§ 380. Power to make loans. 1. A savings and loan association may make a loan upon the security of a mortgage of the type authorized to be made by a savings bank by subdivisions five-a and six of section two hundred thirty-five of this chapter, subject to such regulations as the superintendent of financial services may prescribe.

1-b. A savings and loan association may also lend its funds to borrowers therefrom upon their promissory notes payable to the association which are:

(a) secured by one or more mortgages in which a savings and loan association may invest; provided however, that the amount loaned is not in excess of ninety per centum of the principal sum secured by such mortgage or mortgages. The assignment of every mortgage taken as security for any such note shall be recorded or registered in the office of the proper recording officer of the county in which the real property described in such mortgage is located, unless such mortgage or mortgages have been so assigned by a savings and loan association;

(b) secured by any of the stocks and bonds in which a savings and loan association may invest, except stocks eligible for investment pursuant to the provisions of subdivision twenty-six of section two hundred thirty-five of this chapter; provided however, that the amount of the loan is not in excess of ninety per centum of the market value of such stocks and bonds;

(c) made by a savings bank which has been incorporated three years or more.

(d) secured by any of the stocks eligible for investment by a savings and loan association pursuant to the provisions of subdivision twenty-six of section two hundred thirty-five of this chapter; provided however, that (1) the amount of the loan is not in excess of the lesser of (i) eighty-five per centum of the market value of such stocks, or (ii) the maximum loan value of such stocks determined in accordance with Federal Reserve Regulation U and the supplement thereto of the board of governors of the federal reserve system and as if the savings and loan association were a member bank of such system extending credit secured by such stocks for their purchase as margin stock, and (2) the amount of such loan, together with the aggregate amount outstanding of all loans made pursuant to this paragraph and the aggregate amount of investments

in stock eligible for investment by a savings and loan association pursuant to the provisions of subdivision twenty-six of section two hundred thirty-five of this chapter, shall not exceed the aggregate limitations set forth in subdivision twenty-six of section two hundred thirty-five of this chapter;

2. A savings and loan association may lend its funds to its members upon their notes as follows: (a) secured by the transfer and pledge to the association of shares of any savings and loan association or by the assignment to the association of a time deposit in any savings and loan association, the withdrawal value of which, in either case, shall not be less than the amount of any such loan.

(b) Representing loans and advances of credit for the purpose of financing alterations, repairs and improvements upon or in connection with, or as the superintendent may authorize the equipping of existing structures, and the building of new structures, upon urban, suburban, or rural real property (including the restoration, rehabilitation, rebuilding, and replacement of such improvements which have been damaged or destroyed by earthquake, conflagration, tornado, hurricane, cyclone, flood, or other catastrophe), by the owners thereof or by lessees of such real property under a lease expiring not less than six months after the maturity of the loan or advance of credit or by lessees under proprietary leases from a corporation or partnership formed for the purpose of the cooperative ownership of real estate, provided: (1) the amount of such loan, advance of credit, or purchase made for the purpose of financing the alteration, repair, equipping or improvement of existing structure or the building of new structure does not exceed twenty thousand dollars; (2) the maturity thereof does not exceed one hundred twenty-one months; (3) the rate which may be paid by the borrower for interest, discount, and fees of all kinds in connection with the transaction shall be the rate or rates agreed to by the savings and loan association and the borrower; and (4) the loan shall be paid in equal or substantially equal monthly installments calculated from the date of the note; provided, however, that in addition thereto, the savings and loan association may contract to charge the borrower: (i) the fees payable to the appropriate public officer to perfect any lien or other security interest taken to secure the loan or the premium, not

