-occupied one-to-four-family dwellings]
7 shall provide notice to [the mortgagor]:
8 (A) ANY MORTGAGOR IF THE ACTION RELATES TO AN OWNER-OCCUPIED
9 ONE-TO-FOUR FAMILY DWELLING; AND
10 (B) ANY TENANT OF A DWELLING UNIT in accordance with the provisions of
11 this section [with regard to information and assistance about the fore-
12 closure process].

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

LBD12043-20-9

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

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

Help for Homeowners in Foreclosure

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

Summons and Complaint

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

Sources of Information and Assistance

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

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

Foreclosure rescue scams

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

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

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

NOTICE TO TENANTS OF BUILDINGS IN FORECLOSURE

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

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

17 IF YOU NEED FURTHER INFORMATION, PLEASE CALL THE NEW YORK STATE BANK-
18 ING DEPARTMENT'S TOLL-FREE HELPLINE AT 1-877-BANK-NYS (1-877-226-5697)
19 OR VISIT THE DEPARTMENT'S WEBSITE AT [HTTP://WWW.BANKING.STATE.NY.US](http://www.banking.state.ny.us).

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

22 [5] 7. The banking department shall post on its website or otherwise
23 make readily available the name and contact information of government
24 agencies or non-profit organizations that may be contacted BY MORTGAGORS
25 for information about the foreclosure process, including maintaining a
26 toll-free helpline to disseminate the information required by this
27 section.

28 S 1-a. Subdivisions 1, 2 and 5 of section 1304 of the real property
29 actions and proceedings law, as added by chapter 472 of the laws of
30 2008, are amended to read as follows:

31 1. Notwithstanding any other provision of law, with regard to a [high-
32 cost] home loan[, as such term is defined in section six-l of the bank-
33 ing law, a subprime home loan or a non-traditional home loan], at least
34 ninety days before a lender, AN ASSIGNEE or a mortgage loan servicer
35 commences legal action against the borrower, including mortgage foreclo-
36 sure, [the] SUCH lender, ASSIGNEE or mortgage loan servicer shall give
37 notice to the borrower in at least fourteen-point type which shall
38 include the following:

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

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

45 If you are experiencing financial difficulty, you should know that
46 there are several options available to you that may help you keep your
47 home. Attached to this notice is a list of government approved housing
48 counseling agencies in your area which provide free or very low-cost
49 counseling. You should consider contacting one of these agencies imme-
50 diately. These agencies specialize in helping homeowners who are facing
51 financial difficulty. Housing counselors can help you assess your finan-
52 cial condition and work with us to explore the possibility of modifying
53 your loan, establishing an easier payment plan for you, or even working
54 out a period of loan forbearance. If you wish, you may also contact us
55 directly at _____ and ask to discuss possible options.

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

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

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

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

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

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

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

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

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

41 [(iv)] (III) The loan is secured by a mortgage or deed of trust on
42 real estate [upon which there is located or there is to be located a
43 structure or structures intended principally for occupancy of from one
44 to four families which is or will be occupied by the borrower as the
45 borrower's principal dwelling] IMPROVED BY A ONE TO FOUR FAMILY DWELL-
46 ING, OR A CONDOMINIUM UNIT, IN EITHER CASE, USED OR OCCUPIED, OR
47 INTENDED TO BE USED OR OCCUPIED WHOLLY OR PARTLY, AS THE HOME OR RESI-
48 DENCE OF ONE OR MORE PERSONS AND WHICH IS OR WILL BE OCCUPIED BY THE
49 BORROWER AS THE BORROWER'S PRINCIPAL DWELLING; and

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

51 [(c) "Subprime home loan" for the purposes of this section, means a
52 home loan consummated between January first, two thousand three and
53 September first, two thousand eight in which the terms of the loan
54 exceed the threshold as defined in paragraph (d) of this subdivision. A
55 subprime home loan excludes a transaction to finance the initial
56 construction of a dwelling, a temporary or "bridge" loan with a term of

1 twelve months or less, such as a loan to purchase a new dwelling where
2 the borrower plans to sell a current dwelling within twelve months, or a
3 home equity line of credit.

