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

9851

I N A S S E M B L Y

May 27, 2014

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

AN ACT to amend the banking law, in relation to making certain technical corrections thereto

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

Section 1. Section 6-i of the banking law, as added by chapter 571 of the laws of 1986 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

S 6-i. Mortgage loans. No person, partnership, corporation, banking organization, exempt organization as defined in section five hundred ninety of this chapter or other entity shall make a mortgage loan as defined in section five hundred ninety of this chapter except in conformity with the requirements of article twelve-D and in compliance with such rules and regulations as may be promulgated by the superintendent of financial services [or prescribed by the superintendent] under this section. Nothing in this section shall be construed to limit or otherwise modify any otherwise applicable requirement of state or federal law.

S 2. Subdivision 3 of section 7 of the banking law, as added by chapter 184 of the laws of 1978 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

3. The superintendent of financial services may promulgate such regulations as [it] HE OR SHE deems necessary and proper to implement and define the provisions of this section.

S 3. Subdivision 3 of section 9-f of the banking law, as amended by chapter 571 of the laws of 1986 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

3. For the purposes of this section, the term (a) "prudent loan" means a loan upon the security of real property which is prudent by acceptable banking standards and is in compliance with all of the provisions of this chapter[,] AND RULES AND regulations of the superintendent of financial services [and rules of the superintendent]; and (b) notwithstanding any other provision of this chapter or law to the contrary, the

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

LBD09332-02-4

term banking institution when used in this section shall mean and include all banks, trust companies, savings banks, savings and loan associations, credit unions, mortgage bankers, exempt organizations as defined in article twelve-D of this chapter and foreign banking corporations whether incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States.

S 4. Subdivision 2 of section 14-c of the banking law, as added by chapter 19 of the laws of 1978 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

2. The superintendent of financial services may alter or amend rules and regulations or promulgate additional rules and regulations as [it] HE OR SHE deems necessary and proper to effectuate the provisions of subdivision one.

S 5. Subdivision 10 of section 100-c of the banking law, as added by chapter 239 of the laws of 1986 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

10. The superintendent of financial services shall promulgate such regulations and rules as [it] HE OR SHE considers appropriate to govern the administration of common trust funds and short term investment common trust funds.

S 6. Subdivision 4 of section 103 of the banking law, as amended by chapter 313 of the laws of 2001, the opening paragraph and the fifth undesignated paragraph as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

4. Make a loan upon the security of real estate within or without this state which does not comply with any such rules or regulations as the superintendent of financial services may prescribe.

No loan shall be made under the provisions of this subdivision except upon the written and signed certificate of an appraiser appointed pursuant to policies established by the board of directors, certifying to the value of the premises according to his judgment.

The provisions of this subdivision shall not constitute the authority to make a loan to a natural person upon the security of a mortgage which is not a first lien.

Where the collateral for any loan consists partly of real estate security and partly of other security, including a guarantee or endorsement by or an obligation or commitment of a person other than the borrower, only the amount by which the loan exceeds the value as collateral of such other security, as found in good faith by a duly authorized officer of such bank or trust company, at the time of the making of the loan or commitment therefor, shall be considered a loan upon the security of real estate, provided, that in no event shall a loan be considered a loan upon the security of real estate (i) where the principal amount of any real estate security taken therefor is less than fifteen per centum of the amount of such loan or (ii) where the loan is payable in monthly or quarterly installments over a period not to exceed one hundred twenty-one months and does not exceed twenty thousand dollars and is for the purpose of paying the cost of any repairs, alterations or improvements upon, or in connection with, or, as the superintendent may authorize, the equipping of existing structures or the building of new structures by the owners thereof or by the lessees under a lease expiring not less than six months after the maturity of the loan or (iii) where the loan is fully guaranteed or insured by the United States or a state, or any department, agency or instrumentality thereof, and for the payment of which loan the full faith and credit of the United States or of such state is pledged and if under the terms of the guaranty or insurance

agreement the bank or trust company will be assured of repayment in accordance with the terms of the loan or (iv) where there is a binding and valid commitment or agreement by a financially responsible lender, purchaser or other financially responsible party either directly with the lending bank or trust company or which is for the benefit of, or has been assigned to, the lending bank or trust company and pursuant to which commitment, agreement or assignment, the lender, purchaser or other party is required to advance to the lending bank or trust company within thirty months from the date of such commitment or agreement the full amount of the loan to be made by the lending bank or trust company upon the security of real estate improved by a building or buildings, or to be improved by a building or buildings in the process of construction, the major portion of which building is used, or in the case of a building under construction is to be used, for residential, business, manufacturing or agricultural purposes, and where pursuant to the terms and provisions of such commitment or agreement such advance shall be made prior to or upon the maturity of the loan by the lending bank or trust company.