in excess of such filing fee, payable for any insurance in lieu of such filing; (ii) in case of default, and in accordance with the provisions of the instrument evidencing the obligation, either a fine in an amount not to exceed five cents per dollar on any installment which has become due and remained unpaid for a period in excess of ten days, but no such fine shall exceed five dollars and only one fine shall be collected on any such installment regardless of the period during which it remains in default, and provided further that should the aggregate of such fines collected in connection with any loan exceed two per centum of such loan, or in any event twenty-five dollars, the savings and loan association shall refund such excess to the borrower within sixty days after the loan is paid in full, or, subject to an allowance of unearned interest attributable to the amount in default, interest on each amount past due at a rate not in excess of the rate provided for in the instrument evidencing the obligation; (iii) the actual expenditures, including reasonable attorney's fees, for necessary court process; and (iv) in case the savings and loan association insures a borrower under a credit unemployment insurance policy, group life insurance policy, group health insurance policy, group accident insurance policy, or group health and accident insurance policy, or requires insurance on personal property securing any such loan, an amount not in excess of the premiums chargeable in accordance with rate schedules then in effect and on file with the superintendent of financial services for such insurance by the insurer. No savings and loan association shall require a borrower to purchase shares in the association, or to purchase shares in lieu of regular periodic installment payments, or to do or refrain from any other act which would entail additional expense or sacrifice, as a condition precedent to granting a loan or advance of credit under the authority of this paragraph. Notwithstanding the provisions of this paragraph no refund of excess fines shall be required if it amounts to less than one dollar.

(c) Representing loans and advances of credit for the purpose of defraying the cost of attendance of one or more students the income of whose family is fifteen thousand dollars or more per year at the time the loan or loan commitment is made at a university or college or for the purpose of defraying the cost of attendance of one or more students at an elementary or secondary school providing education required for

minors; provided, however, that no such loan shall bring the total unpaid principal balances of any one or more loans made by such savings and loan association to the borrower pursuant to this paragraph to an amount in excess of thirty thousand dollars; and further provided that the maturity of any such loan does not exceed eighty-five months; and further provided that the rate which may be paid by the borrower for interest, discount, and fees of all kinds in connection with the transaction shall be the rate or rates agreed to by the savings and loan association and the borrower, reckoned on each loan or advance from the date thereof, calculated on any of the following bases: (i) on the unpaid principal amount of such loans and advances from time to time outstanding, or (ii) for each month on an average balance outstanding determined by dividing by two the sum of the balances of unpaid principal of such loans and advances outstanding on two dates during such month, as specified in such agreement; the first of which dates being not later than the fifteenth day of such month and the second being not earlier than the sixteenth day of such month and not less than ten nor more than twenty days after the first day, or (iii) for each month on a fixed amount selected from a schedule, which fixed amount may exceed the average daily balance under (i) above, or the average balance if determined under (ii) above, by a differential of not more than five dollars, provided the same fixed amount is also used for computing interest for any month for which such balance exceeds said fixed amount by any amount up to at least the same differential; and further provided that the loan shall be paid in equal or substantially equal monthly installments calculated from the date of the note. No fee, commission, expense, or other charge whatsoever shall be taken, received, reserved or contracted for in addition to the rate of interest authorized by this paragraph except (i) the fees payable to the appropriate public officer to perfect any lien or other security interest taken to secure the loan or the premium, not in excess of such filing fee, payable for any insurance in lieu of such filing; (ii) in case of default, and in accordance with the provisions of the instrument evidencing the obligation, either a fine in an amount not to exceed five cents per dollar on any installment which has become due and remained unpaid for a period in excess of ten days, but no such fine shall exceed five dollars and only one fine shall be collected on any such installment regardless

of the period during which it remains in default, and provided further that should the aggregate of such fines collected in connection with any loan exceed two per centum of such loan, or in any event twenty-five dollars, the savings and loan association shall refund such excess to the borrower within sixty days after the loan is paid in full, or, subject to an allowance of unearned interest attributable to the amount in default, interest on each amount past due at a rate not in excess of the rate provided for in the instrument evidencing the obligation; (iii) the actual expenditures, including reasonable attorney's fees, for necessary court process; and (iv) in case the savings and loan association insures a borrower under a credit unemployment insurance policy, group life insurance policy, group health insurance policy, group accident insurance policy, or group health and accident insurance policy, or requires insurance on personal property securing any such loan, an amount not in excess of the premiums chargeable in accordance with rate schedules then in effect and on file with the superintendent of financial services for such insurance by the insurer. No savings and loan association shall require a borrower to place any sum on deposit, or to make deposits in lieu of regular periodic installment payments, or to do or refrain from doing any other act which would entail additional expense or sacrifice, as a condition precedent to granting a loan or advance of credit under the authority of this paragraph, except under such terms and conditions as the superintendent may from time to time approve. Notwithstanding the provisions of this paragraph no refund of excess fines shall be required if it amounts to less than one dollar.