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

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

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

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

34 S 2. Section 9-611 of the uniform commercial code is amended by adding
35 a new subsection (f) to read as follows:

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

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

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

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

53 HELP FOR HOMEOWNERS AT RISK OF FORECLOSURE
54 NEW YORK STATE LAW REQUIRES THAT WE SEND YOU THIS INFORMATION ABOUT THE
55 FORECLOSURE PROCESS. PLEASE READ IT CAREFULLY.
56 NOTICE

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

5 SOURCES OF INFORMATION AND ASSISTANCE

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

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

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

17 FORECLOSURE RESCUE SCAMS

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

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

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

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

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

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

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

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

S 4. The real property actions and proceedings law is amended by adding a new section 1305 to read as follows:

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

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

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

(C) "TENANT" SHALL MEAN ANY PERSON WHO AT THE TIME THE NOTICE REQUIRED BY SUBDIVISION FOUR OF SECTION THIRTEEN HUNDRED THREE OF THIS ARTICLE APPEARS AS A LESSEE ON A LEASE OF ONE OR MORE DWELLING UNITS OF A RESIDENTIAL REAL PROPERTY THAT IS SUBORDINATE TO THE MORTGAGE ON SUCH RESIDENTIAL REAL PROPERTY; OR WHO AT SUCH TIME IS A PARTY TO AN ORAL OR IMPLIED RENTAL AGREEMENT WITH THE MORTGAGOR AND OBLIGATED TO PAY RENT TO THE MORTGAGOR OR SUCH MORTGAGOR'S REPRESENTATIVE, FOR THE USE OR OCCUPANCY OF ONE OR MORE DWELLING UNITS OF A RESIDENTIAL REAL PROPERTY.

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

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND CONSISTENT WITH SUBDIVISION TWO OF THIS SECTION, A SUCCESSOR IN INTEREST OF RESIDENTIAL REAL PROPERTY SHALL PROVIDE WRITTEN NOTICE TO ALL TENANTS: (A) THAT THEY ARE ENTITLED TO REMAIN IN OCCUPANCY OF SUCH PROPERTY FOR THE REMAINDER OF THE LEASE TERM, OR A PERIOD OF NINETY DAYS FROM THE DATE OF MAILING

1 OF SUCH NOTICE, WHICHEVER IS GREATER, ON THE SAME TERMS AND CONDITIONS
2 AS WERE IN EFFECT AT THE TIME OF ENTRY OF THE JUDGMENT OF FORECLOSURE
3 AND SALE, OR IF NO SUCH JUDGMENT WAS ENTERED, UPON THE TERMS AND CONDI-
4 TIONS AS WERE IN EFFECT AT THE TIME OF TRANSFER OF OWNERSHIP OF SUCH
5 PROPERTY; AND (B) OF THE NAME AND ADDRESS OF THE NEW OWNER. ANY PERSON
6 OR ENTITY WHO OR WHICH BECOMES A SUCCESSOR IN INTEREST AFTER THE ISSU-
7 ANCE OF THE NINETY-DAY NOTICE PROVIDED FOR IN THIS SUBDIVISION, SHALL
8 NOTIFY ALL TENANTS OF ITS NAME AND ADDRESS AND SHALL ASSUME SUCH INTER-
9 EST SUBJECT TO THE RIGHT OF THE TENANT TO MAINTAIN POSSESSION AS
10 PROVIDED IN THIS SUBDIVISION.

11 4. ACCEPTANCE OF RENTAL PAYMENTS BY ANY SUCCESSOR IN INTEREST ON TERMS
12 PROVIDED IN SUBDIVISION THREE OF THIS SECTION SHALL NOT AFFECT THE RIGHT
13 OF THE SUCCESSOR IN INTEREST TO EVICT SUCH TENANT, AS PROVIDED BY LAW,
14 UPON THE EXPIRATION OF THE TIME PERIOD AS PROVIDED IN SUBDIVISION TWO OF
15 THIS SECTION OR EARLIER IF THE TENANT DOES NOT PAY RENT PURSUANT TO ANY
16 LEASE OR ORAL OR IMPLIED RENTAL AGREEMENT IN EFFECT AT THE TIME OF ISSU-
17 ANCE OF THE JUDGMENT OF FORECLOSURE, OR IF NO SUCH JUDGMENT WAS ISSUED,
18 UPON THE TERMS AND CONDITIONS AS WERE IN EFFECT AT THE TIME OF TRANSFER
19 OF OWNERSHIP OF SUCH PROPERTY.

20 5. THE RIGHTS CONFERRED UPON A TENANT BY SUBDIVISION TWO OF THIS
21 SECTION SHALL BE IN ADDITION TO ANY OTHER RIGHTS OF SUCH TENANT, UNDER
22 LAW, INCLUDING THOSE RIGHTS CONFERRED UPON: (A) ANY TENANT NOT NAMED IN
23 THE FORECLOSURE ACTION; OR (B) ANY TENANT WHOSE TENANCY IS SUBSIDIZED BY
24 THE FEDERAL GOVERNMENT, THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS
25 STATE; OR (C) ANY TENANT WHOSE TENANCY IS SUBJECT TO RENT CONTROL, RENT
26 STABILIZATION, OR FEDERAL STATUTORY SCHEMES.