Real estate security for purposes of this section shall not include (a) an assignment of rents under a lease, (b) a mortgage or other lien upon a leasehold, (c) a mortgage or other lien upon leasehold, royalty or other rights in oil, gas, minerals, standing timber, or other products of land, (d) a mortgage or other lien made or given upon real estate and taken as collateral security for loans to a borrower, provided, that at the time of the making of the loan or commitment therefor, repayment thereof is reasonably expected to be made out of the operations of such borrower or of the mortgagor, or (e) such mortgages or other liens on property as may be specifically exempted from the limitations and restrictions of this subdivision by the superintendent of financial services by general or specific regulations [adopted by a three-fifths vote of all its members]. Nothing in this paragraph shall be construed to imply that security of a kind not mentioned herein is to be deemed real estate security.

The limitations and restrictions contained in this subdivision shall not prevent the acceptance of any real estate security to secure the payment of a debt previously contracted in good faith. Every mortgage and every assignment of a mortgage taken or held by such bank or trust company shall immediately be recorded or registered in its name in the office of the clerk or the proper recording officer of the county in which the real estate described in the mortgage is located, except that where the underlying real estate is located outside the state of New York such mortgage or assignment may be recorded or registered in the name of a duly authorized nominee, and except that if such mortgage or assignment of mortgage or of an interest therein shall be taken from a corporation organized under the banking law or all of the capital stock of which is owned by not less than twenty savings banks of this state, the bank or trust company may hold such mortgage or assignment unrecorded unless the superintendent shall direct the bank or trust company to record the same. The recording or registering of assignments of mortgages shall not be required when not less than ten mortgages are assigned as security for a loan, the term of which does not exceed twelve months.

Any bank or trust company may renew from time to time any loan upon the security of real estate lawfully made by it prior to June thirtieth, nineteen hundred thirty-seven.

None of the prohibitions and restrictions contained in this subdivision shall apply to any corporation all of the capital stock of which is owned by not less than twenty savings banks of this state.

S 7. Paragraph (d) of subdivision 8 of section 108 of the banking law, as added by chapter 344 of the laws of 1974, such subdivision as renumbered by chapter 512 of the laws of 1977, and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(d) The superintendent of financial services may promulgate such regulations as [it] HE OR SHE deems necessary and proper to implement and define the provisions of this subdivision. The superintendent of financial services may prescribe maximum charges from time to time, but not more often than once in any six month period, and shall provide reasonable notice to the public of any change in such maximum charges, of the effective date of such change, which shall not be less than seven days following the adoption of such change by the superintendent of financial services, and of any rule or regulation adopted pursuant to this subdivision.

S 8. Section 111 of the banking law, as amended by chapter 360 of the laws of 1984 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

S 111. Profits; credits to surplus fund and to undivided profits. In any case where the combined capital stock, surplus fund and undivided profits of a bank or trust company do not equal ten per centum of its net deposit liabilities, the superintendent of financial services may in [its] HIS OR HER discretion require such bank or trust company at the close of each accounting period to credit its surplus fund with a portion of its net profits for such period, not to exceed ten per centum thereof, until its combined capital stock, surplus fund and undivided profits equal ten per centum of its net deposit liabilities. For the purposes of this section, the term "net deposit liabilities" shall mean total deposits including all amounts due to national banks, banks, bankers, trust companies and savings banks, the amounts due on certified and cashier's checks, and for unpaid dividends less the amounts of balances due from national banks, banks, bankers, and trust companies and cash items in process of collection payable immediately upon presentation in the United States.