(d) Representing loans secured by mobile home chattel paper evidencing a monetary obligation incurred to finance the purchase of a mobile home located at the time of such purchase, or to be located within ninety days, at a semipermanent site within the state or in a contiguous state and to be maintained as a residence of the borrower, the borrower's spouse, child, grandchild, parent or grandparent.

(1) For this paragraph:

(i) "mobile home chattel paper" means written evidence of both a monetary obligation and a security interest of first priority in a mobile home and any equipment installed, or to be installed therein, and

(ii) "mobile home" or "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode, is

eight body feet or more in width or forty body feet or more in length, or when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein.

(2) If the loan is for the purpose of financing the purchase of a new mobile home,

(i) it shall mature not later than two hundred forty months after the date thereof, and

(ii) the amount advanced to the borrower shall not exceed one hundred per cent of the sum of (a) the purchase price of such mobile home (including any installed equipment) plus (b) the price of any new equipment installed or to be installed by the dealer.

(3) If the loan is for the purpose of financing the purchase of a used mobile home,

(i) it shall mature not later than two hundred forty months after the date thereof, and

(ii) the amount advanced to the borrower shall not exceed one hundred per cent of the purchase price of the mobile home actually paid (including any installed equipment).

(4) The loan shall be payable in equal or substantially equal monthly installments calculated from the date of the loan. Interest, which may be taken in advance, may be charged thereon, computed from the date of the loan to the date of the last installment payable thereunder, if the loan has a maturity, (i) not exceeding thirty-seven months, at a rate not to exceed six dollars per annum discount per one hundred dollars of the face amount or ten dollars if the interest so computed is less than that amount, or (ii) exceeding thirty-seven months, at a rate not to exceed five dollars per annum discount per one hundred dollars of the face amount provided that the interest charged, if the amount thereof exceeds ten dollars, shall not exceed one per cent per month on the unpaid principal balance.

(5) The authorized interest shall be inclusive of all charges incident to investigating and making any loan. No fee, commission, expense, or other charge shall be permitted except that the savings and loan association may contract to charge the borrower (i) the fees payable to

a public officer to perfect any lien or other security interest taken to secure the loan, or the premium, not in excess of such filing fee, payable for any insurance in lieu of such filing; (ii) in case of default, and in accordance with the instrument evidencing the obligation, either a fine in an amount not to exceed five per cent on any installment which has become due and remained unpaid for a period in excess of ten days, but no such fine shall exceed five dollars and only one fine shall be collected on any such installment regardless of the duration of the default, and provided further that should the aggregate of such fines collected in connection with any loan exceed two per cent of such loan or twenty-five dollars, the savings and loan association shall refund such excess within sixty days after the loan is paid in full, or, subject to an allowance of unearned interest attributable to the amount in default, interest on each amount past due at a rate not in excess of one per cent per month during the delinquency; (iii) the actual expenditures, including reasonable attorney's fees for necessary court process, and (iv) in case the savings and loan association insures a borrower under a credit unemployment insurance policy, group life insurance, health insurance, accident insurance, or health and accident insurance policy, or requires insurance on the property securing such loan, an amount not in excess of the premiums lawfully chargeable. No savings and loan association shall require a borrower to purchase shares in the association, or to purchase shares in lieu of regular periodic installment payments, or to do or refrain from doing any other act which would entail additional expense or sacrifice, as a condition to granting a loan under this paragraph except as the superintendent may from time to time approve. No refund of excess fines need be made if it amounts to less than one dollar.