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

29 S 1306. FILING WITH SUPERINTENDENT. 1. EACH LENDER, ASSIGNEE OR
30 MORTGAGE LOAN SERVICER SHALL FILE WITH THE SUPERINTENDENT OF BANKS
31 (SUPERINTENDENT) WITHIN THREE BUSINESS DAYS OF THE MAILING OF THE NOTICE
32 REQUIRED BY SUBDIVISION ONE OF SECTION THIRTEEN HUNDRED FOUR OF THIS
33 ARTICLE OR SUBSECTION (F) OF SECTION 9-611 OF THE UNIFORM COMMERCIAL
34 CODE THE INFORMATION REQUIRED BY SUBDIVISION TWO OF THIS SECTION.
35 NOTWITHSTANDING ANY OTHER PROVISION OF THE LAWS OF THIS STATE, THIS
36 FILING SHALL BE MADE ELECTRONICALLY AS PROVIDED FOR IN SUBDIVISION THREE
37 OF THIS SECTION. ANY COMPLAINT SERVED IN A PROCEEDING INITIATED PURSU-
38 ANT TO THIS ARTICLE SHALL CONTAIN, AS A CONDITION PRECEDENT TO SUCH
39 PROCEEDING, AN AFFIRMATIVE ALLEGATION THAT AT THE TIME THE PROCEEDING IS
40 COMMENCED, THE PLAINTIFF HAS COMPLIED WITH THE PROVISIONS OF THIS
41 SECTION.

42 2. EACH FILING DELIVERED TO THE SUPERINTENDENT SHALL BE ON SUCH FORM
43 AS THE SUPERINTENDENT SHALL PRESCRIBE, AND SHALL INCLUDE AT A MINIMUM,
44 THE NAME, ADDRESS, LAST KNOWN TELEPHONE NUMBER OF THE BORROWER, AND THE
45 AMOUNT CLAIMED AS DUE AND OWING ON THE MORTGAGE, AND SUCH OTHER INFORMA-
46 TION AS WILL ENABLE THE SUPERINTENDENT TO ASCERTAIN THE TYPE OF LOAN AT
47 ISSUE. THE SUPERINTENDENT MAY SUBSEQUENTLY REQUEST SUCH READILY AVAIL-
48 ABLE INFORMATION AS MAY BE REASONABLY NECESSARY TO FACILITATE A REVIEW
49 OF WHETHER THE BORROWER MIGHT BENEFIT FROM COUNSELING OR OTHER FORECLO-
50 SURE PREVENTION SERVICES.

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

1 4. THE INFORMATION PROVIDED TO THE SUPERINTENDENT PURSUANT TO THIS
2 SUBDIVISION SHALL NOT BE SUBJECT TO ARTICLE SIX OF THE PUBLIC OFFICERS
3 LAW OR PARAGRAPHS (A), (C) AND (D) OF SUBDIVISION ONE OR SUBDIVISION SIX
4 OF SECTION NINETY-FOUR OF THE PUBLIC OFFICERS LAW. ALL SUCH INFORMATION
5 SHALL BE USED BY THE SUPERINTENDENT EXCLUSIVELY FOR THE PURPOSES OF
6 MONITORING ON A STATEWIDE BASIS THE EXTENT OF FORECLOSURE FILINGS WITHIN
7 THIS STATE, TO PERFORM AN ANALYSIS OF LOAN TYPES WHICH WERE THE SUBJECT
8 OF A PRE-FORECLOSURE NOTICE AND DIRECTING AS APPROPRIATE AVAILABLE
9 PUBLIC AND PRIVATE FORECLOSURE PREVENTION AND COUNSELING SERVICES TO
10 BORROWERS AT RISK OF FORECLOSURE. THE SUPERINTENDENT MAY SHARE INFORMA-
11 TION CONTAINED IN THE DATABASE WITH HOUSING COUNSELING AGENCIES DESIG-
12 NATED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL AS WELL AS WITH
13 OTHER STATE AGENCIES WITH JURISDICTION OVER HOUSING, FOR THE PURPOSE OF
14 COORDINATING OR SECURING HELP FOR BORROWERS AT RISK OF FORECLOSURE.

15 5. THE SUPERINTENDENT IS HEREBY AUTHORIZED TO PROMULGATE SUCH RULES
16 AND REGULATIONS AS SHALL BE NECESSARY TO IMPLEMENT THE PURPOSES OF THIS
17 SECTION.

