§ 590. Licensing. 1. Definitions. (a) "Mortgage loan" shall mean a loan to a natural person made primarily for personal, family or household use, secured by either a mortgage or deed of trust on residential real property, any certificate of stock or other evidence of ownership in, and proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential real property or, if determined by the superintendent by regulation, shall include such a loan secured by a security interest on a manufactured home;

(b) "Residential real property" shall mean real property located in this state improved by a one-to-four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to unimproved real property upon which such dwellings are to be constructed;

(c) "Making a mortgage loan" shall mean for compensation or gain, either directly or indirectly, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan or a mortgagor as a mortgage loan;

(d) "Soliciting, processing, placing or negotiating a mortgage loan" shall mean for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan on behalf of a third party or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a lender on behalf of a third party;

(e) "Exempt organization" shall mean any insurance company, banking organization, foreign banking corporation licensed by the superintendent or the comptroller of the currency to transact business in this state, national bank, federal savings bank, federal savings and loan association, federal credit union, or any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state, or any instrumentality created by the United States or any state with the power to make mortgage loans. Subject to such regulations as may be promulgated by the superintendent, "exempt organization" may also include any subsidiary of such entities;

(f) "Licensee" or "mortgage banker" shall mean a person or entity who

or which is licensed pursuant to section five hundred ninety-one of this chapter to engage in the business of making mortgage loans in this state;

(g) "Registrant" or "mortgage broker" shall mean a person or entity registered pursuant to section five hundred ninety-one-a of this chapter to engage in the business of soliciting, processing, placing or negotiating mortgage loans for others, or offering to solicit, process, place or negotiate mortgage loans for others;

(h) "Mortgage loan servicer" or "servicer" shall mean a person or entity registered pursuant to subdivision two of this section to engage in the business of servicing mortgage loans for property located in this state;

(i) "Servicing mortgage loans" shall mean receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section six-k of this chapter, title three-A of article nine of the real property tax law or section ten of 12 U.S.C. 2609, and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage service loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in section six-h of this chapter, sections two hundred eighty and two hundred eighty-a of the real property law or 24 CFR 3500.2, servicing includes making payments to the borrower.

2. Necessity for license. (a) No individual, person, partnership, association, corporation or other entity shall engage in the business of making mortgage loans without first obtaining a license from the superintendent in accordance with the licensing procedure provided in this article and such regulations as may be promulgated by the superintendent. The licensing provisions of this subdivision shall not apply to: (i) any exempt organization; (ii) any entity or entities which shall be exempted in accordance with regulations promulgated by the superintendent hereunder; or (iii) any individual, person, partnership, association, corporation or other entity which makes not more than three such loans in a calendar year, nor more than five in a two year period,

provided that no such mortgage loans have been made which were solicited, processed, placed or negotiated by a mortgage broker, mortgage banker or exempt organization.

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

(c) A licensee registrant or mortgage loan servicer may apply for authority to open and maintain one or more branch offices.

(d) No person or entity engaged in the building and sale of residential real property, or a financing subsidiary thereof, shall be deemed to be making a mortgage loan, as defined in paragraph (c) of subdivision one of this section, or soliciting, processing, placing or negotiating a mortgage loan, as defined in paragraph (d) of subdivision one of this section, if and only if such person, entity or financing subsidiary shall make, solicit, process, place or negotiate a mortgage loan with respect to residential real property it has built through a licensee or exempt organization which is acting as its agent in compliance with this article and regulations promulgated hereunder.

3. Rules and regulations. In addition to such powers as may otherwise be prescribed by this chapter, the superintendent is hereby authorized and empowered to promulgate such rules and regulations as may in the judgement of the superintendent be consistent with the purposes of this article, or appropriate for the effective administration of this article, including, but not limited to:

(a) Such rules and regulations in connection with the activities of mortgage brokers, mortgage bankers, mortgage loan servicers and exempt organizations as may be necessary and appropriate for the protection of consumers in this state;

(b) Such rules and regulations as may be necessary and appropriate to define improper or fraudulent business practices in connection with the

activities of mortgage brokers, mortgage bankers, mortgage loan servicers and exempt organizations in making mortgage loans;

(c) Such rules and regulations under this article regarding the origination, sale or servicing of manufactured home loans as may be necessary and appropriate for the protection of consumers;

(d) Such rules and regulations as may define the terms used in this article and as may be necessary and appropriate to interpret and implement the provisions of this article; and

(e) Such rules and regulations as may be necessary for the enforcement of this article.

The superintendent is hereby authorized and empowered to make such specific rulings, demands and findings as the superintendent may deem necessary for the proper conduct of the mortgage lending industry.