S 9. Paragraph (b) of subdivision 3 of section 130 of the banking law, as amended by chapter 217 of the laws of 2010 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(b) The superintendent of financial services shall have the power to determine by regulation who shall be considered, under the provisions of this subdivision, to be an executive officer, and by a general or specific regulation[, upon a three-fifths vote of all its members,] to grant permission to an executive officer of a bank or trust company to be an executive officer, director or trustee or both an executive officer and director or a trustee of another bank or trust company, savings bank, or savings and loan association, national bank, federal savings bank or federal savings association, the principal office of which is located in this state, bank holding company, or foreign banking corporation maintaining a branch in this state. Such permission may be granted only if in the judgment of the superintendent of financial services such service by the executive officer will be consistent with the policy of the state of New York as declared in section ten of this chapter. The superintendent of financial services shall have the power to revoke such

permission [by a like vote] whenever [it] HE OR SHE finds, after reasonable notice and an opportunity to be heard, that the public interest requires such revocation.

S 10. Subdivision 4 of section 234-b of the banking law, as added by chapter 883 of the laws of 1980 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

4. The superintendent of financial services is authorized to promulgate such regulations as [it] HE OR SHE may deem necessary or proper to implement the provisions of this section and the proper exercise of the powers granted by this section.

S 11. Section 380-h of the banking law, as added by chapter 883 of the laws of 1980, subdivisions 1 and 4 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

S 380-h. Trust powers. 1. The superintendent of financial services is authorized and empowered to grant permission to a savings and loan association to exercise any or all of the powers specified in sections one hundred, one hundred-a, one hundred-b and one hundred-c of this chapter. In passing upon applications for permission to exercise any such powers, the superintendent of financial services may take into consideration the amount of surplus of the applying association, whether or not such surplus is sufficient under the circumstances of the case, the needs of the community to be served and any other facts and circumstances that seem [to it] proper, and may grant or refuse it permission accordingly.

2. Whenever the laws of this state require a trust company acting in a fiduciary capacity to deposit securities with the state authorities for the protection of private or court trusts, a savings and loan association, so acting, is empowered to make similar deposits of securities.

4. The superintendent of financial services is authorized to promulgate such regulations as [it] HE OR SHE may deem necessary or proper to implement the provisions of this section and the proper exercise of the powers granted by this section.

S 12. Section 455 of the banking law, as added by chapter 608 of the laws of 1996, subdivisions 1 and 3 as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

S 455. Trust powers. 1. The superintendent of financial services is authorized and empowered to grant permission to a credit union to exercise any or all of the powers specified in sections one hundred, one hundred-a, one hundred-b and one hundred-c of this chapter. In passing upon applications for permission to exercise any such powers, the superintendent of financial services may take into consideration the amount of net worth of the applying credit union, whether or not such net worth is sufficient under the circumstances of the case, the needs of the community to be served and any other facts and circumstances that seem [to it] proper, and may grant or refuse it permission accordingly.

2. Whenever the laws of this state require a trust company acting in a fiduciary capacity to deposit securities with the state authorities for the protection of private or court trusts, a credit union, so acting, is required and empowered to make similar deposits of securities.

3. The superintendent of financial services is authorized to promulgate such regulations as [it] HE OR SHE may deem necessary or proper to implement the provisions of this section and the proper exercise of the powers granted by this section.

S 13. Paragraph (a) of subdivision 1 of section 595 of the banking law, as amended by chapter 571 of the laws of 1986 and as further

amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(a) Through a course of conduct, the licensee or registrant has violated any provisions of this article, or any rule or regulation promulgated by the superintendent of financial services[, or any rule or regulation prescribed by the superintendent] under and within the authority of this article or of any other law, rule or regulation of this state or the federal government;

S 14. Subdivision 7 of section 600 of the banking law, as amended by chapter 315 of the laws of 2008 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(7) One or more subsidiaries or affiliates of a bank, trust company, savings bank or savings and loan association, which are not a bank, trust company, savings bank or savings and loan association, as those terms are defined in section two of this chapter, with the bank, trust company, savings bank or savings and loan association of which it is a subsidiary or affiliate, as the superintendent of financial services shall approve and enter on its records; provided, however, that nothing in this subdivision shall be deemed to authorize a bank, trust company, savings bank or savings and loan association to exercise any power or engage in any activity that it may not exercise or engage in pursuant to this chapter. The superintendent of financial services may promulgate such regulations as [it] HE OR SHE deems necessary and proper to imple-ment and define the provisions of this subdivision. Nothing in this subdivision shall alter, affect or impair any regulation or resolution adopted, or that may be adopted, by the superintendent of financial services, pursuant to section twelve-a or former sections fourteen-g or fourteen-h of this chapter.

S 15. This act shall take effect immediately.