18 S 6. The real property actions and proceedings law is amended by
19 adding a new section 1307 to read as follows:

20 S 1307. DUTY TO MAINTAIN FORECLOSED PROPERTY. 1. A PLAINTIFF IN A
21 MORTGAGE FORECLOSURE ACTION WHO OBTAINS A JUDGMENT OF FORECLOSURE AND
22 SALE PURSUANT TO SECTION THIRTEEN HUNDRED FIFTY-ONE OF THIS ARTICLE,
23 INVOLVING RESIDENTIAL REAL PROPERTY, AS DEFINED IN SECTION THIRTEEN
24 HUNDRED FIVE OF THIS ARTICLE, THAT IS VACANT, OR BECOMES VACANT AFTER
25 THE ISSUANCE OF SUCH JUDGMENT, OR IS ABANDONED BY THE MORTGAGOR BUT
26 OCCUPIED BY A TENANT, AS DEFINED UNDER SECTION THIRTEEN HUNDRED FIVE OF
27 THIS ARTICLE, SHALL MAINTAIN SUCH PROPERTY UNTIL SUCH TIME AS OWNERSHIP
28 HAS BEEN TRANSFERRED THROUGH THE CLOSING OF TITLE IN FORECLOSURE, OR
29 OTHER DISPOSITION, AND THE DEED FOR SUCH PROPERTY HAS BEEN DULY
30 RECORDED; PROVIDED, HOWEVER, THAT IF A MUNICIPALITY OR GOVERNMENTAL
31 ENTITY HOLDS A MORTGAGE SUBORDINATE TO ONE OR MORE MORTGAGES ON THE
32 RESIDENTIAL REAL PROPERTY, THE MUNICIPALITY OR GOVERNMENTAL ENTITY SHALL
33 NOT BE SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

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

41 3. THE MUNICIPALITY IN WHICH SUCH RESIDENTIAL REAL PROPERTY IS
42 LOCATED, ANY TENANT LAWFULLY IN POSSESSION, AND A BOARD OF MANAGERS OF A
43 CONDOMINIUM IN WHICH THE PREMISES ARE LOCATED OR A HOMEOWNERS ASSOCI-
44 ATION IF SAID PREMISES ARE SUBJECT TO THE RULES AND REGULATIONS OF SUCH
45 AN ASSOCIATION, SHALL HAVE THE RIGHT TO ENFORCE THE OBLIGATIONS
46 DESCRIBED IN THIS SECTION IN ANY COURT OF COMPETENT JURISDICTION AFTER
47 AT LEAST SEVEN DAYS NOTICE TO THE PLAINTIFF IN THE FORECLOSURE ACTION
48 UNLESS EMERGENCY REPAIRS ARE REQUIRED. ANY ENTITY ACTING PURSUANT TO
49 THIS SUBDIVISION SHALL HAVE A CAUSE OF ACTION IN ANY COURT OF COMPETENT
50 JURISDICTION AGAINST THE PLAINTIFF IN THE FORECLOSURE ACTION TO RECOVER
51 COSTS INCURRED AS A RESULT OF MAINTAINING THE PROPERTY. THE AUTHORITY
52 PROVIDED BY THIS SUBDIVISION SHALL BE IN ADDITION TO, AND SHALL NOT BE
53 DEEMED TO DIMINISH OR REDUCE, ANY RIGHTS OF THE PARTIES DESCRIBED IN
54 THIS SECTION UNDER EXISTING LAW AGAINST THE MORTGAGOR OF SUCH PROPERTY
55 FOR FAILURE TO MAINTAIN SUCH PROPERTY.

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

7 5. FOR THE PURPOSES OF THIS SECTION "MAINTAIN" SHALL MEAN KEEPING THE
8 SUBJECT PROPERTY IN A MANNER THAT IS CONSISTENT WITH THE STANDARDS SET
9 FORTH IN THE NEW YORK PROPERTY MAINTENANCE CODE CHAPTER 3 SECTIONS 301,
10 302 (EXCLUDING 302.2, 302.6 AND 302.8), 304.1, 304.3, 304.7, 304.10,
11 304.12, 304.13, 304.15, 304.16, 307.1, AND 308.1; PROVIDED, HOWEVER,
12 THAT IF THE PROPERTY IS OCCUPIED BY A TENANT, THEN SUCH PROPERTY MUST
13 ALSO BE MAINTAINED IN A SAFE AND HABITABLE CONDITION.

14 6. A PLAINTIFF SHALL BE RELIEVED OF ITS RESPONSIBILITIES TO MAINTAIN
15 THE RESIDENTIAL REAL PROPERTY THAT IS THE SUBJECT OF A FORECLOSURE
16 ACTION FOR THE PERIOD THAT A RECEIVER OF SUCH PROPERTY IS SERVING.

17 7. NOTHING CONTAINED IN THIS SECTION SHALL DIMINISH IN ANY WAY THE
18 OBLIGATIONS PURSUANT TO ANY STATE OR LOCAL LAW OF THE MORTGAGOR OF THE
19 PROPERTY OR A RECEIVER OF RENTS AND PROFITS APPOINTED IN AN ACTION TO
20 FORECLOSE A MORTGAGE TO MAINTAIN THE PROPERTY PRIOR TO THE CLOSING OF
21 TITLE PURSUANT TO A FORECLOSURE SALE.

