

5450

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to suspending the license of mortgage bankers and brokers for cause

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

1 Section 1. Section 595 of the banking law, as amended by chapter 571
2 of the laws of 1986, paragraph (a) of subdivision 1 as further amended
3 by section 104 of part A of chapter 62 of the laws of 2011, paragraph
4 (c) of subdivision 1 as amended and paragraph (d) of subdivision 1 as
5 added by chapter 164 of the laws of 2003, subdivision 2 as amended by
6 chapter 121 of the laws of 1993, subdivision 3 as amended by chapter 516
7 of the laws of 1996, subdivisions 4, 5 and 6 as amended and subdivisions
8 4-a and 7-a as added by chapter 400 of the laws of 1993, is amended to
9 read as follows:
10 S 595. Grounds for suspension or revocation of license, or suspension
11 or deletion of name from mortgage broker roll. 1. [The] IN ADDITION TO
12 THE AUTHORITY SET FORTH IN SUBDIVISION TWO OF THIS SECTION, THE super-
13 intendent may SUSPEND OR revoke any license to engage in the business of
14 a mortgage banker issued pursuant to this article or SUSPEND OR delete
15 the name of a mortgage broker [from the roll of mortgage brokers] OR A
16 MORTGAGE LOAN SERVICER registered pursuant to this article (EACH
17 REFERRED TO IN THIS SECTION AS A REGISTRANT) if he OR SHE shall find
18 AFTER NOTICE AND A HEARING, that:
19 (a) Through a course of conduct, the licensee or registrant has
20 violated any provisions of this article, or any rule or regulation
21 promulgated by the superintendent of financial services, or any rule or
22 regulation prescribed by the superintendent under and within the author-
23 ity of this article or of any other law, rule or regulation of this
24 state or the federal government;

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

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1 (b) Any fact or condition exists which, if it had existed at the time
2 of the original application for such license or registration, would have
3 warranted the superintendent in refusing originally to issue such
4 license;

5 (c) The commission by a licensee or registrant of a crime against the
6 laws of this state or any other state or of the United States involving
7 moral turpitude or fraudulent or dishonest dealing, or the entry of a
8 final judgment against a licensee or registrant in a civil action upon
9 grounds of fraud, misrepresentation or deceit;

10 (d) As a part of such determination regarding suspension or revoca-
11 tion, the superintendent is authorized to require the fingerprinting of
12 any licensee or registrant. Such fingerprints shall be submitted to the
13 division of criminal justice services for a state criminal history
14 record check, as defined in subdivision one of section three thousand
15 thirty-five of the education law, and may be submitted to the federal
16 bureau of investigation for a national criminal history record check.

17 2. (A) The superintendent may, [on] FOR good cause [shown], WITHOUT
18 NOTICE OR A HEARING, or where there is a substantial risk of public
19 harm, [suspend] ISSUE AN ORDER SUSPENDING any license or [delete the
20 name of any registrant] REGISTRATION ISSUED PURSUANT TO THIS ARTICLE for
21 a period not exceeding [thirty] SIXTY days, pending investigation. "Good
22 cause", as used in this subdivision, shall exist only when the licensee
23 or registrant has defaulted or is likely to default in performing its
24 financial engagements or engages in dishonest or inequitable practices
25 which may cause substantial harm to the persons afforded the protection
26 of this article.

27 (B) THE SUPERINTENDENT MAY, IN HIS OR HER SOLE DISCRETION, WITHOUT A
28 HEARING, ISSUE A NOTICE SUSPENDING THE LICENSE OR REGISTRATION OF ANY
29 MORTGAGE BANKER OR MORTGAGE LOAN SERVICER THIRTY DAYS AFTER THE DATE OR
30 DATES IT FAILS TO MAKE ANY PAYMENTS REQUIRED BY THIS CHAPTER.

31 (C) THE SUPERINTENDENT MAY, IN HIS OR HER SOLE DISCRETION, WITHOUT
32 NOTICE OR A HEARING, ISSUE AN ORDER SUSPENDING ANY LICENSE OR REGISTRA-
33 TION ISSUED PURSUANT TO THIS ARTICLE: (I) THIRTY DAYS AFTER THE DATE THE
34 LICENSEE OR REGISTRANT FAILS TO FILE ANY REPORT REQUIRED TO BE FILED BY
35 IT WITH THE SUPERINTENDENT PURSUANT TO THE AUTHORITY PROVIDED BY SECTION
36 FIVE HUNDRED NINETY-SEVEN OF THIS ARTICLE; (II) IMMEDIATELY UPON NOTICE
37 TO THE SUPERINTENDENT THAT ANY REQUIRED SURETY BOND OR LINE OF CREDIT IS
38 BEING CANCELED OR IS EXPIRING, IF THE LICENSEE OR REGISTRANT HAS NOT
39 PROVIDED THE SUPERINTENDENT WITH PROOF OF A REPLACEMENT BOND OR LINE OF
40 CREDIT SATISFACTORY TO THE SUPERINTENDENT; (III) IMMEDIATELY UPON NOTICE
41 TO THE SUPERINTENDENT THAT THE LICENSEE OR REGISTRANT HAS FILED A PETI-
42 TION IN BANKRUPTCY; OR (IV) AT LEAST THIRTY DAYS AFTER THE LICENSEE OR
43 REGISTRANT HAS HAD FILED AGAINST IT A PETITION IN BANKRUPTCY.