(6) As a condition of any loan made pursuant to this paragraph, the borrower shall certify that the mobile home, against which the loan is made, is intended to be maintained in the state or in a contiguous state as a residence of the borrower, the borrower's spouse, child, grandchild, parent or grandparent. If the mobile home shall not be so maintained on the ninetieth day next succeeding the date of the loan or if it is relocated so as to no longer be located in the state or a contiguous state at any time before the first anniversary of the loan, the loan and all authorized charges shall become immediately due and

payable subject only to the refund provisions of paragraph (d) and the borrower may, if the contract so provides, be required to pay, as an additional authorized charge, a penalty in an amount not to exceed two per cent of the face amount of the loan.

(7) No loan shall be made by a savings and loan association pursuant hereto if the total amount loaned by it pursuant to this paragraph exceeds, or by the making of such loan will exceed, an amount equal to five per cent of the assets of the savings and loan association.

(8) Subject to such limitations and conditions as the superintendent of financial services may prescribe by general regulation, a savings and loan association may make a loan pursuant to this paragraph which the federal housing administrator has insured or has made a commitment to insure and may receive and hold such debentures as are issued by the federal housing administrator in payment of such insurance, or which is guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of l944." No law of this state prescribing or limiting the interest rate upon loans or advances of credit or prescribing a penalty for violation thereof or prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made or prescribing or limiting the period for which loans or advances of credit may be made or limiting the amount of any class of loans, advances of credit or purchases which may be made shall be deemed to apply to loans, advances of credit or purchases made or to loans acquired by purchase pursuant to this subparagraph.

(e) A borrower may prepay any loan made pursuant to paragraph (b), (c) or (d) in full or, with the consent of the savings and loan association, may refinance the loan. In the event of such prepayment or refinancing, the savings and loan association shall refund: (1) the unearned portion of the interest to the borrower the amount of which portion shall be determined according to a generally accepted actuarial method; provided, however, that if the amount of interest previously deducted (i) was less than ten dollars, no refund shall be required; or (ii) exceeded the sum of ten dollars and the earned interest is less than that amount, the savings and loan association may retain such an additional amount as will bring the earned interest to the sum of ten dollars and refund the remainder, and provided further, that unless the loan is refinanced, no

refund shall be required if it amounts to less than one dollar; and (2) if a charge was made to the borrower for premiums for insuring the borrower under a credit unemployment insurance policy, group life insurance policy, or under a group health, group accident or group health and accident insurance policy, the excess of the charge to the borrower therefor over the premiums paid or payable by the savings and loan association, if such premiums were paid or payable by the savings and loan association periodically, or the refund for such insurance premium received or receivable by the savings and loan association, if such premium was paid or payable in a lump sum by the savings and loan association, provided that no such refund shall be required if it amounts to less than one dollar. In the event (i) the maturity of the loan is accelerated due to the default of the borrower or otherwise and judgment is obtained, or (ii) repayment is made pursuant to any such insurance policy, the borrower or his legal representative, as the case may be, shall be entitled to the same refund as if the loan had been prepaid in full on the date of acceleration or repayment.

2-a. A savings and loan association may lend its funds to borrowers therefrom upon their promissory notes representing loans for the purpose of financing the purchase of or refinancing an existing ownership interest in certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate as provided in this subdivision.

A savings and loan association may, subject to such regulations as the superintendent of financial services finds necessary and proper, invest to an amount not exceeding the maximum per cent of the loans permitted to be made on real estate improved by a single family residence occupied by the owner, provided that for purposes of this section the amount of the purchase price shall be deemed to equal the appraised value of such certificate of stock or other evidence of an ownership interest, or, in the case of a refinancing, the appraised value of certificates of stock or other evidence of the ownership of an interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate, for the purpose of financing a

purchase of or refinancing an existing ownership interest in such a corporation or partnership; provided (a) such investment is secured within ninety days from the making of the loan by an assignment or transfer of the stock or other evidence of an ownership interest of the borrower and a proprietary lease; and (b) repayments of principal and interest shall be effected within the same number of years as a conventional mortgage loan previously described in this subdivision. The maximum rate of interest which may be charged, taken or received upon any loan or forbearance made pursuant to this subdivision may exceed the rate of interest prescribed by the superintendent of financial services in accordance with section fourteen-a of this chapter by no more than one and one-half per cent per annum.