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

25 S 7. Section 221 of the real property actions and proceedings law, as
26 added by chapter 312 of the laws of 1962, is amended to read as follows:

27 S 221. Compelling delivery of possession of real property. Where a
28 judgment affecting the title to, or the possession, enjoyment or use of,
29 real property allots to any person a distinct parcel of real property,
30 or contains a direction for the sale of real property, or confirms such
31 an allotment or sale, it also may direct the delivery of the possession
32 of the property to the person entitled thereto, SUBJECT TO THE RIGHTS
33 AND OBLIGATIONS SET FORTH IN SECTION THIRTEEN HUNDRED FIVE OF THIS CHAP-
34 TER.

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

41 S 8. Subdivision 5 of section 713 of the real property actions and
42 proceedings law, as amended by chapter 642 of the laws of 1976, is
43 amended to read as follows:

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

49 S 9. Subdivision (a) of rule 3408 of the civil practice law and rules,
50 as added by chapter 472 of the laws of 2008, is amended and five new
51 subdivisions (d), (e), (f), (g) and (h) are added to read as follows:

52 (a) In any residential foreclosure action involving a [high-cost] home
53 loan [consummated between January first, two thousand three and Septem-
54 ber first, two thousand eight, or a subprime or nontraditional home
55 loan, as those terms are defined under section thirteen hundred four of
56 the real property actions and proceedings law] AS SUCH TERM IS DEFINED

1 IN SECTION THIRTEEN HUNDRED FOUR OF THE REAL PROPERTY ACTIONS AND
2 PROCEEDINGS LAW, in which the defendant is a resident of the property
3 subject to foreclosure, the court shall hold a mandatory conference
4 within sixty days after the date when proof of service is filed with the
5 county clerk, or on such adjourned date as has been agreed to by the
6 parties, for the purpose of holding settlement discussions pertaining to
7 the relative rights and obligations of the parties under the mortgage
8 loan documents, including, but not limited to determining whether the
9 parties can reach a mutually agreeable resolution to help the defendant
10 avoid losing his or her home, and evaluating the potential for a resolu-
11 tion in which payment schedules or amounts may be modified or other
12 workout options may be agreed to, and for whatever other purposes the
13 court deems appropriate.

14 (D) UPON THE FILING OF A REQUEST FOR JUDICIAL INTERVENTION IN ANY
15 ACTION PURSUANT TO THIS SECTION, THE COURT SHALL SEND EITHER A COPY OF
16 SUCH REQUEST OR THE DEFENDANT'S NAME, ADDRESS AND TELEPHONE NUMBER (IF
17 AVAILABLE) TO A HOUSING COUNSELING AGENCY OR AGENCIES ON A LIST DESIG-
18 NATED BY THE DIVISION OF HOUSING AND COMMUNITY RENEWAL FOR THE JUDICIAL
19 DISTRICT IN WHICH THE DEFENDANT RESIDES. SUCH INFORMATION SHALL BE USED
20 BY THE DESIGNATED HOUSING COUNSELING AGENCY OR AGENCIES EXCLUSIVELY FOR
21 THE PURPOSE OF MAKING THE HOMEOWNER AWARE OF HOUSING COUNSELING AND
22 FORECLOSURE PREVENTION SERVICES AND OPTIONS AVAILABLE TO THEM.

23 (E) THE COURT SHALL PROMPTLY SEND A NOTICE TO PARTIES ADVISING THEM OF
24 THE TIME AND PLACE OF THE SETTLEMENT CONFERENCE, THE PURPOSE OF THE
25 CONFERENCE AND THE REQUIREMENTS OF THIS SECTION. THE NOTICE SHALL BE IN
26 A FORM PRESCRIBED BY THE OFFICE OF COURT ADMINISTRATION, OR, AT THE
27 DISCRETION OF THE OFFICE OF COURT ADMINISTRATION, THE ADMINISTRATIVE
28 JUDGE OF THE JUDICIAL DISTRICT IN WHICH THE ACTION IS PENDING, AND SHALL
29 ADVISE THE PARTIES OF THE DOCUMENTS THAT THEY SHOULD BRING TO THE
30 CONFERENCE. FOR THE PLAINTIFF, SUCH DOCUMENTS SHOULD INCLUDE, BUT ARE
31 NOT LIMITED TO, THE PAYMENT HISTORY, AN ITEMIZATION OF THE AMOUNTS NEED-
32 ED TO CURE AND PAY OFF THE LOAN, AND THE MORTGAGE AND NOTE. IF THE
33 PLAINTIFF IS NOT THE OWNER OF THE MORTGAGE AND NOTE, THE PLAINTIFF SHALL
34 PROVIDE THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LEGAL OWNER OF THE
35 MORTGAGE AND NOTE. FOR THE DEFENDANT, SUCH DOCUMENTS SHOULD INCLUDE,
36 BUT ARE NOT LIMITED TO, PROOF OF CURRENT INCOME SUCH AS THE TWO MOST
37 RECENT PAY STUBS, MOST RECENT TAX RETURN AND MOST RECENT PROPERTY TAX
38 STATEMENTS.