4. Exemptions from provisions of article. No person shall be subject to the licensure or registration provisions of this article if he or she is employed by an exempt organization, a licensee or registrant, or a mortgage loan servicer to assist in the performance of the business activities described in this article for the exempt organization, licensee or registrant, or a mortgage loan servicer or is engaged in regulated activities as an associate or affiliate of a registrant, a licensee, a mortgage loan servicer or exempt organization which has filed an undertaking of accountability with the superintendent.

No employee of an exempt organization shall be subject to the licensure or registration provisions of this article due to such employee's assisting in the performance of the business activities of a mortgage banker that is controlled by the exempt organization or affiliated with the exempt organization through common ownership or control.

5. Activities of mortgage brokers, mortgage bankers, mortgage loan servicers and exempt organizations. (a) Mortgage brokers may not make mortgage loans in this state;

(b) Mortgage brokers shall solicit, process, place and negotiate mortgage loans with a mortgage banker licensed pursuant to the

provisions of this article or exempt organization as defined herein or pursuant to regulations as promulgated by the banking board or prescribed by the superintendent and in conformity with the provisions of this chapter, such rules and regulations as may be promulgated by the superintendent thereunder and all applicable federal laws and the rules and regulations promulgated thereunder;

(c) Mortgage bankers and exempt organizations shall make mortgage loans in conformity with the provisions of this chapter, such rules and regulations as may be promulgated by the superintendent thereunder and all applicable federal laws and the rules and regulations promulgated thereunder;

(d) Mortgage loan servicers shall engage in the business of servicing mortgage loans in conformity with the provisions of this chapter, such rules and regulations as may be promulgated by the superintendent thereunder and all applicable federal laws and the rules and regulations promulgated thereunder.

(e) No mortgage banker, mortgage broker or exempt organization shall conduct business with any person, partnership, association, corporation or other entity which it knows or should have known is acting as a mortgage banker or a mortgage broker without being licensed or registered as required by this article. A person, partnership, association, corporation or other entity who provides non-residential subordinate loans shall be exempt from this paragraph. A mortgage banker, mortgage broker or exempt organization shall promptly notify the department of any such unlicensed or unregistered operations.

(f) Nothing in this section shall be construed to limit any otherwise applicable state or federal law or regulations.

5-a. Mortgage brokers and federal housing administration-insured mortgage loans. (a) Notwithstanding the provisions of this section, a mortgage broker may enter into agreements with federally-approved sponsors and make mortgage loans, which are insured by the federal housing administration, for sale or transfer to such sponsors, provided that such mortgage broker:

(i) meets all federal requirements as a loan correspondent and receives and maintains federal approval;

(ii) prior to making any such federal housing administration-insured

mortgage loans, receives the superintendent's approval;

(iii) maintains the superintendent's approval;

(iv) enters into agreements only with federally-approved sponsors who are licensed mortgage bankers or exempt organizations;

(v) promptly notifies the superintendent when it enters into an agreement with a federally-approved sponsor and when any such agreement terminates. The federally-approved sponsor shall also promptly notify the superintendent when any such agreement with a mortgage broker terminates;

(vi) maintains a written agreement with its federally-approved sponsors to fund all federal housing administration-insured mortgage loans that the mortgage broker makes;

(vii) issues a lock-in agreement or commitment only after receiving approval for such agreement or commitment from its federally-approved sponsors; and

(viii) maintains at all times the federal net worth requirement.

(b) A federally-approved sponsor is responsible to the superintendent for the actions of any mortgage broker which is its loan correspondent in regard to the making of a mortgage loan insured by the federal housing administration.

(c) If a mortgage broker's federal approval is surrendered, suspended or revoked, the authorization granted pursuant to this subdivision shall immediately cease and the mortgage broker shall immediately notify the superintendent of the surrender, suspension or revocation.

(d) The approval of the superintendent pursuant to paragraph (a) of this subdivision may be immediately suspended or revoked in the sole discretion of the superintendent if it is found that the making of federal housing administration-insured mortgage loans under this section by a mortgage broker is inconsistent with the provisions of section five hundred eighty-nine of this chapter.

(e) Notwithstanding the provisions of this section and sections five hundred ninety-three-a and five hundred ninety-five-a of this chapter, the superintendent may establish regulations to implement this subdivision, and may impose requirements and conditions on mortgage brokers which supplement or exceed federal requirements.

6. The superintendent is hereby authorized and empowered, consistent

with the declaration of policy set forth in this article, to exempt by rule or regulation from any or all of the provisions of this article any or all licensees or exempt organizations as defined in paragraph (e) of subdivision one of this section with respect to credit line mortgages, installment loans and home improvement loans.