3. A savings and loan association may also lend its funds, if at any time such association has funds in excess of the amount needed for loans to its members, as follows:

(a) To other savings and loan associations.

(b) Upon bonds and mortgages and notes and mortgages upon real estate to the same extent authorized in subdivision one of this section, subject to the limitations therein.

3-a. A savings and loan association may also lend its funds to its members or their children who are attending or planning to attend colleges in this state or elsewhere, to assist them in meeting their expenses of higher education, where such loans are made by the association and (1) guaranteed by the New York higher education assistance corporation in accordance with the provisions of article fourteen of the education law, or (2) insured or covered by a commitment to insure or are guaranteed or covered by a commitment to guarantee issued by the federal education commissioner in accordance with the provisions of the act of congress entitled the "Higher Education Act of 1965". In such cases no further security for the repayment of such loans shall be required of the borrowers by the association. A savings and loan association may also lend its funds to nonmembers, for the same purposes and upon the same terms and conditions if, at any time, such association has funds in excess of the amount needed for loans to its members.

4. No loan shall be made under the provisions of this section upon the security of a mortgage:

(a) Which is not a first lien upon the property described therein, unless all prior mortgages, liens or encumbrances thereon are owned by such association; and no such prior mortgage, lien or encumbrance shall be sold, transferred or assigned by such association until every subsequent mortgage, lien or encumbrance owned by it shall have been fully paid and satisfied; and further provided that whenever loans are made under both subdivisions one and three of this section upon the same real estate the limitations of amount applicable to the loan under each subdivision shall be determined by first segregating that portion of the appraised value of the premises necessary to sustain the prior mortgage, lien or encumbrance, and the limitation of amount applicable to the additional mortgage, lien or encumbrance shall then be determined with reference only to the remaining portion of the appraised value; provided further that the loan under subdivision three shall provide for equal or substantially equal periodic payments of interest and principal at least annually in amount sufficient to pay all interest and effect full repayment of principal within thirty years;

(b) 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 such appraiser's judgment. Such certificate shall be filed and preserved among the records of the association and any member shall have access thereto;

4-a. A savings and loan association may, in addition to the authority granted under any other subdivision of this section or subdivision six of section three hundred seventy-nine of this article, make a loan to a natural person upon the security of a mortgage which is not a first lien at the rate or rates agreed to by the savings and loan association and the borrower, subject to such regulations as the superintendent of financial services may prescribe. Such regulations by the superintendent of financial services may include such restrictions as the superintendent of financial services finds necessary or proper, including without limitation, a restriction as to the percentage of total assets which may be invested in such loans or a restriction on the

loan to appraisal value of property securing such loan.

For purposes of this subdivision, the term mortgage shall include a lien on an existing ownership interest in certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate.

5. Every mortgage and every assignment of a mortgage taken by any savings and loan association shall be immediately recorded or registered in the office of the proper recording officer of the county in which the real estate described in such mortgage is located. This subdivision shall not apply to a participating interest in any mortgage which shall have been acquired by a savings and loan association under the provisions of section three hundred eighty-c of the banking law if the originating mortgagee shall have recorded such mortgage or an assignment thereof in the office of the proper recording officer of the county in which the real estate described in such mortgage is located.

6. Any savings and loan association may require either single premium reducing term, monthly premium reducing term, or fully paid-up life insurance or accident, health or disability insurance to be assigned to it by any borrower. When directed by the written order of a borrower, the cost of such insurance may be advanced and paid by the association. All such payments may be added to the unpaid balance of the loan.

7. A savings and loan association shall have the power to waive its right to enforce payment of a bond or note secured by a mortgage on real property and may waive its right to obtain a deficiency judgment against the borrower in the event of foreclosure of such mortgage.