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

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

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

49 S 10. Section 3-a of chapter 472 of the laws of 2008, amending the
50 real property actions and proceedings law and other laws relating to
51 foreclosure actions on home mortgage loans, is amended to read as
52 follows:

53 S 3-a. For any foreclosure action on a [residential mortgage] HOME
54 loan AS DEFINED BY SECTION 1304 OF THE REAL PROPERTY ACTIONS AND
55 PROCEEDINGS LAW, in which the action was initiated prior to September 1,
56 2008 but where the final order of judgment has not [yet] been issued,

1 the court shall request each plaintiff to identify whether the loan in
2 foreclosure is a subprime home loan as defined in section 1304 of the
3 real property actions and proceedings law AS IN EFFECT ON THE EFFECTIVE
4 DATE OF THIS SECTION or is a high-cost home loan as defined in section
5 6-1 of the banking law.

6 If the loan is a subprime home loan AS THAT TERM IS USED IN THE
7 PRECEDING PARAGRAPH or high-cost home loan, the court shall notify [the
8 defendant] ANY DEFENDANT WHO IS THE BORROWER UNDER THE LOAN that if he
9 or she is a resident of such property, he or she may request a settle-
10 ment conference.

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

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

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

36 S 10-a. 1. The chief administrator of the courts shall, within 90 days
37 of the enactment of this chapter, promulgate such additional rules as
38 may be necessary to ensure the just and expeditious processing of all
39 settlement conferences authorized hereunder. Such court rules shall
40 ensure, among other things, that each judge, judicial hearing officer or
41 referee who is overseeing a settlement conference as authorized herein,
42 shall have the necessary authority and power to fulfill the mandates of
43 this act. This shall include, but not be limited to, ensuring that each
44 party fulfils its legal obligation to negotiate in good faith and seeing
45 that conferences not be unduly delayed or subject to willful dilatory
46 tactics so that the rights of both parties may be adjudicated in a time-
47 ly manner. Such rules may include granting additional authority to sanc-
48 tion the egregious behavior of a counsel or party.

49 2. The chief administrator of the courts shall submit a report no
50 later than the first of November of each year to the governor, temporary
51 president of the senate, the speaker of the assembly, the chair of the
52 senate judiciary committee, the chair of the senate banks committee, the
53 chair of the senate housing committee, the chair of the assembly judici-
54 ary committee, the chair of the assembly banks committee and the chair
55 of the assembly housing committee on the adequacy and effectiveness of
56 the settlement conferences authorized hereunder which shall include, but

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

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

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

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

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

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

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

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

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

S 12. Paragraph (e) of subdivision 1 of section 6-1 of the banking law, as added by chapter 626 of the laws of 2002 and subparagraph (i) as amended by chapter 552 of the laws of 2007, is amended to read as follows:

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

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

(ii) The borrower is a natural person;

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

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

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

2 S 13. Paragraphs (r) and (s) of subdivision 2 of section 6-l of the
3 banking law, as added by chapter 472 of the laws of 2008, are amended to
4 read as follows:

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

10 (s) No abusive yield spread premiums. In arranging a high-cost home
11 loan, the mortgage broker shall, [at the time of application] WITHIN
12 THREE DAYS AFTER RECEIPT OF AN APPLICATION, disclose the exact amount
13 and methodology of total compensation that the broker will receive. Such
14 amount may be paid as direct compensation from the lender, direct
15 compensation from the borrower, or a combination of the two IF PERMITTED
16 BY APPLICABLE LAW. The provisions of this paragraph shall not restrict
17 the ability of a borrower to utilize a yield spread premium in order to
18 offset any up front costs by accepting a higher interest rate IF PERMIT-
19 TED BY APPLICABLE LAW. If the borrower chooses this option, any compen-
20 sation from the lender [which] THAT exceeds the [exact] amount of total
21 compensation owed to the broker must be credited to the borrower. The
22 superintendent shall prescribe the form that such disclosure shall take.
23 This provision shall not restrict a broker from accepting a lesser
24 amount OF COMPENSATION.