44 3. IF THE SUPERINTENDENT HAS ISSUED AN ORDER SUSPENDING A LICENSE OR
45 REGISTRATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS
46 SECTION, SUCH LICENSE OR REGISTRATION MAY BE REINSTATED IF THE SUPER-
47 INTENDENT DETERMINES, IN HIS OR HER SOLE DISCRETION AFTER INVESTIGATION,
48 THAT GOOD CAUSE THEREFOR DID NOT EXIST OR NO LONGER EXISTS. IF THE
49 SUPERINTENDENT HAS ISSUED AN ORDER OR NOTICE SUSPENDING A LICENSE OR
50 REGISTRATION PURSUANT TO PARAGRAPH (B) OR PARAGRAPH (C) OF SUBDIVISION
51 TWO OF THIS SECTION, SUCH LICENSE OR REGISTRATION MAY BE REINSTATED, IF
52 THE SUPERINTENDENT DETERMINES, IN HIS OR HER SOLE DISCRETION, THAT THE
53 LICENSEE OR REGISTRANT HAS CURED ALL DEFICIENCIES SET FORTH IN SUCH
54 SUSPENSION ORDER OR THE NOTICE BY THE CLOSE OF BUSINESS NINETY DAYS
55 AFTER THE DATE OF SUCH SUSPENSION ORDER OR NOTICE, INCLUDING, WITHOUT
56 LIMITATION, MAKING ANY OVERDUE PAYMENT, HAVING ANY SUCH BANKRUPTCY PETI-

1 TION DISMISSED OR HAVING SUCH BOND REINSTATED OR REPLACED. OTHERWISE,
2 UNLESS THE SUPERINTENDENT HAS, IN HIS OR HER SOLE DISCRETION, EXTENDED A
3 SUSPENSION PURSUANT TO PARAGRAPH (B) OR PARAGRAPH (C) OF SUBDIVISION TWO
4 OF THIS SECTION, SUCH LICENSE OR REGISTRATION SHALL BE DEEMED TO BE
5 AUTOMATICALLY TERMINATED BY OPERATION OF LAW AT THE CLOSE OF BUSINESS ON
6 SUCH NINETIETH DAY.

7 4. Except as provided in subdivision two of this section, no license
8 or registration shall be revoked or suspended except after notice and a
9 hearing thereon. Any order of suspension issued after notice and a hear-
10 ing may include as a condition of reinstatement that the licensee or
11 registrant make restitution to consumers of fees or other charges which
12 have been improperly charged or collected as determined by the super-
13 intendent.

14 [4. Any] 5. WITH THE PRIOR APPROVAL OF THE SUPERINTENDENT, ANY licen-
15 see or registrant UNDER THIS ARTICLE may surrender any license or
16 [certificate] REGISTRATION by delivering to the superintendent written
17 notice that it thereby surrenders such license or [certificate] REGIS-
18 TRATION, but such surrender shall not affect such licensee's or regis-
19 trant's civil or criminal liability for acts committed prior to such
20 surrender. [If such surrender is made after the issuance by the super-
21 intendent of a statement of charges and notice of hearing, the super-
22 intendent may proceed against the licensee or registrant as if such
23 surrender had not taken place.

24 4-a. An expiration] 6. A TERMINATION of registration OR LICENSE in
25 accordance with THIS section [five hundred ninety-two-a of this article]
26 shall not affect such registrant's OR LICENSEE'S civil or criminal
27 liability for acts committed prior to such [expirations] TERMINATION.
28 If such [expiration] TERMINATION occurs after the issuance by the super-
29 intendent of a statement of charges and notice of hearing, the super-
30 intendent may proceed against the registrant OR LICENSEE as if such
31 [expiration] TERMINATION had not taken place.

32 [5] 7. No revocation, suspension, surrender or [expiration] TERMI-
33 NATION of any license or [certificate] REGISTRATION shall impair or
34 affect the obligation of any preexisting lawful contract between the
35 licensee or registrant and any person.

36 [6] 8. Every license or registration issued pursuant to this article
37 shall remain in force and effect until the same shall have [expired]
38 TERMINATED in accordance with [section five hundred ninety-two-a of this
39 article] SUBDIVISION TWO OR THREE OF THIS SECTION or shall have been
40 surrendered, revoked or suspended in accordance with any other
41 provisions of this article, but the superintendent shall have authority
42 to reinstate a suspended license or [certificate] REGISTRATION or to
43 issue a new license or [certificate] REGISTRATION to a licensee or
44 registrant whose license or registration shall have been TERMINATED OR
45 revoked if no fact or condition then exists which would have warranted
46 the superintendent in refusing originally to issue such license or
47 registration under this article.

48 [7] 9. Whenever the superintendent shall revoke or suspend a license
49 or registration issued pursuant to this article OTHER THAN PURSUANT TO
50 PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, he OR SHE shall forth-
51 with execute in duplicate a written order to that effect. The super-
52 intendent shall file one copy of such order in the office of the depart-
53 ment of banking and shall forthwith serve the other copy upon the
54 licensee or registrant. Any such order may be reviewed in the manner
55 provided by article seventy-eight of the civil practice law and rules.
56 Such application for review as authorized by this section must be made

1 within thirty days from the date of such order of suspension or revoca-
2 tion.
3 [7-a] 10. Whenever a registration OR LICENSE shall have [expired]
4 TERMINATED in accordance with [section five hundred ninety-two-a of]
5 this article, the superintendent shall notify the registrant OR LICENSEE
6 that the registration OR LICENSE has [expired] TERMINATED and that the
7 registrant OR LICENSEE may not engage in [the business of soliciting,
8 processing, placing or negotiating a mortgage loan or offering to solici-
9 it, process, place or negotiate a mortgage loan] ANY ACTIVITY REQUIRING
10 REGISTRATION OR A LICENSE in this state.
11 [8] 11. Any hearing held pursuant to the provisions of this section
12 shall be noticed, conducted and administered in compliance with the
13 state administrative procedure act.
14 S 2. This act shall take effect immediately.