25 S 14. Paragraphs (b), (c) and (d) of subdivision 1, paragraphs (j),
26 (l) and (n) of subdivision 2 and paragraph (c) of subdivision 4 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 (b) "Fully indexed rate" means: (I) FOR AN ADJUSTABLE RATE LOAN BASED
30 ON AN INDEX, the [index rate that would have applied at the time of the
31 closing had the initial interest rate been determined by the application
32 of the same interest rate formula, (for example, an interest rate index
33 plus or minus a margin) that applies under the terms of the loan docu-
34 ments to subsequent interest rate adjustments, disregarding any limita-
35 tions on the amount by which the interest rate may change at any one
36 time] ANNUAL PERCENTAGE RATE CALCULATED USING THE INDEX RATE ON THE LOAN
37 ON THE DATE THE LENDER PROVIDES THE "GOOD FAITH ESTIMATE" REQUIRED UNDER
38 12 USC S2601 ET SEQ. PLUS THE MARGIN TO BE ADDED TO IT AFTER THE EXPI-
39 RATION OF ANY INTRODUCTORY PERIOD OR PERIODS; OR (II) FOR A FIXED RATE
40 LOAN, THE ANNUAL PERCENTAGE RATE ON THE LOAN DISREGARDING ANY INTRODUC-
41 TORY RATE OR RATES AND ANY INTEREST RATE CAPS THAT LIMIT HOW QUICKLY THE
42 CONTRACTUAL INTEREST RATE MAY BE REACHED CALCULATED AT THE TIME THE
43 LENDER ISSUES ITS COMMITMENT.

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

1 ONLY LOAN, a temporary or "bridge" loan with a term of twelve months or
2 less, such as a loan to purchase a new dwelling where the borrower plans
3 to sell a current dwelling within twelve months, or a home equity line
4 of credit BUT SHALL INCLUDE ANY LOAN, HOWEVER STRUCTURED, THAT THEREAFT-
5 ER IS CONVERTED INTO A PERMANENT LOAN.

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

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

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

35 (i) The principal amount of the loan AT ORIGINATION does not exceed
36 the conforming loan size limit (INCLUDING ANY APPLICABLE SPECIAL LIMIT
37 FOR JUMBO MORTGAGES) for a comparable dwelling as established from time
38 to time by the federal national mortgage association;

39 (ii) The borrower is a natural person;

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

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

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

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

1 mortgage broker must deliver, place in the mail, fax or electronically
2 transmit the following notice in at least twelve point type to the
3 borrower of a subprime home loan at the time of application: "You
4 should consider financial counseling prior to executing loan documents.
5 The enclosed list of counselors is provided by the New York State Bank-
6 ing Department." In the event of a telephone application, the disclo-
7 sures must be made immediately after receipt of the application by tele-
8 phone. Such disclosure shall be on a separate form. In order to utilize
9 an electronic transmission, the lender or broker must first obtain
10 either written or electronically transmitted permission from the borrow-
11 er. A list of approved counselors, available from the New York state
12 banking department, shall be provided to the borrower by the lender or
13 the mortgage broker at the time that this disclosure is given.

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

22 (n) No abusive yield spread premiums. In arranging a subprime home
23 loan, the mortgage broker shall, [at the time of application] WITHIN
24 THREE DAYS AFTER RECEIPT OF AN APPLICATION, disclose the exact amount
25 and methodology for determining the total compensation that the broker
26 will receive. Such amount may be paid as direct compensation from the
27 lender, direct compensation from the borrower, or a combination of the
28 two IF PERMITTED BY APPLICABLE LAW. The provisions of this paragraph
29 shall not restrict the ability of a borrower to utilize a yield spread
30 premium in order to offset any upfront costs by accepting a higher
31 interest rate IF PERMITTED BY APPLICABLE LAW. If the borrower chooses
32 this option, any compensation from the lender [which] THAT exceeds the
33 exact amount of total compensation owed to the broker must be credited
34 to the borrower. The superintendent shall prescribe the form that such
35 disclosure shall take. This paragraph shall not restrict a broker from
36 accepting a lesser amount OF COMPENSATION.

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

48 S 15. Subdivisions 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of
49 section 6-m of the banking law, as added by chapter 472 of the laws of
50 2008, are amended to read as follows:

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

54 4. [No arrangement of certain subprime loans] ABILITY TO REPAY. No
55 lender or mortgage broker shall make or arrange a subprime home loan
56 unless the lender or mortgage broker reasonably and in good faith

1 believes at the time [the loan is consummated] OF THE LOAN CLOSING that
2 one or more of the borrowers, when considered individually or collec-
3 tively, has the ability to repay the loan according to its terms and to
4 pay applicable real estate taxes and hazard insurance premiums. If a
5 lender or mortgage broker making or arranging a subprime home loan knows
6 that one or more home loans secured by the same real property will be
7 made contemporaneously to the same borrower with the subprime home loan
8 being made or arranged by that lender or mortgage broker, the lender or
9 mortgage broker making or arranging the subprime home loan must document
10 the borrower's ability to repay the combined payments of all loans on
11 the same real property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 S 16. Paragraph (a) of subdivision 1 of section 590 of the banking
25 law, as added by chapter 571 of the laws of 1986, is amended to read as
26 follows:

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

36 S 17. Paragraphs (c) and (d) of subdivision 3 of section 590 of the
37 banking law are relettered paragraphs (d) and (e) and a new paragraph
38 (c) is added to read as follows:

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

42 S 18. Paragraphs (b) and (b-1) of subdivision 2 of section 590 of the
43 banking law, paragraph (b) as amended and paragraph (b-1) as added by
44 chapter 472 of the laws of 2008, are amended to read as follows:

45 (b) No person, partnership, association, corporation or other entity
46 shall engage in the business of soliciting, processing, placing or nego-
47 tiating a mortgage loan or offering to solicit, process, place or nego-
48 tiate a mortgage loan in this state without first being registered with
49 the superintendent as a mortgage broker in accordance with the registra-
50 tion procedure provided in this article and by such regulations as may
51 be promulgated by the banking board or prescribed by the superintendent.
52 The registration provisions of this subdivision shall not apply to any
53 exempt organization [or], mortgage banker OR MORTGAGE LOAN SERVICER. No
54 real estate broker or salesman, as defined in section four hundred forty
55 of the real property law, shall be deemed to be engaged in the business
56 of a mortgage broker if he does not accept a fee, directly or indirect-

ly, for services rendered in connection with the solicitation, processing, placement or negotiation of a mortgage loan. No attorney-at-law who solicits, processes, places or negotiates a mortgage loan incidental to his legal practice shall be deemed to be engaged in the business of a mortgage broker. The registration provisions of this subdivision shall not apply to any person or entity which shall be exempted in accordance with regulations promulgated by the banking board hereunder.

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

S 19. Section 595-a of the banking law is amended by adding a new subdivision 5 to read as follows:

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

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

S 187.00 Definitions.

As used in this article:

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

2. "Residential mortgage loan" means a loan or agreement to extend credit, including the renewal [or], refinancing OR MODIFICATION of any such loan, made to a person, which loan is primarily secured by either A mortgage, deed of trust, or other lien upon any interest in residential real property or ANY certificate of stock or other evidence of ownership

1 in, AND A PROPRIETARY LEASE FROM, a corporation or partnership formed
2 for the purpose of cooperative ownership of residential real property.

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

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

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

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

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

23 S 187.01 LIMITATION ON PROSECUTION.

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

30 S 22. Subparagraphs (i) and (vii) of paragraph (e) of subdivision 1
31 and paragraph (b) of subdivision 2 of section 265-b of the real property
32 law, as added by chapter 472 of the laws of 2008, are amended to read as
33 follows:

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

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

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

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

48 S 24. Severability clause. If any clause, sentence, paragraph, section
49 or part of this act shall be adjudged by any court of competent juris-
50 diction to be invalid, such judgment shall not affect, impair or invali-
51 date the remainder thereof, but shall be confined in its operation to
52 the clause, sentence, paragraph, section or part thereof directly
53 involved in the controversy in which such judgment shall have been
54 rendered.

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

- 1 a. Sections one, one-a, two and three of this act shall take effect on
2 the thirtieth day after this act shall have become a law and shall apply
3 to notices required on or after such date; provided, however, that
4 section one-a of this act shall expire and be deemed repealed 5 years
5 after such effective date;
- 6 b. Sections four, seven and eight of this act shall take effect on the
7 thirtieth day after this act shall have become a law and shall apply to
8 actions where a judgment of foreclosure and sale is issued on or after
9 such date;
- 10 c. Section five of this act shall take effect on the sixtieth day
11 after this act shall have become a law and shall apply to notices
12 required by section 1304 of the real property actions and proceedings
13 law mailed on or after such date;
- 14 d. Section six of this act shall take effect on the one hundred twen-
15 tieth day after it shall have become a law;
- 16 e. Section nine of this act shall take effect on the sixtieth day
17 after this act shall have become a law and shall apply to legal actions
18 filed on or after such date; provided, however that the amendments to
19 subdivision (a) of rule 3408 of the civil practice law and rules made by
20 such section shall expire and be deemed repealed 5 years after such
21 effective date;
- 22 f. Section fourteen of this act shall take effect on the sixtieth day
23 after this act shall have become a law; and
- 24 g. Section sixteen of this act shall take effect on the sixtieth day
25 after this act shall have become a law.